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SUPREME COURT

OF THE

PHILIPPINES

FROM

OCTOBER 26, 2007 TO NOVEMBER 23, 2007

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MANILA
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 145587. October 26, 2007]

EDI-STAFFBUILDERS INTERNATIONAL, INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and ELEAZAR S. GRAN,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NLRC; APPEAL; FAILURE TO FURNISH THE ADVERSE PARTY OF THE COPY OF THE APPEAL IS A MERE FORMAL LAPSE NOT A JURISDICTIONAL DEFECT. —** In a catena of cases, It was ruled that **failure of appellant to furnish a copy of the appeal to the adverse party is not fatal to the appeal.** In *Estrada v. National Labor Relations Commission,* this Court set aside the order of the NLRC which dismissed an appeal on the sole ground that the appellant did not furnish the appellee a memorandum of appeal contrary to the requirements of Article 223 of the New Labor Code and Section 9, Rule XIII of its Implementing Rules and Regulations. Also, in *J.D. Magpayo Customs Brokerage Corp. v. NLRC*, the order of dismissal of an appeal to the NLRC based on the ground that "*there is no showing whatsoever that a copy of the appeal was served by the appellant on the appellee*" was annulled. The Court ratiocinated as follows: The failure to give a copy of the appeal to the adverse party was a mere formal lapse, an excusable neglect. Time and

again We have acted on petitions to review decisions of the Court of Appeals even in the absence of proof of service of a copy thereof to the Court of Appeals as required by Section 1 of Rule 45, Rules of Court. **We act on the petitions and simply require the petitioners to comply with the rule**. The *J.D. Magpayo* ruling was reiterated in *Carnation Philippines Employees Labor Union-FFW v. National Labor Relations Commission, Pagdonsalan v. NLRC,* and in *Sunrise Manning Agency, Inc. v. NLRC*. Thus, the doctrine that evolved from these cases is that failure to furnish the adverse party with a copy of the appeal is treated only as a formal lapse, an excusable neglect, and hence, *not a jurisdiction defect*. Accordingly, in such a situation, the appeal should not be dismissed; however, it should not be given due course either. As enunciated in *J.D. Magpayo,* **the duty that is imposed on the NLRC, in such a case, is to require the appellant to comply with the rule that the opposing party should be provided with a copy of the appeal memorandum**.

2. ID.; ID.; ID.; ID.; LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEAL; FAILURE OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) TO DIRECT THAT THE OPPOSING PARTY BE FURNISHED WITH A COPY OF APPEAL MEMORANDUM CONSTITUTES GRAVE ABUSE OF DISCRETION. — While Gran's failure to furnish EDI with a copy of the Appeal Memorandum is excusable, the abject failure of the NLRC to order Gran to furnish EDI with the Appeal Memorandum constitutes *grave abuse of discretion*. The records reveal that the NLRC discovered that Gran failed to furnish EDI a copy of the Appeal Memorandum. The NLRC then ordered Gran to present proof of service. In compliance with the order, Gran submitted a copy of Camp Crame Post Office's list of mail/parcels sent on April 7, 1998. The post office's list shows that private respondent Gran sent two pieces of mail on the same date: one addressed to a certain Dan O. de Guzman of Legaspi Village, Makati; and the other appears to be addressed to Neil B. Garcia (or Gran), of Ermita, Manila— both of whom are not connected with petitioner. This mailing list, however, is not a conclusive proof that EDI indeed received a copy of the Appeal Memorandum. Sec. 5 of the NLRC Rules of Procedure (1990) provides for the proof and completeness of service in proceedings before the NLRC: **SECTION 5.** *Proof and completeness of service*.— xxx Hence, if the service is done

through registered mail, it is only deemed complete when the addressee or his agent received the mail or after five (5) days from the date of first notice of the postmaster. However, the NLRC Rules do not state what would constitute proper proof of service. Sec. 13, Rule 13 of the Rules of Court, provides for proofs of service: **SECTION 13.** *Proof of service*.— xxx. Based on the foregoing provision, it is obvious that the list submitted by Gran is not conclusive proof that he had served a copy of his appeal memorandum to EDI, nor is it conclusive proof that EDI received its copy of the Appeal Memorandum. He should have submitted an affidavit proving that he mailed the Appeal Memorandum together with the registry receipt issued by the post office; afterwards, Gran should have immediately filed the registry return card. Hence, after seeing that Gran failed to attach the proof of service, the NLRC should not have simply accepted the post office's list of mail and parcels sent; but **it should have required Gran to properly furnish the opposing parties with copies of his Appeal Memorandum as prescribed in *J.D. Magpayo* and the other case.** The NLRC should not have proceeded with the adjudication of the case, as this constitutes *grave abuse of discretion.*

3. ID.; ID.; ID.; ID.; THE RIGHTS OF THE EMPLOYERS TO PROCEDURAL DUE PROCESS CANNOT BE CAVALIERLY DISREGARDED. — The glaring failure of NLRC to ensure that Gran should have furnished petitioner EDI a copy of the Appeal Memorandum before rendering judgment reversing the dismissal of Gran's complaint constitutes an evasion of the pertinent NLRC Rules and established jurisprudence. Worse, this failure deprived EDI of procedural due process guaranteed by the Constitution which can serve as basis for the nullification of proceedings in the appeal before the NLRC. One can only surmise the shock and dismay that OAB, EDI, and ESI experienced when they thought that the dismissal of Gran's complaint became final, only to receive a copy of Gran's Motion for Execution of Judgment which also informed them that Gran had obtained a favorable NLRC Decision. This is not level playing field and absolutely unfair and discriminatory against the employer and the job recruiters. The rights of the employers to procedural due process cannot be cavalierly disregarded for they too have rights assured under the Constitution.

4. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; A CONTRACT FREELY ENTERED INTO IS CONSIDERED LAW BETWEEN THE PARTIES, HENCE IT SHOULD BE RESPECTED. —** In cases involving OFWs, the rights and obligations among and between the OFW, the local recruiter/agent, and the foreign employer/principal are governed by the employment contract. A contract freely entered into is considered law between the parties; and hence, should be respected. In formulating the contract, the 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. In the present case, the employment contract signed by Gran specifically states that Saudi Labor Laws will govern matters not provided for in the contract (*e.g.* specific causes for termination, termination procedures, *etc.*). Being the law intended by the parties (*lex loci intentiones)* to apply to the contract, Saudi Labor Laws should govern all matters relating to the termination of the employment of Gran.

5. **POLITICAL LAW; INTERNATIONAL LAW; DOCTRINE OF *PRESUMED-IDENTITY APPROACH,* EXPLAINED. —** In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of a foreign law. He is presumed to know only domestic or forum law. Unfortunately for petitioner, it did not prove the pertinent Saudi laws on the matter; thus, the International Law doctrine of *presumed-identity approach* or *processual presumption* comes into play. Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours. Thus, we apply Philippine labor laws in determining the issues presented before us.

6. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL; CONSIDERED ILLEGAL WHEN THE EMPLOYER FAILED TO PROVE THAT THE SAME IS FOR A JUST AND VALID CAUSE; CASE AT BAR. —** In illegal dismissal cases, it has been established by Philippine law and jurisprudence that the employer should prove that the dismissal of employees or

personnel is legal and just. Section 33 of Article 277 of the Labor Code states that: ART. 277. MISCELLANEOUS PROVISIONS (b) xxx. In many cases, it has been held that in termination disputes or illegal dismissal cases, the employer has the burden of proving that the dismissal is for just and valid causes; and failure to do so would necessarily mean that the dismissal was not justified and therefore illegal. Taking into account the character of the charges and the penalty meted to an employee, the employer is bound to adduce clear, accurate, consistent, and convincing evidence to prove that the dismissal is valid and legal. This is consistent with the principle of *security of tenure* as guaranteed by the Constitution and reinforced by Article 277 (b) of the Labor Code of the Philippines. In the instant case, petitioner claims that private respondent Gran was validly dismissed for just cause, due to incompetence and insubordination or disobedience. To prove its allegations, EDI submitted two letters as evidence. The first is the July 9, 1994 termination letter, addressed to Gran, from Andrea E. Nicolaou, Managing Director of OAB. The second is an unsigned April 11, 1995 letter from OAB addressed to EDI and ESI, which outlined the reasons why OAB had terminated Gran's employment. Petitioner claims that Gran was incompetent for the Computer Specialist position because he had "insufficient knowledge in programming and zero knowledge of [the] ACAD system." Petitioner also claims that Gran was justifiably dismissed due to insubordination or disobedience because he continually failed to submit the required "Daily Activity Reports." However, other than the abovementioned letters, no other evidence was presented to show how and why Gran was considered incompetent, insubordinate, or disobedient. Petitioner EDI had clearly failed to overcome the burden of proving that Gran was validly dismissed.

7. **ID.; ID.; ID.; ID.; INCOMPETENCE; ALLEGATION THEREOF SHOULD HAVE A FACTUAL FOUNDATION. —** Petitioner's imputation of incompetence on private respondent due to his "insufficient knowledge in programming and zero knowledge of the ACAD system" based only on the above mentioned letters, without any other evidence, cannot be given credence. An allegation of incompetence should have a factual foundation. Incompetence may be shown by weighing it against a standard, benchmark, or criterion. However, EDI failed to establish any such bases to show how petitioner found Gran incompetent.

8. **ID.; ID.; ID.; ID.; WILLFUL DISOBEDIENCE; ELEMENTS TO BE CONSIDERED A VALID CAUSE FOR DISMISSAL, NOT PRESENT IN CASE AT BAR. —** In addition, the elements that must concur for the charge of insubordination or willful disobedience to prosper were not present. In *Micro Sales Operation Network v. NLRC*, we held that: For willful disobedience to be a valid cause for dismissal, the following twin elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge. EDI failed to discharge the burden of proving Gran's insubordination or willful disobedience. As indicated by the second requirement provided for in *Micro Sales Operation Network*, in order to justify willful disobedience, we must determine whether the order violated by the employee is reasonable, lawful, made known to the employee, and pertains to the duties which he had been engaged to discharge. In the case at bar, petitioner failed to show that the order of the company which was violated—the submission of "Daily Activity Reports"—was part of Gran's duties as a Computer Specialist. Before the Labor Arbiter, EDI should have provided a copy of the company policy, Gran's job description, or any other document that would show that the "Daily Activity Reports" were required for submission by the employees, more particularly by a Computer Specialist.

9. **ID.; ID.; ID.; ID.; BURDEN OF PROVING THAT THE EMPLOYMENT WAS VALIDLY AND LEGALLY TERMINATED DEVOLVES NOT ONLY UPON THE FOREIGN-BASED EMPLOYER BUT ALSO IN THE RECRUITMENT AGENCY.—** Even though EDI and/or ESI were merely the local employment or recruitment agencies and not the foreign employer, they should have adduced additional evidence to convincingly show that Gran's employment was validly and legally terminated. The burden devolves not only upon the foreign-based employer but also on the employment or recruitment agency for the latter is not only an agent of the former, but is also solidarily liable with the foreign principal for any claims or liabilities arising from the dismissal of the worker. Thus, **petitioner failed to prove that Gran was justifiably dismissed due to incompetence, insubordination, or willful disobedience.**

10. **ID.; ID.; ID.; ID.; DUE PROCESS; TWIN-NOTICE REQUIREMENT; NOT COMPLIED WITH IN CASE AT BAR.—** Under the twin notice requirement, the employees must be given two (2) notices before their employment could be terminated: (1) a first notice to apprise the employees of their fault, and (2) a second notice to communicate to the employees that their employment is being terminated. In between the first and second notice, the employees should be given a hearing or opportunity to defend themselves personally or by counsel of their choice. A careful examination of the records revealed that, indeed, OAB's manner of dismissing Gran fell short of the two notice requirement. While it furnished Gran the written notice informing him of his dismissal, it failed to furnish Gran the written notice apprising him of the charges against him, as prescribed by the Labor Code. Consequently, he was denied the opportunity to respond to said notice. In addition, OAB did not schedule a hearing or conference with Gran to defend himself and adduce evidence in support of his defenses. Moreover, the July 9, 1994 termination letter was effective on the same day. This shows that OAB had already condemned Gran to dismissal, even before Gran was furnished the termination letter. It should also be pointed out that OAB failed to give Gran the chance to be heard and to defend himself with the assistance of a representative in accordance with Article 277 of the Labor Code. Clearly, there was no intention to provide Gran with due process. Summing up, Gran was notified and his employment arbitrarily terminated on the same day, through the same letter, and for unjustified grounds. Obviously, **Gran was not afforded due process.**

11. **ID.; ID.; ID.; ID.; AN EMPLOYER IS LIABLE TO PAY NOMINAL DAMAGES AS INDEMNITY FOR VIOLATING THE EMPLOYEE'S RIGHT TO STATUTORY DUE PROCESS.—** Pursuant to the doctrine laid down in *Agabon*, an employer is liable to pay nominal damages as indemnity for violating the employee's right to statutory due process. Since OAB was in breach of the due process requirements under the Labor Code and its regulations, OAB, ESI, and EDI, jointly and solidarily, are liable to Gran in the amount of PhP 30,000.00 as indemnity.

12. **ID.; ID.; ID.; ID.; CASES ARISING BEFORE THE EFFECTIVITY OF REPUBLIC ACT NO. 8042; WHEN A CONTRACT IS FOR A FIXED TERM AND THE EMPLOYEES ARE ILLEGALLY DISMISSED, THEY ARE ENTITLED TO PAYMENT OF THEIR**

SALARIES CORRESPONDING TO THE UNEXPIRED PORTION OF THEIR CONTRACT.— We reiterate the rule that with regard to employees hired for a fixed period of employment, in cases arising before the effectivity of R.A. No. 8042 (Migrant Workers and Overseas Filipinos Act) on August 25, 1995, that when the contract is for a fixed term and the employees are dismissed without just cause, they are entitled to the payment of their salaries corresponding to the unexpired portion of their contract. On the other hand, for cases arising after the effectivity of R.A. No. 8042, when the termination of employment is without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term whichever is less. In the present case, the employment contract provides that the employment contract shall be valid for a period of two (2) years from the date the employee starts to work with the employer. Gran arrived in Riyadh, Saudi Arabia and started to work on February 7, 1994; hence, his employment contract is until February 7, 1996. Since he was illegally dismissed on July 9, 1994, before the effectivity of R.A. No. 8042, he is therefore entitled to backwages corresponding to the unexpired portion of his contract, which was equivalent to USD 16,150.

13. **ID.; ID.; ID.; ID.; QUITCLAIM AND WAIVER; WHEN CONSIDERED VALID AND BINDING.—** Courts must undertake a meticulous and rigorous review of quitclaims or waivers, more particularly those executed by employees. This requirement was clearly articulated by Chief Justice Artemio V. Panganiban in *Land and Housing Development Corporation v. Esquillo:* Quitclaims, releases and other waivers of benefits granted by laws or contracts in favor of workers should be strictly scrutinized to protect the weak and the disadvantaged. **The waivers should be carefully examined, in regard not only to the words and terms used, but also the factual circumstances under which they have been executed**. This Court had also outlined in *Land and Housing Development Corporation,* citing *Periquet v. NLRC,* the parameters for valid compromise agreements, waivers, and quitclaims: Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be

disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the **person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable**, the transaction must be recognized as a valid and binding undertaking. Is the waiver and quitclaim labeled a Declaration valid? It is not.

14. **ID.; ID.; ID.; ID.; ID.; THE WAIVER AND QUITCLAIM IN CASE AT BAR, DECLARED UNENFORCEABLE.—** The court *a quo* is correct in its finding that the Declaration is a contract of adhesion which should be construed against the employer, OAB. An adhesion contract is contrary to public policy as it leaves the weaker party—the employee—in a "take-it-or-leave-it" situation. Certainly, the employer is being unjust to the employee as there is no meaningful choice on the part of the employee while the terms are unreasonably favorable to the employer. Thus, the Declaration purporting to be a quitclaim and waiver is unenforceable under Philippine laws in the absence of proof of the applicable law of Saudi Arabia.

15. **ID.; ID.; ID.; ID.; ID.; RULES; APPLICABLE ONLY TO LABOR CONTRACTS OF OVERSEAS FILIPINO WORKERS ABSENT PROOF OF THE LAWS OF THE FOREIGN COUNTRY AGREED UPON TO GOVERN SAID CONTRACTS.—** In order to prevent disputes on the validity and enforceability of quitclaims and waivers of employees under Philippine laws, said agreements should contain the following: 1. A fixed amount as full and final compromise settlement; 2. The benefits of the employees if possible with the corresponding amounts, which the employees are giving up in consideration of the fixed compromise amount; 3. A statement that the employer has clearly explained to the employee in English, Filipino, or in the dialect known to the employees—that by signing the waiver or quitclaim, they are forfeiting or relinquishing their right to receive the benefits which are due them under the law; and 4. A statement that the employees signed and executed the document voluntarily, and had fully understood the contents of the document and that their consent was freely given without any threat, violence, duress, intimidation, or undue influence

exerted on their person. It is advisable that the stipulations be made in **English** [and] **Tagalog or in the dialect known to the employee.** There should be two (2) witnesses to the execution of the quitclaim who must also sign the quitclaim. The document should be subscribed and sworn to under oath preferably before any administering official of the Department of Labor and Employment or its regional office, the Bureau of Labor Relations, the NLRC or a labor attaché in a foreign country. Such official shall assist the parties regarding the execution of the quitclaim and waiver. This compromise settlement becomes final and binding under Article 227 of the Labor Code. xxx It is made clear that the foregoing rules on quitclaim or waiver shall apply only to labor contracts of OFWs in the absence of proof of the laws of the foreign country agreed upon to govern said contracts. Otherwise, the foreign laws shall apply.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leaño for petitioner.
Conrado P. Sajor for respondent.

D E C I S I O N

VELASCO, JR., ***J.*****:**

The Case

This Petition for Review on *Certiorari*[1] seeks to set aside the October 18, 2000 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 56120 which affirmed the January 15, 1999 Decision[3] and September 30, 1999 Resolution[4] rendered by

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[1] *Rollo*, pp. 9-39.

[2] *Id*. at 140-148. The Decision was penned by Associate Justice Conchita Carpio Morales (now a Member of this Court) and concurred in by Associate Justices Candido V. Rivera and Elvi John S. Asuncion.

[3] *Id*. at 86-99. The Decision was penned by NLRC Commissioner Ireneo B. Bernardo and concurred in by Commissioners Lourdes C. Javier and Tito F. Genilo.

[4] *Id*. at 106-107.

the National Labor Relations Commission (NLRC) (Third Division) in POEA ADJ (L) 94-06-2194, ordering Expertise Search International (ESI), EDI-Staffbuilders International, Inc. (EDI), and Omar Ahmed Ali Bin Bechr Est. (OAB) jointly and severally to pay Eleazar S. Gran (Gran) the amount of USD 16,150.00 as unpaid salaries.

The Facts

Petitioner EDI is a corporation engaged in recruitment and placement of Overseas Filipino Workers (OFWs).[5] ESI is another recruitment agency which collaborated with EDI to process the documentation and deployment of private respondent to Saudi Arabia.

Private respondent Gran was an OFW recruited by EDI, and deployed by ESI to work for OAB, in Riyadh, Kingdom of Saudi Arabia.[6]

It appears that OAB asked EDI through its October 3, 1993 letter for *curricula vitae* of qualified applicants for the position of "Computer Specialist."[7] In a facsimile transmission dated November 29, 1993, OAB informed EDI that, from the applicants' *curricula vitae* submitted to it for evaluation, it selected Gran for the position of "Computer Specialist." The faxed letter also stated that if Gran agrees to the terms and conditions of employment contained in it, one of which was a monthly salary of SR (Saudi Riyal) 2,250.00 (USD 600.00), EDI may arrange for Gran's immediate dispatch.[8]

After accepting OAB's offer of employment, Gran signed an employment contract[9] that granted him a monthly salary of

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[5] *Id*. at 140.

[6] *Id*. at 140-141.

[7] *Id*. at 40.

[8] *Id*. at 41.

[9] Signed by Eleazar S. Gran (second party) and Mrs. Andrea Nicolaus (first party) representing Omar Ahmed Ali Bin Bechr Est., dated January 20, 1994; *id*. at 42-50.

USD 850.00 for a period of two years. Gran was then deployed to Riyadh, Kingdom of Saudi Arabia on February 7, 1994.

Upon arrival in Riyadh, Gran questioned the discrepancy in his monthly salary—his employment contract stated USD 850.00; while his Philippine Overseas Employment Agency (POEA) Information Sheet indicated USD 600.00 only. However, through the assistance of the EDI office in Riyadh, OAB agreed to pay Gran USD 850.00 a month.[10]

After Gran had been working for about five months for OAB, his employment was terminated through OAB's July 9, 1994 letter,[11] on the following grounds:

1. Non-compliance to contract requirements by the recruitment agency primarily on your salary and contract duration.

2. Non-compliance to pre-qualification requirements by the recruitment agency[,] vide OAB letter ref. F-5751-93, dated October 3, 1993.[12]

3. Insubordination or disobedience to Top Management Order and/or instructions (non-submittal of daily activity reports despite several instructions).

On July 11, 1994, Gran received from OAB the total amount of SR 2,948.00 representing his final pay, and on the same day, he executed a Declaration[13] releasing OAB from any financial obligation or otherwise, towards him.

After his arrival in the Philippines, Gran instituted a complaint, on July 21, 1994, against ESI/EDI, OAB, Country Bankers Insurance Corporation, and Western Guaranty Corporation with the NLRC, National Capital Region, Quezon City, which was docketed as POEA ADJ (L) 94-06-2194 for underpayment of wages/salaries and illegal dismissal.

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[10] *Id.* at 141.

[11] *Id.* at 51.

[12] *Supra* note 7.

[13] *Rollo*, p. 73.

The Ruling of the Labor Arbiter

In his February 10, 1998 Decision,[14] Labor Arbiter Manuel R. Caday, to whom Gran's case was assigned, ruled that there was neither underpayment nor illegal dismissal.

The Labor Arbiter reasoned that there was no underpayment of salaries since according to the POEA-Overseas Contract Worker (OCW) Information Sheet, Gran's monthly salary was USD 600.00, and in his Confirmation of Appointment as Computer Specialist, his monthly basic salary was fixed at SR 2,500.00, which was equivalent to USD 600.00.

Arbiter Caday also cited the Declaration executed by Gran, to justify that Gran had no claim for unpaid salaries or wages against OAB.

With regard to the issue of illegal dismissal, the Labor Arbiter found that Gran failed to refute EDI's allegations; namely, (1) that Gran did not submit a single activity report of his daily activity as dictated by company policy; (2) that he was not qualified for the job as computer specialist due to his insufficient knowledge in programming and lack of knowledge in ACAD system; (3) that Gran refused to follow management's instruction for him to gain more knowledge of the job to prove his worth as computer specialist; (4) that Gran's employment contract had never been substituted; (5) and that Gran was paid a monthly salary of USD 850.00, and USD 350.00 monthly as food allowance.

Accordingly, the Labor Arbiter decided that Gran was validly dismissed from his work due to insubordination, disobedience, and his failure to submit daily activity reports.

Thus, on February 10, 1998, Arbiter Caday dismissed Gran's complaint for lack of merit.

Dissatisfied, Gran filed an Appeal[15] on April 6, 1998 with the NLRC, Third Division. However, it appears from the records

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[14] *Id*. at 75.

[15] CA *rollo*, pp. 108-113.

that Gran failed to furnish EDI with a copy of his Appeal Memorandum.

The Ruling of the NLRC

The NLRC held that EDI's seemingly harmless transfer of Gran's contract to ESI is actually "reprocessing," which is a prohibited transaction under Article 34 (b) of the Labor Code. This scheme constituted misrepresentation through the conspiracy between EDI and ESI in misleading Gran and even POEA of the actual terms and conditions of the OFW's employment. In addition, it was found that Gran did not commit any act that constituted a legal ground for dismissal. The alleged non-compliance with contractual stipulations relating to Gran's salary and contract duration, and the absence of pre-qualification requirements cannot be attributed to Gran but to EDI, which dealt directly with OAB. In addition, the charge of insubordination was not substantiated, and Gran was not even afforded the required notice and investigation on his alleged offenses.

Thus, the NLRC reversed the Labor Arbiter's Decision and rendered a new one, the dispositive portion of which reads:

> WHEREFORE, the assailed decision is SET ASIDE. Respondents Expertise Search International, Inc., EDI Staffbuilders Int'l., Inc. and Omar Ahmed Ali Bin Bechr Est. (OAB) are hereby ordered jointly and severally liable to pay the complainant Eleazar Gran the Philippine peso equivalent at the time of actual payment of SIXTEEN THOUSAND ONE HUNDRED FIFTY US DOLLARS (US$16,150.00) representing his salaries for the unexpired portion of his contract.
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> SO ORDERED.[16]

Gran then filed a Motion for Execution of Judgment[17] on March 29, 1999 with the NLRC and petitioner receiving a copy of this motion on the same date.[18]

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[16] *Supra* note 3, at 98.

[17] *Rollo*, p. 80.

[18] *Id*. at 100 & 224.

To prevent the execution, petitioner filed an Opposition[19] to Gran's motion arguing that the Writ of Execution cannot issue because it was not notified of the appellate proceedings before the NLRC and was not given a copy of the memorandum of appeal nor any opportunity to participate in the appeal.

Seeing that the NLRC did not act on Gran's motion after EDI had filed its Opposition, petitioner filed, on August 26, 1999, a Motion for Reconsideration of the NLRC Decision after receiving a copy of the Decision on August 16, 1999.[20]

The NLRC then issued a Resolution[21] denying petitioner's Motion for Reconsideration, ratiocinating that the issues and arguments raised in the motion "had already been amply discussed, considered, and ruled upon" in the Decision, and that there was "no cogent reason or patent or palpable error that warrant any disturbance thereof."

Unconvinced of the NLRC's reasoning, EDI filed a Petition for *Certiorari* before the CA. Petitioner claimed in its petition that the NLRC committed grave abuse of discretion in giving due course to the appeal despite Gran's failure to perfect the appeal.

The Ruling of the Court of Appeals

The CA subsequently ruled on the procedural and substantive issues of EDI's petition.

On the procedural issue, the appellate court held that "Gran's failure to furnish a copy of his appeal memorandum [to EDI was] a mere formal lapse, an excusable neglect and not a jurisdictional defect which would justify the dismissal of his appeal."[22] The court also held that petitioner EDI failed to

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[19] *Id*. at 100-105.

[20] *Id*. at 219.

[21] *Supra* note 4, at 106.

[22] *Supra* note 2, at 145; citing *Carnation Phil. Employees Labor Union-FFW v. NLRC*, G.R. No. 64397, October 11, 1983, 125 SCRA 42 and *Flexo Manufacturing Corporation v. NLRC*, G.R. No. 164857, April 18, 1997, 135 SCRA 145.

prove that private respondent was terminated for a valid cause and in accordance with due process; and that Gran's Declaration releasing OAB from any monetary obligation had no force and effect. The appellate court ratiocinated that EDI had the burden of proving Gran's incompetence; however, other than the termination letter, no evidence was presented to show how and why Gran was considered to be incompetent. The court held that since the law requires the recruitment agencies to subject OFWs to trade tests before deployment, Gran must have been competent and qualified; otherwise, he would not have been hired and deployed abroad.

As for the charge of insubordination and disobedience due to Gran's failure to submit a "Daily Activity Report," the appellate court found that EDI failed to show that the submission of the "Daily Activity Report" was a part of Gran's duty or the company's policy. The court also held that even if Gran was guilty of insubordination, he should have just been suspended or reprimanded, but not dismissed.

The CA also held that Gran was not afforded due process, given that OAB did not abide by the twin notice requirement. The court found that Gran was terminated on the same day he received the termination letter, without having been apprised of the bases of his dismissal or afforded an opportunity to explain his side.

Finally, the CA held that the Declaration signed by Gran did not bar him from demanding benefits to which he was entitled. The appellate court found that the Declaration was in the form of a quitclaim, and as such is frowned upon as contrary to public policy especially where the monetary consideration given in the Declaration was very much less than what he was legally entitled to—his backwages amounting to USD 16,150.00.

As a result of these findings, on October 18, 2000, the appellate court denied the petition to set aside the NLRC Decision.

Hence, this instant petition is before the Court.

The Issues

Petitioner raises the following issues for our consideration:

I. WHETHER THE FAILURE OF GRAN TO FURNISH A COPY OF HIS APPEAL MEMORANDUM TO PETITIONER EDI WOULD CONSTITUTE A JURISDICTIONAL DEFECT AND A DEPRIVATION OF PETITIONER EDI'S RIGHT TO DUE PROCESS AS WOULD JUSTIFY THE DISMISSAL OF GRAN'S APPEAL.

II. WHETHER PETITIONER EDI HAS ESTABLISHED BY WAY OF SUBSTANTIAL EVIDENCE THAT GRAN'S TERMINATION WAS JUSTIFIABLE BY REASON OF INCOMPETENCE. COROLLARY HERETO, WHETHER THE *PRIETO VS. NLRC RULING*, AS APPLIED BY THE COURT OF APPEALS, IS APPLICABLE IN THE INSTANT CASE.

III. WHETHER PETITIONER HAS ESTABLISHED BY WAY OF SUBSTANTIAL EVIDENCE THAT GRAN'S TERMINATION WAS JUSTIFIABLE BY REASON OF INSUBORDINATION AND DISOBEDIENCE.

IV. WHETHER GRAN WAS AFFORDED DUE PROCESS PRIOR TO TERMINATION.

V. WHETHER GRAN IS ENTITLED TO BACKWAGES FOR THE UNEXPIRED PORTION OF HIS CONTRACT.[23]

The Court's Ruling

The petition lacks merit except with respect to Gran's failure to furnish EDI with his Appeal Memorandum filed with the NLRC.

First Issue: NLRC's Duty is to Require Respondent to Provide Petitioner a Copy of the Appeal

Petitioner EDI claims that Gran's failure to furnish it a copy of the Appeal Memorandum constitutes a jurisdictional defect and a deprivation of due process that would warrant a rejection of the appeal.

This position is devoid of merit.

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[23] *Rollo*, p. 220.

In a catena of cases, it was ruled that **failure of appellant to furnish a copy of the appeal to the adverse party is not fatal to the appeal**.

In *Estrada v. National Labor Relations Commission*,[24] this Court set aside the order of the NLRC which dismissed an appeal on the sole ground that the appellant did not furnish the appellee a memorandum of appeal contrary to the requirements of Article 223 of the New Labor Code and Section 9, Rule XIII of its Implementing Rules and Regulations.

Also, in *J.D. Magpayo Customs Brokerage Corp. v. NLRC*, the order of dismissal of an appeal to the NLRC based on the ground that "*there is no showing whatsoever that a copy of the appeal was served by the appellant on the appellee*"[25] was annulled. The Court ratiocinated as follows:

> The failure to give a copy of the appeal to the adverse party was a mere formal lapse, an excusable neglect. Time and again We have acted on petitions to review decisions of the Court of Appeals even in the absence of proof of service of a copy thereof to the Court of Appeals as required by Section 1 of Rule 45, Rules of Court. **We act on the petitions and simply require the petitioners to comply with the rule**.[26] (Emphasis supplied.)

The *J.D. Magpayo* ruling was reiterated in *Carnation Philippines Employees Labor Union-FFW v. National Labor Relations Commission,*[27] *Pagdonsalan v. NLRC*,[28] and in *Sunrise Manning Agency, Inc. v. NLRC*.[29]

Thus, the doctrine that evolved from these cases is that failure to furnish the adverse party with a copy of the appeal is treated only as a formal lapse, an excusable neglect, and hence, *not*

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[24] G.R. No. 57735, March 19, 1982, 112 SCRA 688, 691.

[25] G.R. No. 60950, November 19, 1982, 118 SCRA 645, 646.

[26] *Id*.

[27] *Supra* note 22.

[28] G.R. No. 63701, January 31, 1980, 127 SCRA 463.

[29] G.R. No. 146703, November 18, 2004, 443 SCRA 35.

a jurisdictional defect. Accordingly, in such a situation, the appeal should not be dismissed; however, it should not be given due course either. As enunciated in *J.D. Magpayo*, **the duty that is imposed on the NLRC, in such a case, is to require the appellant to comply with the rule that the opposing party should be provided with a copy of the appeal memorandum**.

While Gran's failure to furnish EDI with a copy of the Appeal Memorandum is excusable, the abject failure of the NLRC to order Gran to furnish EDI with the Appeal Memorandum constitutes *grave abuse of discretion*.

The records reveal that the NLRC discovered that Gran failed to furnish EDI a copy of the Appeal Memorandum. The NLRC then ordered Gran to present proof of service. In compliance with the order, Gran submitted a copy of Camp Crame Post Office's list of mail/parcels sent on April 7, 1998.[30] The post office's list shows that private respondent Gran sent two pieces of mail on the same date: one addressed to a certain Dan O. de Guzman of Legaspi Village, Makati; and the other appears to be addressed to Neil B. Garcia (or Gran),[31] of Ermita, Manila—both of whom are not connected with petitioner.

This mailing list, however, is not a conclusive proof that EDI indeed received a copy of the Appeal Memorandum.

Sec. 5 of the NLRC Rules of Procedure (1990) provides for the proof and completeness of service in proceedings before the NLRC:

> **SECTION 5.**[32] *Proof and completeness of service*.—The return is *prima facie* proof of the facts indicated therein. **Service by registered mail is complete upon receipt by the addressee or his agent**; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time. (Emphasis supplied.)

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[30] *Rollo*, pp. 84-85.

[31] *Id*. The handwriting is illegible.

[32] Now Sec. 7 of NEW NLRC RULES OF PROCEDURE.

Hence, if the service is done through registered mail, it is only deemed complete when the addressee or his agent received the mail or after five (5) days from the date of first notice of the postmaster. However, the NLRC Rules do not state what would constitute proper proof of service.

Sec. 13, Rule 13 of the Rules of Court, provides for proofs of service:

> **SECTION 13.** *Proof of service*.—Proof of personal service shall consist of a written admission of the party served or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. **If service is made by registered mail, proof shall be made by such affidavit and registry receipt issued by the mailing office**. **The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee** (emphasis supplied).

Based on the foregoing provision, it is obvious that the list submitted by Gran is not conclusive proof that he had served a copy of his appeal memorandum to EDI, nor is it conclusive proof that EDI received its copy of the Appeal Memorandum. He should have submitted an affidavit proving that he mailed the Appeal Memorandum together with the registry receipt issued by the post office; afterwards, Gran should have immediately filed the registry return card.

Hence, after seeing that Gran failed to attach the proof of service, the NLRC should not have simply accepted the post office's list of mail and parcels sent; but **it should have required Gran to properly furnish the opposing parties with copies of his Appeal Memorandum as prescribed in *J.D. Magpayo* and the other cases**. The NLRC should not have proceeded with the adjudication of the case, as this constitutes *grave abuse of discretion*.

The glaring failure of NLRC to ensure that Gran should have furnished petitioner EDI a copy of the Appeal Memorandum

before rendering judgment reversing the dismissal of Gran's complaint constitutes an evasion of the pertinent NLRC Rules and established jurisprudence. Worse, this failure deprived EDI of procedural due process guaranteed by the Constitution which can serve as basis for the nullification of proceedings in the appeal before the NLRC. One can only surmise the shock and dismay that OAB, EDI, and ESI experienced when they thought that the dismissal of Gran's complaint became final, only to receive a copy of Gran's Motion for Execution of Judgment which also informed them that Gran had obtained a favorable NLRC Decision. This is not level playing field and absolutely unfair and discriminatory against the employer and the job recruiters. The rights of the employers to procedural due process cannot be cavalierly disregarded for they too have rights assured under the Constitution.

However, instead of annulling the dispositions of the NLRC and remanding the case for further proceedings we will resolve the petition based on the records before us to avoid a protracted litigation.[33]

The second and third issues have a common matter—whether there was just cause for Gran's dismissal—hence, they will be discussed jointly.

Second and Third Issues: Whether Gran's dismissal is justifiable by reason of incompetence, insubordination, and disobedience

In cases involving OFWs, the rights and obligations among and between the OFW, the local recruiter/agent, and the foreign employer/principal are governed by the employment contract.

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[33] *Marlene Crisostomo v. Florito M. Garcia, Jr.*, G.R. No. 164787, January 31, 2006, 481 SCRA 402; *Bunao v. Social Security Sytem,* G.R. No. 156652, December 13, 2005, 477 SCRA 564, citing *Vallejo v. Court of Appeals*, G.R. No. 156413, April 14, 2004, 427 SCRA 658, 669; and *San Luis v. Court of Appeals*, G.R. No. 142649, September 13, 2001, 417 Phil. 598, 605; *Cadalin v. POEA Administrator*, G.R. Nos. 104776, 104911, 105029-32, December 5, 1994, 238 SCRA 721; *Pagdonsalan v. National Labor Relations Commission*, G.R. No. 63701, January 31, 1984, 127 SCRA 463.

A contract freely entered into is considered law between the parties; and hence, should be respected. In formulating the contract, the 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.[34]

In the present case, the employment contract signed by Gran specifically states that Saudi Labor Laws will govern matters not provided for in the contract (*e.g.* specific causes for termination, termination procedures, *etc*.). Being the law intended by the parties (*lex loci intentiones)* to apply to the contract, Saudi Labor Laws should govern all matters relating to the termination of the employment of Gran.

In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The foreign law is treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of a foreign law. He is presumed to know only domestic or forum law.[35]

Unfortunately for petitioner, it did not prove the pertinent Saudi laws on the matter; thus, the International Law doctrine of *presumed-identity approach* or *processual presumption* comes into play.[36] Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours.[37] Thus, we apply Philippine labor laws in determining the issues presented before us.

Petitioner EDI claims that it had proven that Gran was legally dismissed due to incompetence and insubordination or disobedience.

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[34] CIVIL CODE, Art. 1306.

[35] *Id*. Loquia and Pangalanan, p. 144.

[36] J.R. Coquia & E.A. Pangalangan, *CONFLICT OF LAWS* 157 (1995); citing Cramton, Currie, Kay, *CONFLICT OF LAWS CASES AND COMMENTARIES* 56.

[37] *Philippine Export and Loan Guarantee Corporation v. V.P. Eusebio Construction Inc., et al.*, G.R. No. 140047, July 14, 2004, 434 SCRA 202, 215.

This claim has no merit.

In illegal dismissal cases, it has been established by Philippine law and jurisprudence that the employer should prove that the dismissal of employees or personnel is legal and just.

Section 33 of Article 277 of the Labor Code[38] states that:

ART. 277. MISCELLANEOUS PROVISIONS[39]

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the workers to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. **The burden of proving that the termination was for a valid or authorized cause shall rest on the employer**. xxx

In many cases, it has been held that in termination disputes or illegal dismissal cases, the employer has the burden of proving that the dismissal is for just and valid causes; and failure to do so would necessarily mean that the dismissal was not justified

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[38] *See* Presidential Decree No. 442, "A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice."

[39] As amended by Sec. 33, R.A. 6715, "An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote the Preferential Use of Voluntary Modes of Settling Labor Disputes, and Reorganize the National Labor Relations Commission, Amending for these Purposes Certain Provisions of Presidential Decree No. 442, as amended, Otherwise Known as The Labor Code of the Philippines, Appropriating Funds Therefore and for Other Purposes," approved on March 2, 1989.

and therefore illegal.[40] Taking into account the character of the charges and the penalty meted to an employee, the employer is bound to adduce clear, accurate, consistent, and convincing evidence to prove that the dismissal is valid and legal.[41] This is consistent with the principle of *security of tenure* as guaranteed by the Constitution and reinforced by Article 277 (b) of the Labor Code of the Philippines.[42]

In the instant case, petitioner claims that private respondent Gran was validly dismissed for just cause, due to incompetence and insubordination or disobedience. To prove its allegations, EDI submitted two letters as evidence. The first is the July 9, 1994 termination letter,[43] addressed to Gran, from Andrea E. Nicolaou, Managing Director of OAB. The second is an unsigned April 11, 1995 letter[44] from OAB addressed to EDI and ESI, which outlined the reasons why OAB had terminated Gran's employment.

Petitioner claims that Gran was incompetent for the Computer Specialist position because he had "insufficient knowledge in programming and zero knowledge of [the] ACAD system."[45] Petitioner also claims that Gran was justifiably dismissed due to insubordination or disobedience because he continually failed to submit the required "Daily Activity Reports."[46] However, other than the abovementioned letters, no other evidence was presented to show how and why Gran was considered incompetent, insubordinate, or disobedient. Petitioner EDI had

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[40] *Ting v. Court of Appeals*, G.R. No. 146174, July 12, 2006, 494 SCRA 610.

[41] *Bank of the Philippine Islands v. Uy*, G.R. No. 156994, August 31, 2005, 468 SCRA 633.

[42] I Alcantara, *PHILIPPINE LABOR AND SOCIAL LEGISLATION* 1052 (1999).

[43] *Supra* note 11.

[44] *Rollo*, pp. 155-156.

[45] *Supra* note 1, at 25.

[46] *Id.* at 29.

clearly failed to overcome the burden of proving that Gran was validly dismissed.

Petitioner's imputation of incompetence on private respondent due to his "insufficient knowledge in programming and zero knowledge of the ACAD system" based only on the above mentioned letters, without any other evidence, cannot be given credence.

An allegation of incompetence should have a factual foundation. Incompetence may be shown by weighing it against a standard, benchmark, or criterion. However, EDI failed to establish any such bases to show how petitioner found Gran incompetent.

In addition, the elements that must concur for the charge of insubordination or willful disobedience to prosper were not present.

In *Micro Sales Operation Network v. NLRC*, we held that:

> For willful disobedience to be a valid cause for dismissal, the following twin elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[47]

EDI failed to discharge the burden of proving Gran's insubordination or willful disobedience. As indicated by the second requirement provided for in *Micro Sales Operation Network*, in order to justify willful disobedience, we must determine whether the order violated by the employee is reasonable, lawful, made known to the employee, and pertains to the duties which he had been engaged to discharge. In the case at bar, petitioner failed to show that the order of the company which was violated—the submission of "Daily Activity Reports"—was part of Gran's duties as a Computer Specialist. Before the Labor Arbiter, EDI should have provided a copy of the company policy, Gran's job description, or any other

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[47] G.R. No. 155279, October 11, 2005, 472 SCRA 328, 335-336.

document that would show that the "Daily Activity Reports" were required for submission by the employees, more particularly by a Computer Specialist.

Even though EDI and/or ESI were merely the local employment or recruitment agencies and not the foreign employer, they should have adduced additional evidence to convincingly show that Gran's employment was validly and legally terminated. The burden devolves not only upon the foreign-based employer but also on the employment or recruitment agency for the latter is not only an agent of the former, but is also solidarily liable with the foreign principal for any claims or liabilities arising from the dismissal of the worker.[48]

Thus, **petitioner failed to prove that Gran was justifiably dismissed due to incompetence, insubordination, or willful disobedience**.

Petitioner also raised the issue that *Prieto v. NLRC*,[49] as used by the CA in its Decision, is not applicable to the present case.

In *Prieto*, this Court ruled that "[i]t is presumed that before their deployment, the petitioners were subjected to trade tests required by law to be conducted by the recruiting agency to insure employment of only technically qualified workers for the foreign principal."[50] The CA, using the ruling in the said case, ruled that Gran must have passed the test; otherwise, he would not have been hired. Therefore, EDI was at fault when it deployed Gran who was allegedly "incompetent" for the job.

According to petitioner, the *Prieto* ruling is not applicable because in the case at hand, Gran misrepresented himself in his *curriculum vitae* as a Computer Specialist; thus, he was not qualified for the job for which he was hired.

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[48] *Royal Crown Internationale v. NLRC*, G.R. No. 78085, October 16, 1989, 178 SCRA 569; s*ee also G & M (Phil.), Inc. v. Willie Batomalaque*, G.R. No. 151849, June 23, 2005, 461 SCRA 111.

[49] G.R. No. 93699, September 10, 1993, 266 SCRA 232.

[50] *Id*. at 237.

We disagree.

The CA is correct in applying *Prieto*. The purpose of the required trade test is to weed out incompetent applicants from the pool of available workers. It is supposed to reveal applicants with false educational backgrounds, and expose bogus qualifications. Since EDI deployed Gran to Riyadh, it can be presumed that Gran had passed the required trade test and that Gran is qualified for the job. Even if there was no objective trade test done by EDI, it was still EDI's responsibility to subject Gran to a trade test; and its failure to do so only weakened its position but should not in any way prejudice Gran. In any case, the issue is rendered moot and academic because Gran's incompetency is unproved.

Fourth Issue: Gran was not Afforded Due Process

As discussed earlier, in the absence of proof of Saudi laws, Philippine Labor laws and regulations shall govern the relationship between Gran and EDI. Thus, our laws and rules on the requisites of due process relating to termination of employment shall apply.

Petitioner EDI claims that private respondent Gran was afforded due process, since he was allowed to work and improve his capabilities for five months prior to his termination.[51] EDI also claims that the requirements of due process, as enunciated in *Santos, Jr. v. NLRC*,[52] and *Malaya Shipping Services, Inc. v. NLRC*,[53] cited by the CA in its Decision, were properly observed in the present case.

This position is untenable.

In *Agabon v. NLRC*,[54] this Court held that:

> Procedurally, (1) if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee

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[51] *Rollo*, p. 235.

[52] G.R. No. 115795, March 6, 1998, 287 SCRA 117.

[53] G.R. No. 121698, March 26, 1998, 228 SCRA 181.

[54] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 608.

before terminating the employment: a notice specifying the grounds for which dismissal is sought a hearing or an opportunity to be heard and after hearing or opportunity to be heard, a notice of the decision to dismiss; and (2) if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation.

Under the twin notice requirement, the employees must be given two (2) notices before their employment could be terminated: (1) a first notice to apprise the employees of their fault, and (2) a second notice to communicate to the employees that their employment is being terminated. In between the first and second notice, the employees should be given a hearing or opportunity to defend themselves personally or by counsel of their choice.[55]

A careful examination of the records revealed that, indeed, OAB's manner of dismissing Gran fell short of the two notice requirement. While it furnished Gran the written notice informing him of his dismissal, it failed to furnish Gran the written notice apprising him of the charges against him, as prescribed by the Labor Code.[56] Consequently, he was denied the opportunity to respond to said notice. In addition, OAB did not schedule a hearing or conference with Gran to defend himself and adduce evidence in support of his defenses. Moreover, the July 9, 1994 termination letter was effective on the same day. This shows that OAB had already condemned Gran to dismissal, even before Gran was furnished the termination letter. It should also be pointed out that OAB failed to give Gran the chance to be heard and to defend himself with the assistance of a representative in accordance with Article 277 of the Labor Code. Clearly, there was no intention to provide Gran with due process. Summing up, Gran was notified and his employment arbitrarily terminated

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[55] *King of Kings Transport Inc. v. Mamac*, G.R. No. 166208, June 29, 2007.

[56] *See* Article 277 (b) of the Labor Code; Sec. 2 (I) (a) Rule XXIII Rules Implementing Book V of the Labor Code; and Sec. 2 (d) (i) Rule I, Rules Implementing Book VI of the Labor Code.

on the same day, through the same letter, and for unjustified grounds. Obviously, **Gran was not afforded due process**.

Pursuant to the doctrine laid down in *Agabon*,[57] an employer is liable to pay nominal damages as indemnity for violating the employee's right to statutory due process. Since OAB was in breach of the due process requirements under the Labor Code and its regulations, OAB, ESI, and EDI, jointly and solidarily, are liable to Gran in the amount of PhP 30,000.00 as indemnity.

Fifth and Last Issue: Gran is Entitled to Backwages

We reiterate the rule that with regard to employees hired for a fixed period of employment, in cases arising before the effectivity of R.A. No. 8042[58] (Migrant Workers and Overseas Filipinos Act) on August 25, 1995, that when the contract is for a fixed term and the employees are dismissed without just cause, they are entitled to the payment of their salaries corresponding to the unexpired portion of their contract.[59] On the other hand, for cases arising after the effectivity of R.A. No. 8042, when the termination of employment is without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term whichever is less.[60]

In the present case, the employment contract provides that the employment contract shall be valid for a period of two (2) years from the date the employee starts to work with the

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[57] *Supra* note 54.

[58] Took effect on July 15, 1995, R.A. No. 8042 is "An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers their Families and Overseas Filipinos in Distress, and for Other Purposes."

[59] *Land and Housing Development Corporation v. Esquillo*, G.R. No. 152012, September 30, 2005, 471 SCRA 488, 490.

[60] *Supra* note 58, Sec. 10.

employer.[61] Gran arrived in Riyadh, Saudi Arabia and started to work on February 7, 1994;[62] hence, his employment contract is until February 7, 1996. Since he was illegally dismissed on July 9, 1994, before the effectivity of R.A. No. 8042, he is therefore entitled to backwages corresponding to the unexpired portion of his contract, which was equivalent to USD 16,150.

Petitioner EDI questions the legality of the award of backwages and mainly relies on the Declaration which is claimed to have been freely and voluntarily executed by Gran. The relevant portions of the Declaration are as follows:

I, ELEAZAR GRAN (COMPUTER SPECIALIST) AFTER RECEIVING MY FINAL SETTLEMENT ON THIS DATE THE AMOUNT OF:

S.R. 2,948.00 (SAUDI RIYALS TWO THOUSAND NINE HUNDRED FORTY-EIGHT ONLY)

REPRESENTING COMPLETE PAYMENT (COMPENSATION) FOR THE SERVICES I RENDERED TO OAB ESTABLISHMENT.

I HEREBY DECLARE THAT OAB EST. HAS NO FINANCIAL OBLIGATION IN MY FAVOUR AFTER RECEIVING THE ABOVE MENTIONED AMOUNT IN CASH.

I STATE FURTHER THAT OAB EST. HAS NO OBLIGATION TOWARDS ME IN WHATEVER FORM.

I ATTEST TO THE TRUTHFULNESS OF THIS STATEMENT BY AFFIXING MY SIGNATURE VOLUNTARILY.

SIGNED.

ELEAZAR GRAN

Courts must undertake a meticulous and rigorous review of quitclaims or waivers, more particularly those executed by employees. This requirement was clearly articulated by Chief Justice Artemio V. Panganiban in *Land and Housing Development Corporation v. Esquillo*:

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[61] *Rollo,* p. 45.

[62] *Id*. at 70, OAB's Final Account of Gran's salaries receivable.

Quitclaims, releases and other waivers of benefits granted by laws or contracts in favor of workers should be strictly scrutinized to protect the weak and the disadvantaged. **The waivers should be carefully examined, in regard not only to the words and terms used, but also the factual circumstances under which they have been executed.**[63] (Emphasis supplied.)

This Court had also outlined in *Land and Housing Development Corporation,* citing *Periquet v. NLRC,*[64] the parameters for valid compromise agreements, waivers, and quitclaims:

Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the **person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable**, the transaction must be recognized as a valid and binding undertaking. (Emphasis supplied.)

Is the waiver and quitclaim labeled a Declaration valid? It is not.

The Court finds the waiver and quitclaim null and void for the following reasons:

1. The salary paid to Gran upon his termination, in the amount of SR 2,948.00, is unreasonably low. As correctly pointed out by the court *a quo*, the payment of SR 2,948.00 is even lower than his monthly salary of SR 3,190.00 (USD 850.00). In addition, it is also very much less than the USD 6,150.00 which is the amount Gran is legally entitled to get from petitioner EDI as backwages.

2. The Declaration reveals that the payment of SR 2,948.00 is actually the payment for Gran's salary for the services he

[63] *Supra* note 59.

[64] G.R. No. 91298, June 22 1990, 186 SCRA 724, 730.

rendered to OAB as Computer Specialist. If the Declaration is a quitclaim, then the consideration should be much much more than the monthly salary of SR 3,190.00 (USD 850.00)—although possibly less than the estimated Gran's salaries for the remaining duration of his contract and other benefits as employee of OAB. A quitclaim will understandably be lower than the sum total of the amounts and benefits that can possibly be awarded to employees or to be earned for the remainder of the contract period since it is a compromise where the employees will have to forfeit a certain portion of the amounts they are claiming in exchange for the early payment of a compromise amount. The court may however step in when such amount is unconscionably low or unreasonable although the employee voluntarily agreed to it. In the case of the Declaration, the amount is unreasonably small compared to the future wages of Gran.

3. The factual circumstances surrounding the execution of the Declaration would show that Gran did not voluntarily and freely execute the document. Consider the following chronology of events:

a. On July 9, 1994, Gran received a copy of his letter of termination;

b. On July 10, 1994, Gran was instructed to depart Saudi Arabia and required to pay his plane ticket;[65]

c. On July 11, 1994, he signed the Declaration;

d. On July 12, 1994, Gran departed from Riyadh, Saudi Arabia; and

e. On July 21, 1994, Gran filed the Complaint before the NLRC.

The foregoing events readily reveal that Gran was "forced" to sign the Declaration and constrained to receive the amount of SR 2,948.00 even if it was against his will—since he was told on July 10, 1994 to leave Riyadh on July 12, 1994. He had

[65] *Supra* note 14, at 76.

no other choice but to sign the Declaration as he needed the amount of SR 2,948.00 for the payment of his ticket. He could have entertained some apprehensions as to the status of his stay or safety in Saudi Arabia if he would not sign the quitclaim.

4. The court *a quo* is correct in its finding that the Declaration is a contract of adhesion which should be construed against the employer, OAB. An adhesion contract is contrary to public policy as it leaves the weaker party—the employee—in a "take-it-or-leave-it" situation. Certainly, the employer is being unjust to the employee as there is no meaningful choice on the part of the employee while the terms are unreasonably favorable to the employer.[66]

Thus, the Declaration purporting to be a quitclaim and waiver is unenforceable under Philippine laws in the absence of proof of the applicable law of Saudi Arabia.

In order to prevent disputes on the validity and enforceability of quitclaims and waivers of employees under Philippine laws, said agreements should contain the following:

1. A fixed amount as full and final compromise settlement;

2. The benefits of the employees if possible with the corresponding amounts, which the employees are giving up in consideration of the fixed compromise amount;

3. A statement that the employer has clearly explained to the employee in English, Filipino, or in the dialect known to the employees—that by signing the waiver or quitclaim, they are forfeiting or relinquishing their right to receive the benefits which are due them under the law; and

4. A statement that the employees signed and executed the document voluntarily, and had fully understood the contents of the document and that their consent was freely given without any threat, violence, duress, intimidation, or undue influence exerted on their person.

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[66] *Chretian v. Donald L. Bren Co.* (1984) 151 [185 Cal. App. 3d 450].

It is advisable that the stipulations be made in **English <u>and</u> Tagalog or in the dialect known to the employee**. There should be two (2) witnesses to the execution of the quitclaim who must also sign the quitclaim. The document should be subscribed and sworn to under oath preferably before any administering official of the Department of Labor and Employment or its regional office, the Bureau of Labor Relations, the NLRC or a labor attaché in a foreign country. Such official shall assist the parties regarding the execution of the quitclaim and waiver.[67] This compromise settlement becomes final and binding under Article 227 of the Labor Code which provides that:

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[67] A form copy of the Quitclaim and Release used by the NLRC is reproduced below for the guidance of management and labor:

Republic of the Philippines
Department of Labor and Employment
NATIONAL LABOR RELATIONS COMMISSION
Quezon City

<u>CONCILIATION AND MEDIATION</u>

QUITCLAIM AND RELEASE

PAGTALIKOD AT PAGPAPAWALANG-SAYSAY

I (*Ako*), ______________________________ of legal age (*may sapat na gulang*) residing at (*nakatira sa*) ____________________________ for and in consideration of the amount of (*bilang konsiderasyon sa halagang*) _________________ pesos (*piso*) given to me by (*na ibinigay sa akin ng*) ________________________________, do hereby release and discharge (*ay aking pinawawalang-saysay at tinatalikuran*) aforesaid company/ corporation and its officers, person/s (*ang nabanggit na kompanya/ korporasyon at ang mga tauhan nito*) from any money claims (*mula sa anumang paghahabol na nauukol sa pananalapi*) by way of unpaid wages (*sa pamamagitan ng di nabayarang sahod*), separation pay, overtime pay otherwise (*o anupaman*), as may be due to me (*na karapat-dapat para sa akin*) in officers/person/s (*na may kaugnayan sa aking huling pinapasukang kompanya o korporasyon at sa mga opisyales o tauhan nito*).

I am executing this quitclaim and release (*Isinasagawa ko ang pagtalikod o pagpapawalang-saysay na ito*), freely and voluntary (*ng may kalayaan at kusang-loob*) before this Honorable Office (*sa harapan ng marangal na tanggapang ito*) without any force or duress (*ng walang pamimilit o pamumuwersa*) and as part of the compromise agreement reached during the preventive conciliation and mediation process conducted in the NLRC (*at bilang bahagi ng napagkasunduan buhat sa proseso ng "preventive conciliation at mediation" dito sa NLRC*).

[A]ny compromise settlement voluntarily agreed upon *with the assistance* of the Bureau of Labor Relations or the regional office of the DOLE, shall be final and binding upon the parties and the NLRC or any court "shall not assume jurisdiction over issues involved therein except in case of non-compliance thereof or if there is *prima facie* evidence that the settlement was obtained through fraud, misrepresentation, or coercion."

It is made clear that the foregoing rules on quitclaim or waiver shall apply only to labor contracts of OFWs in the absence of proof of the laws of the foreign country agreed upon to govern said contracts. Otherwise, the foreign laws shall apply.

WHEREFORE, the petition is *DENIED*. The October 18, 2000 Decision in CA-G.R. SP No. 56120 of the Court of Appeals affirming the January 15, 1999 Decision and September 30, 1999 Resolution of the NLRC is *AFFIRMED* with the *MODIFICATION* that petitioner EDI-Staffbuilders International, Inc. shall pay the amount of PhP 30,000.00 to respondent Gran as nominal damages for non-compliance with statutory due process.

IN VIEW WHEREOF (*DAHIL DITO*), I hereunto set my hand this (*ako'y lumagda ngayong*) ______ day of (*araw ng*) ________________, 200__, in Quezon City (*sa Lungsod ng Quezon*).

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Signature of the Requesting Party
(*Lagda ng Partidong Humiling ng Com-Med Conference*)

Signed in presence of (*Nilagdaan sa harapan ni*):

____

Name in Print below Signature
(*Limbagin ang pangalan sa ilalim ng lagda*)

SUBSCRIBED AND SWORN TO before me this ____ day of ___________ 200__ in Quezon City, Philippines.

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Labor Arbiter

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 147923. October 26, 2007]

JIMMY T. GO, *petitioner, vs.* **ALBERTO T. LOOYUKO,** *respondent.*

[G.R. No. 147962. October 26, 2007]

JIMMY T. GO, *petitioner, vs.* **ALBERTO T. LOOYUKO and COURT OF APPEALS,** *respondent.*

[G.R. No. 154035. October 26, 2007]

JIMMY T. GO, *petitioner, vs.* **ALBERTO T. LOOYUKO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; DISQUALIFICATION OF JUDGES; INHIBITION; NOT A REMEDY TO OUST A JUDGE FROM SITTING ON THE CASE ABSENT PROOF THAT THE SAME HAD ACTED IN A WANTON, WHIMSICAL OR OPPRESSIVE MANNER OR FOR AN ILLEGAL CONSIDERATION IN GIVING UNDUE ADVANTAGE TO A PARTY. —** We have ploughed through the records and we are constrained to agree with the findings of the appellate court. *First*, we find no manifest partiality. Indeed, the adverse rulings on the denial

[*] As per October 17, 2007 raffle.

of the proposed testimonies of the prosecution's witnesses are judicial in nature. Absent proof that the trial court judge had acted in a wanton, whimsical or oppressive manner or for an illegal consideration, and similar reasons, in giving undue advantage to respondent, inhibition is not a remedy to oust the judge from sitting on the case.

2. ID.; ID.; ID.; GROUNDS; BIAS AND PREJUDICE MUST BE PROVED WITH CLEAR AND CONVINCING EVIDENCE IN ORDER TO BE CONSIDERED VALID REASONS FOR THE VOLUNTARY INHIBITION OF A JUDGE. — *Second,* the other two (2) grounds raised by petitioner are also baseless. We reiterate the age-old rule in civil cases that one who alleges a fact has the burden of proving it and a mere allegation is not evidence. Verily, petitioner has not shown substantial proof to bolster these allegations. It is quite revealing what was pointed out by Judge Felix in his December 16, 1999 Order, as quoted by the appellate court, that the allegation of respondent's counsel saying to petitioner that ***"Amin na si Judge"*** first came out only in petitioner's second supplemental motion with manifestation dated September 7, 1999. If it was indeed uttered by respondent's counsel, such would have been immediately stated in the prior pleadings of petitioner: the urgent motion for reconsideration dated august 26, 1999 and supplemental motion with manifestation dated August 31, 1999. Besides, in a string of cases, this Court has said that bias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence. Bare allegations of partiality and prejudgment will not suffice.

3. ID.; ID.; ID.; A JUDGE CANNOT BE COMPELLED TO INHIBIT HIMSELF ABSENT VALID GROUNDS THEREFOR. — *Third,* on June 26, 2002, we dismissed the administrative case filed by petitioner against Judge Felix in OCA I.P.I. No. 00-971-RTJ. Therein, we found no basis to administratively discipline respondent judge for manifest partiality. Verily, the assailed orders were issued with judicial discretion and no administrative liability attaches absent showing of illegal consideration or giving undue advantage to a party, and much less can we compel the trial court judge to inhibit himself absent valid grounds therefor.

4. ID.; ID.; ID.; THE DECISION TO INHIBIT HIMSELF LIES WITHIN THE DISCRETION OF THE JUDGE HEARING THE CASE

WHERE THE GROUNDS RAISED BY THE PARTY ARE OUTSIDE OF THOSE MENTIONED IN THE RULES. — *Fourth*, since the grounds raised by petitioner in his motion to inhibit are not among those expressly mentioned in Section 1, Rule 137 of the Revised Rules of Court, the decision to inhibit himself lies within the sound discretion of Judge Felix. Grounds raised outside the five (5) mandatory disqualification of judges enumerated in the first paragraph of Sec. 1 of Rule 137 are properly addressed to the sound discretion of the trial court judge hearing a case as pertinent provided for in the second paragraph of Sec. 1, Rule 137, thus: SECTION 1. *Disqualification of judges.* – xxx A judge may, in the **exercise of his sound discretion,** disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. Thus, it is clearly within the discretion of the judge to voluntarily inhibit himself from sitting in a case or not.

5. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROSECUTION MUST BE ACCORDED FULL OPPORTUNITY TO ADDUCE EVIDENCE TO PROVE ITS CASE AND TO PROPERLY VENTILATE THE ISSUES ABSENT PATENT SHOWING OF DILATORY TACTICS; REASON. — It is basic that the case of the prosecution in a criminal case depends on the strength of its evidence and not on the weakness of the defense. This is so as proof beyond reasonable doubt is required in criminal cases. Thus, the prosecution must be afforded ample opportunity to present testimonial and documentary evidence to prove its case. A close perusal of the antecedent facts in the instant case shows that the prosecution had not been given this opportunity. xxx. It must be emphasized that in a *catena* of cases we have reiterated the principle that the matter of deciding who to present as a witness for the prosecution is not for the defendant or the trial court to decide, as it is the prerogative of the prosecutor. It cannot be overemphasized that the trial court must accord full opportunity for the prosecution, more so in criminal cases, to adduce evidence to prove its case and to properly ventilate the issues absent patent showing of dilatory or delaying tactics. The reason is obvious; it is tasked to produce and adduce evidence beyond a reasonable doubt. Sans such evidence, a dismissal of the criminal case on a demurrer to the evidence is proper. In the case at bar, there was no showing that the presentation of the three (3) witnesses

previously approved by the trial court would be dilatory and manifestly for delay.

6. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; WHEN PRESENT; AN ERROR OF JUDGMENT COMMITTED IN THE EXERCISE OF THE COURT'S LEGITIMATE JURISDICTION IS NOT THE SAME AS GRAVE ABUSE OF DISCRETION. —** Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is well-settled that an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the act was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. An error of judgment committed in the exercised of its legitimate jurisdiction is not the same as "grave abuse of discretion." An abuse of discretion is not sufficient by itself to justify the issuance of a writ of *certiorari.*

7. **ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; DISCRETION OF THE COURT TO STOP FURTHER EVIDENCE SHOULD BE EXERCISED WITH CAUTION. —** *Third*, the trial court cannot invoke its discretion under Sec. 6 of Rule 134, Rules of Court given that only two (2) witnesses were presented when it denied the testimony of the three (3) witnesses. Sec. 6 of Rule 134 pertinently provides: SEC. 6. *Power of the court to stop further evidence.* – The court may stop the introduction of further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive. But this power should be exercised with caution. The above proviso clearly grants the trial court the authority and discretion to stop further testimonial evidence on the ground that **additional corroborative testimony has no more persuasive value <u>as the evidence on that particular point is already so full.</u>** Indeed, it was only petitioner Go, whose testimony may be considered self-serving who testified on the issue of the transfer. Certainly, the additional testimony of de

Leon on the issue of the transfer cannot be considered as so adequate that additional corroborative has no more persuasive value. Besides, the discretion granted by the above proviso has the clear caveat that this power should be exercised with caution, more so in criminal cases where proof beyond reasonable doubt is required for the conviction of the accused.

8. ID.; ID.; EFFECT OF DEATH ON CIVIL ACTION; DEATH OF THE ACCUSED PENDING FINAL ADJUDICATION OF THE CRIMINAL CASE EXTINGUISHED CRIMINAL LIABILITY; IF THE CIVIL LIABILITY DIRECTLY ARISES FROM AND IS BASED SOLELY ON THE OFFENSE COMMITTED, THEN THE CIVIL LIABILITY IS ALSO EXTINGUISHED. — Respondent Looyuko died on October 29, 2004. It is an established principle that the death of the accused pending final adjudication of the criminal case extinguishes the accused's criminal liability. If the civil liability **directly** arose from and is based **solely** on the offense committed, then the civil liability is also extinguished. In the case at bar, the civil liability for the recovery of the CBC stock certificates covering 41,376 shares of stock or their value does not directly result from or based solely on the crime of *estafa* but on an agreement or arrangement between the parties that petitioner Go would endorse in blank said stock certificates and give said certificates to respondent Looyuko in trust for petitioner for said respondent to sell the stocks covered by the certificates. In such a case, the civil liability survives and an action for recovery therefore in a separate civil action can be instituted either against the executor or administrator or the estate of the accused.

9. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PETITION SHOULD BE FILED WITH THE SOLICITOR GENERAL IN BEHALF OF THE STATE AND NOT SOLELY BY THE OFFENDED PARTY. — Petitioner Go filed the two petitions before the CA docketed as CA-G.R. SP No. 58639 and CA-G.R. SP No. 62296 involving incidents arising from the proceedings in Crim. Case No. 98-1643. It can be observed from the two petitioners that they do not reflect the conformity of the trial prosecutor assigned to said criminal case. This is in breach of Sec. 5, Rule 110 of the Rules of Court that requires that all criminal actions shall be prosecuted "under the direction and control of a public prosecutor." Although in rare occasions, the

offended party as a "person aggrieved" was allowed to file a petition under Rule 65 before the CA without the intervention of the Solicitor General, the instant petitions before the CA, as a general rule, should be filed by the Solicitor General on behalf of the State and not solely by the offended party. For non-compliance with the rules, the twin petitions could have been rejected outright. However, in view of the death of respondent Looyuko, these procedural matters are now mooted and rendered insignificant.

10. **ID.; ID.; ID.; APPELLATE COURT HAS DISCRETION TO GIVE DUE COURSE TO THE PETITION BEFORE IT OR TO DISMISS THE SAME WHEN IT IS NOT SUFFICIENT IN FORM AND SUBSTANCE, AND THE REQUIRED PLEADINGS AND DOCUMENTS ARE NOT ATTACHED THERETO. —** Sec. 1 of Rule 65 pertinently provides: SECTION 1. *Petition for certiorari.* – xxx. The above proviso clearly vests the appellate court the authority and discretion to give due course to the petitions before it or to dismiss the same when it is not sufficient in form and substance, the required pleadings and documents are not attached thereto, and no sworn certificate on non-forum shopping is submitted. And such must be exercised, not arbitrary or oppressively, but in a reasonable manner in consonance with the spirit of the law. The appellate court should always see to it that justice is served in exercising such discretion. In the case at bar, the appellate court exercised its discretion in giving due course to respondent Looyuko's petition in view of the policy of liberality in the application of the rules. Verily, petitioner has not shown that the appellate court abused its discretion in an arbitrary or oppressive manner in not dismissing the petition due to the non-attachment of some relevant pleadings to the petition. The miscue was cured when respondent submitted additional annexes to the petition. Neither has petitioner shown any manifest bias, fraud, or illegal consideration on the part of the appellate court to merit reconsideration for the grant of due course.

11. **ID.; ACTIONS; FORUM SHOPPING; RESPONDENT IS GUILTY THEREOF IN CASE AT BAR. —** There was still a pending Motion for Reconsideration (to the Order of denial of Looyuko's Motion to Dismiss) filed by Looyuko in the court *a quo* when he instituted the petition before the CA January 2, 1001. It is

aggravated by the fact that the Motion for Reconsideration to the denial Order was filed on the **same day** or simultaneously with the filing of the Petition for *Certiorari*; hence, the petition is in the nature of forum shopping. The issues brought before the CA are similar to the issues raised in Looyuko's Motion for Reconsideration involving similar cause of action and reliefs sought, that is, to dismiss the basic complaint of petitioner Go. This Court in a *catena* of cases resolved that a Motion for Reconsideration is an adequate remedy in itself, and is a condition *sine qua non* to the prosecution of the independent, original, and extra ordinary special civil action of *certiorari*. We must not lose sight of the fact that a Motion for Reconsideration (subsequently denied) is a pre-requisite before a Petition for *Certiorari* may properly be filed. Considering, that the Motion for Reconsideration has not been resolved by the court *a quo*, the petition (CA-G.R. SP No. 62438) was prematurely filed; hence, it should have been outrightly denied due course. Looyuko was remiss of his duty to inform the appellate court in his petition that there was a pending Motion for Reconsideration in the court *a quo*.

12. **ID.; PROVISIONAL REMEDIES; INJUNCTION; WILL NOT ISSUE TO RESTRAIN THE PERFORMANCE OF AN ACT ALREADY DONE. —** The established principle is that when the events sought to be prevented by injunction or prohibition have already happened, nothing more could be enjoined or prohibited. Indeed, it is a universal principle of law that an injunction will not issue to restrain the performance of an act already done. This is so, for the simple reason that nothing more can be done in reference thereto. A writ of injunction becomes moot and academic after the act sought to be enjoined has already been consummated. In the case at bar, it is manifest that the inventory has already been conducted when the January 8, 2001 TRO and February 12, 2001 Writ of Injunction were issued. Thus, the issue of injunction has been mooted, and the injunctive writ must be nullified and lifted.

13. **ID.; ID.; ID.; LOWER COURT SHOULD PROCEED WITH THE CASE ABSENT ANY TEMPORARY RESTRAINING ORDER OR WRIT OF PRELIMINARY INJUNCTION ISSUED BY THE SUPREME COURT. —** With regard to the injunction on the September 25, 2000 and December 19, 2000 Orders which denied

respondent's motion to dismiss and motion for reconsideration, respectively, which effectively prohibited the Pasig City RTC from conducting further proceedings in Civil Case No. 67921 until CA-G.R. SP No. 62438 is resolved, it is clear that more than six (6) years had elapsed since the April 24, 2001 CA Resolution was issued and still the CA petition of petitioner has not yet been resolved on the merits. It is observed that this Court did not issue a TRO or a writ of preliminary injunction against the CA from proceeding in CA-G.R. SP No. 62438. The CA should have proceeded to resolve the petition notwithstanding the pendency of G.R. No. 147962 before this Court. This is unequivocal from Sec. 7 of Rule 65 which provides that the "petition shall not interrupt the course of the principal case unless a TRO or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case." This rule must be strictly adhered to by the lower court notwithstanding the possibility that the proceedings undertaken by the lower court tend to or would render nugatory the pending petition before this Court. As long as there is no directive from this Court for the lower court to defer action in the case, the latter would not be faulted if it continues with the proceedings in said case. Given the more than six (6) years that CA-G.R. SP No. 62438 has been pending with the CA, we deem it better to resolve the issue of the propriety of the denial by the trial court of respondent's motion to dismiss than remanding it to the CA.

14. **ID.; ACTIONS; DISMISSAL ON GROUND OF *LITIS PENDENTIA*; REQUISITES; FORUM SHOPPING; WHEN IT EXISTS; RESPONDENT IS NOT GUILTY OF FORUM SHOPPING. —** There is no basis for respondent's claim based on *litis pendentia* and forum shopping. For *litis pendentia* to be a ground for the dismissal of an action there must be: (1) identity of the parties or at least such as to represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (3) the identity in the two cases should be such that the judgment which may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other. On the other hand, forum shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. A brief perusal of the

cause of action in Civil Case No. 67921 *vis-à-vis* those of Civil Case Nos. 98-91153 and MC 98-038 reveals that there is neither identity of rights asserted and reliefs prayed for, nor are the reliefs founded on the same acts. In this case, Civil Case No. 67921, the relief sought before the Pasig City RTC where the complaint for specific performance was filed by petitioner, was the enforcement of the disputed partnership agreements, whereas, in the Makati City and Mandaluyong City RTCs, the reliefs sought by petitioner who is a defendant and respondent, respectively, were merely as defense for his co-ownership over subject parcels of land and as defense for the adverse claims he had annotated in the titles of subject properties. Such defenses cannot be equated with seeking relief for the enforcement of the disputed partnership agreements. Indeed, the complaint and petition filed by respondent in the Makati City and Mandaluyong City RTCs had different causes of action and sought different reliefs which did not stem from nor are founded from the same acts complained of. There is no basis, therefore, for petitioner's contention that respondent is guilty of forum shopping nor the instant complaint barred by *litis pendentia.*

15. **ID.; ID.; LACHES; EVIDENTIARY IN NATURE AND CANNOT BE RESOLVED IN A MOTION TO DISMISS. —** Anent abandonment or laches, we fully agree with the trial court that there is no basis to dismiss the complaint in Civil Case No. 67921 on the grounds of laches and abandonment. Laches, being controlled by equitable considerations and addressed to the sound discretion of the trial court, is evidentiary in nature and thus can not be resolved in a motion to dismiss, as we have held in the fairly recent case of *Felix Gochan and Sons Realty Corporation v. Heirs of Raymundo Baba.*

APPEARANCES OF COUNSEL

Madayag Cañeda Ruenata Obligar and Associates and *Jose B. Flaminiano* for petitioner.

Agabin Verzola Hermoso & Layaoen Law Offices for private respondent.

DECISION

VELASCO, JR., *J.*:

The Case

Before us are three (3) petitions. The first,[1] G.R. No. 147962, is for *certiorari* under Rule 65. It assails the February 12, 2001 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 62438, which granted a Writ of Preliminary Injunction in favor of respondent Looyuko restraining the Orders of the Pasig City Regional Trial Court (RTC), Branch 69, from enforcing the Orders dated September 25, 2000,[3] December 19, 2000,[4] and December 29, 2000[5] in Civil Case No. 67921 entitled *Jimmy T. Go v. Alberto T. Looyuko* for Specific Performance, Accounting, Inventory of Assets and Damages; also questioned is the April 24, 2001 CA Resolution[6] which rejected petitioner's plea for reconsideration.

G.R. No. 147923[7] assails the September 11, 2000 CA Decision[8] in CA-G.R. SP No. 58639, which upheld the December 16, 1999[9] Makati City RTC Order denying the requested inhibition of RTC Judge Nemesio Felix (now retired) and the March 8,

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[1] *Rollo* (G.R. No. 147962), pp. 3-37.

[2] *Id*. at 40-44. The Resolution was penned by Associate Justice Marina L. Buzon (Chairperson) and concurred in by Associate Justices Wenceslao I. Agnir, Jr. and Bienvenido L. Reyes.

[3] *Id*. at 97-100, per Presiding Judge Lorifel Lacap Pahimna.

[4] *Id*. at 101-102.

[5] *Id*. at 103-104.

[6] *Id*. at 46-47.

[7] *Rollo* (G.R. No. 147923), pp. 12-56, Petition dated June 18, 2001.

[8] *Id*. at 59-69. The Decision was penned by Associate Justice Conrado M. Vasquez (Chairperson) and concurred in by Associate Justices Mariano M. Umali and Rebecca de Guia-Salvador.

[9] *Id*. at 72-80, per Presiding Judge Nemesio S. Felix.

2000 Order[10] which denied the recall of the December 16, 1999 Order and which likewise required the prosecution to make a formal offer of evidence. Also challenged is the March 27, 2001 CA Resolution[11] denying petitioner's Motion for Reconsideration.

The third, **G.R. No. 154035**,[12] assails the January 31, 2002 CA Decision[13] in CA-G.R. SP No. 62296, which affirmed the Makati City RTC May 9, 2000 Order[14] in Criminal Case No. 98-1643, denying petitioner's prayer to defer submission of the formal offer of evidence and at the same time granting leave to respondent to file demurrer to evidence, and the September 22, 2000 Order[15] denying reconsideration of the May 9, 2000 Order. Likewise challenged is the June 3, 2002 CA Resolution[16] of the CA disallowing petitioner's Motion for Reconsideration.

The second, G.R. No. 147923, and third, G.R. No. 154035, petitions under Rule 45 of the Rules of Court arose from Criminal Case No. 98-1643 entitled *People of the Philippines v. Alberto T. Looyuko* for *Estafa* under Article 315, paragraph 1 (b) of the Revised Penal Code before the Makati City RTC, Branch 56.

In **G.R. No. 154035**, we consolidated the three petitions having originated from the same criminal case involving the same parties with interrelated issues. Although the latter petition

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[10] *Id.* at 82.

[11] *Id.* at 71. The Resolution was penned by Associate Justice Conrado M. Vasquez (Chairperson) and concurred in by Associate Justices Rebecca de Guia-Salvador and Presiding Justice Cancio C. Garcia (now Associate Justice of this Court).

[12] *Rollo* (G.R. No. 154035), pp. 12-54, Petition dated August 7, 2002.

[13] *Id.* at 55-75. The Decision was penned by Associate Justice Romeo J. Callejo, Sr. (Chairperson, now a retired member this Court) and concurred in by Associate Justices Remedios Salazar-Fernando and Perlita J. Tria Tirona of the Eleventh Division.

[14] *Id.* at 77-78.

[15] *Id.* at 80.

[16] *Id.* at 76.

raises the issue of the existence of a business partnership and propriety of the conduct of the inventory of assets and properties of Noah's Ark Sugar Refinery in Civil Case No. 67921, all the foregoing actions trace their beginnings from the same factual milieu.[17]

The Facts

Petitioner Go and respondent Looyuko were business associates. Respondent is the registered owner of Noah's Ark Merchandising, a sole proprietorship, which includes Noah's Ark International, Noah's Ark Sugar Carriers, Noah's Ark Sugar Truckers, Noah's Ark Sugar Repacker, Noah's Ark Sugar Insurers, Noah's Ark Sugar Terminal, Noah's Ark Sugar Building and the land on which the building stood, and Noah's Ark Sugar Refinery, and the plant/building/machinery in the compound and the land on which the refinery is situated. These businesses are collectively known as the Noah's Ark Group of Companies. Go was the business manager or chief operating officer of the group of companies.

Sometime in 1997, the business associates had a falling out that spawned numerous civil lawsuits. Among these actions are Civil Case No. 67921 and Criminal Case No. 98-1643 from which arose several incidents which eventually became subject of these consolidated petitions.

Criminal Case No. 98-1643

On May 21, 1998, petitioner filed *People of the Philippines v. Alberto T. Looyuko*, an Affidavit Complaint[18] before the Makati City RTC, Branch 56, charging respondent with *Estafa* under Article 315, paragraph 1 (b) of the Revised Penal Code. The case was docketed as Criminal Case No. 98-1643. Petitioner alleged that respondent misappropriated and converted in his name petitioner's 41,376 China Banking Corporation (CBC)

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[17] *Id*. at 461-463. Memorandum dated July 14, 2004 submitted by Atty. Enriqueta Esguerra-Vidal, Clerk of Court, First Division, recommending the consolidation of the three cases.

[18] *Id*. at 83-84, dated April 24, 1998.

shares of stock. Petitioner averred that he entrusted the stock certificates to respondent for the latter to sell. The Information reads:

That sometime during the month of May, 1997 or prior thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received in trust from complainant Jimmy T. Go China Banking Corporation stock certificates numbers 25447, 25449, 25450, 26481, 28418, 30916, 32501, 34697 and 36713 representing the 41,376 shares of stocks of the complainant with China Banking Corporation, with a market value of ₱1,400.00 per share, more or less, with the obligation on the part of the accused to sell the same and remit the proceeds thereof to the complainant, but the accused, once in possession of said stock certificates, far from complying with his aforesaid obligation, with intent to gain and abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriated, misapply and convert the said shares of stocks to his own personal benefit by causing the transfer of said stock certificates to his name considering that the same were endorsed in blank by the complainant out of the latter's trust to the accused, and the accused never paid the market value of said shares of stocks, which is ₱1,400.00 per share, more or less, or a total market value of ₱57,926,400.00 for the 41,376 shares of stocks, to the damage and prejudice of the complainant in the amount of ₱7,926,400.00.

CONTRARY TO LAW.[19]

After respondent pleaded "Not Guilty," and after the testimonies of the prosecution witnesses among them, Go and Amalia de Leon, an employee of CBC, who testified that certificates of stocks in Go's name were cancelled and new certificates were issued in Looyuko's name. Earlier, *subpoena ad testificandum* and *subpoena duces tecum* were issued to Peter Dee, President of CBC, Atty. Arsenio Lim, Corporate Secretary of CBC, and Gloria Padecio. The trial court also felt no need for the testimonies of Dee, Lim, and Padecio and ordered the prosecution to offer its evidence.

Petitioner filed a Motion for Reconsideration and asked that the prosecution be allowed to present its last witness from

[19] *Id.* at 85.

Amsteel Securities, Inc., Bohn Bernard J. Briones. The RTC granted the motion. However, at the conclusion of Briones' testimony, the prosecution moved to subpoena Alvin Padecio which was vehemently objected to by the defense. The trial court denied the motion. The prosecution thereafter opted to ask for ten (10) days to formally offer its documentary evidence. The trial court granted the request.

Instead of filing its formal offer of evidence, the prosecution filed an Urgent Motion for Reconsideration,[20] then a Supplemental Motion with Manifestation, and a Second Supplemental Motion with Manifestation,[21] all praying that the testimony of Alvin Padecio be allowed.

For his part, respondent filed a Motion to Declare the Prosecution as Having Waived its Right to Make a Formal Offer of Evidence.[22] Hence, petitioner filed an Omnibus Motion to Withdraw the Urgent Motion for Reconsideration with Motion for Inhibition.[23]

On December 16, 1999, the trial court denied petitioner's motion for inhibition;[24] petitioner's motion to declare the prosecution to have waived its right to file formal offer of evidence; and gave the prosecution a last chance to submit its formal offer of documentary evidence within ten (10) days from notice.[25]

Petitioner moved to defer compliance with the submission of its formal offer of documentary evidence pending petitioner's motion for reconsideration of the trial court's December 16, 1999 Order denying petitioner's motion for inhibition.[26] The

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[20] *Id*. at 235-243.

[21] *Id*. at 252-256.

[22] *Id*. at 147-149.

[23] *Id*. at 150-163.

[24] *Rollo* (G.R. No. 147923), pp. 72-80. (This is subject of CA-G.R. SP No. 58639 and later G.R. No. 147923.)

[25] *Rollo* (G.R. No. 154035), pp. 176-179.

[26] *Id*. at 180-183.

RTC denied petitioner's motion and granted the prosecution a last opportunity to submit its formal offer of documentary evidence within five (5) days from notice.[27]

Frustrated, petitioner adamantly reiterated his motion for inhibition in a Manifestation/Motion[28] praying that the trial court reconsider its Order directing the prosecution to formally offer its documentary evidence in deference to the petition for *certiorari* it intends to file with the CA, where it would assail the December 16, 1999 and March 8, 2000 Orders denying the inhibition of the judge.

Subsequently, petitioner filed a Petition for *Certiorari*[29] under Rule 65 before the CA. It again sought the reversal of the orders denying his motion for inhibition. The petition was docketed as CA-G.R. SP No. 58639.

Meanwhile, before the RTC hearing the criminal case, respondent filed an Omnibus Motion[30] dated March 20, 2000 to declare petitioner to have rested his case on the basis of the prosecution's testimonial evidence and to grant respondent leave to file his demurrer to evidence. The RTC denied the Omnibus Motion. Petitioner timely filed a Motion for Reconsideration/ Manifestation, which was denied. Respondent filed his demurrer to evidence incorporating in it his offer of evidence.

Petitioner filed another petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 62296. It sought to reverse the orders of the trial court declaring petitioner to have waived his right to formally offer his documentary evidence and allowing respondent to file a demurrer to evidence.

While these motions were being considered by the trial court, petitioner filed an administrative case docketed as OCA I.P.I. No. 00-971-RTJ against the trial court Presiding Judge Nemesio

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[27] *Rollo* (G.R. No. 147923), p. 82. (This is subject of CA-G.R. SP No. 58639 and later G.R. No. 147923.)

[28] *Rollo* (G.R. No. 154035), pp. 185-189.

[29] *Rollo* (G.R. No. 147923), pp. 101-121.

[30] *Rollo* (G.R. No. 154035), pp. 190-194.

S. Felix. It charged Judge Felix with *Partiality*, relative to Criminal Case No. 98-1643.

Citing the administrative case he filed against Judge Felix, petitioner filed a Second Motion for Voluntary Inhibition[31] before the trial court. The trial court denied the second motion.[32] His Motion for Reconsideration was opposed[33] by respondent.

Civil Case No. 67921

Meanwhile, during the pendency of Crim. Case No. 98-1643, on May 23, 2000, petitioner filed a Complaint[34] docketed as Civil Case No. 67921 entitled *Jimmy T. Go v. Alberto T. Looyuko* for Specific Performance, Accounting, Inventory of Assets and Damages against respondent before the Pasig City RTC. Petitioner claimed that in two (2) Agreements executed on February 9, 1982[35] and October 10, 1986,[36] respondent and petitioner agreed to have their venture registered with the Department of Trade and Industry (DTI) in the name of Looyuko as sole proprietor, and both agreed to be equally entitled to 50% of the business, goodwill, profits, and real and personal properties owned by the group of companies. Petitioner alleged that respondent had committed and continued to commit insidious acts to oust him from the ownership of half of the assets of the firms under Noah's Ark Group of Companies in breach of their agreements. Thus, petitioner's action for specific performance, accounting, and inventory of assets and damages was instituted against respondent.

Respondent filed a motion to dismiss on the grounds of forum shopping, *litis pendentia*, and abandonment or laches. The

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[31] *Id*. at 335-343.

[32] *Id*. at 345-346.

[33] *Id*. at 355-358, Opposition to the Motion for Reconsideration dated February 12, 2001.

[34] *Rollo* (G.R. No. 147962), pp. 49-71.

[35] *Id*. at 195-197.

[36] *Id*. at 198-200.

motion to dismiss was denied.[37] The trial court likewise denied respondent's Motion for Reconsideration.[38] The trial court nevertheless granted petitioner's motion to conduct an inventory of the assets of the group of companies but under the direct supervision and control of the Branch Clerk of Court.[39]

On January 2, 2001, respondent filed before the CA a Petition for *Certiorari*[40] with application for a temporary restraining order (TRO) and preliminary injunction assailing the trial court's orders denying respondent's motion to dismiss and grant of the motion of petitioner to conduct an inventory.

Respondent also filed a Manifestation and Motion for Reconsideration of the grant of the motion to inventory before the trial court. Therein, respondent informed the trial court of his intention to elevate the denial of his motion to dismiss before the CA, praying that no further proceedings be conducted in view thereof. Apparently, respondent's petition for *certiorari* before the CA did not mention the fact of the Manifestation and Motion for Reconsideration filed and pending before the trial court.

After filing the petition for *certiorari*, respondent filed an Urgent *Ex-Parte* Motion to Admit Additional Annexes to Petition.[41] In the meantime, on January 5, 2001, the inventory of assets in the Noah's Ark Sugar Refinery was completed.

Three days after the CA issued a Resolution[42] enjoining the trial court from enforcing its orders denying the motion to dismiss

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[37] *Id*. at 97-100. (This is subject of CA-G.R. SP No. 62438 and later G.R. No. 147962.)

[38] *Id*. at 101-102. (This is subject of CA-G.R. SP No. 62438 and later G.R. No. 147962.)

[39] *Id*. at 103-104. (This is likewise subject of CA-G.R. SP No. 62438 and later G.R. No. 147962.)

[40] *Id*. at 72-96, dated December 29, 2000.

[41] *Id*. at 318-322.

[42] *Id*. at 150-151.

and grant of motion to inventory, it set the hearing for the application of the injunctive writ on January 29, 2001.

On February 9, 2001, petitioner filed his opposition[43] to respondent's urgent motion to admit additional annexes to petition which was replied[44] by respondent with additional annexes appended thereto.

The Ruling of the Court of Appeals in CA-G.R. SP No. 58639 (Criminal Case No. 98-1643)

On September 11, 2000, the CA rendered the assailed Decision dismissing the petition.

The CA explained that the petition was initiated solely by petitioner and was dismissible for it did not implead nor have the participation of the Office of the Solicitor General. And, on the merits, the appellate court ruled that the voluntary inhibition prayed by petitioner had no legal and factual basis. The appellate court found that three (3) alleged grounds of partiality raised by petitioner were not badges of partiality.

The appellate court ruled that the denial of the testimony of three (3) witnesses and that of Alvin Padecio was an exercise of sound discretion by the judge. Besides, the CA added, Alvin Padecio, son of respondent, was entitled to the testimonial privilege set forth in Section 25,[45] Rule 130 of the Rules of Court. Moreover, the appellate court found baseless the other two (2) grounds of partiality. In fine, the CA held that mere allegation of partiality and bias will not suffice for a judge to voluntarily inhibit himself and shirk from responsibility of hearing the case.

On March 27, 2001, the appellate court likewise denied petitioner's Motion for Reconsideration. Thus, petitioner assails

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[43] *Id*. at 323-329.

[44] *Id*. at 330-335.

[45] SEC. 25. *Parental and filial privilege*. – No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants.

the above Decision and Resolution of the appellate court in CA-G.R. SP No. 58639 through a Petition for Review on *Certiorari* before us docketed as **G.R. No. 147923**.

The Ruling of the Court of Appeals in CA-G.R. SP No. 62296 (Criminal Case No. 98-1643)

On January 31, 2002, the appellate court in CA-G.R. SP No. 62296 rendered the assailed Decision. The CA in dismissing the petition ruled that the trial court did not commit grave abuse of discretion in finding that the petitioner had waived his right to file a formal offer of documentary evidence and in allowing respondent to file a demurrer to evidence. It ratiocinated that the pendency of the issue of inhibition before the appellate court absent a TRO did not suspend the proceedings in the trial court. The CA pointed out that petitioner should have pursued his plea for injunctive relief before it or to file with the trial court his Formal Offer of Evidence *Ex Abundantia Cautelam.* Since petitioner pursued neither, he cannot fault the trial court from issuing the assailed orders.

Finally, on the issue of the demurrer to evidence, the CA held that such was seasonably filed by respondent. It ruled in this wise:

> In the case before the Respondent Court, the Petitioner had presented its witnesses but had no documentary evidence to formally offer as it was considered to have waived the same by his intractable refusal to file its "**Formal Offer of Evidence**." Hence, the "**Demurrer to Evidence**," filed by the Private Respondent, was seasonably filed with the Respondent Court.[46]

Petitioner's Motion for Reconsideration was also denied. Hence, petitioner assails the above Decision and Resolution of the appellate court in CA-G.R. SP No. 62296 through a Petition for Review on *Certiorari* before us docketed as **G.R. No. 154035**.

[46] *Rollo* (G.R. No. 154035), p. 74.

The Ruling of the Court of Appeals in CA-G.R. SP No. 62438 (Civil Case No. 67921)

On February 12, 2001, the CA issued the assailed Resolution, granting a writ of preliminary injunction conditioned on the filing of a PhP 50,000 bond. The CA ruled that the requisites for an injunctive writ were present and that the *status quo* at the inception of the case on May 23, 2000 must be observed. Thus, the appellate court enjoined the trial court from enforcing its Orders dated September 25, 2000, December 19, 2000, and December 29, 2000, and from conducting further proceedings in the case pending resolution of the *certiorari* case.

Petitioner's Motion for Reconsideration was denied through the appellate court's April 24, 2001 Resolution. Thus, petitioner assails the above Resolutions of the appellate court in CA-G.R. SP No. 62438 through a petition for *certiorari* under Rule 65 before us docketed as **G.R. No. 147962**.

The Issues

In G.R. No. 147923, petitioner Go raises the sole issue:

> Whether the Honorable Court of Appeals committed reversible errors when it failed to apply the law and established jurisprudence on the matter by issuing the questioned Resolutions (sic) thereby affirming the questioned Orders of the Court *a quo* which were issued with grave abuse of discretion.

In G.R. No. 154035, petitioner Go raises the sole issue:

> Whether the Honorable Court of Appeals committed reversible errors when it failed to apply the law and established jurisprudence on the matter by issuing the questioned Resolutions thereby affirming the questioned Orders of the Court *a quo* which were issued with grave abuse of discretion.

In G.R. No. 147962, petitioner Go alleges that the respondent CA acted with grave abuse of discretion and in excess of its jurisdiction in rendering the questioned Resolutions when:

> 1) It failed to dismiss the questioned Petition notwithstanding the *fatal* error committed by Looyuko in intentionally failing to await

the resolution of his Motion for Reconsideration filed in the Court *a quo* before filing his Petition with the Court of Appeals.

2) It failed to dismiss the questioned Petition on the ground of Looyuko's failure to attach all relevant and pertinent documents to his Petition.

3) It failed to dismiss the questioned Petition notwithstanding the fact that Looyuko violated the rule against forum-shopping.

4) It failed to apply the rule that consummated acts could no longer be restrained by injunction.

5) It granted Looyuko's prayer for injunction. Injunction should have been denied. Looyuko has *unclean hands* and he seeks equity without "doing equity." *No irreparable damage* exists and a plain and adequate *legal remedy* is available to him.

6) It fixed the amount of the injunction bond in the measly amount of ₱50,000.00.

Meanwhile, during the pendency of these petitions, respondent Looyuko died on October 29, 2004.[47]

The Court's Ruling

The petitions are partly meritorious.

G.R. Nos. 147923 and 154035

We will tackle G.R. Nos. 147923 and 154035 jointly since the issues raised are closely interwoven as the pending incidents arose from the same Crim. Case No. 98-1643.

Voluntary Inhibition: Not a remedy absent valid grounds

In G.R. No. 147923, petitioner strongly asserts that Presiding Judge Nemesio Felix has displayed manifest bias and partiality in favor of respondent by disallowing the presentation of the testimonies of the prosecution's vital witnesses, namely, Dee, Lim, Gloria Padecio, and Alvin Padecio, without any valid reason and in utter bad faith. Petitioner also foists the alleged badges of partiality in the conduct and attitude of the trial court judge

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[47] *Rollo* (G.R. No. 147962), p. 552. Death Certificate of respondent Alberto T. Looyuko.

during the proceedings; and that it is revealing that the respondent and his counsel knew the judge beforehand. Finally, petitioner points to the apparent animosity and enmity of Judge Felix in his Comment to the administrative case (OCA I.P.I. No. 00-971-RTJ) filed by petitioner against him.

We have ploughed through the records and we are constrained to agree with the findings of the appellate court. *First*, we find no manifest partiality. Indeed, the adverse rulings on the denial of the proposed testimonies of the prosecution's witnesses are judicial in nature. Absent proof that the trial court judge had acted in a wanton, whimsical or oppressive manner or for an illegal consideration, and similar reasons, in giving undue advantage to respondent, inhibition is not a remedy to oust the judge from sitting on the case.

Second, the other two (2) grounds raised by petitioner are also baseless. We reiterate the age-old rule in civil cases that one who alleges a fact has the burden of proving it and a mere allegation is not evidence.[48] Verily, petitioner has not shown substantial proof to bolster these allegations. It is quite revealing what was pointed out by Judge Felix in his December 16, 1999 Order, as quoted by the appellate court, that the allegation of respondent's counsel saying to petitioner that "***Amin na si Judge***" first came out only in petitioner's second supplemental motion with manifestation dated September 7, 1999. If it was indeed uttered by respondent's counsel, such would have been immediately stated in the prior pleadings of petitioner: the urgent motion for reconsideration dated August 26, 1999 and supplemental motion with manifestation dated August 31, 1999. Besides, in a string of cases, this Court has said that bias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence. Bare allegations of partiality and prejudgment will not suffice.[49]

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[48] *Luxuria Homes, Inc. v. Court of Appeals*, G.R. No. 125986, January 28, 1999, 302 SCRA 315, 325.

[49] *Joseph Estrada v. Gloria Macapagal-Arroyo*, G.R. No. 146738, March 2, 2001, 353 SCRA 452, 583.

Third, on June 26, 2002, we dismissed the administrative case filed by petitioner against Judge Felix in OCA I.P.I. No. 00-971-RTJ. Therein, we found no basis to administratively discipline respondent judge for manifest partiality. Verily, the assailed orders were issued with judicial discretion and no administrative liability attaches absent showing of illegal consideration or giving undue advantage to a party, and much less can we compel the trial court judge to inhibit himself absent valid grounds therefor.

Fourth, since the grounds raised by petitioner in his motion to inhibit are not among those expressly mentioned in Section 1, Rule 137 of the Revised Rules of Court, the decision to inhibit himself lies within the sound discretion of Judge Felix. Grounds raised outside the five (5) mandatory disqualification of judges enumerated in the first paragraph of Sec. 1 of Rule 137 are properly addressed to the sound discretion of the trial court judge hearing a case as pertinently provided for in the second paragraph of Sec. 1, Rule 137, thus:

> SECTION 1. *Disqualification of judges*. — x x x
>
> A judge may, in the **exercise of his sound discretion**, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

Thus, it is clearly within the discretion of the judge to voluntarily inhibit himself from sitting in a case or not.

Fifth, we fail to appreciate petitioner's contention that the harsh language in the comment of Judge Felix shows his apparent animosity and enmity against petitioner. We have gone over the 2nd Indorsement (Comment) of Judge Felix and we failed to find such animosity against petitioner. Be that as it may, the tenor of the comment is usual given the indignation and the bother that judges, and other court employees for that matter, have to go through when faced with an administrative case.

Finally, this issue has been mooted as Judge Nemesio Felix had compulsorily retired on December 19, 2004.

Grave abuse of discretion in the denial of additional witnesses

At this juncture, we come to the issue of denial of additional witnesses. Petitioner contends that the prosecution should have been given the opportunity to present four witnesses, namely, Dee, the President of CBC; Lim, Corporate Secretary of CBC; Gloria Padecio and Alvin Padecio, whom petitioner strongly avers are vital witnesses to prove the allegations in the Information as set out in the issues embodied in the Pre-Trial Order.

The contention of petitioner is well-taken.

It is basic that the case of the prosecution in a criminal case depends on the strength of its evidence and not on the weakness of the defense. This is so as proof beyond reasonable doubt is required in criminal cases. Thus, the prosecution must be afforded ample opportunity to present testimonial and documentary evidence to prove its case. A close perusal of the antecedent facts in the instant case shows that the prosecution had not been given this opportunity.

The Pre-Trial Order[50] of January 19, 1999 shows that the prosecution will present seven (7) witnesses and to resolve the issues on whether petitioner is only a mere employee of or a "50-50" partner of respondent. The prosecution was allowed to present only three (3) witnesses, namely, petitioner Jimmy T. Go, Amalia de Leon, representative of CBC, Bohn Briones, representative of and Credit Comptroller of Amsteel Securities, Inc.

It must be noted that after petitioner and de Leon presented their testimonies, the trial court ruled that the testimonies of Dee and Lim of the CBC, who were ready to testify, and that of Gloria Padecio, the common-law wife of respondent, were superfluous. Moreover, after much wrangling with the prosecution conceding the non-presentation of the three (3) witnesses, the testimony of Briones was allowed as final witness for the prosecution. But Briones' testimony left much to be desired

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[50] *Rollo* (G.R. No. 147923), pp. 257-261.

as he was not able to testify on some points the prosecution considered vital to its case. Thus, the prosecution requested for the presentation of Alvin Padecio, the son of respondent and Gloria Padecio, the alleged stock agent of Amsteel Securities, Inc. who handled the transaction involving the subject shares of stock of CBC. This was likewise denied by the trial court, which led to the motion for inhibition and administrative case against Judge Felix, and the adamant stand of petitioner not to rest his case by filing his formal offer of evidence until the testimony of Padecio is had.

It must be emphasized that in a *catena* of cases we have reiterated the principle that the matter of deciding who to present as a witness for the prosecution is not for the defendant or the trial court to decide, as it is the prerogative of the prosecutor.[51] It cannot be overemphasized that the trial court must accord full opportunity for the prosecution, more so in criminal cases, to adduce evidence to prove its case and to properly ventilate the issues absent patent showing of dilatory or delaying tactics. The reason is obvious: it is tasked to produce and adduce evidence beyond a reasonable doubt. Sans such evidence, a dismissal of the criminal case on a demurrer to the evidence is proper. In the case at bar, there was no showing that the presentation of the three (3) witnesses previously approved by the trial court would be dilatory and manifestly for delay.

The trial court anchored its ruling on the denial of the three (3) witnesses on the fact that the Pre-Trial Order already stipulated the fact that the certificates were issued in the name of petitioner Go, were indorsed in blank and delivered to respondent, and the certificates were subsequently transferred to respondent's name. The trial court ruled that these facts were already testified to by petitioner and de Leon. Moreover, the trial court also ruled that the testimony of Gloria Padecio was a superfluity as petitioner already testified to the alleged partnership between petitioner and respondent.

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[51] *People v. Dagami*, G.R. No. 136397, November 11, 2003, 415 SCRA 482, 500; citing *People v. Tuvilla*, G.R. No. 88822, July 15, 1996, 259 SCRA 1. *See* also *People v. Morico*, G.R. No. 92660, July 14, 1995, 246 SCRA 214.

We cannot agree with the trial court and neither can we give imprimatur on the appellate court's affirmance thereof. We find that the trial court gravely abused its discretion in denying petitioner and the prosecution to present their witnesses.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is well-settled that an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the act was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[52] An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." An abuse of discretion is not sufficient by itself to justify the issuance of a writ of *certiorari*.

We find that the trial court gravely abused its discretion in patently and arbitrarily denying the prosecution the opportunity to present four (4) witnesses in the instant criminal case. *First*, the testimonies of Dee and Lim from CBC would bolster and tend to prove whatever fact the prosecution is trying to establish. Truth to tell, only the testimony of de Leon corroborates petitioner's testimony on the alleged transfer from petitioner's name to that of respondent of the certificates of stock. More light can be shed on the transaction with the additional testimony of Dee and Lim.

Second, the superfluity of a testimony *vis-à-vis* what has already been proven can be determined with certainty only after it has been adduced. Verily, the testimonies of petitioner

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[52] *Intestate Estate of Carmen de Luna v. Intermediate Appellate Court,* G.R. No. 72424, February 13, 1989, 170 SCRA 246; *Litton Mills v. Galleon Traders,* G.R. No. L-40867, July 26, 1988, 163 SCRA 489; *Butuan Bay Export Co. v. Court of Appeals,* G.R. No. L-45473, April 28, 1980, 97 SCRA 297.

Go and de Leon on the issue of the transfer cannot be said to have truly proven and been corroborated with certainty as they are.

Third, the trial court cannot invoke its discretion under Sec. 6 of Rule 134, Rules of Court given that only two (2) witnesses were presented when it denied the testimony of the three (3) witnesses. Sec. 6 of Rule 134 pertinently provides:

> SEC. 6. *Power of the court to stop further evidence*. — The court may stop the introduction of further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive. But this power should be exercised with caution.

The above proviso clearly grants the trial court the authority and discretion to stop further testimonial evidence on the ground that **additional corroborative testimony has no more persuasive value <u>as the evidence on that particular point is already so full</u>**. Indeed, it was only petitioner Go, whose testimony may be considered self-serving who testified on the issue of the transfer. Certainly, the additional testimony of de Leon on the issue of the transfer cannot be considered as so adequate that additional corroborative testimony has no more persuasive value. Besides, the discretion granted by the above proviso has the clear caveat that this power should be exercised with caution, more so in criminal cases where proof beyond reasonable doubt is required for the conviction of the accused.

Fourth, in consonance with the immediate preceding discussion, petitioner Go's testimony on the alleged partnership is not confirmed and supported by any other proof with the exclusion of the testimony of Gloria Padecio. Certainly, it is imperative for the prosecution to prove by clear and strong evidence that the alleged partnership exists; otherwise, respondent Looyuko is entitled to exoneration as the element of trust is important in *estafa* by abuse of confidence. Corroborative testimony is a necessity given the nature of the criminal case.

Likewise, the trial court gravely abused its discretion in denying the prosecution to present the testimony of Alvin Padecio

considering that Briones of Amsteel Securities, Inc. did not provide some details on the transfer. Alvin Padecio, petitioner claims, is the person who can shed light on these matters, more particularly if one considers the fact that he is the son of respondent Looyuko.

Based on the foregoing findings, we hold that the trial court whimsically, arbitrarily, and gravely abused its discretion amounting to a denial of the prosecution of its day in court.

Death of respondent extinguished criminal liability

Respondent Looyuko died on October 29, 2004. It is an established principle that the death of the accused pending final adjudication of the criminal case extinguishes the accused's criminal liability. If the civil liability **directly** arose from and is based **solely** on the offense committed, then the civil liability is also extinguished.[53]

In the case at bar, the civil liability for the recovery of the CBC stock certificates covering 41,376 shares of stock or their value does not directly result from or based solely on the crime of *estafa* but on an agreement or arrangement between the parties that petitioner Go would endorse in blank said stock certificates and give said certificates to respondent Looyuko in trust for petitioner for said respondent to sell the stocks covered by the certificates. In such a case, the civil liability survives and an action for recovery therefor in a separate civil action can be instituted either against the executor or administrator or the estate of the accused.

The case law on the matter reads:

> 1. Corollarily, the claim for civil liability survives notwithstanding the death of the accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

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[53] *People v. Bayotas*, G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255.

a.) Law
b.) Contracts
c.) Quasi-contracts
d.) x x x
e.) Quasi-delicts

2. **Where the civil liability survives**, as explained in Number 2 above, **an action for recover therefore may be pursued but only by way of filing a separate civil action** and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.[54] (Emphasis supplied.)

On the other hand, Sec. 4, Rule 111 of the Rules on Criminal Procedure provides:

SEC. 4. *Effect of death on civil actions*. –– The death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the delict.

However, the independent civil action instituted under Section 3 of this Rule or **which thereafter is instituted to enforce liability arising from other sources of obligation <u>may be continued</u> against the estate or legal representative of the accused after proper substitution or against said estate**, as the case may be. The heirs of the accused may 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. (Emphasis supplied.)

In the light of the foregoing provision, Crim. Case No. 98-1643 has to be dismissed by reason of the death of respondent Looyuko without prejudice to the filing of a separate civil action.

One last point. Petitioner Go filed the two petitions before the CA docketed as CA-G.R. SP No. 58639 and CA-G.R. SP No. 62296 involving incidents arising from the proceedings in Crim. Case No. 98-1643. It can be observed from the

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[54] *Id.* at 255-256.

two petitions that they do not reflect the conformity of the trial prosecutor assigned to said criminal case. This is in breach of Sec. 5, Rule 110 of the Rules of Court that requires that all criminal actions shall be prosecuted "under the direction and control of a public prosecutor." Although in rare occasions, the offended party as a "person aggrieved" was allowed to file a petition under Rule 65 before the CA without the intervention of the Solicitor General,[55] the instant petitions before the CA, as a general rule, should be filed by the Solicitor General on behalf of the State and not solely by the offended party.[56]

For non-compliance with the rules, the twin petitions could have been rejected outright. However, in view of the death of respondent Looyuko, these procedural matters are now mooted and rendered insignificant.

G.R. No. 147962

Appellate court's discretion to give due course to petition

Petitioner strongly asserts that the CA gravely abused its discretion in failing to dismiss the petition in CA-G.R. SP No. 62438 on the ground of respondent's failure to attach all relevant and pertinent documents to his petition, and it erroneously ruled that such procedural defect was cured by admitting respondent's motion to admit additional annexes. Petitioner relies on *Manila Midtown Hotels and Land Corp., et al. v. NLRC*[57] and contends that *Director of Lands v. Court of Appeals*[58] cited by the CA is inapplicable.

We cannot agree with petitioner.

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[55] *People v. Calo, Jr.*, G.R. No. 88531, June 18, 1990, 186 SCRA 620, 624; and *People v. Santiago*, G.R. No. 80778, June 20, 1989, 174 SCRA 143, 153.

[56] *Republic v. Partisala*, No. 61997, November 15, 1982, 118 SCRA 370, 373.

[57] G.R. No. 118397, March 27, 1998, 288 SCRA 259.

[58] G.R. No. L-47380, February 23, 1999, 303 SCRA 495.

Sec. 1 of Rule 65 pertinently provides:

SECTION 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

The above proviso clearly vests the appellate court the authority and discretion to give due course to the petitions before it or to dismiss the same when it is not sufficient in form and substance, the required pleadings and documents are not attached thereto, and no sworn certificate on non-forum shopping is submitted. And such must be exercised, not arbitrarily or oppressively, but in a reasonable manner in consonance with the spirit of the law. The appellate court should always see to it that justice is served in exercising such discretion.

In the case at bar, the appellate court exercised its discretion in giving due course to respondent Looyuko's petition in view of the policy of liberality in the application of the rules. Verily, petitioner has not shown that the appellate court abused its discretion in an arbitrary or oppressive manner in not dismissing the petition due to the non-attachment of some relevant pleadings to the petition. The miscue was cured when respondent submitted additional annexes to the petition. Neither has petitioner shown any manifest bias, fraud, or illegal consideration on the part of the appellate court to merit reconsideration for the grant of due course.

Respondent guilty of forum shopping

There was still a pending Motion for Reconsideration (to the Order of denial of Looyuko's Motion to Dismiss) filed by Looyuko in the court *a quo* when he instituted the petition before the CA on January 2, 2001. It is aggravated by the fact that the Motion for Reconsideration to the denial Order was filed on the **same day** or simultaneously with the filing of the Petition for *Certiorari*; hence, the petition is in the nature of forum shopping. The issues brought before the CA are similar to the issues raised in Looyuko's Motion for Reconsideration involving similar cause of action and reliefs sought, that is, to dismiss the basic complaint of petitioner Go. This Court in a *catena* of cases resolved that a Motion for Reconsideration is an adequate remedy in itself, and is a condition *sine qua non* to the prosecution of the independent, original, and extra ordinary special civil action of *certiorari*.[59] We must not lose sight of the fact that a Motion for Reconsideration (subsequently denied) is a pre-requisite before a Petition for *Certiorari* may properly be filed.[60]

Considering, that the Motion for Reconsideration has not been resolved by the court *a quo*, the petition (CA-G.R. SP No. 62438) was prematurely filed; hence, it should have been outrightly denied due course. Looyuko was remiss of his duty to inform the appellate court in his petition that there was a pending Motion for Reconsideration in the court *a quo*.

Consummated acts not restrained by injunctive writ

A close review of the antecedent facts bears out that, indeed, petitioner did not know of the petition for *certiorari* before the CA until he received a copy of the CA's January 8, 2001 Resolution on January 12, 2001. It is undisputed that petitioner received a copy of respondent's December 29, 2000 petition only on January 19, 2001.

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[59] *Manila Post Publishing Co. v. Sanchez*, 81 Phil. 614 (1948); *Uy Chu v. Imperial and Uy Du*, 44 Phil. 27 (1922).

[60] *Ricafort v. Fernan, et al.*, 101 Phil. 575 (1957).

Clearly, petitioner did not yet know of the pendency of the petition for *certiorari* before the CA when the inventory of the assets in Noah's Ark Sugar Refinery was completed on January 5, 2001. Thus, the appellate court committed reversible error when it held that petitioner proceeded at his own peril the conduct of the inventory in view of the pendency of the *certiorari* case in which the appellate court enjoined the trial court from proceeding with its January 8, 2001 Resolution. Verily, even before the CA granted the TRO and issued its January 8, 2001 Resolution, the proceeding to be enjoined, that is, the conduct of the inventory, had already been done. Thus, we agree with petitioner that *Verzosa v. Court of Appeals*[61] relied upon by the appellate court is not applicable.

The established principle is that when the events sought to be prevented by injunction or prohibition have already happened, nothing more could be enjoined or prohibited.[62] Indeed, it is a universal principle of law that an injunction will not issue to restrain the performance of an act already done. This is so, for the simple reason that nothing more can be done in reference thereto.[63] A writ of injunction becomes moot and academic after the act sought to be enjoined has already been consummated.[64]

In the case at bar, it is manifest that the inventory has already been conducted when the January 8, 2001 TRO and February 12, 2001 Writ of Injunction were issued. Thus, the issue of injunction has been mooted, and the injunctive writ must be nullified and lifted.

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[61] G.R. Nos. 119511-13, November 24, 1998, 299 SCRA 100.

[62] *Ramos, Sr. v. Court of Appeals*, G.R. No. 80908, May 24, 1989, 173 SCRA 550.

[63] *Manila Railroad Company v. Yatco*, G.R. No. L-23056, May 27, 1968, 23 SCRA 735.

[64] *PCIB v. NAMAWU-MIF*, G.R. No. 50402, August 19, 1982, 115 SCRA 873; *Romulo v. Yñiguez*, G.R. No. 71908, February 4, 1986, 141 SCRA 263; *Rivera v. Florendo*, G.R. No. 60066, July 31, 1986, 144 SCRA 647; *Zabat v. Court of Appeals*, G.R. No. 122089, August 23, 2000, 338 SCRA 551.

Inventory of assets does not prejudice the parties

Moreover, it must be noted that the inventory of assets granted by the trial court on December 29, 2000, which was completed on January 5, 2001, does not prejudice respondent Looyuko's right. Certainly, the rights of respondent over the inventoried assets in Noah's Ark Sugar Refinery have not been transgressed, set aside, diminished, or militated upon by the conduct of the inventory.

An inventory does not confer any rights. Thus, by conducting the inventory, petitioner had not been conferred any rights over the assets absent a final determination by the court on the main action for specific performance, accounting, and damages, as the inventory is only an ancillary remedy preparatory for the party to an action to institute other legal remedies for the protection of whatever right the party may have over the subject of the inventory.

Injunction, therefore, against the inventory of the assets covered by the December 29, 2000 Order should be lifted since the inventory has been completed and there is nothing to enjoin or restrain. Consequently, the February 12, 2001 CA Resolution on this matter will have to be modified.

Lower court to proceed absent any TRO or injunctive writ from this Court

With regard to the injunction on the September 25, 2000 and December 19, 2000 Orders which denied respondent's motion to dismiss and motion for reconsideration, respectively, which effectively prohibited the Pasig City RTC from conducting further proceedings in Civil Case No. 67921 until CA-G.R. SP No. 62438 is resolved, it is clear that more than six (6) years had elapsed since the April 24, 2001 CA Resolution was issued and still the CA petition of petitioner has not yet been resolved on the merits. It is observed that this Court did not issue a TRO or a writ of preliminary injunction against the CA from proceeding in CA-G.R. SP No. 62438. The CA should have proceeded to resolve the petition notwithstanding the pendency of G.R. No. 147962 before this Court. This is unequivocal

from Sec. 7 of Rule 65 which provides that the "petition shall not interrupt the course of the principal case unless a TRO or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case." This rule must be strictly adhered to by the lower court notwithstanding the possibility that the proceedings undertaken by the lower court tend to or would render nugatory the pending petition before this Court. As long as there is no directive from this Court for the lower court to defer action in the case, the latter would not be faulted if it continues with the proceedings in said case.

Given the more than six (6) years that CA-G.R. SP No. 62438 has been pending with the CA, we deem it better to resolve the issue of the propriety of the denial by the trial court of respondent's motion to dismiss than remanding it to the CA.

Issue of denial of motion to dismiss

Respondent Looyuko anchored his motion to dismiss on the ground of forum shopping, *litis pendentia*, and abandonment or laches. Respondent anchors his grounds of *litis pendentia* and forum shopping on the fact of the pendency of Civil Case No. 98-91153 entitled *Alberto T. Looyuko v. Jimmy T. Go a.k.a. Jaime Gaisano and the Register of Deeds of Manila* before the Manila RTC, Branch 36, and in Civil Case No. MC 98-038 entitled *Alberto T. Looyuko v. Jimmy T. Go a.k.a. Jaime Gaisano and the Register of Deeds of Mandaluyong City* before Mandaluyong City RTC, Branch 213.

Civil Case No. 98-91153 involves an action to amend Transfer Certificate of Title (TCT) Nos. 160277 and 160284 by deleting the name of petitioner Jimmy T. Go as co-owner. While Civil Case No. MC 98-038 is a petition to cancel the adverse claims annotated by petitioner in TCT No. 64070 in the name of respondent Alberto T. Looyuko and in TCT No. 3325 in the name of Noah's Ark Sugar Refinery. In both civil cases, petitioner has anchored his defense and adverse claims on the Agreements executed on February 9, 1982 and October 10, 1986, wherein the parties allegedly entered into and embodied in said agreements

their true intent and relationship with respect to their business ventures in Noah's Ark Group of Companies, that is, for convenience and expediency, the parties agreed to have their ventures registered with the DTI in the name of respondent Looyuko only as sole proprietor while they are both equally entitled to 50% of the business, goodwill, profits, real and personal properties owned by the group of companies.

Respondent pointed out that that petitioner has prayed in Civil Case No. 98-91153 that the parties' agreement dated February 9, 1982 and October 10, 1986 be declared valid and binding, and in Civil Case No. MC 98-038 to order the Register of Deeds of Mandaluyong City to register petitioner Go's name as co-owner of the properties covered by TCT Nos. 64070 and 3325 by virtue of the February 9, 1982 and October 10, 1986 agreements.

Thus, respondent strongly argues that the issue regarding the validity and binding effect of the alleged partnership agreements dated February 9, 1982 and October 10, 1986 on which petitioner anchors his claim of co-ownership in the Noah's Ark Group of Companies has been squarely raised not only as a defense but also as basis of his prayer for positive relief. Respondent now contends that petitioner is barred by *litis pendentia* in filing Civil Case No. 67921 for Specific Performance, Accounting, Inventory of Assets and Damages anchored on the same issue of the disputed partnership agreements. Moreover, such filing duly recognized by the trial court constitutes forum shopping.

We cannot agree with respondent.

***Litis pendentia* and forum shopping not present**

There is no basis for respondent's claim based on *litis pendentia* and forum shopping. For *litis pendentia* to be a ground for the dismissal of an action there must be: (1) identity of the parties or at least such as to represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (3) the identity in the two cases should be such that the judgment which

may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.[65] On the other hand, forum shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other.[66]

A brief perusal of the cause of action in Civil Case No. 67921 *vis-à-vis* those of Civil Case Nos. 98-91153 and MC 98-038 reveals that there is neither identity of rights asserted and reliefs prayed for, nor are the reliefs founded on the same acts. In this case, Civil Case No. 67921, the relief sought before the Pasig City RTC where the complaint for specific performance was filed by petitioner, was the enforcement of the disputed partnership agreements, whereas, in the Makati City and Mandaluyong City RTCs, the reliefs sought by petitioner who is a defendant and respondent, respectively, were merely as defense for his co-ownership over subject parcels of land and as defense for the adverse claims he had annotated in the titles of subject properties. Such defenses cannot be equated with seeking relief for the enforcement of the disputed partnership agreements. Indeed, the complaint and petition filed by respondent in the Makati City and Mandaluyong City RTCs had different causes of action and sought different reliefs which did not stem from nor are founded from the same acts complained of. There is no basis, therefore, for petitioner's contention that respondent is guilty of forum shopping nor the instant complaint barred by *litis pendentia*.

Anent abandonment or laches, we fully agree with the trial court that there is no basis to dismiss the complaint in Civil Case No. 67921 on the grounds of laches and abandonment. Laches, being controlled by equitable considerations and addressed to the sound discretion of the trial court, is evidentiary in nature and thus can not be resolved in a motion to dismiss, as we

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[65] *Cebu International Finance Corp. v. Court of Appeals*, G.R. No. 123031, October 12, 1999, 316 SCRA 488.

[66] *Prubankers Association v. Prudential Bank & Trust Company*, G.R. No. 131247, January 25, 1999, 302 SCRA 74.

have held in the fairly recent case of *Felix Gochan and Sons Realty Corporation v. Heirs of Raymundo Baba*.[67]

WHEREFORE, the petition in **G.R. No. 147962** is *GRANTED*. The February 12, 2001 and April 24, 2001 Resolutions of the CA in CA-G.R. SP No. 62438 are *REVERSED* and *SET ASIDE*, and the Writ of Preliminary Injunction is *LIFTED*. The Petition for *Certiorari* of respondent Looyuko in CA-G.R. SP No. 62438 is *DISMISSED* for lack of merit, and the Orders dated September 25, 2000, December 19, 2000, and December 29, 2000 of the Pasig City RTC, Branch 69 are *AFFIRMED.* The Pasig City RTC, Branch 69 is hereby ordered to proceed with the case with dispatch.

The petition in **G.R. No. 147923** is *DENIED* and the September 11, 2000 Decision and March 27, 2001 Resolution of the CA in CA-G.R. SP No. 58639 are *AFFIRMED*.

The petition in **G.R. No. 154035** is *GRANTED*. The January 31, 2002 Decision and June 3, 2002 Resolution of the CA in CA-G.R. SP No. 62296 are *REVERSED* and *SET ASIDE.* Likewise, the Orders dated May 9, 2000 and September 22, 2000 of the Makati City RTC in Crim. Case No. 98-1643 are *REVERSED* and *SET ASIDE*.

However, in view of the demise of respondent Looyuko on October 29, 2004, the Makati City RTC is ordered to dismiss Crim. Case No. 98-1643 without prejudice to the filing of a separate civil action by petitioner Go.

No pronouncement as to costs.

SO ORDERED.

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

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[67] G.R. No. 138945, August 19, 2003, 409 SCRA 306, 315, citing *Santos v. Santos*, G.R. No. 133895, 2 October 2, 2001, 366 SCRA 395, 405-406, where we held, thus:

Though laches applies even to imprescriptible actions, its elements must be proved positively. **Laches is evidentiary in nature** which could not be established by mere allegations in the pleadings and **can not be resolved in a motion to dismiss**. (Emphasis supplied.)

THIRD DIVISION

[G.R. No. 168650. October 26, 2007]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOSE TUAZON,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ACCUSED MAY BE CONVICTED SOLELY ON THE BASIS OF THE TESTIMONY OF THE VICTIM PROVIDED THE SAME IS CREDIBLE, NATURAL, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS.—** The Court stresses that conviction or acquittal in a rape case more often than not depends almost entirely on the credibility of the complainant's testimony because of the very nature of this crime. It is usually the victim who alone can testify as to its occurrence. In rape cases, the accused may be convicted solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things. The credibility given by the trial court to the rape victim is an important aspect of evidence which appellate courts can rely on because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct and attitude during direct and cross-examination by counsel. Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts and circumstances of weight which would affect the result of the case, his assessment of credibility deserves the appellate court's highest respect.

2. **ID.; ID.; ID.; TESTIMONIES OF RAPE VICTIMS WHO ARE YOUNG AND IMMATURE DEMAND FULL CREDENCE.—** We agree with the conclusion of the RTC, as affirmed by the CA, that the testimony of AAA was direct, unequivocal and consistent, and thus deserves full faith and credit. xxx. The above testimony of AAA says everything. Jurisprudence has recognized the inbred modesty of a Filipina, especially a young child, who would be unwilling to allow examination of her private parts, suffer the humiliation of a public trial, endure the ordeal

of recounting the details of an assault on her dignity unless her purpose is to bring the perpetrator to the bar of justice and avenge her honor. Testimonies of rape victims who are young and immature demand full credence.

3. **CRIMINAL LAW; RAPE; WHERE THE TESTIMONY OF THE RAPE VICTIM IS CONSISTENT WITH THE MEDICAL FINDINGS, SUFFICIENT BASIS EXISTS TO WARRANT A CONCLUSION THAT THE ESSENTIAL REQUISITE OF CARNAL KNOWLEDGE HAS THEREBY BEEN ESTABLISHED.—** Moreover, the testimony of AAA was corroborated by Dr. Dulig's medical report and testimony that when she conducted the medical examination on the person of AAA, her orifice accepted two fingers with ease and without pain which means that there had been multiple penetration on the vaginal orifice. She likewise claimed that there was no more hymen at the time she conducted the examination. She further testified that the labia minora in AAA's vagina were still swollen which means that she was sexually abused one or two days prior to the examination. The Court held that when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.

4. **ID.; ID.; LUST IS NO RESPECTER OF TIME AND PLACE.—** We have held in a number of cases that lust is no respecter of time and place. Rape can be committed even in places where people congregate, in parks along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many, would appear unlikely and high risk venues for its commission. Besides, there is no rule that rape can be committed only in seclusion. This is especially true in the present case as the brothers and sisters of AAA who were with them inside the room were even younger than her. They did not have the slightest idea of what was happening nor even had a suspicion that appellant was committing a crime against their sister because of their innocence brought about by their young age.

5. **ID.; ID.; IDENTIFICATION OF AN ACCUSED BY HIS VOICE IS ACCEPTED PARTICULARLY IN CASES WHERE THE WITNESSES HAVE KNOWN THE MALEFACTOR PERSONALLY FOR SO LONG AND SO INTIMATELY.—**

During rape incidents, the offender and the victim are as close to each other as is physically possible. In truth, a man and a woman cannot be physically closer to each other than during a sexual act. Moreover, per testimony of AAA, while appellant was performing the lustful act, he threatened to kill her. As such, she heard the voice of her assailant. Identification of an accused by his voice has also been accepted particularly in cases where, such as in this case, the witnesses have known the malefactor personally for so long and so intimately. Considering that appellant and AAA lived together in one house, and the former repeatedly abused her, she is undoubtedly familiar not only with his physical features but also with his voice. Not surprisingly therefore, she readily and positively identified appellant in court during the trial as the man who raped her.

6. **ID.; ID.; HESITANCE OF THE VICTIM IN REPORTING THE CRIME TO THE AUTHORITIES IS NOT NECESSARILY AN INDICATION OF A FABRICATED CHARGE.—** The Court has acknowledged in several cases that the hesitance of the victim in reporting the crime to the authorities is not necessarily an indication of a fabricated charge. This is especially true where the delay can be attributed to the pattern of fear instilled by the threats of bodily harm made by a person who exercises moral ascendancy over the victim. Neither can appellant find refuge in AAA's failure to promptly report the sexual assault to her relatives especially her mother. This applies with greater force in the present case where the offended party was barely 11 years old at the time of the first rape incident and more or less 13 years old at the time of the last incident, and was therefore susceptible to intimidation and threats to physical harm.

7. **ID.; ID.; INTIMIDATION; PHYSICAL RESISTANCE NEED NOT BE ESTABLISHED WHEN INTIMIDATION IS EXERCISED UPON THE VICTIM WHO SUBMITS AGAINST HER WILL TO THE RAPIST'S LUST BECAUSE OF FEAR FOR HER LIFE OR PERSONAL SAFETY.—** Physical resistance need not be established in rape when intimidation is exercised upon the victim who submits against her will to the rapist's lust because of fear for her life or personal safety. The force, violence or intimidation in rape is a relative term, depending not only on

the age, size, and strength of the parties but also on their relationship with each other. A woman of such young age like AAA can only cower in fear and yield into submission. Rape is nothing more than a conscious process of intimidation by which a man keeps a woman in a state of fear and humiliation. Thus, it is not impossible for a victim of rape not to make an outcry against an unarmed assailant. Because of AAA's youthfulness, coupled with the fact that the assailant is her stepfather, it was easy for her to believe that appellant would make good his threat to kill her should she resist.

8. **ID.; ID.; IT IS UNNATURAL FOR A GRANDPARENT TO USE HER OFFSPRING AS AN INSTRUMENT OF MALICE, ESPECIALLY IF IT WILL SUBJECT A GRANDDAUGHTER TO EMBARASSMENT AND EVEN STIGMA.—** It is unnatural for a parent (or grandparent) to use her offspring as an instrument of malice, especially if it will subject a daughter (or granddaughter) to embarrassment and even stigma. It is highly inconceivable that a mother (grandmother) would willfully and deliberately corrupt the innocent mind of her young daughter (granddaughter) and put into her lips the lewd description of a carnal act to justify a personal grudge or anger against the appellant. This Court cannot give weight to the bare assertion of appellant without sufficient evidence to prove the same.

9. **ID.; ID.; ACCUSED-APPELLANT FOUND GUILTY THEREOF IN CASE AT BAR; IMPOSABLE PENALTY.—** The trial court correctly convicted appellant of statutory rape for the crime committed in 1995 and simple rape for that committed on May 27,1997. Private complainant was born on November 14, 1984. She was, accordingly, eleven years old in 1995 when the first incident of rape took place. However, in 1997, she was already more than 12 years old, thus appellant is liable for simple rape. Appellant was, therefore, correctly meted the penalty of *reclusion perpetua* for each count of rape pursuant to Article 335 of the Revised Penal Code, as amended by Section 11, Republic Act (R.A.) No. 7659.

10. **ID.; PENALTY; INDETERMINATE SENTENCE LAW; DOES NOT APPLY TO PERSONS SENTENCED TO *RECLUSION PERPETUA*.—** Moreover, appellant shall not be eligible for parole pursuant to the Indeterminate Sentence Law. Section 2 thereof provides that the law "shall not apply to persons

convicted of offenses punished with death penalty or life imprisonment." Although the law makes no reference to persons convicted to suffer the penalty of *reclusion perpetua* such as the appellant herein, the Court has consistently held that the Indeterminate Sentence Law likewise does not apply to persons sentenced to *reclusion perpetua.*

11. ID.; RAPE; CIVIL LIABILITY OF ACCUSED-APPELLANT.— As to the civil liability of appellant, we modify the same. The RTC awarded ₱50,000.00 as damages and ₱75,000.00 as civil damages. This Court affirms the award of ₱50,000.00 for each count of rape as moral damages instead of "damages," and reduces the amount of ₱75,000.00 to ₱50,000.00 for each count as civil indemnity instead of "civil damages." This is pursuant to the prevailing doctrine enunciated in the cases of *People v. Bascugin*, *People v. Tolentino*, *People v. Espinosa*, and *People v. Rote*. Furthermore, as held in *People v. Malones,* this is not the first time that a child has been snatched from the cradle of innocence by some beast to sate its deviant sexual appetite. To curb this disturbing trend, appellant should, likewise, be made to pay exemplary damages which is pegged at ₱25,000.00 for each count of rape.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

NACHURA, *J*.:

AAA is the daughter of BBB by her first marriage. After the death of AAA's father, BBB contracted marriage with the appellant, Jose Tuazon; they then lived together as husband and wife, together with the former's children.

Instead of guarding his stepchildren/children against wrongful acts of strangers, the appellant committed lustful acts against one of them, by repeatedly abusing AAA. The first of this series of acts was committed in 1995 while AAA was still in

Grade V.[1] She was at that time 11 years old, having been born on November 14, 1984 as shown in her certificate[2] of live birth.

One night sometime in 1995, AAA was inside their house with the appellant, together with her younger brothers and sisters, while BBB was out as she went to harvest coffee at Calakkad, Tabuk. Appellant then went inside the room where all of the children were sleeping; approached the place where AAA was lying down; removed her panty; kissed her; brought out his male organ; placed his penis inside her vagina; then made the push and pull movement, after which AAA felt that there was liquid coming out of his penis. She was then in pain and her private part bled. She could not offer resistance at that time because the appellant threatened to kill her if she would report the incident. Immediately after satisfying his lustful desire, appellant put on AAA's panty.[3] Unsatisfied, he repeated the incident several times, always when BBB was out. The last incident took place on May 27, 1997.

AAA did not reveal her gruesome experience to anybody – not even to her mother BBB, because of her fear that the appellant would make good his promise of killing her if she would report the incident.

Sometime in May 1997, AAA's grandmother CCC, invited her to sleep in the latter's house but she was prevented by the appellant. The next day, CCC went to the house of the appellant and inquired why AAA did not sleep at her house. Instead of answering CCC, AAA started crying. When CCC asked why, she answered that "she was raped."[4] It was then that she revealed her ordeal at the hands of the appellant.

CCC thereafter reported the matter to AAA's uncle who, in turn, reported it to BBB's brothers. Together, they reported the incident to the Municipal Hall of XXX, Isabela.

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[1] TSN, December 2, 1998, p. 5.

[2] Records, p. 2.

[3] TSN, December 2, 1998, pp. 5-11.

[4] TSN, January 21, 1999, pp. 3-5.

On May 29, 1997, AAA submitted herself to medical examination by Dr. Alpha Dulig (Dr. Dulig), Rural Health Physician of XXX, Isabela, who subsequently issued a medical certificate,[5] the pertinent portion of which reads:

> GENITALIA
>
> Pubic hairs: few(,) fine, short hair
> Labia Majora: reddish and swollen
> Labia Minora: reddish and swollen
> Fourchete: healed laceration, not coaptated
> Vestibules: reddish
> Hymen: absent
> Orifice: Accepts 2 finger (sic) withease (sic) and without pain
> Vagina:
> Walls: reddish,
> Rugosities: rough
> Uteros (sic): palpable; small
> Cervix: soft close, reddish
> Discharge: none

Thereafter, AAA and CCC executed their respective sworn statements[6] before the XXX police. Subsequently, AAA filed a complaint[7] dated May 30, 1997, with the 12th Municipal Circuit Trial Court (MCTC) of XXX, Province of Isabela.

After the requisite preliminary investigation, on January 28, 1998, two separate Informations for rape were filed against the appellant before the Regional Trial Court of Roxas (RTC). The cases were docketed as Criminal Cases Nos. 23-829 and 23-830. The respective accusatory portions of the foregoing informations are as follows:

> That on or about the 27th day of May, 1997, in the municipality of XXX, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force,

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[5] Exhibit "B"; Records, pp. 3-4.

[6] Records, pp. 6-7.

[7] *Id*. at 1.

intimidation and with lewd designs, did then and there, willfully, unlawfully and feloniously, lay with and have carnal knowledge with one AAA, a girl of 12 years of age, against her will and consent.

CONTRARY TO LAW.[8]

That on or about the year 1995, in in (sic) the municipality of XXX, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force, intimidation and with lewd design, did then and there, willfully, unlawfully and feloniously, lay with and have carnal knowledge with one AAA, a girl below 12 years of age, against her will and consent.

CONTRARY TO LAW.[9]

Appellant pleaded "Not Guilty" to both charges. Accordingly, joint trial ensued.

For his part, appellant denied the charges imputed against him. He testified that they were fabricated by AAA's paternal grandmother, CCC, who was angry at him because of his marriage to BBB.[10]

The defense likewise presented BBB who testified that she did not know of anyone who opposed her relationship with the accused but she did not answer when asked if her in-laws opposed such marriage.[11] She likewise testified that she did not have personal knowledge that the appellant abused her daughter AAA.[12]

After trial, the RTC rendered a Joint Decision[13] dated December 6, 2000, finding the appellant guilty of the offenses charged. The *fallo* reads:

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[8] *Id.* at 23.

[9] Records (Criminal Case No. 23-830), p.1.

[10] TSN, June 22, 1999, pp. 6-7.

[11] TSN, October 12, 1999, p. 8.

[12] *Id.* at 10.

[13] Penned by Judge Teodulo E. Mirasol; records, pp. 133-137.

WHEREFORE, finding the accused guilty beyond any iota of doubt, of the offenses as charged in both informations above-quoted, the court hereby sentences the accused to *RECLUSION PERPETUA* for each count of rape and to pay the sum of Fifty Thousand (₱50,000.00) Pesos as damages for each offense and additional Seventy-five (sic) (₱75,000.00) Pesos as civil damages or a total of One Hundred Twenty-five Thousand (₱25,000.00) Pesos for each count following prevailing jurisprudence, with all the necessary penalties provided for by law, and to pay the costs.

SO ORDERED.[14]

The records of this case were originally forwarded to this Court by the RTC in view of the notice of appeal filed by the appellant. After the parties submitted their respective briefs, conformably with our Decision in *People v. Mateo,*[15] we transferred this case and its records to the Court of Appeals (CA) in a Resolution[16] dated August 30, 2004 for appropriate action and disposition.

In his Brief,[17] appellant raised the following as errors of the RTC:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE UNBELIEVABLE AND INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT, AAA.

II

THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF RAPE IN CRIMINAL CASE NO. 23-829.

III

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT IN CRIMINAL CASE

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[14] Records, pp. 136-137.

[15] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[16] CA *rollo*, pp. 102-103.

[17] *Id*. at 44-58.

NO. 23(-)830 HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[18]

On April 21, 2005, the CA rendered the assailed Decision:[19]

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The assailed decision of the Regional Trial Court, Branch 23, Roxas, Isabela dated December 6, 2000 is hereby **AFFIRMED**.

SO ORDERED.[20]

Hence, the present appeal.

The Court stresses that conviction or acquittal in a rape case more often than not depends almost entirely on the credibility of the complainant's testimony because of the very nature of this crime. It is usually the victim who alone can testify as to its occurrence. In rape cases, the accused may be convicted solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[21] The credibility given by the trial court to the rape victim is an important aspect of evidence which appellate courts can rely on because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct and attitude during direct and cross-examination by counsel. Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts and circumstances of weight which would affect the result of the case, his assessment of credibility deserves the appellate court's highest respect.[22]

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[18] *Id*. at 46-47.

[19] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Portia Aliño-Hormachuelos and Vicente Q. Roxas, concurring; CA *rollo*, pp. 100-123.

[20] CA *rollo*, p. 122.

[21] *People v. Malones*, 469 Phil. 301, 318 (2004).

[22] *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 658; *People v. Cayabyab*, G.R. No. 167147, August 3, 2005, 465 SCRA 681, 686; *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 512.

We agree with the conclusion of the RTC, as affirmed by the CA, that the testimony of AAA was direct, unequivocal and consistent, and thus deserves full faith and credit. She testified:

1st Incident of Rape
Sometime in 1995
(Criminal Case No. 23-830)

Q: If that is the case tell all what happened to you that first night?
A: That night he went to our room, he make (sic) me naked then he raped me, sir.

Q: Did he kiss you?
A: Yes, sir.

Q: When he kissed you, did he bring (sic) his male organ?
A: Yes, sir.[23]

x x x x x x x x x

Q: When he brought out his penis, what did he do?
A: He had sexual intercourse with me, sir.

Q: Did he place his penis into your vagina?
A: Yes, sir.

Q: Will you tell the Court if his penis penetrated in your private parts?
A: Yes, sir.

Q: After the insertion of his penis into your vagina, what did he do?
A: He told me that whenever I will report the matter he would kill me, sir.

Q: When his penis was inside your vagina, did you ever feel any liquid coming out from his penis?

Atty. Lamorena:
Objection, Your Honor.

A: There was, sir.[24]

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[23] TSN, December 2, 1998, p. 9.

[24] *Id.* at 10-11.

x x x x x x x x x

Q: Did you notice if he made the push and pull movement?
A: Yes, sir.

Q: And did he kiss you while he was making that movement?
A: Yes, sir.

Q: After you have feel (sic) that there was a liquid coming out from his penis, what else happened?
A: After he finished, sir, he put on my panty.[25]

2nd Incident of Rape
May 27, 1997
(Criminal Case No. 23-829)

Q: On May 27, 1997, will you describe how he raped you for the last time? What did he do?
A: He went again in our room where we were lying down, then he made me naked, and told me that if I will report the matter he will kill me, sir.

Q: After removing your clothes, and you were already naked, what did he do?
A: He abused me again, sir.

Q: How did he abuse you?
A: When I was already naked he had sexual intercourse with me, sir.

Q: Did he go on top of you after he made you naked?
A: Yes, sir.

Q: Did he kiss you before he place (sic) his penis inside your vagina?
A: Yes, sir.

Q: Did he kiss your breast?
A: No, sir.

Q: When his penis entered into your private parts, did you feel anything?
A: There was, sir.

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[25] *Id.* at. 11.

Q: Did you still feel pain while according to you you had so many sexual intercourse with him?

A: Yes, sir, I felt pain because it was long time ago already. We went to Dagupan to earn for a living there for harvesting palay then Jose Tuazon came and fetched me, sir.

Q: And you did not protest when he placed his penis inside your vagina?

A: No, sir, because he told me that he will kill me, sir.

Q: And did he make the same movement as he made before?

A: Yes, sir.

Q: Did he go on top of you?

A: Yes, sir.

Q: Did he spread your legs?

A: Yes, sir.

Q: He did not put pillow under your buttocks?

A: No, sir.[26]

x x x x x x x x x

Q: How about Jose Tuazon whenever he commits or makes sexual intercourse with you, did he also remove his clothes?

A: He removed only his brief, sir.

Q: Can you tell the Honorable Court how long did Jose Tuazon make that sexual intercourse with you?

A: A little bit long, sir.

Q: Around three (3) minutes or five (5) minutes?

A: Around five (5) minutes, sir.[27]

The above testimony of AAA says everything. Jurisprudence has recognized the inbred modesty of a Filipina, especially a young child, who would be unwilling to allow examination of her private parts, suffer the humiliation of a public trial, endure the ordeal of recounting the details of an assault on her dignity unless her purpose is to bring the perpetrator to the bar of

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[26] *Id.* at 12-13.

[27] *Id.* at 14.

justice and avenge her honor. Testimonies of rape victims who are young and immature demand full credence.[28]

Moreover, the testimony of AAA was corroborated by Dr. Dulig's medical report[29] and testimony that when she conducted the medical examination on the person of AAA, her orifice accepted two fingers with ease and without pain which means that there had been multiple penetration on the vaginal orifice. She likewise claimed that there was no more hymen at the time she conducted the examination. She further testified that the labia minora in AAA's vagina were still swollen which means that she was sexually abused one or two days prior to the examination. The Court held that when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.[30]

We now come to the specific defenses set forth by appellant in his brief in his attempt to seek the reversal of his conviction.

First, he avers that rape could not have been committed inside a room where AAA and her younger brothers and sisters were sleeping, otherwise, it would have aroused their attention.[31]

We do not agree.

We have held in a number of cases that lust is no respecter of time and place. Rape can be committed even in places where people congregate, in parks along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many, would appear unlikely and high risk venues for its commission. Besides, there is no rule

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[28] *People v. Malones*, *supra* note 21, at 323-324; see also *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 448; *People v. Guambor*, 465 Phil. 671, 678 (2004); *People v. Aspuria*, 440 Phil. 41, 52 (2002).

[29] Exhibit "B".

[30] *People v. Mahinay*, 462 Phil. 53, 66 (2003).

[31] CA *rollo*, p. 51.

that rape can be committed only in seclusion.[32] This is especially true in the present case as the brothers and sisters of AAA who were with them inside the room were even younger than her. They did not have the slightest idea of what was happening nor even had a suspicion that appellant was committing a crime against their sister because of their innocence brought about by their young age.

Second, appellant claims that the evidence for the prosecution failed to show that the room where the rape was committed was properly illuminated considering that the incident took place at nighttime. Otherwise, it would have been impossible for AAA to properly identify the assailant.[33]

During rape incidents, the offender and the victim are as close to each other as is physically possible. In truth, a man and a woman cannot be physically closer to each other than during a sexual act.[34] Moreover, per testimony of AAA, while appellant was performing the lustful act, he threatened to kill her. As such, she heard the voice of her assailant. Identification of an accused by his voice has also been accepted particularly in cases where, such as in this case, the witnesses have known the malefactor personally for so long and so intimately.[35] Considering that appellant and AAA lived together in one house, and the former repeatedly abused her, she is undoubtedly familiar not only with his physical features but also with his voice. Not surprisingly therefore, she readily and positively identified appellant in court during the trial as the man who raped her.

Third, appellant questions the act of AAA in belatedly reporting the incident. He goes on by saying that the period from 1995 until 1997 is so long such that she had the chance to report it

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[32] *People v. Ortizuela*, G.R. No. 135675, June 23, 2004, 432 SCRA 574, 582-583; *People v. Malones*, *supra* note 21, at 326; *People v. Evina*, 453 Phil. 25, 41 (2003).

[33] CA *rollo*, p. 52.

[34] *People v. Evina*, *supra*, at 40.

[35] *People v. Intong*, 466 Phil. 733, 742 (2004).

as there were times when appellant was not by her side.[36] He likewise questions the failure of AAA to report the incident to her mother. He avers that it is contrary to human experience that an adolescent could actually keep to herself such a traumatic experience for a long time.[37]

The Court has acknowledged in several cases that the hesitance of the victim in reporting the crime to the authorities is not necessarily an indication of a fabricated charge. This is especially true where the delay can be attributed to the pattern of fear instilled by the threats of bodily harm made by a person who exercises moral ascendancy over the victim.[38] Neither can appellant find refuge in AAA's failure to promptly report the sexual assault to her relatives especially her mother.[39] This applies with greater force in the present case where the offended party was barely 11 years old at the time of the first rape incident and more or less 13 years old at the time of the last incident, and was therefore susceptible to intimidation and threats to physical harm.

Fourth, appellant insists that he should be acquitted because the prosecution failed to prove that he employed force in fulfilling his lustful act and because of the admission made by AAA that she did not resist the sexual assault.

Physical resistance need not be established in rape when intimidation is exercised upon the victim who submits against her will to the rapist's lust because of fear for her life or personal safety. The force, violence or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other. A woman of such young age like AAA can only cower in fear and yield into submission. Rape is nothing more than a conscious process of intimidation by which a man keeps a woman in a state of

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[36] CA *rollo*, p. 52.

[37] *Id.* at 53.

[38] *People v. Manlod*, 434 Phil. 330, 350 (2002).

[39] *People v. Ballester*, 465 Phil. 314, 321 (2004).

fear and humiliation. Thus, it is not impossible for a victim of rape not to make an outcry against an unarmed assailant.[40] Because of AAA's youthfulness, coupled with the fact that the assailant is her stepfather, it was easy for her to believe that appellant would make good his threat to kill her should she resist.

Lastly, in his attempt to impute ill motive on the part of AAA, appellant claims that the case was filed due to the malicious instruction of her grandmother CCC who strongly opposed his marriage to BBB.

It is unnatural for a parent (or grandparent) to use her offspring as an instrument of malice, especially if it will subject a daughter (or granddaughter) to embarrassment and even stigma. It is highly inconceivable that a mother (grandmother) would willfully and deliberately corrupt the innocent mind of her young daughter (granddaughter) and put into her lips the lewd description of a carnal act to justify a personal grudge or anger against the appellant.[41] This Court cannot give weight to the bare assertion of appellant without sufficient evidence to prove the same.

In view of the foregoing, we find appellant's defense of denial to be unavailing in the face of the positive and credible testimony of the prosecution witnesses. His guilt has been proved beyond reasonable doubt.

The trial court correctly convicted appellant of statutory rape for the crime committed in 1995 and simple rape for that committed on May 27,1997. Private complainant was born on November 14, 1984. She was, accordingly, eleven years old in 1995 when the first incident of rape took place. However, in 1997, she was already more than 12 years old, thus appellant is liable for simple rape. Appellant was, therefore, correctly meted the penalty of *reclusion perpetua* for each count of rape pursuant to Article 335 of the Revised Penal Code, as

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[40] *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 554; *People v. Gutierrez*, 451 Phil. 227, 239 (2003).

[41] *People v. Malones*, *supra* note 21, at 327, citing *People v. Zabala*, 409 SCRA 51 (2003).

amended by Section 11, Republic Act (R.A.) No. 7659 which provides:

Article 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. x x x
3. When the woman is under 12 years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

Moreover, appellant shall not be eligible for parole pursuant to the Indeterminate Sentence Law. Section 2 thereof provides that the law "shall not apply to persons convicted of offenses punished with death penalty or life imprisonment." Although the law makes no reference to persons convicted to suffer the penalty of *reclusion perpetua* such as the appellant herein, the Court has consistently held that the Indeterminate Sentence Law likewise does not apply to persons sentenced to *reclusion perpetua*.[42]

As to the civil liability of appellant, we modify the same. The RTC awarded ₱50,000.00 as damages and ₱75,000.00 as civil damages. This Court affirms the award of ₱50,000.00 for each count of rape as moral damages instead of "damages," and reduces the amount of ₱75,000.00 to ₱50,000.00 for each count as civil indemnity instead of "civil damages." This is pursuant to the prevailing doctrine enunciated in the cases of *People v. Bascugin*,[43] *People v. Tolentino*,[44] *People v. Espinosa*,[45] and *People v. Rote*.[46] Furthermore, as held in

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[42] *See People v. Enriquez, Jr.*, G.R. No. 158797, July 29, 2005, 465 SCRA 407, 418; *People v. Tan,* G.R. Nos. 116200-02, June 21, 2001, 359 SCRA 283, 307; and *People v. Lampaza*, G.R. No. 138876, November 24, 1999, 319 SCRA 112, 130.

[43] G.R. No. 144195, May 25, 2004, 429 SCRA 140, 151-152.

[44] 467 Phil. 937, 960 (2004).

[45] G.R. No. 138742, June 15, 2004, 432 SCRA 86, 102-103.

[46] 463 Phil. 662, 675 (2003).

People v. Malones,[47] this is not the first time that a child has been snatched from the cradle of innocence by some beast to sate its deviant sexual appetite. To curb this disturbing trend, appellant should, likewise, be made to pay exemplary damages which is pegged at ₱25,000.00 for each count of rape.

WHEREFORE, the Decision of the Court of Appeals dated April 21, 2005 in CA-G.R. CR-HC No. 00002, is *AFFIRMED with MODIFICATIONS*. The appellant is sentenced to suffer the penalty of *Reclusion Perpetua* for each count of rape without eligibility for parole. He is likewise ordered to pay private complainant ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱50,000.00 as exemplary damages.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 168661. October 26, 2007]

ESTATE OF THE LATE JESUS S. YUJUICO, represented by ADMINISTRATORS BENEDICTO V. YUJUICO and EDILBERTO V. YUJUICO; and AUGUSTO Y. CARPIO, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES and the COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT; RECONVEYANCE; REVERSION SUITS, WHEN PROPER.— An action for reversion seeks to restore public land fraudulently

[47] *Supra* note 21, at 333.

awarded and disposed of to private individuals or corporations to the mass of public domain. This remedy is provided under Commonwealth Act (CA) No. 141 (Public Land Act) which became effective on December 1, 1936. Said law recognized the power of the state to recover lands of public domain. Section 124 of CA No. 141 reads: xxx Pursuant to Section 124 of the Public Land Act, reversion suits are proper in the following instances, to wit: 1. Alienations of land acquired under free patent or homestead provisions in violation of Section 118, CA No. 141; 2. Conveyances made by non-Christians in violation of Section 120, CA No. 141; and 3. Alienations of lands acquired under CA No. 141 in favor of persons not qualified under Sections 121, 122, and 123 of CA No. 141. From the foregoing, an action for reversion to cancel titles derived from homestead patents or free patents based on transfers and conveyances in violation of CA No. 141 is filed by the OSG pursuant to its authority under the Administrative Code with the RTC. It is clear therefore that reversion suits were originally utilized to annul titles or patents administratively issued by the Director of the Land Management Bureau or the Secretary of the DENR.

2. ID.; ID.; ID.; REVERSION SUITS, WHERE FILED.— While CA No. 141 did not specify whether judicial confirmation of titles by a land registration court can be subject of a reversion suit, the government availed of such remedy by filing actions with the RTC to cancel titles and decrees granted in land registration applications. The situation changed on August 14, 1981 upon effectivity of Batas Pambansa (BP) Blg. 129 which gave the Intermediate Appellate Court the exclusive original jurisdiction over actions for annulment of judgments of RTCs. When the 1997 Rules of Civil Procedure became effective on July 1, 1997, it incorporated Rule 47 on annulment of judgments or final orders and resolutions of the RTCs. The two grounds for annulment under Sec. 2, Rule 47 are extrinsic fraud and lack of jurisdiction. If based on extrinsic fraud, the action must be filed within four (4) years from its discovery, and if based on lack of jurisdiction, before it is barred by laches or estoppel as provided by Section 3, Rule 47. Thus, effective July 1, 1997, any action for reversion of public land instituted by the Government was already covered by Rule 47. The instant Civil Case No. 01-0222 for annulment and cancellation of Decree No. N-150912 and its derivative titles was filed on June 8, 2001

with the Parañaque City RTC. It is clear therefore that the reversion suit was erroneously instituted in the Parañaque RTC and should have been dismissed for lack of jurisdiction. The proper court is the CA which is the body mandated by BP Blg. 129 and prescribed by Rule 47 to handle annulment of judgments of RTCs.

3. **ID.; ID.; EQUITABLE ESTOPPEL MAY BE INVOKED AGAINST PUBLIC AUTHORITIES WHEN THE LOT WAS ALREADY ALIENATED TO INNOCENT BUYERS FOR VALUE AND THE GOVERNMENT DID NOT UNDERTAKE ANY ACT TO CONTEST THE TITLE FOR AN UNREASONABLE LENGTH OF TIME.—** Assuming that the Parañaque RTC has jurisdiction over the reversion case, still the lapse of almost three decades in filing the instant case, the inexplicable lack of action of the Republic and the injury this would cause constrain us to rule for petitioners. While it may be true that estoppel does not operate against the state or its agents, deviations have been allowed. In *Manila Lodge No. 761 v. Court of Appeals*, we said: Estoppels against the public are little favored. They should not be invoked except in rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. *Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . ., the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.* Equitable estoppel may be invoked against public authorities when as in this case, the lot was already alienated to innocent buyers for value and the government did not undertake any act to contest the title for an unreasonable length of time.

4. **ID.; ID.; ID.; FRAUDULENT ACQUISITION CANNOT AFFECT THE TITLES OF INNOCENT PURCHASERS FOR VALUE.—** *Republic v. Court of Appeals* is reinforced by our ruling in *Republic v. Umali*, where, in a reversion case, we held that even if the original grantee of a patent and title has obtained the same through fraud, reversion will no longer prosper as the land had become private land and the fraudulent acquisition

cannot affect the titles of innocent purchasers for value. Considering that innocent purchaser for value Yujuico bought the lot in 1974, and more than 27 years had elapsed before the action for reversion was filed, then said action is now barred by laches.

5. **ID.; ID.; TORRENS SYSTEM; EVERY SUBSEQUENT PURCHASER OF REGISTERED LAND TAKING A CERTIFICATE OF TITLE FOR VALUE AND IN GOOD FAITH SHALL HOLD THE SAME FREE FROM ALL ENCUMBRANCES EXCEPT THOSE NOTED IN THE CERTIFICATE AND ANY OF THE ENCUMBRANCES WHICH MAY BE SUBSISTING.—** While the general rule is that an action to recover lands of public domain is imprescriptible, said right can be barred by laches or estoppel. Section 32 of PD 1592 recognized the rights of an innocent purchaser for value over and above the interests of the government. xxx. In this petition, the LRC (now LRA), on May 30, 1974, issued Decree No. N-150912 in favor of Fermina Castro and OCT No. 10215 was issued by the Rizal Registrar of Deeds on May 29, 1974. OCT No. 10215 does not show any annotation, lien, or encumbrance on its face. Relying on the clean title, Yujuico bought the same in good faith and for value from her. He was issued TCT No. 445863 on May 31, 1974. There is no allegation that Yujuico was a buyer in bad faith, nor did he acquire the land fraudulently. He thus had the protection of the Torrens System that every subsequent purchaser of registered land taking a certificate of title for value and in good faith shall hold the same free from all encumbrances except those noted on the certificate and any of the . . . encumbrances which may be subsisting. The same legal shield redounds to his successors-in-interest, the Yujuicos and Carpio, more particularly the latter since Carpio bought the lot from Jesus Y. Yujuico for value and in good faith.

6. **ID.; SPECIAL CONTRACTS; MORTGAGE; THE MORTGAGE RIGHTS OF A MORTGAGEE IN GOOD FAITH CANNOT BE NULLIFIED BY THE DECLARATION THAT THE TITLE IS NULL AND VOID.—** Likewise protected are the rights of innocent mortgagees for value, the PISO, Citibank, N.A., PDC, RCBC, PCIB, and DBP. Even if the mortgagor's title was proved fraudulent and the title declared null and void, such declaration cannot nullify the mortgage rights of a mortgagee in good faith.

7. **ID.; LACHES; DOCTRINE; APPLIED TO CASE AT BAR.—** 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 a presumption that the party entitled thereto has either abandoned or declined to assert it. xxx. From the undisputed facts of the case, it is easily revealed that respondent Republic took its sweet time to nullify Castro's title, notwithstanding the easy access to ample remedies which were readily available after OCT No. 10215 was registered in the name of Castro. *First,* it could have appealed to the CA when the Pasig-Rizal CFI rendered a decision ordering the registration of title in the name of applicant Castro on April 26, 1974. Had it done so, it could have elevated the matter to this Court if the appellate court affirms the decision of the land registration court. *Second,* when the entry of Decree No. N-150912 was made on May 29, 1974 by the Rizal Register of Deeds, the Republic had one (1) year from said date or up to May 28, 1975 to file a petition for the reopening and review of Decree No. N-150912 with the Rizal CFI (now RTC) on the ground of actual fraud under Section 32 of PD 1592. Again, respondent Republic did not avail of such remedy. *Third,* when Jesus Yujuico filed a complaint for *Removal of Cloud and Annulment of Title with Damages* against PEA before the Parañaque RTC in Civil Case No. 96-0317, respondent could have persevered to question and nullify Castro's title. Instead, PEA undertook a compromise agreement on which the May 18, 1998 Resolution was issued. PEA in effect admitted that the disputed land was owned by the predecessors-in-interest of petitioners and their title legal and valid; and impliedly waived its right to contest the validity of said title; respondent Republic even filed the petition for relief from judgment beyond the time frames allowed by the rules, a fact even acknowledged by this Court in *Public Estates Authority. Lastly,* respondent only filed the reversion suit on June 8, 2001 after the passage of 27 years from the date the decree of registration was issued to Fermina Castro. Such a Rip Van Winkle, coupled with the signing of the settlement with PEA, understandably misled petitioners to believe that the government no longer had any right or interest in the disputed lot to the extent that the two lots were even mortgaged to several banks including a government financing institution. Any

nullification of title at this stage would unsettle and prejudice the rights and obligations of innocent parties. All told, we are constrained to conclude that laches had set in.

8. REMEDIAL LAW; JUDGMENT; *STARE DECISIS*; RULING IN THE CASE OF *FIRESTONE CERAMICS, INC.* (G.R. NO. 127022, SEPTEMBER 2, 1999) APPLICABLE TO CASE AT BAR.— The doctrine on precedents is expressed in the latin maxim — *Stare decisis et non quieta movere*. Follow past precedents and do not disturb what has been settled. In order however that a case can be considered as a precedent to another case which is pending consideration, the facts of the first case should be similar or analogous to the second case. A perusal of the facts of the Firestone case and those of the case at bar reveals that the facts in the two (2) cases are parallel. *First,* in *Firestone* and in this case, the claimants filed land registration applications with the CFI; both claimants obtained decrees for registration of lots applied for and were issued OCTs. *Second,* in *Firestone,* the Republic filed a reversion case alleging that the land covered by the OCT was still inalienable forest land at the time of the application and hence the Land Registration Court did not acquire jurisdiction to adjudicate the property to the claimant. In the instant case, respondent Republic contend that the land applied for by Yujuico was within Manila Bay at the time of application and therefore the CFI had no jurisdiction over the subject matter of the complaint. *Third,* in *Firestone,* the validity of the title of the claimant was favorably ruled upon by this Court in *G.R. No. 109490* entitled *Patrocinio E. Margolles v. CA*. In the case at bar, the validity of the compromise agreement involving the disputed lot was in effect upheld when this Court in *Public Estates Authority v. Yujuico* dismissed the petition of PEA seeking to reinstate the petition for relief from the May 18, 1998 Resolution approving said compromise agreement. With the dismissal of the petition, the May 18, 1998 Resolution became final and executory and herein respondent Republic through PEA was deemed to have recognized Castro's title over the disputed land as legal and valid. In *Romero v. Tan*, we ruled that "a judicial compromise has the effect of *res judicata*." We also made clear that a judgment based on a compromise agreement is a judgment on the merits, wherein the parties have validly entered into stipulations and the evidence was duly considered by the trial

court that approved the agreement. In the instant case, the May 18, 1998 Resolution approving the compromise agreement confirmed the favorable decision directing the registration of the lot to Castro's name in LRC Case No. N-8239. Similarly, in *Firestone,* the Margolles case confirmed the decision rendered in favor of Gana in Land Registration Case No. 672 ordering the issuance of the decree to said applicant. *Fourth*, in *Firestone*, the Supreme Court relied on the letter of then Solicitor General Francisco Chavez that the evidence of the Bureau of Lands and the LRC was not sufficient to support an action for cancellation of OCT No. 4216. In the instant case, both the Solicitor General and the Government Corporate Counsel opined that the Yujuico land was not under water and that "there appears to be no sufficient basis for the Government to institute the action for annulment." *Fifth*, in *Firestone,* we ruled that "the Margolles case had long become final, thus the validity of OCT No. 4216 should no longer be disturbed and should be applied in the instant case (reversion suit) based on the principle of *res judicata* or, otherwise, the rule on conclusiveness of judgment." Clearly from the above, *Firestone* is a precedent case. The *Public Estates Authority* had become final and thus the validity of OCT No. 10215 issued to Castro could no longer be questioned.

9. **ID.; ID.; *RES JUDICATA*; REQUISITES.—** Even granting for the sake of argument that *Firestone* is not squarely applicable, still we find the reversion suit already barred by *res judicata*. For *res judicata* to serve as an absolute bar to a subsequent action, the following requisites must concur: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be between the two cases, identity of parties, subject matter and causes of action.

10. **ID.; COURTS; JURISDICTION; THE AUTHORITY TO DECIDE A CASE AND NOT THE DECISION RENDERED THEREIN MAKES UP JURISDICTION.—** Firmly entrenched is the principle that jurisdiction over the subject matter is conferred by law. Consequently, the proper CFI (now the RTC) under Section 14 of PD 1529 (Property Registration Decree) has jurisdiction over applications for registration of title to land. xxx Conformably, the Pasig-Rizal CFI, Branch XXII has

jurisdiction over the subject matter of the land registration case filed by Fermina Castro, petitioners' predecessor-in-interest, since jurisdiction over the subject matter is determined by the allegations of the initiatory pleading — the application. Settled is the rule that "the authority to decide a case and not the decision rendered therein is what makes up jurisdiction. When there is jurisdiction, the decision of all questions arising in the case is but an exercise of jurisdiction."

11. **CIVIL LAW; LAND REGISTRATION; REVERSION SUIT IN CASE AT BAR IS ALREADY BARRED BY *RES JUDICATA*.—** In our view, it was imprecise to state in *Municipality of Antipolo* that the "**Land Registration Court [has] no jurisdiction to entertain the application for registration of public property** x x x" for such court precisely has the jurisdiction to entertain land registration applications since that is conferred by PD 1529. The applicant in a land registration case usually claims the land subject matter of the application as his/her private property, as in the case of the application of Castro. Thus, the conclusion of the CA that the Pasig-Rizal CFI has no jurisdiction over the subject matter of the application of Castro has no legal mooring. The land registration court initially has jurisdiction over the land applied for at the time of the filing of the application. After trial, the court, in the exercise of its jurisdiction, can determine whether the title to the land applied for is registrable and can be confirmed. In the event that the subject matter of the application turns out to be inalienable public land, then it has no jurisdiction to order the registration of the land and perforce must dismiss the application. Based on our ruling in *Antipolo*, the threshold question is whether the land covered by the titles of petitioners is under water and forms part of Manila Bay at the time of the land registration application in 1974. If the land was within Manila Bay, then *res judicata* does not apply. Otherwise, the decision of the land registration court is a bar to the instant reversion suit. After a scrutiny of the case records and pleadings of the parties in LRC Case No. N-8239 and in the instant petition, we rule that the land of Fermina Castro is registrable and not part of Manila Bay at the time of the filing of the land registration application.

12. **ID.; ID.; RESPONDENT REPUBLIC'S WAIVER OF ITS RIGHT TO CHALLENGE THE PETITIONERS' TITLES, DECLARED VALID.—** Notably, the land in question has been the subject

of a compromise agreement upheld by this Court in *Public Estates Authority*. In that compromise agreement, among other provisions, it was held that the property covered by TCT Nos. 446386 and S-29361, the land subject of the instant case, would be exchanged for PEA property. The fact that PEA signed the May 15, 1998 Compromise Agreement is already a clear admission that it recognized petitioners as true and legal owners of the land subject of this controversy. Moreover, PEA has waived its right to contest the legality and validity of Castro's title. Such waiver is clearly within the powers of PEA since it was created by PD 1084 as a body corporate "which shall have the attribute of perpetual succession and possessed of the powers of the corporations, to be exercised in conformity with the provisions of this Charter [PD 1084]." It has the power "to enter into, make, perform and carry out contracts of every class and description, including loan agreements, mortgages and other types of security arrangements, necessary or incidental to the realization of its purposes with any person, firm or corporation, private or public, and with any foreign government or entity." It also has the power to sue and be sued in its corporate name. Thus, the Compromise Agreement and the Deed of Exchange of Real Property signed by PEA with the petitioners are legal, valid and binding on PEA. In the Compromise Agreement, it is provided that it "settles in full all the claims/counterclaims of the parties against each other." The waiver by PEA of its right to question petitioners' title is fortified by the manifestation by PEA in the Joint Motion for Judgment based on Compromise Agreement that 4. The parties herein hereto waive and abandon any and all other claims and counterclaims which they may have against each other arising from this case or related thereto. Thus, there was a valid waiver of the right of respondent Republic through PEA to challenge petitioners' titles.

13. **REMEDIAL LAW; JUDGMENT; *RES JUDICATA*; PRECLUDES THE RELITIGATION OF THE ISSUE OF REGISTRABILITY OF PETITIONERS' LOT.—** The recognition of petitioners' legal ownership of the land is further bolstered by the categorical and unequivocal acknowledgment made by PEA in its September 30, 2003 letter where it stated that: "Your ownership thereof was acknowledged by PEA when it did not object to your membership in the CBP-IA Association, in which an owner of a piece of land in CBP-IA automatically becomes a member

thereof." Section 26, Rule 130 provides that "the act, declaration or omission of a party as to a relevant fact may be given in evidence against him." The admissions of PEA which is the real party in interest in this case on the nature of the land of Fermina Castro are valid and binding on respondent Republic. Respondent's claim that the disputed land is underwater falls flat in the face of the admissions of PEA against its interests. Hence, *res judicata* now effectively precludes the relitigation of the issue of registrability of petitioners' lot.

APPEARANCES OF COUNSEL

Villaraza & Angcangco Law Offices for petitioners.
The Solicitor General for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

In 1973, Fermina Castro filed an application for the registration and confirmation of her title over a parcel of land with an area of 17,343 square meters covered by plan (LRC) Psu-964 located in the Municipality of Parañaque, Province of Rizal (now Parañaque City), in the Pasig-Rizal Court of First Instance (CFI), Branch 22. The application was docketed LRC Case No. N-8239. The application was opposed by the Office of the Solicitor General (OSG) on behalf of the Director of Lands, and by Mercedes Dizon, a private party. Both oppositions were stricken from the records since the opposition of Dizon was filed after the expiration of the period given by the court, and the opposition of the Director of Lands was filed after the entry of the order of general default. After considering the evidence, the trial court rendered its April 26, 1974 Decision. The dispositive portion reads:

WHEREFORE, the Court hereby declares the applicant, Fermina Castro, of legal age, single, Filipino and a resident of 1515 F. Agoncillo St., Corner J. Escoda St., Ermita, Manila, the true and absolute owner of the land applied for situated in the Municipality of Parañaque, Province of Rizal, with an area of 17,343 square meters and covered

by plan (LRC) Psu-964 and orders the registration of said parcel of land in her name with her aforementioned personal circumstances.

Once this decision becomes final and executory, let the corresponding order for the issuance of the decree be issued.

SO ORDERED.[1]

The Director of Lands and Mercedes Dizon did not appeal from the adverse decision of the Pasig-Rizal CFI. Thus, the order for the issuance of a decree of registration became final, and Decree No. N-150912 was issued by the Land Registration Commission (LRC).[2] Original Certificate of Title (OCT) No. 10215 was issued in the name of Fermina Castro by the Register of Deeds for the Province of Rizal on May 29, 1974.[3]

The land was then sold to Jesus S. Yujuico, and OCT No. 10215 was cancelled. On May 31, 1974,[4] Transfer Certificate of Title (TCT) No. 445863 was issued in Yujuico's name, who subdivided the land into two lots. TCT No. 446386[5] over Lot 1 was issued in his name, while TCT No. S-29361[6] over Lot 2 was issued in the name of petitioner Augusto Y. Carpio.

Annotations at the back of TCT No. 446386 show that Yujuico had, at one time or another, mortgaged the lot to the Philippine Investments System Organization (PISO) and Citibank, N.A. Annotations in the title of petitioner Carpio reveal the lot was mortgaged in favor of Private Development Corporation (PDC), Rizal Commercial Banking Corporation (RCBC) and then Philippine Commercial and Industrial Bank (PCIB) and the Development Bank of the Philippines (DBP) to secure various loans.

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[1] *Rollo*, pp. 390-396, 396.

[2] *Id*. at 398-399.

[3] *Id*. at 401-402.

[4] *Id*. at 403-404

[5] *Id*. at 406-410.

[6] *Id*. at 411-413.

Sometime in 1977, Presidential Decree No. (PD) 1085 entitled *Conveying the Land Reclaimed in the Foreshore and Offshore of the Manila Bay (The Manila-Cavite Coastal Road Project) as Property of the Public Estates Authority as well as Rights and Interests with Assumptions of Obligations in the Reclamation Contract Covering Areas of the Manila Bay between the Republic of the Philippines and the Construction and Development Corporation of the Philippines (1977)* was issued. Land reclaimed in the foreshore and offshore areas of Manila Bay became the properties of the Public Estates Authority (PEA), a government corporation that undertook the reclamation of lands or the acquisition of reclaimed lands. On January 13, 1989, OCT No. SP 02 was issued in favor of PEA. The PEA also acquired ownership of other parcels of land along the Manila Bay coast, some of which were subsequently sold to the Manila Bay Development Corporation (MBDC), which in turn leased portions to Uniwide Holdings, Inc.[7]

The PEA undertook the construction of the Manila Coastal Road. As this was being planned, Yujuico and Carpio discovered that a verification survey they commissioned showed that the road directly overlapped their property, and that they owned a portion of the land sold by the PEA to the MBDC.

On July 24, 1996, Yujuico and Carpio filed before the Parañaque City Regional Trial Court (RTC), a complaint for the Removal of Cloud and Annulment of Title with Damages docketed as Civil Case No. 96-0317 against the PEA. On May 15, 1998 the parties entered into a compromise agreement approved by the trial court in a Resolution dated May 18, 1998. On June 17, 1998, the parties executed a Deed of Exchange of Real Property, pursuant to the compromise agreement, where the PEA property with an area of 1.4007 hectares would to be conveyed to Jesus Yujuico and petitioner Carpio in exchange for their property with a combined area of 1.7343 hectares.

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[7] *Id*. at 17.

On July 31, 1998, the incumbent PEA General Manager, Carlos P. Doble, informed the OSG that the new PEA board and management had reviewed the compromise agreement and had decided to defer its implementation and hold it in abeyance following the view of the former PEA General Manager, Atty. Arsenio Yulo, Jr., that the compromise agreement did not reflect a condition of the previous PEA Board, requiring the approval of the Office of the President. The new PEA management then filed a petition for relief from the resolution approving the compromise agreement on the ground of mistake and excusable negligence.

The petition was dismissed by the trial court on the ground that it was filed out of time and that the allegation of mistake and excusable negligence lacked basis.

The PEA fared no better in the Court of Appeals (CA), as the petition was dismissed for failure to pay the required docket fees and for lack of merit.

The matter was raised to the Supreme Court in *Public Estates Authority v. Yujuico*[8] but PEA's petition was denied, upholding the trial court's dismissal of the petition for relief for having been filed out of time. The allegation of fraud in the titling of the subject property in the name of Fermina Castro was not taken up by the Court.

On June 8, 2001, in a Complaint for Annulment and Cancellation of Decree No. N-150912 and its Derivative Titles, entitled *Republic of the Philippines v. Fermina Castro, Jesus S. Yujuico, August Y. Carpio and the Registry of Deeds of Parañaque City* docketed as Civil Case No. 01-0222, filed with the Parañaque City RTC, respondent Republic of the Philippines, through the OSG, alleged that when the land registered to Castro was surveyed by Engr. H. Obreto on August 3, 1972 and subsequently approved by the LRC on April 23, 1973, the land was still a portion of Manila Bay as evidenced by Namria Hydrographic Map No. 4243, Surveys to 1980; 1st Ed/. January 9/61: Revised 80-11-2; that Roman Mataverde, the then OIC

[8] G.R. No. 140486, February 6, 2001, 351 SCRA 280.

of the Surveys Division, Bureau of Lands, informed the OIC of the Legal Division that "[w]hen projected on Cadastral Maps CM 14 deg. 13' N-120 deg, 59'E, Sec.2-A of Parañaque Cadastre (Cad. 299), (LRC) Psu-964 falls inside Manila Bay, outside Cad. 299"; that then Acting Regional Lands Director Narciso V. Villapando issued a Report dated November 15, 1973 stating that plan (LRC) Psu-964 is a portion of Manila Bay; that then Officer-in-Charge, Assistant Director of Lands, Ernesto C. Mendiola, submitted his Comment and Recommendation re: Application for Registration of Title of FERMINA CASTRO, LRC Case No. N-8239, dated Dec. 1, 1977, praying that the instant registration case be dismissed; and that Fermina Castro had no registrable rights over the property.

More significantly, respondent Republic argued that, first, since the subject land was still underwater, it could not be registered in the name of Fermina Castro. Second, the land registration court did not have jurisdiction to adjudicate inalienable lands, thus the decision adjudicating the subject parcel of land to Fermina Castro was void. And third, the titles of Yujuico and Carpio, being derived from a void title, were likewise void.[9]

On September 13, 2001, Yujuico and Carpio filed a Motion to Dismiss (With Cancellation of Notice of *Lis Pendens*),[10] on the grounds that: (1) the cause of action was barred by prior judgment; (2) the claim had been waived, abandoned, or otherwise extinguished; (3) a condition precedent for the filing of the complaint was not complied with; and (4) the complaint was not verified and the certification against forum shopping was not duly executed by the plaintiff or principal party.

On November 27, 2001, respondent Republic filed an Opposition[11] to the motion to dismiss to which defendants filed a Reply[12] on January 14, 2002, reiterating the grounds for the motion to dismiss.

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[9] *Rollo*, p. 11.

[10] *Id*. at 40.

[11] *Id*. at 313.

[12] *Id*. at 442.

In the August 7, 2002 Order of the RTC,[13] Civil Case No. 01-0222 was dismissed. The trial court stated that the matter had already been decided in LRC Case No. N-8239, and that after 28 years without being contested, the case had already become final and executory. The trial court also found that the OSG had participated in the LRC case, and could have questioned the validity of the decision but did not. Civil Case No. 01-0222 was thus found barred by prior judgment.

On appeal to the CA, in CA-G.R. CV No. 76212, respondent Republic alleged that the trial court erred in disregarding that appellant had evidence to prove that the subject parcel of land used to be foreshore land of the Manila Bay and that the trial court erred in dismissing Civil Case No. 01-0222 on the ground of *res judicata.*[14]

The CA observed that shores are properties of the public domain intended for public use and, therefore, not registrable and their inclusion in a certificate of title does not convert the same into properties of private ownership or confer title upon the registrant.

Further, according to the appellate court *res judicata* does not apply to lands of public domain, nor does possession of the land automatically divest the land of its public character.

The appellate court explained that rulings of the Supreme Court have made exceptions in cases where the findings of the Director of Lands and the Department of Environment and Natural Resources (DENR) were conflicting as to the true nature of the land in as much as reversion efforts pertaining foreshore lands are embued with public interest.

The dispositive portion of the CA decision reads,

> WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed Order dated August 7, 2002 of the trial court in Civil Case No. 01-0222 is hereby REVERSED and SET ASIDE.

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[13] *Id.* at 538.

[14] *Id.* at 30.

The case is hereby REMANDED to said court for further proceedings and a full-blown trial on the merits with utmost dispatch.[15]

Hence, this petition.

The Issues

Petitioners now raise the following issues before this Court:

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS NECESSITATING THE HONORABLE COURT'S EXERCISE OF ITS POWER OF SUPERVISION CONSIDERING THAT:

I. THE REVERSAL BY THE COURT OF APPEALS OF THE TRIAL COURT'S APPLICATION OF THE PRINCIPLE OF *RES JUDICATA* IN THE INSTANT CASE IS BASED ON ITS ERRONEOUS ASSUMPTION THAT THE SUBJECT LAND IS OF PUBLIC DOMAIN, ALLEGEDLY PART OF MANILA BAY.

   A. IN THE *FIRESTONE* CASE, THE HONORABLE COURT APPLIED THE PRINCIPLE OF *RES JUDICATA* NOTWITHSTANDING ALLEGATIONS OF LACK OF JURISDICTION OF A LAND REGISTRATION COURT, FORECLOSING ANY FURTHER ATTEMPT BY RESPONDENT THEREIN, AS IN THE INSTANT CASE, TO RESURRECT A LONG-SETTLED JUDICIAL DETERMINATION OF REGISTRABILITY OF A PARCEL OF LAND BASED ON THE SHEER ALLEGATION THAT THE SAME IS PART OF THE PUBLIC DOMAIN.

   B. THE LAND REGISTRATION COURT HAD JURISDICTION TO DETERMINE WHETHER THE SUBJECT LAND WAS PART OF THE PUBLIC DOMAIN.

   C. RESPONDENT'S REVERSION CASE SEEKS TO RETRY THE VERY SAME FACTUAL ISSUES THAT HAVE

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[15] *Id*. at 35. The Decision was penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle.

ALREADY BEEN JUDICIALLY DETERMINED OVER THIRTY (30) YEARS AGO.

D. THE JURISPRUDENTIAL BASES APPLIED BY THE COURT OF APPEALS IN ITS QUESTIONED DECISION ARE MISPLACED, CONSIDERING THAT THEY ARE ALL PREDICATED ON THE ERRONEOUS PREMISE THAT IT IS UNDISPUTED THAT THE SUBJECT LAND IS PART OF THE PUBLIC DOMAIN.

II. RESPONDENT IS BARRED BY JURISDICTIONAL ESTOPPEL AND LACHES FROM QUESTIONING THE JURISDICTION OF THE LAND REGISTRATION COURT.

III. RELIANCE BY THE COURT OF APPEALS ON THE ISOLATED PRONOUNCEMENT OF THE HONORABLE COURT IN THE *PEA* CASE IS UNWARRANTED AND MISLEADING CONSIDERING THAT THE MATTER OF WHETHER *RES JUDICATA* APPLIES WITH RESPECT TO THE LAND REGISTRATION COURT'S DECISION IN 1974 WAS NOT IN ISSUE IN SAID CASE.

A. THE INSTANT REVERSION CASE IS NOT THE PROPER RECOURSE.

B. THE VALIDITY OF THE COURT-APPROVED COMPROMISE AGREEMENT 15 MAY 1998 HAS ALREADY BEEN AFFIRMED BY THE HONORABLE COURT IN THE *PEA* CASE.

IV. EQUITABLE CONSIDERATIONS MANDATE THE APPLICATION OF THE RULE ON ORDINARY ESTOPPEL AND LACHES IN THE INSTANT CASE AGAINST RESPONDENT.

V. RESPONDENT CANNOT BE GIVEN SPECIAL CONSIDERATION AND EXCUSED FOR TRANSGRESSING RULES OF PROCEDURE.[16]

Essentially, the issues boil down to three: (1) Is a reversion suit proper in this case? (2) Is the present petition estopped by laches? (3) Did the CA erroneously apply the principle of *res judicata*?

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[16] *Id.* at 72-74.

An action for reversion seeks to restore public land fraudulently awarded and disposed of to private individuals or corporations to the mass of public domain.[17] This remedy is provided under Commonwealth Act (CA) No. 141 (Public Land Act) which became effective on December 1, 1936. Said law recognized the power of the state to recover lands of public domain. Section 124 of CA No. 141 reads:

> SEC. 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of Sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent, or permit originally issued, recognized or confirmed, actually or presumptively, **and cause the reversion of the property and its improvements to the State**. (Emphasis supplied.)

Pursuant to Section 124 of the Public Land Act, reversion suits are proper in the following instances, to wit:

1. Alienations of land acquired under free patent or homestead provisions in violation of Section 118, CA No. 141;
2. Conveyances made by non-Christians in violation of Section 120, CA No. 141; and
3. Alienations of lands acquired under CA No. 141 in favor of persons not qualified under Sections 121, 122, and 123 of CA No. 141.

From the foregoing, an action for reversion to cancel titles derived from homestead patents or free patents based on transfers and conveyances in violation of CA No. 141 is filed by the OSG pursuant to its authority under the Administrative Code with the RTC. It is clear therefore that reversion suits were originally utilized to annul titles or patents administratively issued by the Director of the Land Management Bureau or the Secretary of the DENR.

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[17] O.D. Agcaoili, *PROPERTY REGISTRATION DECREE AND RELATED LAWS (LAND TITLES AND DEEDS)* 352 (2006).

While CA No. 141 did not specify whether judicial confirmation of titles by a land registration court can be subject of a reversion suit, the government availed of such remedy by filing actions with the RTC to cancel titles and decrees granted in land registration applications.

The situation changed on August 14, 1981 upon effectivity of Batas Pambansa (BP) Blg. 129 which gave the Intermediate Appellate Court the exclusive original jurisdiction over actions for annulment of judgments of RTCs.

When the 1997 Rules of Civil Procedure became effective on July 1, 1997, it incorporated Rule 47 on annulment of judgments or final orders and resolutions of the RTCs. The two grounds for annulment under Sec. 2, Rule 47 are extrinsic fraud and lack of jurisdiction. If based on extrinsic fraud, the action must be filed within four (4) years from its discovery, and if based on lack of jurisdiction, before it is barred by laches or estoppel as provided by Section 3, Rule 47. Thus, effective July 1, 1997, any action for reversion of public land instituted by the Government was already covered by Rule 47.

The instant Civil Case No. 01-0222 for annulment and cancellation of Decree No. N-150912 and its derivative titles was filed on June 8, 2001 with the Parañaque City RTC. It is clear therefore that the reversion suit was erroneously instituted in the Parañaque RTC and should have been dismissed for lack of jurisdiction. The proper court is the CA which is the body mandated by BP Blg. 129 and prescribed by Rule 47 to handle annulment of judgments of RTCs.

In *Collado v. Court of Appeals*,[18] the government, represented by the Solicitor General pursuant to Section 9(2) of BP Blg. 129, filed a petition for annulment of judgment with the CA. Similarly in the case of *Republic v. Court of Appeals*,[19] the Solicitor General correctly filed the annulment of judgment with the said appellate court.

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[18] G.R. No. 107764, October 4, 2002, 390 SCRA 343, 351.

[19] G.R. No. 126316, June 25, 2004, 432 SCRA 593, 597.

This was not done in this case. The Republic misfiled the reversion suit with the Parañaque RTC. It should have been filed with the CA as required by Rule 47. Evidently, the Parañaque RTC had no jurisdiction over the instant reversion case.

Assuming that the Parañaque RTC has jurisdiction over the reversion case, still the lapse of almost three decades in filing the instant case, the inexplicable lack of action of the Republic and the injury this would cause constrain us to rule for petitioners. While it may be true that estoppel does not operate against the state or its agents,[20] deviations have been allowed. In *Manila Lodge No. 761 v. Court of Appeals*, we said:

> Estoppels against the public are little favored. They should not be invoked except in rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. **Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations** x x x**, the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals**.[21] (Emphasis supplied.)

Equitable estoppel may be invoked against public authorities when as in this case, the lot was already alienated to innocent buyers for value and the government did not undertake any act to contest the title for an unreasonable length of time.

In *Republic v. Court of Appeals*, where the title of an innocent purchaser for value who relied on the clean certificates of the title was sought to be cancelled and the excess land to be reverted to the Government, we ruled that "[i]t is only **fair and reasonable to apply the equitable principle of estoppel by laches against**

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[20] *Manila Lodge No. 761 v. Court of Appeals*, No. L-41001, September 30, 1976, 73 SCRA 166.

[21] 31 CJS 675-676; cited in *Republic v. CA*, G.R. No. 116111, January 21, 1999, 301 SCRA 366, 377.

the government to avoid an injustice to innocent purchasers for value (emphasis supplied)."[22] We explained:

> Likewise time-settled is the doctrine that where innocent third persons, relying on the correctness of the certificate of title, acquire rights over the property, courts cannot disregard such rights and order the cancellation of the certificate. Such cancellation would impair public confidence in the certificate of title, for everyone dealing with property registered under the Torrens system would have to inquire in every instance whether the title has been regularly issued or not. This would be contrary to the very purpose of the law, which is to stabilize land titles. Verily, all persons dealing with registered land may safely rely on the correctness of the certificate of title issued therefore, and the law or the courts do not oblige them to go behind the certificate in order to investigate again the true condition of the property. They are only charged with notice of the liens and encumbrances on the property that are noted on the certificate.[23]
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> But in the interest of justice and equity, neither may the titleholder be made to bear the unfavorable effect of the mistake or negligence of the State's agents, in the absence of proof of his complicity in a fraud or of manifest damage to third persons. *First*, the real purpose of the Torrens system is *to quiet title to land to put a stop forever to any question as to the legality of the title*, except claims that were noted in the certificate at the time of the registration or that may arise subsequent thereto. *Second*, as we discussed earlier, estoppel by laches now bars petitioner from questioning private respondents' titles to the subdivision lots. *Third*, it was never proven that Private Respondent St. Jude was a party to the fraud that led to the increase in the area of the property after its subdivision. *Finally*, because petitioner even failed to give sufficient proof of any error that might have been committed by its agents who had surveyed the property, the presumption of regularity in the performance of their functions must be respected. Otherwise, the integrity of the Torrens system, which petitioner purportedly aims to protect by filing this case, shall forever be sullied by the ineptitude and inefficiency

[22] G.R. No. 116111, January 21, 1999, 301 SCRA 366, 379.

[23] *Id*. at 379-380.

of land registration officials, who are ordinarily presumed to have regularly performed their duties.[24]

Republic v. Court of Appeals is reinforced by our ruling in *Republic v. Umali*,[25] where, in a reversion case, we held that even if the original grantee of a patent and title has obtained the same through fraud, reversion will no longer prosper as the land had become private land and the fraudulent acquisition cannot affect the titles of innocent purchasers for value.

Considering that innocent purchaser for value Yujuico bought the lot in 1974, and more than 27 years had elapsed before the action for reversion was filed, then said action is now barred by laches.

While the general rule is that an action to recover lands of public domain is imprescriptible, said right can be barred by laches or estoppel. Section 32 of PD 1592 recognized the rights of an innocent purchaser for value over and above the interests of the government. Section 32 provides:

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 judgments, **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 encumbrances for value. (Emphasis supplied.)

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[24] *Id*. at 370.

[25] G.R. No. 80687, April 10, 1989, 171 SCRA 647, 653.

In this petition, the LRC (now LRA), on May 30, 1974, issued Decree No. N-150912 in favor of Fermina Castro and OCT No. 10215 was issued by the Rizal Registrar of Deeds on May 29, 1974. OCT No. 10215 does not show any annotation, lien, or encumbrance on its face. Relying on the clean title, Yujuico bought the same in good faith and for value from her. He was issued TCT No. 445863 on May 31, 1974. There is no allegation that Yujuico was a buyer in bad faith, nor did he acquire the land fraudulently. He thus had the protection of the Torrens System that every subsequent purchaser of registered land taking a certificate of title for value and in good faith shall hold the same free from all encumbrances except those noted on the certificate and any of the x x x encumbrances which may be subsisting.[26] The same legal shield redounds to his successors-in-interest, the Yujuicos and Carpio, more particularly the latter since Carpio bought the lot from Jesus Y. Yujuico for value and in good faith.

Likewise protected are the rights of innocent mortgagees for value, the PISO, Citibank, N.A., PDC, RCBC, PCIB, and DBP. Even if the mortgagor's title was proved fraudulent and the title declared null and void, such declaration cannot nullify the mortgage rights of a mortgagee in good faith.[27]

All told, a reversion suit will no longer be allowed at this stage.

More on the issue of laches. 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 a presumption that the party entitled thereto has either abandoned or declined to assert it.[28]

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[26] PD 1529, Sec. 44.

[27] *Blanco v. Esquierdo*, 110 Phil. 494 (1960); cited in O.D. Agcaoili, *supra* note 17.

[28] *Felizardo v. Fernandez*, G.R. No. 137509, August 15, 2001, 363 SCRA 182, 191.

When respondent government filed the reversion case in 2001, 27 years had already elapsed from the time the late Jesus Yujuico purchased the land from the original owner Castro. After the issuance of OCT No. 10215 to Castro, no further action was taken by the government to question the issuance of the title to Castro until the case of *Public Estates Authority*, brought up in the oral argument before this Court on September 6, 2000.[29] We then held that allegation of fraud in the issuance of the title was not proper for consideration and determination at that stage of the case.

From the undisputed facts of the case, it is easily revealed that respondent Republic took its sweet time to nullify Castro's title, notwithstanding the easy access to ample remedies which were readily available after OCT No. 10215 was registered in the name of Castro. *First,* it could have appealed to the CA when the Pasig-Rizal CFI rendered a decision ordering the registration of title in the name of applicant Castro on April 26, 1974. Had it done so, it could have elevated the matter to this Court if the appellate court affirms the decision of the land registration court. *Second*, when the entry of Decree No. N-150912 was made on May 29, 1974 by the Rizal Register of Deeds, the Republic had one (1) year from said date or up to May 28, 1975 to file a petition for the reopening and review of Decree No. N-150912 with the Rizal CFI (now RTC) on the ground of actual fraud under Section 32 of PD 1592. Again, respondent Republic did not avail of such remedy. *Third*, when Jesus Yujuico filed a complaint for *Removal of Cloud and Annulment of Title with Damages* against PEA before the Parañaque RTC in Civil Case No. 96-0317, respondent could have persevered to question and nullify Castro's title. Instead, PEA undertook a compromise agreement on which the May 18, 1998 Resolution[30] was issued. PEA in effect admitted that the disputed land was owned by the predecessors-in-interest of petitioners and their title legal and valid; and impliedly waived its right to contest the validity of said title; respondent Republic

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[29] *Supra* note 8, at 292.

[30] *Rollo*, p. 294.

even filed the petition for relief from judgment beyond the time frames allowed by the rules, a fact even acknowledged by this Court in *Public Estates Authority*. *Lastly*, respondent only filed the reversion suit on June 8, 2001 after the passage of 27 years from the date the decree of registration was issued to Fermina Castro.

Such a Rip Van Winkle, coupled with the signing of the settlement with PEA, understandably misled petitioners to believe that the government no longer had any right or interest in the disputed lot to the extent that the two lots were even mortgaged to several banks including a government financing institution. Any nullification of title at this stage would unsettle and prejudice the rights and obligations of innocent parties. All told, we are constrained to conclude that laches had set in.

Even granting *arguendo* that respondent Republic is not precluded by laches from challenging the title of petitioners in the case at bar, still we find that the instant action for reversion is already barred by *res judicata*.

Petitioners relying on *Firestone Ceramics, Inc. v. Court of Appeals*[31] as a precedent to the case at bar contend that the instant reversion suit is now barred by *res judicata*.

We agree with petitioners.

The doctrine on precedents is expressed in the latin maxim—*Stare decisis et non quieta movere.* Follow past precedents and do not disturb what has been settled.[32] In order however that a case can be considered as a precedent to another case which is pending consideration, the facts of the first case should be similar or analogous to the second case.

A perusal of the facts of the Firestone case and those of the case at bar reveals that the facts in the two (2) cases are parallel. *First*, in *Firestone* and in this case, the claimants filed land registration applications with the CFI; both claimants

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[31] G.R. No. 127022, September 2, 1999, 313 SCRA 522.

[32] *J.M. Tuazon and Co., Inc. v. Mariano*, No. L-33140, October 23, 1978, 85 SCRA 644.

obtained decrees for registration of lots applied for and were issued OCTs. *Second*, in *Firestone*, the Republic filed a reversion case alleging that the land covered by the OCT was still inalienable forest land at the time of the application and hence the Land Registration Court did not acquire jurisdiction to adjudicate the property to the claimant. In the instant case, respondent Republic contend that the land applied for by Yujuico was within Manila Bay at the time of application and therefore the CFI had no jurisdiction over the subject matter of the complaint. *Third*, in *Firestone*, the validity of the title of the claimant was favorably ruled upon by this Court in *G.R. No. 109490* entitled *Patrocinio E. Margolles v. CA*. In the case at bar, the validity of the compromise agreement involving the disputed lot was in effect upheld when this Court in *Public Estates Authority v. Yujuico* dismissed the petition of PEA seeking to reinstate the petition for relief from the May 18, 1998 Resolution approving said compromise agreement. With the dismissal of the petition, the May 18, 1998 Resolution became final and executory and herein respondent Republic through PEA was deemed to have recognized Castro's title over the disputed land as legal and valid. In *Romero v. Tan*,[33] we ruled that "a judicial compromise has the effect of *res judicata*." We also made clear that a judgment based on a compromise agreement is a judgment on the merits, wherein the parties have validly entered into stipulations and the evidence was duly considered by the trial court that approved the agreement. In the instant case, the May 18, 1998 Resolution approving the compromise agreement confirmed the favorable decision directing the registration of the lot to Castro's name in LRC Case No. N-8239. Similarly, in *Firestone*, the Margolles case confirmed the decision rendered in favor of Gana in Land Registration Case No. 672 ordering the issuance of the decree to said applicant. *Fourth*, in *Firestone*, the Supreme Court relied on the letter of then Solicitor General Francisco Chavez that the evidence of the Bureau of Lands and the LRC was not sufficient to support an action for cancellation of OCT No. 4216. In the instant case, both the Solicitor General and the Government

[33] G.R. No. 147570, February 27, 2004, 424 SCRA 108, 123.

Corporate Counsel opined that the Yujuico land was not under water and that "there appears to be no sufficient basis for the Government to institute the action for annulment." *Fifth*, in *Firestone*, we ruled that "the Margolles case had long become final, thus the validity of OCT No. 4216 should no longer be disturbed and should be applied in the instant case (reversion suit) based on the principle of *res judicata* or, otherwise, the rule on conclusiveness of judgment."[34]

Clearly from the above, *Firestone* is a precedent case. The *Public Estates Authority* had become final and thus the validity of OCT No. 10215 issued to Castro could no longer be questioned.

While we said in *Public Estates Authority* that the court does not foreclose the right of the Republic from pursuing the proper recourse in a separate proceedings as it may deem warranted, the statement was *obiter dictum* since the inquiry on whether or not the disputed land was still under water at the time of its registration was a non-issue in the said case.

Even granting for the sake of argument that *Firestone* is not squarely applicable, still we find the reversion suit already barred by *res judicata.*

For *res judicata* to serve as an absolute bar to a subsequent action, the following requisites must concur: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be between the two cases, identity of parties, subject matter and causes of action.[35]

There is no question as to the first, third and last requisites. The threshold question pertains to the second requisite, whether or not the then Pasig-Rizal CFI, Branch 22 had jurisdiction over the subject matter in LRC Case No. N-8239. In Civil Case No. 01-0222, the Parañaque City RTC, Branch 257 held

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[34] *Supra* note 31, at 540.

[35] *San Pedro v. Binalay*, G.R. No. 126207, August 25, 2005, 468 SCRA 47, 57.

that the CFI had jurisdiction. The CA reversed the decision of the Parañaque City RTC based on the assertion of respondent Republic that the Pasig-Rizal CFI had no jurisdiction over the subject matter, and that there was a need to determine the character of the land in question.

The Parañaque City RTC Order dismissing the case for *res judicata* must be upheld.

The CA, in rejecting the dismissal of the reversion case by the Parañaque RTC, relied on two cases, namely: *Municipality of Antipolo v. Zapanta*[36] and *Republic v. Vda. De Castillo*.[37]

In *Municipality of Antipolo*, we held that the land registration court had no jurisdiction to entertain any land registration application if the land was public property, thus:

Since the Land Registration Court had no jurisdiction to entertain the application for registration of public property of ANTIPOLO, its Decision adjudicating the DISPUTED PROPERTY as of private ownership is null and void. It never attained finality, and can be attacked at any time. It was not a bar to the action brought by ANTIPOLO for its annulment by reason of *res judicata*.

"[x x x] the want of jurisdiction by a court over the subject matter renders the judgment void and a mere nullity, and considering that a void judgment is in legal effect no judgment, by which no rights are divested, from which no rights can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out of are void, and considering, further, that the decision, for want of jurisdiction of the court, is not a decision in contemplation of law, and hence, can never become executory, it follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*."

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"It follows that 'if a person obtains a title under the Public Land Act which includes, by oversight, lands which cannot

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[36] No. 65334, December 26, 1984, 133 SCRA 820.

[37] No. 69002, June 30, 1988, 163 SCRA 286.

be registered under the Torrens System, or when the Director of Lands did not have jurisdiction over the same because it is a public forest, the grantee does not, by virtue of the said certificate of title alone, become the owner of the land illegally included' (*Republic vs. Animas*, 56 SCRA 499, 503; *Ledesma vs. Municipality of Iloilo*, 49 Phil. 769)."

[x x x x x x x x x]

"Under these circumstances, the certificate of title may be ordered cancelled (*Republic vs. Animas, et al., supra*), and the cancellation maybe pursued through an ordinary action therefore. *This action cannot be barred by the prior judgment of the land registration court, since the said court had no jurisdiction over the subject matter.* And if there was no such jurisdiction, then the principle of *res judicata* does not apply. [x x x] Certainly, one of the essential requisites, *i.e.,* jurisdiction over the subject matter, is absent in this case." (Italics supplied).[38]

The plain import of *Municipality of Antipolo* is that a land registration court, the RTC at present, has no jurisdiction over the subject matter of the application which respondent Republic claims is public land. This ruling needs elucidation.

Firmly entrenched is the principle that jurisdiction over the subject matter is conferred by law.[39] Consequently, the proper CFI (now the RTC) under Section 14 of PD 1529[40] (Property Registration Decree) has jurisdiction over applications for registration of title to land.

Section 14 of PD 1592 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:

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[38] *Supra* note 35, at 825-826.

[39] I Regalado, *REMEDIAL LAW COMPENDIUM* 8 (6th rev. ed.).

[40] "Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes" (1978).

(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. (Emphasis supplied.)

Conformably, the Pasig-Rizal CFI, Branch XXII has jurisdiction over the subject matter of the land registration case filed by Fermina Castro, petitioners' predecessor-in-interest, since jurisdiction over the subject matter is determined by the allegations of the initiatory pleading–the application.[41] Settled is the rule that "the authority to decide a case and not the decision rendered therein is what makes up jurisdiction. When there is jurisdiction, the decision of all questions arising in the case is but an exercise of jurisdiction."[42]

In our view, it was imprecise to state in *Municipality of Antipolo* that the "**Land Registration Court [has] no jurisdiction to entertain the application for registration of public property** x x x" for such court precisely has the jurisdiction to entertain land registration applications since that is conferred by PD 1529. The applicant in a land registration case usually claims the land subject matter of the application as his/her private property, as in the case of the application of Castro. Thus, the conclusion of the CA that the Pasig-Rizal CFI has no jurisdiction over the subject matter of the application of Castro has no legal mooring. The land registration court initially has jurisdiction over the land applied for at the time of the filing of the application. After trial, the court, in the exercise of its jurisdiction, can determine whether the title to the land applied for is registrable and can be confirmed. In the event that the subject matter of the application turns out to be inalienable public land, then it has no jurisdiction to order the registration of the land and perforce must dismiss the application.

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[41] *Ganadin v. Ramos*, No. L-23547, September 11, 1980, 99 SCRA 613; *Time, Inc. v. Reyes*, No. L-28882, May 31, 1971, 39 SCRA 303.

[42] I Regalado, *supra* note 39, at 7; citations omitted.

Based on our ruling in *Antipolo*, the threshold question is whether the land covered by the titles of petitioners is under water and forms part of Manila Bay at the time of the land registration application in 1974. If the land was within Manila Bay, then *res judicata* does not apply. Otherwise, the decision of the land registration court is a bar to the instant reversion suit.

After a scrutiny of the case records and pleadings of the parties in LRC Case No. N-8239 and in the instant petition, we rule that the land of Fermina Castro is registrable and not part of Manila Bay at the time of the filing of the land registration application.

The trial court's Decision in 1974 easily reveals the basis for its conclusion that the subject matter was a dry land, thus:

> On February 1, 1974, the applicant presented her evidence before the Deputy Clerk of this Court and among the evidence presented by her were certain documents which were marked as Exhibits D to J, inclusive. The applicant testified in her behalf and substantially declared that: she was 62 years old, single, housekeeper and residing at 1550 J. Escoda, Ermita, Manila; that she was born on June 3, 1911; that she first came to know of the land applied for which is situated in the Municipality of Parañaque, province of Rizal, with an area of 17,343 square meters and covered by plan (LRC) Psu-964 while she was still ten (10) years old or sometime in 1921; that when she first came to know of the land applied for, the person who was in possession and owner of said land was her father, Catalino Castro; that during that time her father used to plant on said land various crops like pechay, mustard, eggplant, *etc.*; that during that time, her father built a house on said land which was used by her father and the other members of the family, including the applicant, as their residential house; that the land applied for was inherited by her father from her grandfather Sergio Castro; that Catalino Castro continuously possessed and owned the land in question from 1921 up to the time of his death in 1952; and that during that period of time nobody ever disturbed the possession and ownership of her father over the said parcel of land; that after the death of her father in 1952 she left the place and transferred her place of residence but she had also occasions to visit said land twice or thrice a week and sometimes

once a week; that after she left the land in question in 1952, she still continued possessing said land, through her caretaker Eliseo Salonga; that her possession over the land in question from the time she inherited it up to the time of the filing of the application has been continuous, public, adverse against the whole world and in the concept of an owner; that it was never encumbered, mortgaged, or disposed of by her father during his lifetime and neither did she ever encumber or sell the same; that it was declared for taxation purposes by her father when he was still alive and her father also paid the real estate taxes due to the government although the receipt evidencing the payment of said real estate taxes for the property applied for have been lost and could no longer be found inspite of diligent effort exerted to locate the same.

The other witness presented by the applicant was Emiliano de Leon, who declared that he was 70 years old, married, farmer and residing at San Jose, Baliwag, Bulacan; that he knew Catalino Castro, the father of the applicant because said Catalino Castro was his neighbor in Tambo, Parañaque, Rizal, he had a house erected on the land of Catalino Castro; that he was born in 1903 and he first came to know of the land in question when in 1918 when he was about 18 years old; that the area of the land owned and possessed by Catalino Castro where he constructed a residential house has an area of more than one and one-half (1 ½) hectares; that the possession of Catalino Castro over the land in question was peaceful, continuous, notorious, adverse against the whole world and in the concept of an owner; that during the time that Catalino Castro was in possession of the land applied for he planted on said parcel of land mango, coconut and banana, *etc.*; that Catalino Castro continuously possessed and owned said parcel of land up to the year 1952 when he died; that during the time that Catalino Castro was in possession of said land, nobody ever laid claim over the said property; that said land is not within any military or naval reservation; that upon the death of Catalino Castro, the applicant took possession of the land applied for and that up to the present the applicant is in possession of said land; that he resided in the land in question from 1918 up to the time he transferred his place of residence in Baliwag, Bulacan in the year 1958.

On February 11, 1974, the Court, pursuant to the provision of Presidential Decree No. 230 issued by his Excellency, Ferdinand E. Marcos dated July 9, 1973 held in abeyance the rendition of a decision in this case and directed the applicant to submit a white print copy

of plan (LRC) Psu-964 to the Director of lands who was directed by the Court to submit his comment and recommendation thereon.

The property in question is declared for taxation purposes under Tax Declaration No. 51842 (Exhibit G) and real estate taxes due thereon have been paid up to the year 1973 (Exhibit H).

In compliance with the Order of this Court February 11, 1974, the Director of Lands, thru Special Attorney Saturnino A. Pacubas, submitted a report to this Court dated April 25, 1974, stating among other things, that upon ocular inspection conducted by Land Inspector Adelino G. Gorospe and the subsequent joint ocular inspection conducted by Geodetic Engineer Manuel A. Cervantes and Administrative Assistant Lazaro G. Berania, it was established that the parcel of land covered by plan (LRC) Psu-964 no longer forms part of the Manila Bay but is definitely solid and dry land.

In this connection, it should be noted that Administrative Assistant Lazaro G. Berania and Geodetic Engineer Manuel A. Cervantes, in their report dated March 22, 1974 have also stated that ***the land applied for cannot be reached by water even in the highest tide and that the said land is occupied by squatter families who have erected makeshift shanties and a basketball court which only prove that the same is dry and solid land away from the shores of Manila Bay***.

Furthermore, Land Inspector Adelino G. Gorospe in his letter-report dated November 28, 1973 has also stated that there is a house of pre-war vintage owned by the applicant on the land in question which in effect corroborates the testimony of the applicant and her witness that they have lived on the land in question even prior to the outbreak of the second world war and that the applicant has been in possession of the land in question long time ago.[43]

To counter the evidence of applicant Castro, and bolster its claim that she has no valid title, respondent Republic relies on the July 18, 1973 Office Memorandum[44] of Roman Mataverde, OIC, Surveys Division, to the OIC, Legal Division, of the Bureau of Lands, stating that "when projected on cadastral maps CM

[43] *Supra* note 1, at 395-396.

[44] Records, p. 217.

14º 13'N - 120º 59'E., Sec. 3-D and CM 14º 30'N - 120º 59'E., Sec. 2-A of Paranaque [sic] Cadastre (Cad-299), (LRC) Psu-964 falls inside Manila Bay, outside Cad-299."[45]

The same conclusion was adopted in a November 15, 1973 letter of Narciso Villapando, Acting Regional Lands Director to the Chief, Legal Division, Bureau of Lands and in the Comment and Recommendation of Ernesto C. Mendiola, Assistant Director, also of the Bureau of Lands.

Respondent likewise cites Namria Hydrographic Map No. 4243 Revised 80-11-2 to support its position that Castro's lot is a portion of Manila Bay.

The burden of proving these averments falls to the shoulders of respondent Republic. The difficulty is locating the witnesses of the government. Roman Mataverde, then OIC of the Surveys Division retired from the government service in 1982. He should by this time be in his 90s. Moreover, Asst. Regional Director Narciso Villapando and Asst. Director Ernesto C. Mendiola are no longer connected with the Bureau of Lands since 1986.

Assuming that OIC Roman Mataverde, Asst. Regional Director Narciso Villapando and Assistant Director Ernesto C. Mendiola are still available as witnesses, the projections made on the cadastral maps of the then Bureau of Lands cannot prevail over the results of the two ocular inspections by several Bureau of Lands officials that the disputed lot is definitely "dry and solid land" and not part of Manila Bay. Special Attorney Saturnino A. Pacubas, Land Inspector Adelino G. Gorospe, Geodetic Engineer Manuel A. Cervantes and Administrative Asst. Lazaro A. Berana, all officials of the Bureau of Lands, were positive that the disputed land is solid and dry land and no longer forms part of Manila Bay. Evidence gathered from the ocular inspection is considered direct and firsthand information entitled to great weight and credit while the Mataverde and Villapando reports are evidence weak in probative value, being merely based on theoretical projections "in the cadastral map

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[45] *Id.*

or table surveys."[46] Said projections must be confirmed by the actual inspection and verification survey by the land inspectors and geodetic engineers of the Bureau of Lands. Unfortunately for respondent Republic, the bureau land inspectors attested and affirmed that the disputed land is already dry land and not within Manila Bay.

On the other hand, the Namria Hydrographic Map No. 4243 does not reveal what portion of Manila Bay was Castro's lot located in 1974. Moreover, a hydrographic map is not the best evidence to show the nature and location of the lot subject of a land registration application. It is derived from a hydrographic survey which is mainly used for navigation purposes, thus:

> Surveys whose principal purpose is the determination of data relating to bodies of water. A hydrographic survey may consist of the determination of one or several of the following classes of data: depth water; configuration and nature of the bottom; directions and force of currents; heights and times of tides and water stages; and location of fixed objects for survey and navigation purposes.[47]

Juxtaposed with finding of the ocular inspection by Bureau of Lands Special Attorney Pacubas and others that Castro's lot is dry land in 1974, Namria Hydrographic Map No. 4243 is therefore inferior evidence and lacking in probative force.

Moreover, the reliability and veracity of the July 18, 1973 report of Roman Mataverde based on the alleged projection on cadastral maps and the Villapando report dated November 15, 1973 are put to serious doubt in the face of the opinion dated October 13, 1997 of the Government Corporate Counsel, the lawyer of the PEA, which upheld the validity of the titles of petitioners, thus:

> We maintain to agree with the findings of the court that the property of Fermina Castro was registrable land, as based on the two (2) ocular inspections conducted on March 22, 1974 by Lands

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[46] *Rollo*, p. 94.

[47] Sec. 01. Surveying, National Mapping and Resource Information Authority (NAMRIA), <http://www.namria.gov.ph/serv.asp> (visited October 16, 2007).

Administrative Assistant Lazaro G. Berania and Lands Geodetic Engr. Manuel Cervantes,

finding '… the same no longer forms part of Manila Bay but is definitely solid land which cannot be reached by water even in the highest of tides.' **This Berania-Cervantes report based on ocular inspections literally overturned the findings and recommendations of Land Director Narciso V. Villapando dated November 15, 1973, and that of Director Ernesto C. Mendiola dated December 1, 1977, and the fact that the Villapando-Mendiola reports were merely based on projections in the cadastral map or table surveys**.

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A. The Legal prognosis of the case is not promising in favor of PEA.

4.1 <u>LRC Case No. N-8239 has already become final and executory and OCT No. 10215 was already issued in favor of Fermina Castro. Any and all attempts to question its validity can only be entertained in a *quo warranto* proceedings (sic), assuming that there are legal grounds (not factual grounds) to support its nullification</u>. Subjecting it to a collateral attack is not allowed under the Torrens Title System. In *Calalang vs. Register of Deeds of Quezon City,* 208 SCRA 215, the Supreme Court held that the present petition is not the proper remedy in challenging the validity of certificates of titles since the judicial action required is a direct and not a collateral attack (refer also to: *Toyota Motor Philippine Corporation vs. CA*, 216 SCRA 236).

4.2 OCT No. 10215 in favor of Fermina Castro was issued pursuant to a cadastral proceeding, hence is a <u>rem proceedings</u> which is translated as a constructive notice to the whole world, as held in *Adez Realty Incorporated vs. CA*, 212 SCRA 623.

4.3 From the cursory and intent reading of the decision of Judge Sison in LRC Case No. N-8239, we cannot find any iota of fraud having been committed by the court and the parties. In fact, due process was observed when the Office of the Solicitor General represented ably the Bureau of Lands. In *Balangcad vs. Justices of the Court of Appeals,* 206 SCRA 169, the Supreme Court held that title to registered property becomes indefeasible after one-year from date of registration except where there is actual fraud in which case it may be challenged in a direct proceeding within that period. This is also the ruling in *Bishop vs. CA*, 208 SCRA 636, that to sustain an action for annulment

of a torrens certificate for being void *ab initio*, it must be shown that the registration court had not acquired jurisdiction over the case and there was actual fraud in securing the title.

4.4 As to priority of torrens title, PEA has no defense, assuming that both PEA and Yujuico titles are valid, as held in *Metropolitan Waterworks and Sewerage System vs. CA*, 215 SCRA 783, where two (2) certificates purport to include the same land, the earlier in date prevails.

4.5 **The documents so far submitted by the parties to the court indicate that the mother title of the Yujuico land when registered in 1974 was not underwater. This was shown in the two (2) ocular inspections conducted by the officials of the Land Bureau**.

4.6 The provision of P.D. 239 that no decree of registration may be issued by the court unless upon approval and recommendation of the Bureau of Lands was substantially complied with in the Report of Lands Special Attorney Saturnino Pacubas, submitted to the court.[48]

Even the counsel of respondent Republic, the OSG, arrived at the conclusion that there is no sufficient legal basis for said respondent to institute action to annul the titles of petitioners, thus:

It may be stated at the outset that a petition for annulment of certificate of title or reconveyance of land may be based on fraud which attended the issuance of the decree of registration and the corresponding certificate of title.

Based on the decision in the LRC Case No. N-8239 involving the petition for registration and confirmation of title filed by Fermina Castro, there is no showing that fraud attended the issuance of OCT No. 10215. it appears that the evidence presented by Fermina Castro was sufficient for the trial court to grant her petition.

The testimony of Fermina Castro, which was corroborated by Emiliano de Leon, that she and her predecessors-in-interest had been in possession of the land for more than thirty (30) years sufficiently established her vested right over the property initially covered by OCT No. 10215. The report dated April 25, 1974 which was submitted

[48] *Rollo*, pp. 93-95.

to the trial court by the Director of Lands through Special Attorney Saturnino Pacubas showed that the parcel of land was solid and dry land when Fermina Castro's application for registration of title was filed. It was based on the ocular inspection conducted by Land Inspector Adelino Gorospe and the joint circular inspection conducted by Geodetic Engineer Manuel A. Cervantes and Administrative Assistant Lazaro Berania on November 28, 1973 and March 22, 1974 respectively.

The aforesaid report must be requested unless there is a concrete proof that there was an irregularity in the issuance thereof. In the absence of evidence to the contrary, the ocular inspection of the parcel of land, which was made the basis of said report, is presumed to be in order.

Based on the available records, there appears to be no sufficient basis for the Government to institute an action for the annulment of OCT No. 10215 and its derivative titles. It is opined that a petition for cancellation/annulment of Decree No. N-150912 and OCT No. 10215 and all its derivative titles will not prosper unless there is convincing evidence to negate the report of the then Land Management Bureau through Special Attorney Pacubas. Should the Government pursue the filing of such an action, the possibility of winning the case is remote.[49]

More so, respondent Government, through its counsel, admits that the land applied by Fermina Castro in 1973 was solid and dry land, negating the nebulous allegation that said land is underwater. The only conclusion that can be derived from the admissions of the Solicitor General and Government Corporate Counsel is that the land subject of the titles of petitioners is alienable land beyond the reach of the reversion suit of the state.

Notably, the land in question has been the subject of a compromise agreement upheld by this Court in *Public Estates Authority*.[50] In that compromise agreement, among other provisions, it was held that the property covered by TCT Nos. 446386 and S-29361, the land subject of the instant case, would

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[49] *Id*. at 95-96.

[50] *Supra* note 8.

be exchanged for PEA property. The fact that PEA signed the May 15, 1998 Compromise Agreement is already a clear admission that it recognized petitioners as true and legal owners of the land subject of this controversy.

Moreover, PEA has waived its right to contest the legality and validity of Castro's title. Such waiver is clearly within the powers of PEA since it was created by PD 1084 as a body corporate "which shall have the attribute of perpetual succession and possessed of the powers of the corporations, to be exercised in conformity with the provisions of this Charter [PD 1084]."[51] It has the power "to enter into, make, perform and carry out contracts of every class and description, including loan agreements, mortgages and other types of security arrangements, necessary or incidental to the realization of its purposes with any person, firm or corporation, private or public, and with any foreign government or entity."[52] It also has the power to sue and be sued in its corporate name.[53] Thus, the Compromise Agreement and the Deed of Exchange of Real Property signed by PEA with the petitioners are legal, valid and binding on PEA. In the Compromise Agreement, it is provided that it "settles in full all the claims/counterclaims of the parties against each other."[54] The waiver by PEA of its right to question petitioners' title is fortified by the manifestation by PEA in the Joint Motion for Judgment based on Compromise Agreement that

> 4. The parties herein hereto waive and abandon any and all other claims and counterclaims which they may have against each other arising from this case or related thereto.[55]

Thus, there was a valid waiver of the right of respondent Republic through PEA to challenge petitioners' titles.

The recognition of petitioners' legal ownership of the land is further bolstered by the categorical and unequivocal

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[51] PD 1084, Sec. 1.

[52] PD 1084, Sec. 5, letter m.

[53] PD 1084, Sec. 5, letter b.

[54] *Rollo*, p. 286.

[55] *Id*. at 291.

acknowledgment made by PEA in its September 30, 2003 letter where it stated that: "Your ownership thereof was acknowledged by PEA when it did not object to your membership in the CBP-IA Association, in which an owner of a piece of land in CBP-IA automatically becomes a member thereof."[56] Section 26, Rule 130 provides that "the act, declaration or omission of a party as to a relevant fact may be given in evidence against him." The admissions of PEA which is the real party-in-interest in this case on the nature of the land of Fermina Castro are valid and binding on respondent Republic. Respondent's claim that the disputed land is underwater falls flat in the face of the admissions of PEA against its interests. Hence, *res judicata* now effectively precludes the relitigation of the issue of registrability of petitioners' lot.

In sum, the Court finds that the reversion case should be dismissed for lack of jurisdiction on the part of the Parañaque RTC. Even if we treat said case as a petition for annulment of judgment under Rule 47 of the 1997 Rules of Civil Procedure, the dismissal of the case nevertheless has to be upheld because it is already barred by laches. Even if laches is disregarded, still the suit is already precluded by *res judicata* in view of the peculiar facts and circumstances obtaining therein.

WHEREFORE, premises considered, the petition is *GRANTED.* The Decision of the Court of Appeals in CA-G.R. CV No. 76212 is *REVERSED* and *SET ASIDE,* and the August 7, 2002 Order of the Parañaque City RTC, Branch 257 in Civil Case No. 01-0222 entitled *Republic of the Philippines v. Fermina Castro, et al.* dismissing the complaint is *AFFIRMED*.

No costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, and *Nachura,*[*] *JJ.,* concur.

Tinga, J., in the result.

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[56] *Id*. at 105.

[*] As per September 3, 2007 raffle.

SECOND DIVISION

[G.R. No. 172607. October 26, 2007]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RUFINO UMANITO,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; IF IT CAN BE CONCLUSIVELY DETERMINED THAT THE ACCUSED DID NOT SIRE THE ALLEGED VICTIM'S CHILD, THIS MAY CAST THE SHADOW OF REASONABLE DOUBT AND ALLOW HIS ACQUITTAL ON THE BASIS THEREOF. —** Amidst the slew of assertions and counter-assertions, a happenstance may provide the definitive key to the absolution of the appellant. This is the fact that AAA bore a child as a result of the purported rape. With the advance in generics and the availability of new technology, it can now be determined with reasonable certainty whether appellant is the father of AAA's child. If he is not, his acquittal may be ordained. We have pronounced that if it can be conclusively determined that the accused did not sire the alleged victim's child, this may cast the shadow of reasonable doubt and allow his acquittal on this basis. If he is found not to be the father, the finding will at least weigh heavily in the ultimate decision in this case. Thus, we are directing appellant, AAA and her child to submit themselves to deoxyribonucleic acid (DNA) testing under the aegis of the New Rule on DNA Evidence (the Rules), which took effect on 15 October 2007, subject to guidelines prescribed herein.

2. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF DNA EVIDENCE; DNA IDENTIFICATION; A SOURCE OF BOTH INCULPATORY AND EXCULPATORY EVIDENCE. —** DNA print or identification technology is now recognized as a uniquely effective means to link a suspect to a crime, or to absolve one erroneously accused, where biological evidence is available. For purposes of criminal investigation, DNA identification is a fertile source of a both inculpatory and exculpatory evidence. It can aid immensely in determining a more accurate account of the crime committed, efficiently facilitating the conviction of the guilty, securing the acquittal

of the innocent, and ensuring the proper administration of justice in every case. Verily, as we pointed out in *People v. Yatar*, the process of obtaining such vital evidence has become less arduous - xxx

3. ID.; ID.; ID.; COURTS ARE AUTHORIZED, AFTER DUE HEARING AND NOTICE, *MOTU PROPRIO* TO ORDER A DNA TESTING. — It is obvious to the Court that the determination of whether appellant is the father of AAA's child, which may be accomplished through DNA testing, is material to the fair and correct adjudication of the instant appeal. Under Section 4 of the Rules, the courts are authorized, after due hearing and notice, *motu proprio* to order a DNA testing. However, while this Court retains jurisdiction over the case at bar, capacitated as it is to receive and act on the matter in controversy, the Supreme Court is not a trier of facts and does not, in the course of daily routine, conduct hearings. Hence, it would be more appropriate that the case be remanded to the RTC for reception of evidence in appropriate hearings, with due notice to the parties.

4. ID.; ID.; ID.; THE REGIONAL TRIAL COURT SHALL DETERMINE THE INSTITUTION WHICH WILL UNDERTAKE THE DNA TESTING AND THE PARTIES ARE FREE TO MANIFEST THEIR COMMENTS ON THE CHOICE OF A DNA TESTING CENTER. — Given our earlier pronouncements on the relevance of the DNA testing, it would be unbecoming of the RTC to conclude otherwise, Section 4 (d) notwithstanding. The hearing should be confined to ascertaining the feasibility of DNA testing with due regard to the standards set in Section 4 (a), (b), (c), (e) of the Rules. Should the RTC find the DNA testing feasible in the case at bar, it shall order the same, in conformity with Section 5 of the Rules. It is also the RTC which shall determine the institution to undertake the DNA testing and the parties are free to manifest their comments on the choice of DNA testing center. After the DNA analysis is obtained, it shall be incumbent upon the parties who wish to avail of the same to offer the results in accordance with the rules of evidence. The RTC, in evaluating the DNA results upon presentation, shall assess the same as evidence in keeping with Section 7 and 8 of the Rules xxx The trial court is further enjoined to observe the requirements of confidentiality and preservation of the DNA evidence in accordance with Sections 11 and 12 of the Rules.

5. ID.; ID.; ID.; ASSESSMENT OF PROBATIVE VALUE OF DNA EVIDENCE. — In assessing the probative value of DNA evidence, the RTC shall consider, among other things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests. Moreover, the court *a quo* must ensure that the proper chain of custody in the handling of the samples submitted by the parties is adequately borne in the records, *i.e.:* that the samples are collected by a neutral third party; that the tested parties are appropriately identified at their sample collection appointments; that the samples are protected with tamper tape at the collection site; that all persons in possession thereof at each stage of testing thoroughly inspected the samples for tampering and explained his role in the custody of the samples and the acts he performed in relation thereto.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

R E S O L U T I O N

TINGA, *J.*:

On appeal is the Decision[1] of the Court of Appeals dated 15 February 2006, affirming the Judgment[2] of the Regional Trial Court (RTC) of Bauang, La Union, Branch 67 dated 15 October 1997 finding Rufino Umanito (appellant) guilty beyond reasonable doubt of the crime of rape, sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to indemnify the private complainant in the sum of ₱50,000.00.[3]

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[1] *Rollo*, pp. 3-15. Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr.

[2] CA *rollo*, pp. 20-34. Penned by Judge Jose G. Paneda.

[3] *Id*. at 34.

On 9 January 1990, appellant was charged with the crime of rape in a Criminal Complaint[4] which reads:

> That on or about 9:00 P.M. of July 15, 1989, at Brgy[.] Daramuangan, Municipality of Naguilian, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who was armed with a fan knife and by means of force and threats, did then and there willfully, unlawfully and feloniously succeeded in having a sexual intercourse to [*sic*] the undersigned who is unmarried woman of good reputation, a woman who is over 12 but below 18 years old [*sic*] of age, to the damage and prejudice of the offended party.
>
> CONTRARY TO LAW.[5]

It was only five (5) years later, or sometime in 1995, that appellant was arrested. It took place when he went to the Municipal Hall of Naguilian to secure a police clearance.

On arraignment, appellant pleaded not guilty.

The appellate court's chronicle of the facts is as follows:

> It was around 9:00 o'clock in the evening of July 15, 1989, while on her way to her grandmother's home, when private complainant [AAA][6] was accosted by a young male. It was only later when she learned the name of accused-appellant UMANITO. She recounted that accused-appellant UMANITO waited for her by the creek, and then with a knife pointed at [AAA]'s left side of the [*sic*] abdomen, he forced her to give in to his kisses, to his holding her breasts and stomach, and to his pulling her by the arm to be dragged to the Home Economics Building inside the premises of the Daramuangan Elementary School where accused-appellant UMANITO first undressed her [AAA] and himself with his right hand while he still clutched the knife menacingly on his left hand. Private complainant [AAA] recounted that she could not shout because she was afraid. She further recounted that accused-appellant UMANITO laid her down

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[4] Records, p. 1.

[5] *Id*.

[6] The real name of the victim is withheld per R.A. No. 7610 and R.A. No. 9262. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

on a bench, 4 meters long and 24 inches wide, set the knife down, then mounted her, inserting his penis into her [AAA's] vagina and shortly thereafter, accused-appellant UMANITO dressed up and threatened [AAA] while poking the knife at her neck, not to report the incident to the police or else he said he would kill her. Accused-appellant UMANITO then left, while the victim [AAA] went on to her grandmother's house and she noticed that it was already around 1:00 o'clock in the morning when she reached there.

In January 1990, 6 months after the incident, private complainant [AAA's] mother, [BBB],[7] noticed the prominence on [AAA]'s stomach. It was only then when the victim, private complainant [AAA], divulged to her mother the alleged rape and told her the details of what had happened in July, [*sic*] 1989. After hearing private complainant [AAA]'s story, her mother brought her to the police station.[8]

Appellant's version on the stand was different. Denying the accusations of AAA, he claimed that on 15 July 1989, he was home the whole day, helping his family complete rush work on picture frames ordered from Baguio. He did not step out of their house on the evening in question, he added.[9] Concerning his relationship with AAA, appellant admitted that he had courted her but she spurned him. He conjectured, though, that AAA had a crush on him since she frequently visited him at his house.[10]

Finding that the prosecution had proven appellant's guilt beyond reasonable doubt, the RTC rendered judgment against him and sentenced him to suffer the penalty of *reclusion perpetua* and to indemnify AAA in the sum of ₱50,000.00.[11] In so doing, the court *a quo* held that the discrepancies in AAA's testimony did not impair her credibility. Despite some inconsistencies in her statement, the RTC observed that AAA's demeanor on the witness stand did not indicate any falsehood in her narration.[12]

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[7] The real name of the victim's mother is likewise withheld to protect her and the victim's privacy. See *People v. Cabalquinto*, *supra*.

[8] *Supra* note 1 at 5-6.

[9] TSN, 11 February 1997, pp. 6-8.

[10] *Id*. at 10.

[11] *Supra* note 2 at 33-34.

[12] CA *rollo*, p. 31.

The trial court likewise rejected appellant's defense of alibi, ruling that he did not prove that it was physically impossible for him to be at the scene of the crime given the testimonies that he and complainant were residing in the same *barrio*.[13]

Pursuant to our ruling in *People v. Mateo*,[14] appellant's appeal before us was transferred to the Court of Appeals for intermediate review. On 15 February 2006, the appellate court affirmed the challenged decision. Finding AAA to be a credible witness, the Court of Appeals agreed with the trial court that the inconsistencies in her statements were too trivial and inconsequential to impair the credibility of her testimony.[15]

In this appeal, appellant seeks his acquittal on reasonable doubt by reason of the belated filing of the case against him and the questionable credibility of AAA with respect to her varying allegations.

Appellant asserts that the court *a quo* erred in giving full faith and credence to the testimony of the complaining witness and in not acquitting him on reasonable doubt. He avers that apparently AAA filed the complaint against him only upon the prodding of her mother.[16] This aspect, appellant insists, negates AAA's claim that he was the one who raped her but rather supports his assertion that the sexual congress AAA engaged in was with another man, her real lover who was married to another woman.[17] Appellant further puts in issue the long delay in AAA's filing of the complaint.[18]

Appellant capitalizes on the alleged serious inconsistencies in AAA's assertions, and further characterizes her actions and contentions as incredible and unnatural.[19] In particular, appellant

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[13] *Id*.

[14] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[15] *Supra* note 1 at 8, 11.

[16] CA *rollo,* p. 58.

[17] *Id*. See also TSN, 11 February 1997, pp. 5, 9-10, 12.

[18] CA *rollo,* pp. 58-59.

[19] Records, p. 392.

highlights AAA's contradictory declarations on when she met appellant and the nature of their relationship. He also alludes to AAA's purportedly inconsistent statements on whether it was appellant or she herself, upon his orders, who took off her clothes. Finally, appellant points out the supposedly conflicting assertions of AAA on whether it was at the creek or in the school building that he kissed her face and other parts of her body.

Once again, this Court is called upon to determine whether the prosecution has successfully met the level of proof needed to find appellant guilty of the crime of rape.

Among the many incongruent assertions of the prosecution and the defense, the disharmony on a certain point stands out. Appellant, on one hand, testified that although he had courted AAA, they were not sweethearts. Therefore, this testimony largely discounts the possibility of consensual coitus between him and AAA. On the other, AAA made contradictory allegations at the preliminary investigation and on the witness stand with respect to the nature of her relationship with appellant. First, she claimed that she met appellant only on the day of the purported rape; later, she stated that they were actually friends; and still later, she admitted that they were close.[20]

Amidst the slew of assertions and counter-assertions, a happenstance may provide the definitive key to the absolution of the appellant. This is the fact that AAA bore a child as a result of the purported rape. With the advance in genetics and the availability of new technology, it can now be determined with reasonable certainty whether appellant is the father of AAA's child. If he is not, his acquittal may be ordained. We have pronounced that if it can be conclusively determined that the accused did not sire the alleged victim's child, this may cast the shadow of reasonable doubt and allow his acquittal on this basis.[21] If he is found not to be the father, the finding will

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[20] *Id*. at 3; TSN, 29 March 1995, p. 4; TSN, 13 March 1996, pp. 2-3, 20-24.

[21] See In *Re: The Writ of Habeas Corpus for De Villa*, 442 SCRA 706 (2004).

at least weigh heavily in the ultimate decision in this case. Thus, we are directing appellant, AAA and AAA's child to submit themselves to deoxyribonucleic acid (DNA) testing[22] under the aegis of the New Rule on DNA Evidence[23] (the Rules), which took effect on 15 October 2007, subject to guidelines prescribed herein.

DNA print or identification technology is now recognized as a uniquely effective means to link a suspect to a crime, or to absolve one erroneously accused, where biological evidence is available. For purposes of criminal investigation, DNA identification is a fertile source of both inculpatory and exculpatory evidence. It can aid immensely in determining a more accurate account of the crime committed, efficiently facilitating the conviction of the guilty, securing the acquittal of the innocent, and ensuring the proper administration of justice in every case.[24] Verily, as we pointed out in *People v. Yatar*,[25] the process of obtaining such vital evidence has become less arduous –

> The U.P. National Science Research Institute (NSRI), which conducted the DNA tests in this case, used the Polymerase chain reaction (PCR) amplification method by Short Tandem Repeat (STR) analysis. With PCR testing, tiny amounts of a specific DNA sequence can be copied exponentially within hours. Thus, getting sufficient DNA for analysis has become much easier since it became possible to reliably amplify small samples using the PCR method.[26]

The ground work for acknowledging the strong weight of DNA testing was first laid out in *Tijing v. Court of Appeals*,[27] where the Court said –

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[22] In *People v. Marquez* (430 Phil. 383 [2002]), we characterized DNA testing as synonymous to DNA typing, DNA fingerprinting, DNA profiling, genetic tests, and genetic fingerprinting.

[23] A.M. No. 06-11-5-SC, 15 October 2007.

[24] *People v. Yatar,* G.R. No. 150224, 19 May 2004, 428 SCRA 504, 514.

[25] G.R. No. 150224, 19 May 2004, 428 SCRA 505 (2004).

[26] *Id*. at 515.

[27] 406 Phil. 449 (2001).

x x x Parentage will still be resolved using conventional methods unless we adopt the modern and scientific ways available. Fortunately, we have now the facility and expertise in using DNA test for identification and parentage testing. The University of the Philippines Natural Science Research Institute (UP-NSRI) DNA Analysis Laboratory has now the capability to conduct DNA typing using short tandem repeat (STR) analysis. The analysis is based on the fact that the DNA of a child/person has two (2) copies, one copy from the mother and the other from the father. The DNA from the mother, the alleged father and child are analyzed to establish parentage. Of course, being a novel scientific technique, the use of DNA test as evidence is still open to challenge. Eventually, as the appropriate case comes, courts should not hesitate to rule on the admissibility of DNA evidence. For it was said, that courts should apply the results of science when competently obtained in aid of situations presented, since to reject said result is to deny progress. Though it is not necessary in this case to resort to DNA testing, in future it would be useful to all concerned in the prompt resolution of parentage and identity issues.[28]

The leading case of *Herrera v. Alba*,[29] where the validity of a DNA test as a probative tool to determine filiation in our jurisdiction was put in issue, discussed DNA analysis as evidence and traced the development of its admissibility in our jurisdiction. Thus:

DNA is the fundamental building block of a person's entire genetic make-up. DNA is found in all human cells and is the same in every cell of the same person. Genetic identity is unique. Hence, a person's DNA profile can determine his identity.

DNA analysis is a procedure in which DNA extracted from a biological sample obtained from an individual is examined. The DNA is processed to generate a pattern, or a DNA profile, for the individual from whom the sample is taken. This DNA profile is unique for each person, except for identical twins. We quote relevant portions of the trial court's 3 February 2000 Order with approval:

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[28] *Id.* at 461.

[29] G.R. No. 148220, 15 June 2005, 460 SCRA 197. See also *Agustin v. Court of Appeals*, G.R. No. 162571, 15 June 2005, 460 SCRA 315.

Everyone is born with a distinct genetic blueprint called **DNA (deoxyribonucleic acid)**. It is exclusive to an individual (except in the rare occurrence of identical twins that share a single, fertilized egg), and DNA is unchanging throughout life. Being a component of every cell in the human body, the DNA of an individual's blood is the very DNA in his or her skin cells, hair follicles, muscles, semen, samples from buccal swabs, saliva, or other body parts.

The chemical structure of DNA has four bases. They are known as **A** (adenine), **G** (guanine), **C** (cystosine) and **T** (thymine). The order in which the four bases appear in an individual's DNA determines his or her physical makeup. And since DNA is a double-stranded molecule, it is composed of two specific paired bases, **A-T** or **T-A** and **G-C** or **C-G**. These are called "genes."

Every *gene* has a certain number of the above base pairs distributed in a particular sequence. This gives a person his or her genetic code. Somewhere in the DNA framework, nonetheless, are sections that differ. They are known as "*polymorphic loci*," which are the areas analyzed in DNA typing (profiling, tests, fingerprinting, or analysis/DNA fingerprinting/ genetic tests or fingerprinting). In other words, DNA typing simply means determining the "*polymorphic loci*."

How is DNA typing performed? From a DNA sample obtained or extracted, a molecular biologist may proceed to analyze it in several ways. There are five (5) techniques to conduct DNA typing. They are: the *RFLP (restriction fragment length polymorphism*); "*reverse dot blot*" or HLA DQ a/Pm loci which was used in 287 cases that were admitted as evidence by 37 courts in the U.S. as of November 1994; mtDNA process; VNTR (variable number tandem repeats); and the most recent which is known as the PCR-([polymerase] chain reaction) based STR (short tandem repeats) method which, as of 1996, was availed of by most forensic laboratories in the world. PCR is the process of replicating or copying DNA in an evidence sample a million times through repeated cycling of a reaction involving the so-called DNA polymerize enzyme. *STR*, on the other hand, takes measurements in 13 separate places and can match two (2) samples with a reported theoretical error rate of less than one (1) in a trillion.

Just like in fingerprint analysis, in DNA typing, "*matches*" are determined. To illustrate, when DNA or fingerprint tests are done to identify a suspect in a criminal case, the evidence collected from the crime scene is compared with the "*known*" print. If a substantial amount of the identifying features are the same, the DNA or fingerprint is deemed to be a **match**. But then, even if only one feature of the DNA or fingerprint is different, it is deemed **not to have come from the suspect**.

As earlier stated, certain regions of human DNA show variations between people. In each of these regions, a person possesses two genetic types called "allele," one inherited from each parent. In [a] paternity test, the forensic scientist looks at a number of these variable regions in an individual to produce a DNA profile. Comparing next the DNA profiles of the mother and child, it is possible to determine which half of the child's DNA was inherited from the mother. The other half must have been inherited from the biological father. The alleged father's profile is then examined to ascertain whether he has the DNA types in his profile, which match the paternal types in the child. If the man's DNA types do not match that of the child, the man is **excluded** as the father. If the DNA types match, then he is **not excluded** as the father (Emphasis in the original).

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The 2002 case of *People v. Vallejo* discussed DNA analysis as evidence. This may be considered a 180 degree turn from the Court's wary attitude towards DNA testing in the 1997 *Pe Lim* case, where we stated that "DNA, being a relatively new science, x x x has not yet been accorded official recognition by our courts." In *Vallejo*, the DNA profile from the vaginal swabs taken from the rape victim matched the accused's DNA profile. We affirmed the accused's conviction of rape with homicide and sentenced him to death.

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Vallejo discussed the probative value, not admissibility, of DNA evidence. By 2002, there was no longer any question on the validity of the use of DNA analysis as evidence. The Court moved from the issue of according "official recognition" to DNA analysis as evidence to the issue of observance of procedures in conducting DNA analysis.

In 2004, there were two other cases that had a significant impact on jurisprudence on DNA testing: *People v. Yatar* and *In re: The*

Writ of Habeas Corpus for Reynaldo de Villa. In Yatar, a match existed between the DNA profile of the semen found in the victim and the DNA profile of the blood sample given by appellant in open court. The Court, following Vallejo's footsteps, affirmed the conviction of appellant because the physical evidence, corroborated by circumstantial evidence, showed appellant guilty of rape with homicide. In De Villa, the convict-petitioner presented DNA test results to prove that he is not the father of the child conceived at the time of commission of the rape. The Court ruled that a difference between the DNA profile of the convict-petitioner and the DNA profile of the victim's child does not preclude the convict-petitioner's commission of rape.[30]

The 2004 case of *Tecson v. Commission on Elections*[31] likewise reiterated the acceptance of DNA testing in our jurisdiction in this wise: "[i]n case proof of filiation or paternity would be unlikely to satisfactorily establish or would be difficult to obtain, DNA testing, which examines genetic codes obtained from body cells of the illegitimate child and any physical residue of the long dead parent could be resorted to."[32]

It is obvious to the Court that the determination of whether appellant is the father of AAA's child, which may be accomplished through DNA testing, is material to the fair and correct adjudication of the instant appeal. Under Section 4 of the Rules, the courts are authorized, after due hearing and notice, *motu proprio* to order a DNA testing. However, while this Court retains jurisdiction over the case at bar, capacitated as it is to receive and act on the matter in controversy, the Supreme Court is not a trier of facts and does not, in the course of daily routine, conduct hearings.[33] Hence, it would be more appropriate that the case be remanded to the RTC for reception of evidence in appropriate hearings, with due notice to the parties.

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[30] *Id*. at 209-213. Citations omitted.

[31] G.R. No. 161434, 3 March 2004, 424 SCRA 277.

[32] *Id*. at 345.

[33] *Carlos v. Sandoval*, 471 SCRA 266 (2005).

What should be the proper scope of such hearings? Section 4 of the Rules spells out the matters which the trial court must determine, thus:

> SEC. 4. *Application for DNA Testing Order*.– The appropriate court may, at any time, either *motu proprio* or on application of any person who has a legal interest in the matter in litigation, order a DNA testing. Such order shall issue after due hearing and notice to the parties upon a showing of the following:
>
> (a) A biological sample exists that is relevant to the case;
>
> (b) The biological sample: (i) was not previously subjected to the type of DNA testing now requested; or (ii) was previously subjected to DNA testing, but the results may require confirmation for good reasons;
>
> (c) The DNA testing uses a scientifically valid technique;
>
> (d) The DNA testing has the scientific potential to produce new information that is relevant to the proper resolution of the case; and
>
> (e) The existence of other factors, if any, which the court may consider as potentially affecting the accuracy or integrity of the DNA testing.
>
> The Rule shall not preclude a DNA testing, without need of a prior court order, at the behest of any party, including law enforcement agencies, before a suit or proceeding is commenced.[34]

Given our earlier pronouncements on the relevance of the DNA testing, it would be unbecoming of the RTC to conclude otherwise, Section 4 (d) notwithstanding. The hearing should be confined to ascertaining the feasibility of DNA testing with due regard to the standards set in Section 4 (a), (b), (c) and (e) of the Rules.

Should the RTC find the DNA testing feasible in the case at bar, it shall order the same, in conformity with Section 5 of the Rules.[35] It is also the RTC which shall determine the

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[34] RULE ON DNA EVIDENCE, Sec. 4.

[35] SEC. 5. *DNA Testing Order*. – If the court finds that the requirements in Section 4 hereof have been complied with, the court shall. —

institution[36] to undertake the DNA testing and the parties are free to manifest their comments on the choice of DNA testing center.

After the DNA analysis is obtained, it shall be incumbent upon the parties who wish to avail of the same to offer the results in accordance with the rules of evidence. The RTC, in evaluating the DNA results upon presentation, shall assess the same as evidence in keeping with Sections 7 and 8 of the Rules, to wit:

SEC. 7. *Assessment of probative value of DNA evidence*. – In assessing the probative value of the DNA evidence presented, the court shall consider the following:

(a) The chain of custody, including how the biological samples were collected, how they were handled, and the possibility of contamination of the samples;

(b) The DNA testing methodology, including the procedure followed in analyzing the samples, the advantages and disadvantages of the procedure, and compliance with the scientifically valid standards in conducting the tests;

(c) The forensic DNA laboratory, including accreditation by any reputable standards-setting institution and the qualification of the

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(a) Order, as appropriate, that biological samples be taken from any person or crime scene evidence;

(b) Impose reasonable conditions on DNA testing designed to protect the integrity of the biological sample, the testing process and the reliability of the test results, including a condition that the DNA test results shall be simultaneously disclosed to parties involved in the case; and

(c) If the biological sample taken is of such an amount that prevents the conduct of confirmatory testing by the other or the adverse party and where additional biological samples of the same kind can no longer be obtained, issue an order requiring all parties to the case or proceedings to witness the DNA testing to be conducted.

x x x The grant of a DNA testing application shall not be construed as an automatic admission into evidence of any component of the DNA evidence that may be obtained as a result thereof.

[36] Among the current known institutions offering DNA testing are the University of the Philippines Natural Science Research Institute and St. Luke's Medical Center.

analyst who conducted the tests. If the laboratory is not accredited, the relevant experience of the laboratory in forensic casework and credibility shall be properly established; and

(d) The reliability of the testing result, as hereinafter provided.

The provisions of the Rules of Court concerning the appreciation of evidence shall apply suppletorily.

SEC. 8. *Reliability of DNA testing methodology*.–In evaluating whether the DNA testing methodology is reliable, the court shall consider the following:

(a) The falsifiability of the principles or methods used, that is, whether the theory or technique can be and has been tested;

(b) The subjection to peer review and publication of the principles or methods;

(c) The general acceptance of the principles or methods by the relevant scientific community;

(d) The existence and maintenance of standards and controls to ensure the correctness of data gathered;

(e) The existence of an appropriate reference population database; and

(f) The general degree of confidence attributed to mathematical calculations used in comparing DNA profiles and the significance and limitation of statistical calculations used in comparing DNA profiles.

The trial court is further enjoined to observe the requirements of confidentiality and preservation of the DNA evidence in accordance with Sections 11[37] and 12[38] of the Rules.

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[37] SEC. 11. *Confidentiality.* – DNA profiles and all results or other information obtained from DNA testing shall be confidential. Except upon order of the court, a DNA profile and all results or other information obtained from DNA testing shall only be released to any of the following, under such terms and conditions as may be set forth by the court:

(1) Person from whom the sample was taken;

(2) Lawyers representing parties in the case or action where the DNA evidence is offered and presented or sought to be offered and presented;

In assessing the probative value of DNA evidence, the RTC shall consider, among other things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.[39]

Moreover, the court *a quo* must ensure that the proper chain of custody in the handling of the samples submitted by the parties

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(3) Lawyers of private complainants in a criminal action;

(4) Duly authorized law enforcement agencies; and

(5) Other persons as determined by the court.

Whoever discloses, utilizes or publishes in any form any information concerning a DNA profile without the proper court order shall be liable for indirect contempt of the court wherein such DNA evidence was offered, presented or sought to be offered and presented.

Where the person from whom the biological sample was taken files a written verified request to the court that allowed the DNA testing for the disclosure of his DNA profile and all results or other information obtained from the DNA testing, the same may be disclosed to the persons named in the written verified request.

[38] SEC. 12. *Preservation of DNA evidence*.–The trial court shall preserve the DNA evidence, in its totality, including all biological samples, DNA profiles and results or other genetic information obtained from DNA testing. For this purpose, the court may order the appropriate government agency to preserve the DNA evidence as follows:

(a) In criminal cases:

i. for not less than the period of time that any person is under trial for an offense; or,

ii. in case the accused is serving sentence, until such time as the accused has served his sentence; and

(b) in all other cases, until such time as the decision in the case where the DNA evidence was introduced has become final and executory.

The court may allow the physical destruction of a biological sample before the expiration of the periods set forth above provided that:

(a) a court order to that effect has been secured; or

(b) the person from whom the DNA sample was obtained has consented in writing to the disposal of the DNA evidence.

[39] *People v. Vallejo*, 431 Phil. 798, 817 (2002).

is adequately borne in the records, *i.e.*: that the samples are collected by a neutral third party; that the tested parties are appropriately identified at their sample collection appointments; that the samples are protected with tamper tape at the collection site; that all persons in possession thereof at each stage of testing thoroughly inspected the samples for tampering and explained his role in the custody of the samples and the acts he performed in relation thereto.

In light of the fact that this case constitutes the first known application of the Rules, the Court is especially interested in monitoring the implementation thereof in this case, for its guidance and continuing evaluation of the Rules as implemented. For purposes of supervising the implementation the instant resolution, the Court designates Deputy Court Administrator Reuben Dela Cruz (DCA Dela Cruz) to: (a) monitor the manner in which the court *a quo* carries out the Rules; and (b) assess and submit periodic reports on said implementation to the Court. Towards the fulfillment of such end, the RTC is directed to cooperate and coordinate with DCA Dela Cruz.

A final note. In order to facilitate the execution of this Resolution, though the parties are primarily bound to bear the expenses for DNA testing, such costs may be advanced by this Court if needed.

WHEREFORE, the instant case is remanded to the RTC for reception of DNA evidence in accordance with the terms of this Resolution. The RTC is further directed to report to the Court the results of the proceedings below within sixty (60) days from receipt hereof.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 150134. October 31, 2007]

ERNESTO C. DEL ROSARIO and DAVAO TIMBER CORPORATION, *petitioners, vs.* **FAR EAST BANK & TRUST COMPANY**[1] **and PRIVATE DEVELOPMENT CORPORATION OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; CAN RAISE ONLY QUESTIONS OF LAW WHICH MUST BE DISTINCTLY SET FORTH.—** Stripped of the verbiage, the only issue for this Court's consideration is the propriety of the dismissal of Civil Case No. 00-540 upon the grounds stated by the trial court. This should be so because a Rule 45 petition, like the one at bar, can raise only questions of law (and that justifies petitioners' elevation of the case from the trial court directly to this Court) which must be distinctly set forth.

2. **ID.; JUDGMENTS; *RES JUDICATA*; BAR BY PRIOR JUDGMENT; EXPLAINED.—** Section 47 of Rule 39 of the Rules of Court, on the doctrine of *res judicata,* reads: Sec. 47. *Effect of judgments or final orders*. — xxx. The above-quoted provision lays down two main rules. Section 49(b) enunciates the first rule of *res judicata* known as "bar by prior judgment" or "estoppel by judgment," which states that the judgment or decree of a court of competent jurisdiction on the merits concludes the parties and their privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal. Stated otherwise, "bar by former judgment" makes the judgment rendered in the first case an absolute bar to the subsequent action since that judgment is conclusive not only as to the matters offered and received to sustain it but also as to any other matter which might have been offered for that purpose and which could have been adjudged therein. It is in this concept that the term *res judicata* is more commonly and generally used as a ground for a motion to dismiss in civil cases.

[1] Now merged with the Bank of the Philippine Islands.

3. ID.; ID.; ID.; CONCLUSIVENESS OF JUDGMENT; RULE.— The second rule of *res judicata* embodied in Section 47(c), Rule 39 is "conclusiveness of judgment." This rule provides that any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim or demand, purpose, or subject matter of the two suits is the same. It refers to a situation where the judgment in the prior action operates as an estoppel only as to the matters actually determined or which were necessarily included therein.

4. ID.; ID.; ID.; BAR BY PRIOR JUDGMENT; ESSENTIAL REQUISITES.— The case at bar satisfies the four essential requisites of "bar by prior judgment," *viz*: (a) finality of the former judgment; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter and causes of action. There is no doubt that the judgment on appeal relative to Civil Case No. 94-1610 (that rendered in CA-G.R. CV No. 50591) was a final judgment. Not only did it dispose of the case on the merits; it also became executory as a consequence of the denial of FEBTC's motion for reconsideration and appeal.

5. ID.; ID.; ID.; ID.; IDENTITY OF CAUSE OF ACTION; TEST.— In determining whether causes of action are identical to warrant the application of the rule of *res judicata*, the test is to ascertain whether the same evidence which is necessary to sustain the second action would suffice to authorize a recovery in the first even in cases in which the forms or nature of the two actions are different. Simply stated, if the same facts or evidence would sustain both, the two actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action. It bears remembering that a cause of action is the delict or the wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff.

6. ID.; ID.; ID.; ID.; ID.; A PARTY CANNOT, BY VARYING THE FORM OF ACTION OR ADOPTING A DIFFERENT METHOD OF PRESENTING HIS CASE, OR BY PLEADING JUSTIFIABLE CIRCUMSTANCES, ESCAPE THE OPERATION

OF THE PRINCIPLE THAT ONE AND THE SAME CAUSE OF ACTION SHOULD NOT BE TWICE LITIGATED.— Notably, the same facts were also pleaded by the parties in support of their allegations for, and defenses against, the recovery of the ₱4.335 million. Petitioners, of course, plead the CA Decision as basis for their subsequent claim for the remainder of their overpayment. It is well established, however, that a party cannot, by varying the form of action or adopting a different method of presenting his case, or by pleading justifiable circumstances as herein petitioners are doing, escape the operation of the principle that one and the same cause of action shall not be twice litigated. In fact, authorities tend to widen rather than restrict the doctrine of *res judicata* on the ground that public as well as private interest demands the ending of suits by requiring the parties to sue once and for all in the same case all the special proceedings and remedies to which they are entitled.

7. **ID.; ACTIONS; CAUSE OF ACTION; SPLITTING A CAUSE OF ACTION; A GROUND FOR DISMISSAL OF THE SUIT.—** xxx. This Court finds well-taken then the pronouncement of the court *a quo* that to allow the re-litigation of an issue that was finally settled as between petitioners and FEBTC in the prior case is to allow the splitting of a cause of action, a ground for dismissal under Section 4 of Rule 2 of the Rules of Court reading: SEC. 4. *Splitting of a single cause of action; effect of.* – This rule proscribes a party from dividing a single or indivisible cause of action into several parts or claims and instituting two or more actions based on it. Because the plaintiff cannot divide the grounds for recovery, he is mandated to set forth in his first action every ground for relief which he claims to exist and upon which he relies; he cannot be permitted to rely upon them by piecemeal in successive actions to recover for the same wrong or injury. Clearly then, the judgment in Civil Case No. 94-1610 operated as a bar to Civil Case No. 00-540, following the above-quoted Section 4, Rule 2 of the Rules of Court.

APPEARANCES OF COUNSEL

Romeo C. dela Cruz & Associates for petitioners.
Benedicto Verzosa Gealogo & Burkley for FEBTC.
Pelaez Gregorio and Gregorio & Lim for PDCP.

DECISION

CARPIO MORALES, *J.*:

The Regional Trial Court (RTC) of Makati City, Branch "65" (sic)[2] having, by Decision[3] of July 10, 2001, dismissed petitioners' complaint in Civil Case No. 00-540 on the ground of *res judicata* and splitting of a cause of action, and by Order of September 24, 2001[4] denied their motion for reconsideration thereof, petitioners filed the present petition for review on *certiorari*.

From the rather lengthy history of the present controversy, a recital of the following material facts culled from the records is in order.

On May 21, 1974, petitioner Davao Timber Corporation (DATICOR) and respondent Private Development Corporation of the Philippines (PDCP) entered into a loan agreement under which PDCP extended to DATICOR a foreign currency loan of US $265,000 and a peso loan of ₱2.5 million or a total amount of approximately ₱4.4 million, computed at the then prevailing rate of exchange of the dollar with the peso.

The loan agreement provided, among other things, that DATICOR shall pay: (1) a service fee of one percent (1%) per annum (later increased to six percent [6%] per annum) on the outstanding balance of the peso loan; (2) 12 percent (12%) per annum interest on the peso loan; and (3) penalty charges of two percent (2%) per month in case of default.

The loans were secured by real estate mortgages over six parcels of land – one situated in Manila (the Otis property) which was registered in the name of petitioner Ernesto C. Del Rosario, and five in Mati, Davao Oriental – and chattel mortgages over pieces of machinery and equipment.

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[2] The indication in the decision of the RTC Branch number as 65 is clearly erroneous. The records of the case show that the complaint was raffled to, and heard before Branch 143 presided by Judge Salvador S. Abad Santos.

[3] *Rollo*, pp. 27-30; penned by Judge Salvador S. Abad Santos.

[4] Records, p. 277.

Petitioners paid a total of ₱3 million to PDCP, which the latter applied to interest, service fees and penalty charges. This left petitioners, by PDCP's computation, with an outstanding balance on the principal of more than ₱10 million as of May 15, 1983.

By March 31, 1982, petitioners had filed a complaint against PDCP before the then Court of First Instance (CFI) of Manila for violation of the Usury Law, annulment of contract and damages. The case, docketed as Civil Case No. 82-8088, was dismissed by the CFI.

On appeal, the then Intermediate Appellate Court (IAC) set aside the CFI's dismissal of the complaint and declared void and of no effect the stipulation of interest in the loan agreement between DATICOR and PDCP.

PDCP appealed the IAC's decision to this Court where it was docketed as G.R. No. 73198.

In the interim, PDCP assigned a portion of its receivables from petitioners (the receivables) to its co-respondent Far East Bank and Trust Company (FEBTC) under a Deed of Assignment dated April 10, 1987[5] for a consideration of ₱5,435,000. The Deed of Assignment was later amended by two Supplements.[6]

FEBTC, as assignee of the receivables, and petitioners later executed a Memorandum of Agreement (MOA) dated December 8, 1988 whereby petitioners agreed to, as they did pay FEBTC[7] the amount of <u>₱6.4 million</u> as full settlement of the receivables.

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[5] *Rollo*, pp. 148-154.

[6] *Id*. at 157-161. The First and Second Supplements were dated June 21, 1988 and September 1, 1988, respectively (cited in the 5th and 6th Whereas Clauses of the Memorandum of Agreement (MOA) between petitioners and FEBTC dated December 9, 1988).

[7] The payment of ₱6.4 million was made on December 9, 1988, a day after the MOA was executed by the parties.

On September 2, 1992, this Court promulgated its Decision in G.R. No. 73198[8] affirming *in toto* the decision of the IAC. It determined that after deducting the ₱3 million earlier paid by petitioners to PDCP, their remaining balance on the principal loan was only ₱1.4 million.

Petitioners thus filed on April 25, 1994 a Complaint[9] for sum of money against PDCP and FEBTC before the RTC of Makati, mainly to recover the excess payment which they computed to be ₱5.3 million[10] – ₱4.335 million from PDCP, and ₱965,000 from FEBTC. The case, Civil Case No. 94-1610, was raffled to Branch 132 of the Makati RTC.

On May 31, 1995, Branch 132 of the Makati RTC rendered a decision[11] in Civil Case No. 94-1610 ordering PDCP to pay petitioners the sum of ₱4.035 million,[12] to bear interest at 12% per annum from April 25, 1994 until fully paid; to execute a release or cancellation of the mortgages on the five parcels of land in Mati, Davao Oriental and on the pieces of machinery and equipment and to return the corresponding titles to petitioners; and to pay the costs of the suit.

As for the complaint of petitioners against respondent FEBTC, the trial court dismissed it for lack of cause of action, ratiocinating that the MOA between petitioners and FEBTC was not subject to this Court's Decision in G.R. No. 73198, FEBTC not being a party thereto.

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[8] *Private Development Corporation of the Philippines v. Intermediate Appellate Court*, September 2, 1992, 213 SCRA 282.

[9] Records, pp. 8-15.

[10] Petitioners contended that the correct amount of this outstanding obligation was ₱1.1 million as they claimed that the Supreme Court made an error in computation; and since they had paid a total of ₱6.4 million, they were claiming a refund of ₱5.3 million. *Rollo*, p. 13.

[11] Records, pp. 16-21; penned by Judge Herminio I. Benito.

[12] According to the trial court, this was the amount by which the consideration for the assignment of the receivables exceeded the unpaid balance of ₱1.4 million.

From the trial court's decision, petitioners and respondent PDCP appealed to the Court of Appeals (CA). The appeal was docketed as CA-G.R. CV No. 50591.

On May 22, 1998, the CA rendered a decision[13] in CA-G.R. CV No. 50591, holding that petitioners' outstanding obligation, which this Court had determined in G.R. No. 73198 to be ₱1.4 million, could not be increased or decreased by any act of the creditor PDCP.

The CA held that when PDCP assigned its receivables, the amount payable to it by DATICOR was the same amount payable to assignee FEBTC, irrespective of any stipulation that PDCP and FEBTC might have provided in the Deed of Assignment, DATICOR not having been a party thereto, hence, not bound by its terms.

Citing Articles 2154[14] and 2163[15] of the Civil Code which embody the principle of *solutio indebiti*, the CA held that the party bound to refund the excess payment of ₱5 million[16] was FEBTC as it received the overpayment; and that FEBTC could recover from PDCP the amount of ₱4.035 million representing its overpayment for the assigned receivables based on the terms of the Deed of Assignment or on the general principle of equity.

Noting, however, that DATICOR claimed in its complaint only the amount of ₱965,000 from FEBTC, the CA held that

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[13] Records, pp. 23-31; penned by Justice Hilarion L. Aquino and concurred in by Justices Emeterio C. Cui (then, chairman of the CA Second Division) and Ramon U. Mabutas, Jr.

[14] Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[15] Art. 2163. It is presumed that there was a mistake in the payment if something which had never been due or had already been paid was delivered; but he from whom the return is claimed may prove that the delivery was made out of liberality or for any other just cause.

[16] This amount represents the difference between the ₱6.4 million paid by petitioners under the MOA and the outstanding obligation of ₱1.4 million.

it could not grant a relief different from or in excess of that prayed for.

Finally, the CA held that the claim of PDCP against DATICOR for the payment of ₱1.4 million had no basis, DATICOR's obligation having already been paid in full, overpaid in fact, when it paid assignee FEBTC the amount of ₱6.4 million.

Accordingly, the CA ordered PDCP to execute a release or cancellation of the mortgages it was holding over the Mati real properties and the machinery and equipment, and to return the corresponding certificates of title to petitioners. And it ordered FEBTC to pay petitioners the amount of ₱965,000 with legal interest from the date of the promulgation of its judgment.

FEBTC's motion for reconsideration of the CA Decision was denied, and so was its subsequent appeal to this Court.

On April 25, 2000, petitioners filed before the RTC of Makati a Complaint[17] against FEBTC to recover the balance of the excess payment of ₱4.335 million.[18] The case was docketed as Civil Case No. 00-540, the precursor of the present case and raffled to Branch 143 of the RTC.

In its Answer,[19] FEBTC denied responsibility, it submitting that nowhere in the dispositive portion of the CA Decision in CA-G.R. CV No. 50591 was it held liable to return the whole amount of ₱5.435 million representing the consideration for the assignment to it of the receivables, and since petitioners failed to claim the said whole amount in their original complaint in Civil Case No. 94-1610 as they were merely claiming the amount of ₱965,000 from it, they were barred from claiming it.

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[17] Records, pp. 1-7.

[18] This amount was later corrected by the trial court to be ₱4.035million on the basis of the Manifestation and Motion filed by petitioners on January 5, 2001; Order dated February 28, 2001. Records, p.173.

[19] *Id.* at 49-52.

FEBTC later filed a Third Party Complaint[20] against PDCP praying that the latter be made to pay the ₱965,000 and the interests adjudged by the CA in favor of petitioners, as well as the ₱4.335 million and interests that petitioners were claiming from it. It posited that PDCP should be held liable because it received a consideration of ₱5.435 million when it assigned the receivables.

Answering[21] the Third Party Complaint, PDCP contended that since petitioners were not seeking the recovery of the amount of ₱965,000, the same cannot be recovered via the third party complaint.

PDCP went on to contend that since the final and executory decision in CA-G.R. CV No. 50591 had held that DATICOR has no cause of action against it for the refund of any part of the excess payment, FEBTC can no longer re-litigate the same issue.

Moreover, PDCP contended that it was not privy to the MOA which explicitly excluded the receivables from the effect of the Supreme Court decision, and that the amount of ₱6.4 million paid by petitioners to FEBTC was clearly intended as consideration for the release and cancellation of the lien on the Otis property.

Replying[22] FEBTC pointed out that PDCP cannot deny that it benefited from the assignment of its rights over the receivables from petitioners. It added that the third party claim being founded on a valid and justified cause, PDCP's counterclaims lacked factual and legal basis.

Petitioners thereafter filed a Motion for Summary Judgment[23] to which FEBTC filed its opposition.[24]

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[20] *Id*. at 55-60. FEBTC's Third Party Complaint was admitted by the trial court in an Order dated July 14, 2000; *id*. at 101.

[21] *Id*. at 117-120.

[22] *Id*. at 128-129; dated September 19, 2000.

[23] *Id*. at 174-181; dated February 16, 2001.

[24] *Id*. at 183-186; Opposition to Motion for Summary Judgment dated February 26,2001.

By Order of March 5, 2001, the trial court denied the motion for summary judgment for lack of merit.[25]

On July 10, 2001, the trial court issued the assailed Decision dismissing petitioners' complaint on the ground of *res judicata* and splitting of cause of action. It recalled that petitioners had filed Civil Case No. 94-1610 to recover the alleged overpayment both from PDCP and FEBTC and to secure the cancellation and release of their mortgages on real properties, machinery and equipment; that when said case was appealed, the CA, in its Decision, ordered PDCP to release and cancel the mortgages and FEBTC to pay ₱965,000 with interest, which Decision became final and executory on November 23, 1999; and that a Notice of Satisfaction of Judgment between petitioners and FEBTC was in fact submitted on August 8, 2000, hence, the issue between them was finally settled under the doctrine of *res judicata.*

The trial court moreover noted that the MOA between petitioners and FEBTC clearly stated that the "pending litigation before the Supreme Court of the Philippines with respect to the Loan exclusive of the Receivables assigned to FEBTC shall prevail up to the extent not covered by this Agreement." That statement in the MOA, the trial court ruled, categorically made only the loan subject to this Court's Decision in G.R. No. 73198, hence, it was with the parties' full knowledge and consent that petitioners agreed to pay ₱6.4 million to FEBTC as consideration for the settlement. The parties cannot thus be allowed to welsh on their contractual obligations, the trial court concluded.

Respecting the third party claim of FEBTC, the trial court held that FEBTC's payment of the amount of ₱1,224,906.67 (₱965,000 plus interest) to petitioners was in compliance with the final judgment of the CA, hence, it could not entertain such claim because the Complaint filed by petitioners merely sought to recover from FEBTC the alleged overpayment of ₱4.335 million and attorney's fees of ₱200,000.

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[25] *Id.* at 187; dated March 5, 2001.

Petitioners' motion for reconsideration[26] of the July 10, 2001 decision of the trial court was denied by Order of September 24, 2001.

Hence, the present petition.

In their Memorandum,[27] petitioners proffer that, aside from the issue of whether their complaint is dismissible on the ground of *res judicata* and splitting of cause of action, the issues of 1) whether FEBTC can be held liable for the balance of the overpayment of ₱4.335 million plus interest which petitioners previously claimed against PDCP in Civil Case No. 94-1610, and 2) whether PDCP can interpose as defense the provision in the Deed of Assignment and the MOA that the assignment of the receivables shall not be affected by this Court's Decision in G.R. No. 73198, be considered.

Stripped of the verbiage, the only issue for this Court's consideration is the propriety of the dismissal of Civil Case No. 00-540 upon the grounds stated by the trial court. This should be so because a Rule 45 petition, like the one at bar, can raise only questions of law (and that justifies petitioners' elevation of the case from the trial court directly to this Court) which must be distinctly set forth.[28]

The petition is bereft of merit.

Section 47 of Rule 39 of the Rules of Court, on the doctrine of *res judicata,* reads:

Sec. 47. *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having

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[26] *Id*. at 259-263.

[27] *Rollo*, pp. 111-147.

[28] Section 1 of Rule 45 provides:

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*. (Emphasis supplied)

jurisdiction to pronounce the judgment or final order, may be as follows:

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(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. (Underscoring supplied)

The above-quoted provision lays down two main rules. Section 49(b) enunciates the first rule of *res judicata* known as "bar by prior judgment" or "estoppel by judgment," which states that the judgment or decree of a court of competent jurisdiction on the merits concludes the parties and their privies to the litigation and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal.[29]

Stated otherwise, "bar by former judgment" makes the judgment rendered in the first case an absolute bar to the subsequent action since that judgment is conclusive not only as to the matters offered and received to sustain it but also as to any other matter which might have been offered for that purpose and which could have been adjudged therein.[30] It is in

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[29] *Orendain v. BF Homes, Inc.*, G.R. No. 146313, October 31, 2006, 506 SCRA 348, 365; *Equitable Philippine Commercial International Bank v. Court of Appeals*, G.R. No. 143556, March 16, 2004, 425 SCRA 544, 553; *Development Bank of the Phil. v. Court of Appeals*, 409 Phil. 717, 727 (2001); *Smith Bell & Co., Inc. v. Court of Appeals*, G.R. No. 59692, October 11, 1990, 190 SCRA 362, 370 citing *Vda. De Cruzo v. Carriaga, Jr.*, G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 338-339.

[30] *Heirs of Rolando N. Abadilla v. Galarosa*, G.R. No. 149041, July 12, 2006, 494 SCRA 675, 687; *Dapar v. Biascan*, G.R. No. 141880, September 27, 2004, 439 SCRA 179, 196; *Oropeza Marketing Corporation v. Allied Banking Corp.*, 441 Phil. 551, 564 (2002).

this concept that the term *res judicata* is more commonly and generally used as a ground for a motion to dismiss in civil cases.[31]

The second rule of *res judicata* embodied in Section 47(c), Rule 39 is "conclusiveness of judgment." This rule provides that any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim or demand, purpose, or subject matter of the two suits is the same.[32] It refers to a situation where the judgment in the prior action operates as an estoppel only as to the matters actually determined or which were necessarily included therein.[33]

The case at bar satisfies the four essential requisites of "bar by prior judgment," *viz*:

(a) finality of the former judgment;

(b) the court which rendered it had jurisdiction over the subject matter and the parties;

(c) it must be a judgment on the merits; and

(d) there must be, between the first and second actions, identity of parties, subject matter and causes of action.[34]

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[31] *Vda. De Cruzo v. Carriaga, Jr.*, *supra* note 29 at 339.

[32] *Aromin v. Floresca*, G.R. No. 160994, July 27, 2006, 496 SCRA 785, 806-807; *Vda. De Cruzo v. Carriaga, Jr.*, *supra*, p. 338.

[33] *Heirs of Pael v. Court of Appeals*, 461 Phil. 104, 124 (2003); *Camara v. Court of Appeals*, 369 Phil. 858, 866 (1999); *Ybañez v. Court of Appeals*, 323 Phil. 643, 655 (1996); *Calalang v. Register of Deeds of Quezon City*, G.R. No. 76265, April 22, 1992, 208 SCRA 215, 224.

[34] *Mallion v. Alcantara*, G.R. No. 141528, October 31, 2006, 506 SCRA 336, 343-344; *Perez v. Court of Appeals*, G.R. No. 157616, July 22, 2005, 464 SCRA 89, 106-107; *Sps. Romero v. Tan*, 468 Phil. 224, 239 (2004); *Sta. Lucia Realty and Development Corporation v. Cabrigas*, 411 Phil. 369, 386 (2001).

There is no doubt that the judgment on appeal relative to Civil Case No. 94-1610 (that rendered in CA-G.R. CV No. 50591) was a final judgment. Not only did it dispose of the case on the merits; it also became executory as a consequence of the denial of FEBTC's motion for reconsideration and appeal.[35]

Neither is there room to doubt that the judgment in Civil Case No. 94-1610 was on the merits for it determined the rights and liabilities of the parties.[36] To recall, it was ruled that: (1) DATICOR overpaid by ₱5.3 million; (2) FEBTC was bound to refund the excess payment but because DATICOR's claim against FEBTC was only ₱965,000, the court could only grant so much as the relief prayed for; and (3) PDCP has no further claim against DATICOR because its obligation had already been paid in full.

Right or wrong, that judgment bars another case based upon the same cause of action.[37]

As to the requisite of identity of parties, subject matter and causes of action, it cannot be gainsaid that the first case, Civil Case No. 94-1610, was brought by petitioners to recover an alleged overpayment of ₱5.3 million –₱965,000 from FEBTC and ₱4.335 million from PDCP.

On the other hand, Civil Case No. 00-540, filed by the same petitioners, was for the recovery of ₱4.335 million which is admittedly part of the ₱5.3 million earlier sought to be recovered in Civil Case No. 94-1610. This time, the action was brought solely against FEBTC which in turn impleaded PDCP as a third party defendant.

In determining whether causes of action are identical to warrant the application of the rule of *res judicata*, the test is to ascertain whether the same evidence which is necessary to sustain the

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[35] Vide *Allied Banking Corporation v. Court of Appeals*, G.R. No. 108089, January 10, 1994, 229 SCRA 252, 259-260.

[36] *Nabus v. Court of Appeals*, G.R. No. 91670, February 7, 1991, 193 SCRA 732,740.

[37] *Perez v. Court of Appeals*, *supra* note 34 at 107.

second action would suffice to authorize a recovery in the first even in cases in which the forms or nature of the two actions are different.[38] Simply stated, if the same facts or evidence would sustain both, the two actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action.

It bears remembering that a cause of action is the delict or the wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff.[39]

In the two cases, petitioners imputed to FEBTC the same alleged wrongful act of mistakenly receiving and refusing to return an amount in excess of what was due it in violation of their right to a refund. The same facts and evidence presented in the first case, Civil Case No. 94-1610, were the very same facts and evidence that petitioners presented in Civil Case No. 00-540.

Thus, the same Deed of Assignment between PDCP and FEBTC, the first and second supplements to the Deed, the MOA between petitioners and FEBTC, and this Court's Decision in G.R. No. 73198 were submitted in Civil Case No. 00-540.

Notably, the same facts were also pleaded by the parties in support of their allegations for, and defenses against, the recovery of the ₱4.335 million. Petitioners, of course, plead the CA Decision as basis for their subsequent claim for the remainder of their overpayment. It is well established, however, that a party cannot, by varying the form of action or adopting a different method of presenting his case, or by pleading justifiable circumstances as herein petitioners are doing, escape the operation of the principle that one and the same cause of action shall not be twice litigated.[40]

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[38] *Mallion v. Alcantara*, *supra* note 32 at 345-346; *Perez v. Court of Appeals*, *supra* note 34 at 108.

[39] *Heirs of Abadilla v. Galarosa*, *supra* note 30 at 687. *Vide* RULES OF COURT, Rule 2, Sec. 2.

[40] *Phil. Commercial International Bank v. Court of Appeals*, 454 Phil. 338, 366 (2003); *Esperas v. Court of Appeals*, 395 Phil. 803, 811 (2000); *Ybañez v. Court of Appeals*, *supra* note 31 at 654; *Allied Banking Corp. v. Court of Appeals*, *supra* note 35 at 260.

In fact, authorities tend to widen rather than restrict the doctrine of *res judicata* on the ground that public as well as private interest demands the ending of suits by requiring the parties to sue once and for all in the same case all the special proceedings and remedies to which they are entitled.[41]

This Court finds well-taken then the pronouncement of the court *a quo* that to allow the re-litigation of an issue that was finally settled as between petitioners and FEBTC in the prior case is to allow the splitting of a cause of action, a ground for dismissal under Section 4 of Rule 2 of the Rules of Court reading:

> SEC. 4. *Splitting of a single cause of action; effect of.* – If two or more suits are instituted on the basis of the same cause of action, the filing of one or **a judgment upon the merits in any one is available as a ground for the dismissal of the others**. (Emphasis and underscoring supplied)

This rule proscribes a party from dividing a single or indivisible cause of action into several parts or claims and instituting two or more actions based on it.[42] Because the plaintiff cannot divide the grounds for recovery, he is mandated to set forth in his first action every ground for relief which he claims to exist and upon which he relies; he cannot be permitted to rely upon them by piecemeal in successive actions to recover for the same wrong or injury.[43]

Clearly then, the judgment in Civil Case No. 94-1610 operated as a bar to Civil Case No. 00-540, following the above-quoted Section 4, Rule 2 of the Rules of Court.

A final word. Petitioners are sternly reminded that both the rules on *res judicata* and splitting of causes of action are based on the salutary public policy against unnecessary multiplicity

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[41] *Valencia v. RTC of Quezon City, Br. 90*, G.R. No. 82112, April 3, 1990, 184 SCRA 80, 92, citing *Vda. De Cruzo v. Carriaga*, *Jr.*, *supra* note 29 at 341-342.

[42] *Perez v. Court of Appeals*, *supra* note 34 at 104.

[43] *Supra* at 114.

of suits – *interest reipublicae ut sit finis litium*.[44] Re-litigation of matters already settled by a court's final judgment merely burdens the courts and the taxpayers, creates uneasiness and confusion, and wastes valuable time and energy that could be devoted to worthier cases.[45]

WHEREFORE, the Petition is *DENIED*. The assailed Decision of the RTC, Branch 143, Makati dismissing petitioners' complaint in Civil Case No. 00-540 is *AFFIRMED.*

Costs against petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 165855. October 31, 2007]

HARISH RAMNANI, CHANDRU P. PESSUMAL, MAUREEN RAMNANI, and JOSE MANACOP, *petitioners, vs.* **QBE INSURANCE PHILIPPINES, INC.,** *respondent.*

SYLLABUS

REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; DISMISSAL OF THE PETITION FOR MOOTNESS, WARRANTED.— The present petition was filed because the writ of execution pending appeal was sought to be enforced

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[44] *Camara v. Court of Appeals*, *supra* note 33 at 865; *Nabus v. Court of Appeals, supra* note 36 at 738; *Aguila, et al. v. J.M. Tuason & Co., Inc., et al.*, 130 Phil. 715, 720 (1968).

[45] *Ibid.*

against QBE. The writ, in turn, was issued only because the RTC ordered the execution of its decision pending appeal. It may be so that the issue of whether petitioners were entitled to execution pending appeal was not directly raised in the petition, yet it cannot be denied that the RTC rulings, assailed by QBE and set aside by the Court of Appeals, were issued as a sole consequence of petitioner's motion for execution pending appeal. Since it has been ruled with finality that petitioners had no right to an execution pending appeal and that the RTC issuances directly infusing life to that right have been irretrievably nullified, it follows that the RTC rulings challenged in the present petition have been rendered *functus officio*. Given the situation at hand, any extraneous pronouncement by the Court on the merits of the case would be *dicta.* Hence, there is no genuine need to delve into the other issues raised in the petition. We reiterate that the cause for the dismissal of this petition is mootness, as the RTC rulings sought to be reinstated were rendered *functus officio* by the 25 August 2005 Decision of this Court declaring that petitioners were not entitled to execution pending appeal. Still, the above-cited passages of the decisions in *QBE v. Rabello* and *QBE v. Laviña* serve as an appropriate commentary, at least insofar as the 27 May 2002 Order is concerned.

APPEARANCES OF COUNSEL

Arturo S. Santos for petitioners.

Quasha Ancheta Peña & Nolasco Law Offices for respondent.

D E C I S I O N

TINGA, *J.*:

Lavine Loungewear Mfg. Inc. (Lavine) is a corporation engaged in the manufacture and export of loungewear. It procured six (6) fire insurance contracts from different insurers in order to insure its buildings and supplies. The insurers were Philippine Fire and Marine Insurance Corporation (PhilFire), Rizal Surety and Insurance Company (Rizal Surety), Tabacalera Insurance Company (Tabacalera), First Lepanto-Taisho Insurance

Corporation (First Lepanto), Equitable Insurance Corporation (Equitable Insurance), and Reliance Insurance Corporation (Reliance Insurance).

On 1 August 1998, a fire in Pasig City destroyed in whole or in part two of Lavine's buildings and the supplies stored therein. Lavine filed claims with the various insurers. It was later determined by the Office of the Insurance Commission that the total amount payable to Lavine was ₱112,245,324.34. A controversy arose as to how the claims were to be paid out. It appears that all of the insurance policies, with the exception of the First Lepanto policy, had earlier been endorsed to Equitable PCI Bank on account of loans procured by Lavine through its authorized representative, petitioner Harish Ramnani (Harish). The insurance companies were thus willing to release the payments on the claims to Equitable Bank, a result which Harish encouraged. However, on 17 March 2000, the board of directors of Lavine appointed Chandru Ramnani (Chandru) as president of the corporation and designated him, together with Atty. Mario Aguinaldo, as Lavine's representatives and agents to negotiate with the insurance companies. Chandru demanded that the insurance companies course their payments to Lavine, which would thereafter pay Equitable Bank.

When the insurance companies insisted on paying Equitable Bank directly, Lavine filed a Complaint dated 22 January 2001[1] against them and the bank before the Regional Trial Court (RTC) of Pasig City, seeking that the companies be restrained from paying the proceeds of the insurance policies directly to Equitable Bank and that they be directed to pay such proceeds directly to Lavine instead.

The case was docketed as Civil Case No. 68287 and raffled to Branch 71 presided by Judge Celso D. Laviña. Harish and the other present petitioners, namely: Jose F. Manacop, Chandru P. Pessumal, Maureen M. Ramnani and Salvador Cortez, moved to intervene in the case. They alleged they were Lavine's incumbent directors, that Harish remained the authorized

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[1] *Rollo,* pp. 105-110.

representative of Lavine, and that Harish had not been validly elected president of Lavine and bore no authority to institute the complaint. In addition, they alleged that Lavine's obligations to Equitable Bank had totaled around ₱71 million and that Equitable Insurance and Reliable Insurance had already paid the bank more than said amount out of the insurance proceeds. Thus, petitioners prayed that the remaining insurance proceeds be delivered to them by the insurance companies.

After trial, the RTC rendered a Decision in favor of the intervenors on 2 April 2002,[2] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. DISMISSING the Complaint dated January 22, 2001, for lack of merit, with costs against Chandru C. Ramnani.

2. ORDERING the defendant Bank to refund to plaintiff through the Intervenors the amount of ₱63,819,936.05 representing the overpayment as actual or compensatory damages, with legal rate of interest at six (6%) per cent per annum from the date of this decision until full payment.

3. ORDERING:

a. Defendant Philippine Fire and Marine Insurance Corporation to pay plaintiff through Intervenors the total amount of ₱15,111,670.48, representing unpaid insurance proceeds as actual or compensatory damages, with twenty-nine (29%) per cent interest per annum from October 1, 1998 until full payment.

b. Defendant Rizal Surety and Insurance Company to pay plaintiff through Intervenors the amount of ₱17,100,000.00[,] representing unpaid insurance proceeds as actual or compensatory damages, with twenty-nine (29%) per cent interest per annum from October 1, 1998 until full payment.

c. Defendant First Lepanto-Taisho Insurance Corporation to pay plaintiff through Intervenors the total amount of ₱18,250,000.00[,] representing unpaid insurance proceeds as actual or compensatory damages, with twenty-nine (29%) per cent interest per annum from October 1, 1998 until full payment.

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[2] *Id.* at 141-172.

d. Defendant Tabacalera Insurance Company to pay plaintiff through Intervenors the amount of ₱25,690,000.00[,] representing unpaid insurance proceeds as actual or compensatory damages, with twenty-nine (29%) per cent interest per annum from October 1, 1998 until full payment.

4. ORDERING all defendants to pay, jointly and severally, plaintiff through Intervenors the amount equivalent to ten (10%) per cent of the actual damages due and demandable as and by way of attorney's fees.

5. CANCELLING the loan mortgage annotations and RETURNING to plaintiff through Intervenors TCT No. 23906, CCT Nos. PT-17871, PT-17872 and PT-17873.

6. Costs of suit.

Counterclaims filed by plaintiff against intervenors and cross-claims filed by all defendants against intervenors and counterclaims are hereby DISMISSED for lack of merit.

SO ORDERED.[3]

On 3 April 2002, the day after the decision was rendered, petitioners filed a motion for execution pending appeal, alleging that Tabacalera was on the brink of insolvency; that Lavine was in imminent danger of extinction; and that any appeal from the trial court's judgment would be merely dilatory. The motion was granted by the RTC on 17 May 2002, and petitioners posted a surety bond in the amount of ₱40 million. On 20 May 2002, the RTC issued a Writ of Execution Pending Appeal, directing Branch Sheriff Cresenciano K. Rabello, Jr. (Sheriff Rabello) to cause the execution of the 2 April 2002 decision.[4]

On 24 May 2002, Sheriff Rabello filed an Urgent *Ex-Parte* Manifestation/Motion[5] with the RTC wherein he stated that the copy of the writ of execution had not yet been served against

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[3] *Id*. at 170-172.

[4] *Id*. at 173-175.

[5] *Id*. at 176. The Motion likewise alleged similar circumstances and sought a similar prayer with respect to Tabacalera Insurance, which allegedly was not served a writ of execution because it was under receivership with the Insurance Commission.

Rizal Surety because that company had "recently changed its corporate name to QBE Insurance (Phils.) Inc." Sheriff Rabello likewise recounted that despite the failure to serve the writ of execution on Rizal Surety, the bank deposits of said company were garnished; hence, he sought an order from the court directing him to lift and/or cancel the notice of garnishment served to all banks where Rizal Surety maintained bank deposits.

On 27 May 2002, the RTC favorably acted upon the manifestation/motion filed by Sheriff Rabello per its Order of even date. In the order, the trial court stated, among other things, that "[c]onsidering that defendant [Rizal Surety] has recently changed its name and transferred its operation to Q.B.E. Insurance Philippines, Inc., the writ [of execution] may be implemented against said defendant Rizal Surety under its new name Q.B.E. Insurance Philippines, Inc."[6]

On 24 March 2003,[7] Sheriff Rabello served a Notice of Garnishment, citing as basis the earlier writ of execution, on the Ayala Avenue Branch of ANZ Bank, levying the bank deposits therein of "Rizal Surety and Ins. Co., and/or QBE Ins. (Phils), Inc." In response, respondent QBE Insurance Philippines, Inc. (QBE) filed with the RTC an Urgent Motion to Lift 27 May 2002 Order and 24 March 2003 Notice of Garnishment.[8] It argued that contrary to the "deliberate lie put forth by the branch sheriff"[9] before the RTC, QBE is a corporation distinct and separate from Rizal Surety. QBE also stated that it was not a party to Civil Case No. 68287 and thus could not be prejudiced by any decision or order in the case. Petitioners filed an Opposition[10] to QBE's motion. The RTC duly heard the incident and on 15 May 2003, it issued an Order denying QBE's urgent motion for lack of merit.[11]

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[6] *Id.* at 178.

[7] *Id.* at 188-189.

[8] *Id.* at 179-181.

[9] *Id.* at 180.

[10] *Id.* at 217-221.

[11] *Id.* at 477-484.

QBE filed a petition for *certiorari* with the Court of Appeals challenging the RTC orders directed against it, imputing grave abuse of discretion to Judge Laviña for ordering the execution pending appeal of the decision in Civil Case No. 68287 against QBE even though the latter was not a party to the case, and for unduly considering QBE and Rizal Surety as effectively one entity. The petition was granted by the Court of Appeals in a Decision[12] dated 31 May 2004, which set aside the assailed RTC orders dated 27 May 2002 and 15 May 2003.[13] In essence, the Court of Appeals ruled that the RTC all too readily accepted the unverified, capricious and unsubstantiated claim of Sheriff Rabello that Rizal Surety had merely changed its name to QBE and that the resulting order directing the execution of the judgment against QBE, which is not a party to the instant case, was null and void for being violative of due process. The Court of Appeals concluded that based on the documentary evidence presented, particularly the Business Run-Off Agreement between QBE and Rizal Surety, the two entities are distinct from each other and that QBE was merely a management agent of Rizal Surety.

Hence, the present petition, which posits that the Court of Appeals erred in not holding that QBE and Rizal Surety are one and the same entity and in reversing the RTC order directing execution pending appeal of the decision against QBE. Petitioners pray for the reinstatement of the RTC orders to pave the way for the implementation of the writ of execution pending appeal

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[12] *Id*. at 55-70. Penned by Associate Justice A. Reyes, Jr. of the Former Fifth Division, concurred in by Associate Justices E. Labitoria and R. Maambong.

[13] The records bear some confusion on this point. While the Court of Appeals likewise annulled an RTC Order dated 19 May 2003, described in the Decision as one which "upheld the 24 March 2003 Notice of Garnishment of Branch Sheriff Cresencio Rabello, Jr." See *rollo*, p. 56. Petitioners do not advert to any such ruling, and no copy of it appears in the *rollo*. Further, the 15 May 2003 RTC Order already denied QBE's Urgent Motion to lift the 24 March 2003 Notice of Garnishment, and any subsequent RTC ruling reaffirming said Notice of Garnishment against QBE's claims would be superfluous. In any event, these matters ultimately bear no impact on our present decision.

against QBE, as well as for the garnishment of the latter's bank deposits pursuant to the writ of execution.

Apart from contesting the arguments of petitioners, in its Comment,[14] QBE chides petitioners for neglecting to mention that on 29 May 2003, or more than a year before the filing of the present petition, the Court of Appeals promulgated a Decision[15] in CA-G.R. SP. No. 70292 which set aside the 2 April 2002 Decision in Civil Case No. 68287, the subsequent RTC Order dated 17 May 2002 allowing execution pending appeal, and the Writ of Execution Pending Appeal dated 20 May 2002. QBE pointed out that with the setting aside of the decision and the nullification of the orders allowing execution pending appeal, the subsequent RTC orders subject of the present petition had become *functus officio*. On that point, petitioners replied that they had timely appealed from the Court of Appeals decision to this Court, with the appeal docketed as G.R. No. 162814, and that until a final decision is rendered therein the decision and orders of the RTC remain.

On 25 August 2005, the Court promulgated its Decision[16] in G.R. No. 162814, affirming the Court of Appeals in CA-G.R. SP. No. 70292 "insofar as it declared null and void the Special Order dated May 17, 2002 [granting execution pending appeal] and the Writ of Execution dated May 20, 2002" of the RTC. On 7 September 2005, QBE filed a Manifestation and Motion[17] citing the said decision of this Court as ground for the dismissal of the present petition. It argued that the orders challenged in the petition were issued by the RTC pursuant to the 17 May

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[14] *Id.* at 526-549.

[15] *Id.* at 552-597; Penned by Associate Justice Remedios Salazar-Fernando, concurred in by Associate Justices Conrado Vasquez, Jr. and Danilo Pine.

[16] Entitled *Manacop v. Equitable PCIBank,* G.R. Nos. 162814-17, 25 August 2005, 468 SCRA 256. Penned by Associate Justice Consuelo Ynares-Santiago, and concurred in by then Chief Justice Hilario G. Davide Jr., Associate Justices Leonardo A. Quisumbing, Antonio T. Carpio and Adolfo S. Azcuna.

[17] *Rollo*, pp. 618-624.

2002 Order granting execution pending appeal and that the nullification of such "mother order" also rendered the challenged orders moot or null and void. Petitioners filed a Counter-Manifestation[18] dated 23 September 2005 pointing out that the 25 August 2005 Decision of the Court was not yet final as they had timely filed a motion for reconsideration.

We agree with QBE that the 25 August 2005 Decision of this Court, affirming the nullification of the 17 May 2002 Order and the 20 May 2002 Writ of Execution, has mooted the present petition as a consequence.

The 25 August 2005 Decision of this Court, which has since attained finality,[19] unequivocally ruled that petitioners were not entitled to execution pending appeal. The Court extensively discussed why that was so, thus:

> The general rule is that only judgments which have become final and executory may be executed. However, discretionary execution of appealed judgments may be allowed under Section 2 (a) of Rule 39 of the Revised Rules of Civil Procedure upon concurrence of the following requisites: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and (c) the good reason must be stated in a special order. The yardstick remains the presence or the absence of good reasons consisting of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later. Since the execution of a judgment pending appeal is an exception to the general rule, the existence of good reasons is essential.
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> In the case at bar, petitioners insist that execution pending appeal is justified because respondent insurance companies admitted their liabilities under the insurance contracts and thus have no reason to withhold payment.
>
> We are not persuaded. The fact that the insurance companies admit their liabilities is not a compelling or superior circumstance that would

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[18] *Id.* at 626-627.

[19] The motions for reconsideration thereof having been denied with finality on 5 December 2005.

warrant execution pending appeal. On the contrary, admission of their liabilities and willingness to deliver the proceeds to the proper party militate against execution pending appeal since there is little or no danger that the judgment will become illusory.

There is likewise no merit in petitioners' contention that the appeals are merely dilatory because, while the insurance companies admitted their liabilities, the matter of how much is owing from each of them and who is entitled to the same remain unsettled. It should be noted that respondent insurance companies are questioning the amounts awarded by the trial court for being over and above the amount ascertained by the Office of the Insurance Commission. There are also three parties claiming the insurance proceeds, namely: petitioners, Equitable Bank, and Lavine as represented by the group of Chandru.

Besides, that the appeal is merely dilatory is not a good reason for granting execution pending appeal. As held in *BF Corporation v. Edsa Shangri-la Hotel*:

> . . . it is not for the trial judge to determine the merit of a decision he rendered as this is the role of the appellate court. Hence, it is not within competence of the trial court, in resolving a motion for execution pending appeal, to rule that the appeal is patently dilatory and rely on the same as basis for finding good reasons to grant the motion. Only an appellate court can appreciate the dilatory intent of an appeal as an additional good reason in upholding an order for execution pending appeal. . .

Lastly, petitioners assert that Lavine's financial distress is sufficient reason to order execution pending appeal. Citing *Borja v. Court of Appeals*, they claim that execution pending appeal may be granted if the prevailing party is already of advanced age and in danger of extinction.

Borja is not applicable to the case at bar because its factual milieu is different. In *Borja*, the prevailing party was a natural person who, at 76 years of age, "may no longer enjoy the fruit of the judgment before he finally passes away." Lavine, on the other hand, is a juridical entity whose existence cannot be likened to a natural person. Its precarious financial condition is not by itself a compelling circumstance warranting immediate execution and does not outweigh the long standing general policy of enforcing only final and executory judgments.[20]

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[20] *Manacop v. Equitable PCIBank*, *supra* at 275-277.

The present petition was filed because the writ of execution pending appeal was sought to be enforced against QBE. The writ, in turn, was issued only because the RTC ordered the execution of its decision pending appeal. It may be so that the issue of whether petitioners were entitled to execution pending appeal was not directly raised in the petition, yet it cannot be denied that the RTC rulings, assailed by QBE and set aside by the Court of Appeals, were issued as a sole consequence of petitioner's motion for execution pending appeal. Since it has been ruled with finality that petitioners had no right to an execution pending appeal and that the RTC issuances directly infusing life to that right have been irretrievably nullified, it follows that the RTC rulings challenged in the present petition have been rendered *functus officio*.

Given the situation at hand, any extraneous pronouncement by the Court on the merits of the case would be *dicta.* Hence, there is no genuine need to delve into the other issues raised in the petition. However, it should be pointed out that in two administrative cases, the Court has respectively found Sheriff Rabella and Judge Laviña administratively liable on account of their actions which led to the implementation of the writ of execution against QBE. Said actions, in particular, concerned the sheriff's manifestation and motion and of the judge's corresponding 27 May 2002 Order acting on said manifestation and motion.

In *QBE Insurance (Phils.), Inc. v. Sheriff Rabello, Jr.,*[21] the Court observed of the sheriff:

In the instant case, respondent asserted that the manifestation he filed before the trial court stating that Rizal Surety and Insurance Co. had recently changed its corporate name to QBE Insurance (Phils.) was based on what he saw in the office of Rizal Surety and information relayed to him by its employees. Respondent ought to be aware that execution could only be issued against a party and not against one

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[21] A.M. No. P-04-1884, 9 December 2004, 445 SCRA 554. Penned by the author of this present Resolution, concurred in by then Associate Justice (now Chief Justice) Reynato S. Puno, and Associate Justices Alicia Austria-Martinez, Romeo J. Callejo, Sr. and Minita V. Chico-Nazario.

who was not accorded his day in court and it was his bounden duty to see to it that the writ of execution would be implemented only upon properties unquestionably belonging to the judgment debtor. Property belonging to third persons cannot thus be levied upon.

It behooved respondent to confirm and establish the veracity of the information he received by making his own verification with the SEC. Instead of doing so, he unthinkingly accepted the representations of the employees of Rizal Surety and hastily filed the *Urgent Ex-Parte Manifestation and Motion* dated 24 May 2002, informing the trial court, among others, that Rizal Surety had changed its corporate name to QBE Ins. (Phils.), Inc. This prompted the trial court to issue its 27 May 2002 Order, directing the implementation of the Writ of Execution against the properties of QBE. While respondent's acts may not have been tainted with bad faith or malice, he nevertheless failed to discharge his duties with prudence, caution and attention which careful men usually exercise in the management of their affairs.[22]

In the recently promulgated case of *QBE Insurance v. Judge Laviña,*[23] the Court stated:

There is no question that the writ of execution was issued against the judgment debtors (Rizal Surety, among other insurance companies) in Civil Case No. Q-68287, before the RTC of Pasig City. There was no mention of the name of QBE Insurance. However, Sheriff Rabello included the properties allegedly owned by QBE Insurance based on Judge Laviña's belief that Rizal Surety and the former are one and the same. xxx Being the owner of the property garnished, QBE Insurance possesses property rights entitled to be protected by law. Their property rights cannot be arbitrarily interfered with without running afoul of the due process rule enshrined in the Bill of Rights. In a real sense, it is a deprivation of property without due process of law. For failure to observe due process, Judge Laviña acted without jurisdiction.

Hence, QBE Insurance remains a third person to the judgment in Civil Case No. 68287 and cannot be bound by it. Nor can the writ of

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[22] *Id*. at 562.

[23] A.M. No. RTJ-06-1971, promulgated in 17 October 2007. Penned by Associate Justice Minita V. Chico-Nazario for the Court *en banc*.

execution issued pursuant to said judgment be enforced against QBE Insurance since it was not afforded its day in court.

We agree with the Investigating Justice that Judge Laviña is guilty of gross ignorance of the law when he issued the 27 May 2002 Order allowing the implementation of the writ of execution pending appeal against Rizal Surety under its new name QBE Insurance. In disregarding the rules and settled jurisprudence, Judge Laviña showed gross ignorance of the law, amounting to bad faith.

x x x Sections 36 and 37 of Rule 39 of the 1997 Rules of Civil Procedure already provide for the proper procedure if the judgment is unsatisfied against the judgment obligor, or if another person or other juridical entity has property of such judgment obligor. Whichever rule is applied, there is a requirement that the judgment obligor, or the person who has property of such judgment obligor, to appear before the court and be examined concerning the same. The failure of respondent to observe the procedure in Sections 36 and 37 of Rule 39 contributed to the finding of Gross Ignorance of the Law or Knowingly Rendering an Unjust Interlocutory Order.

We reiterate that the cause for the dismissal of this petition is mootness, as the RTC rulings sought to be reinstated were rendered *functus officio* by the 25 August 2005 Decision of this Court declaring that petitioners were not entitled to execution pending appeal. Still, the above-cited passages of the decisions in *QBE v. Rabello* and *QBE v. Laviña* serve as an appropriate commentary, at least insofar as the 27 May 2002 Order is concerned.

WHEREFORE, the petition is *DENIED*. Costs against petitioners.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[A.M. No. P-05-1955. November 12, 2007]
(Formerly OCA I.P.I. No. 04-1883-P)

CARMELITA LAO LEE, *complainant, vs.* **LOUIE C. DELA CRUZ, Sheriff IV, RTC-Branch 75, Valenzuela City,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; CHARGES OF SIMPLE MISCONDUCT, INEFFICIENCY AND INCOMPETENCE; RESPONDENT FOUND GUILTY THEREOF IN CASE AT BAR; IMPOSABLE PENALTY.— While the Court shares the findings of the investigating judge, it does not subscribe to the recommended penalties. Under the *Uniform Rules on Administrative Cases in the Civil Service*, the imposable penalty for simple misconduct is one (1) month and one (1) day to six (6) months whereas that for inefficiency and incompetence in the performance of official duties is suspension ranging from six (6) months and one (1) day to one (1) year for the first offense. Section 17, Rule XIV of the same Rules provides that if respondent is found guilty of two or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or count and the rest may be considered as aggravating circumstances. In the case at bar, the offense of simple misconduct becomes an aggravating circumstance. It follows that respondent should be meted out the maximum of the penalty for inefficiency and incompetence in the performance of official duties, which is ten (10) months and (1) day to one (1) year.

APPEARANCES OF COUNSEL

The Law Firm of Pinzon Garcia Calubaquib Sanchez-Javier & Associates for complainant.

Irineo Guardiano for respondent.

RESOLUTION

TINGA, *J.*:

This resolves the administrative matter concerning respondent Louie C. Dela Cruz, Sheriff IV of the Regional Trial Court (RTC) of Valenzuela City, Branch 75, which stemmed from an Affidavit-Complaint filed on 26 February 2004 by Carmelita Lao Lee with the Office of the Court Administrator. Respondent was charged with obstruction of justice, inefficiency and incompetence in the performance of his duty and conduct unbecoming a government official relative to Civil Case No. 267-V-02 entitled *Carmelita Lao Lee v. Romy and Lina Lamsen, et al.*

As both parties opted that an investigation be conducted instead of having the case submitted for decision based on the pleadings, the records of the case were transmitted to Hon. Maria Nena J. Santos, Executive Judge, RTC of Valenzuela City, for investigation.

In her Investigation Report and Recommendation,[1] the investigating judge narrated the following facts:

> Herein complainant is the plaintiff-appellee in Civil Case No. 267-V-02 for Ejectment, entitled "*Carmelita Lao Lee vs. Sps. Romy and Lina Lamsen* and all persons claiming rights under them." The Court a quo, Metropolitan Trial Court, Br. 82, Valenzuela City, decided the case in favor of plaintiff-appellee. On appeal with the Regional Trial Court, Branch 75, the decision was affirmed by Acting Presiding Judge Dionisio Sison on 10 April 2003, who subsequently issued on 3 July 2003 a Writ of Execution pursuant to Sec. 21, Rule 70 of Rules of Court. In the meantime, incidents relative to the issued writ transpired but were disposed of in the Order dated 15 January 2004, where Respondent Sheriff was directed to immediately execute the Writ of Execution pending appeal.
>
> A Notice to Vacate dated 27 January 2004 was issued and served by the respondent on defendant-appellants on the same day. It was duly received by Lina Lamsen, one of the defendants-appellants. The

[1] Dated 9 July 2006.

Notice gave the defendants fifteen (15) days from receipt, within which to vacate the subject premises.

Around 9:00 to 10:00 o'clock in the morning of 12 February 2004, which is the 16th day from the service of the notice to vacate, respondent went to the Barangay Hall of Dalandanan, Valenzuela City to seek assistance in the implementation of the Writ of Execution on the losing defendants-appellants Spouses Romy and Lina Lamsen at No. 7-A Marcelo St., Dalandanan, Valenzuela City. Barangay Kagawad Benito Encarnacion, Jr. and Barangay Tanod Ernesto Galang accompanied respondent to defendant-appellants' premises. The place was padlocked but the respondent destroyed it using a *'barreta de cabra'* so the complainant, respondent, Encarnacion and Galang were able to enter the house. The occupants of the house were not around although their things were there. Respondent then proceeded to inventory the items but did not carry them outside the house. The arrival of defendant-appellant Romy Lamsen at the subject premises interrupted the inventory. The implementation of the writ was stopped and respondent padlocked the house again then, along with Encarnacion and Galang went back to the Barangay Hall of Dalandanan to enter in the Barangay Blotter what transpired.

The complaint and respondent agreed to meet in Br. 75 the following day, 13 February 2004. Complainant arrived between 10:00 to 11:00 o'clock in the morning and filed an "*Ex-Party* (sic) Motion to Break Open" dated 13 February 2004, but was not acted upon by the acting Presiding Judge as the premises was already opened the day before. Like the previous day, respondent went to the Barangay Hall of Dalandanan, Valenzuela City to seek for *barangay* assistance. Three (3) *barangay tanods* accompanied the respondent and proceeded to the premises of the defendants, arriving there [at] more or less 1:00 o'clock P.M. Thereafter, around 2:00 o'clock, defendant Mr. Lamsen arrived with the Temporary Restraining Order issued by the Court of Appeals and the implementation of the writ was stopped. On 20 February 2004, respondent submitted a "Sheriff's Partial Return" with even date.

Essentially, the charges against respondent were in connection with the following incidents, namely (a) when respondent served a Notice to Vacate dated 27 January 2004 on spouses Lamsen to implement the Writ of Execution dated 3 July 2003; (b) when allegedly respondent demanded from complainant ₱8,000.00

for execution expenses, with the advertence that if the amount is not given expenses would be deducted from the rentals deposited with the court; (c) when respondent discontinued the service of the orders of the court after defendant had threatened him with a suit, a development that resulted in delay during which spouses Lamsen succeeded in securing a Temporary Restraining Order (TRO) from the Court of Appeals that prevented the execution of the writ altogether, and; (d) when respondent showed bias in favor of the defendants who were also *"Pangalatoks"* like him.

Respondent denied having deliberately delayed the execution of the writ, and claimed that it was complainant's suggestion to give defendants fifteen (15)-day grace period to allow her (complainant) time to prepare the money needed for the execution. Respondent explained that the execution of the writ on 12 February 2004 was not fully carried out due to the failure of the complainant to provide him with men to assist in carrying the articles which he had already inventoried. Further, he continued the inventory of the articles inside the premises and stopped the writ's implementation only when Lamsen showed him a copy of the TRO from the Court of Appeals. Respondent disclaimed being biased in the execution of the writ. He also denied demanding from complainant the amount of ₱8,000.00 covering the expenses for the implementation of the writ. The said amount, he explained, was mentioned only as an "example" and complainant was made to understand that whatever given amount would be liquidated and supported by proper receipts later on.

The investigating judge further found that:

1. x x x The Notice to Vacate which respondent served on spouses Lamsen gave the latter fifteen (15) days to vacate the subject premises, [which is beyond the] (3)[-day] grace period mandated by the Rules. However, whether it was actually intended by the respondent to favor the defendant-spouses was not proven;

2. The manner with which respondent implemented the writ of execution on February 12 and 13, 2004, displayed his

incompetence and inefficiency. **Firstly**, on both occasions respondent started out very late in the day – between the hours of 11:00 and 12:00 noon on February 12 and around 1:00 P.M. on February 13. **Second,** respondent was ill-equipped to undertake the task on hand. He had no plan how to carry out the execution; neither had he made arrangements to accomplish his task nor had he coordinated with the complainant. **Third,** there was no need to proceed with the inventory when the defendant-Mr. Lamsen showed up at the house on February 12. The execution could have been carried out in the presence of Mr. Lamsen. Respondent let the opportune time pass, instead continued with the inventory then stopped when Mr. Lamsen threatened to file charges for the alleged loss of some of his things. **Fourth,** it was a blatant show of ignorance when respondent required the complainant to secure from the Court a Notice to Break Open before he would proceed with the execution of February 13, 2004. It was unnecessary since defendant-wife duly received the Notice to Vacate. Besides, the premises were already forcibly opened the day before or on February 12, 2004 but ironically, he did not then [ask] for a Break-Open Order. Respondent could have fully implemented the writ on February 12, 2004, if he had the foresight to prepare what and who would be needed, and the competence to command control of the situation;

3. The charge of respondent's collusion and fraternizing with the defendant-spouses who are co-"*pangalatoks*," has not gone above the level of bare allegations as these were not duly proven. However, complainant's doubt on respondent's independence is not without basis x x x [because, in proceeding with the inventory of the things of spouses Lamsen instead of taking out the same, it appeared as if it was done to placate the Mr. Lamsen];

4. x x x On the charge of respondent demanding money from the complainant, undoubtedly, there was discussion about money, but no money changed hands from complainant to respondent. The problem was respondent dispensed with proper procedure. Respondent Sheriff simply demanded money from complainant without first securing Court approval which is in clear violation of the rule. Neither did respondent advise the complainant that the Sheriff's expenses shall be

> deposited with the Clerk of Court & *Ex-officio* Sheriff upon approval by the Court. x x x However, since no testimony was given that respondent persisted in allegedly demanding for money, this circumstance somehow disproved that his demand for money was for an illegitimate purpose.

With the above findings, the investigating judge concluded that respondent is guilty of inefficiency, incompetence and simple misconduct relative to Civil Case No. 267-V-02. She recommended that respondent be fined ₱2,000 and admonished; that PHILJA be directed to require the inclusion of an "On-the-job Training Workshop" during sheriffs' conventions; and that newly-appointed sheriffs be required to undergo an orientation course before assumption of duty.

While the Court shares the findings of the investigating judge, it does not subscribe to the recommended penalties. Under the *Uniform Rules on Administrative Cases in the Civil Service*,[2] the imposable penalty for simple misconduct is one (1) month and one (1) day to six (6) months whereas that for inefficiency and incompetence in the performance of official duties is suspension ranging from six (6) months and one (1) day to one (1) year for the first offense.[3] Section 17, Rule XIV of the same Rules provides that if respondent is found guilty of two or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or count and the rest may be considered as aggravating circumstances. In the case at bar, the offense of simple misconduct becomes an aggravating circumstance. It follows that respondent should be meted out the maximum of the penalty for inefficiency and incompetence in the performance of official duties, which is ten (10) months and (1) day to one (1) year.

WHEREFORE, the Court finds Louie C. Dela Cruz, Sheriff IV of the Regional Trial Court of Valenzuela City, Branch 75, *GUILTY* of *INEFFICIENCY, INCOMPETENCE* and *SIMPLE MISCONDUCT*, and orders that he be *SUSPENDED*

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[2] Resolution No. 991936, signed 31 August 1999.

[3] *Supra* note 2, Rule IV, Section 52. A., par.16.

from service for ten (10) months and one (1) day without pay and other fringe benefits including leave credits, with a stern warning that a repetition of the same offense or offenses shall be dealt with more severely.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. Nos. 167829-30. November 13, 2007]

FILIPINAS (PRE-FAB BLDG.) SYSTEMS, INC., *petitioner, vs.* **MRT DEVELOPMENT CORPORATION; COURT OF APPEALS; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION; and VICTOR P. LAZATIN, ELISEO I. EVANGELISTA, and JACINTO M. BUTALID, in their capacities as Chairman and members of the Arbitral Tribunal of the Construction Industry Arbitration Commission,** *respondents.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT FOR A PIECE OF WORK; CONTRACT MODIFICATION IS NOT A PRE-CONDITION FOR THE EXECUTION OF THE CHANGE ORDERS.—** We do not agree with the CA. A plain reading of par. (c) of Art. 20.07 would show that change orders can be executed immediately and that contract modification is not a pre-condition for it. Nowhere in the above provisions is it stated that the modification of the contract is a requisite for the execution of the change orders. It only states that in the

event that such changes cause an increase or decrease in the amount due under the contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. This means that the contract could be made to conform to the agreement that has already been agreed upon.

2. **ID.; ID.; ID.; WRITTEN CONSENT OF THE OWNER IS REQUIRED BEFORE RECOVERY FOR ADDITIONAL COSTS MAY BE ALLOWED; DOCTRINE OF ESTOPPEL, APPLIED TO CASE AT BAR.—** In *Powton Conglomerate, Inc.*, we enunciated: The present Civil Code added substantive requisites before recovery of the contractor may be validly had. It will be noted that while under the precursor provision, recovery for additional costs may be allowed if consent to make such additions can be proved, the present provision clearly requires that changes should be authorized, such authorization by the proprietor in writing. The evident purpose of the amendment is to prevent litigation for additional costs incurred by reason of additions or changes in the original plan. Undoubtedly, it was adopted to serve as a safeguard or a substantive condition precedent to recovery. We agree that indeed a written consent is needed. In the instant case, the written consent is embodied in the General Conditions of the Bid Documents issued by MRTDC and found by the CIAC as one of the documents comprising the contract between MRTDC and FSI. Arts. 20.07 and 21.04 authorized the Project Manager to issue change orders and time extensions, respectively. And as discussed above, such authority extends to the modification of the contract between the parties. Moreover, an examination of the records will show that PIJV issued several Certificates of Payment for progress billings covering Change Order Nos. 1 through 15. One of these is Certificate of Payment No. JV4390 which was approved by David Sampson, endorsed for payment by Melvin Satok and Augustus Salgado and approved for payment by an Owner's Representative. Clearly, MRTDC cannot now question the authority of the Project Manager to bind MRTDC, as it is now estopped from so doing having paid the change orders ordered by David Sampson thereby ratifying the same. Verily, David Sampson was authorized to order changes in the Contract Work as well as binding MRTDC to it.

3. **ID.; ID.; ID.; PETITIONER IS ENTITLED TO EARLY ACCOMPLISHMENT BONUS BASED ON TECHNICAL TIME EXTENSION.—** Furthermore, although the construction of the Project was already completed, the winding up of the contractual obligations relative to the Project was not yet finished. The bonus scheme employed by MRTDC could only be implemented upon the completion of the Project after computing for time extensions. Although David Sampson may have been already employed as a consultant by MRTDC at the time that he approved the 200-day technical time extension, it must be stressed that his engagement as the Project Manager did not end with the completion of the construction works. David Sampson signed Certificate of Payment No. MRT-1299 dated July 22, 1999 as the Area Construction Manager or Project Manager along with the signatures of: Gaudioso Del Rosario, AVP Operations; Augustus V. Salgado, President; and an Owner's Representative. Patently, David Sampson was still engaged as the Project Manager at the time that he approved the 200-day technical time extension. Hence, FSI is entitled to the 200-day Technical Time Extension and, consequently, to the 94-day early accomplishment bonus awarded by the CIAC.

4. **ID.; ID.; ID.; ID.; AUTOMATIC TIME EXTENSION SHALL NOT BE INCLUDED IN THE COMPUTATION OF EARLY ACCOMPLISHMENT BONUS; PETITIONER IS NOT ENTITLED TO FINANCIAL TIME EXTENSION.—** Furthermore, the contemporaneous conduct of MRTDC in allowing long delays in the payment of the FSI's progress billings would indicate their belief that such automatic time extension shall not be included in the computation of early accomplishment bonus. Certainly, MRTDC never intended that it should be liable to FSI for 1,800 days of delay amounting to USD 54,000,000 of early completion bonus. Such financial time extension must be distinguished from the earlier discussed technical time extension. The technical time extension resulted from change orders issued by the Project Manager on the so-called "critical path" of the Project, whereby the construction could not proceed until such change orders were completed. Clearly, in the computation for early accomplishment bonus, MRTDC only contemplated time extensions when the actual work had to cease. It thus becomes clear that MRTDC never consented to nor ratified the inclusion of financial time extensions

in the computation of early accomplishment bonus. It must also be pointed out that FSI was sufficiently indemnified for the delay in the payment of its progress billings with the payment of interest at the rate of 2% per month, or 24% per annum, on the amount due. Thus, FSI is not entitled to financial time extension.

5. **ID.; ID.; AGENCY; ONE CANNOT BE BOUND TO A CONTRACT ENTERED INTO BY ANOTHER PERSON; EXCEPTIONS.—** MRTDC admits that the Project Manager could order changes in the Contract Work but cannot bind the owner to it. Having to await for the consent of the owner to change orders would defeat the purpose of authorizing the Project Manager to order such changes. While the general rule is one cannot be bound to a contract entered into by another person, there are exceptions, such as when the contracting person was authorized to enter a contract on behalf of another, or when such contract was ratified, as enunciated in the Civil Code: Article 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him. A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party. Here, David Sampson was clearly authorized to issue change orders.

6. **REMEDIAL LAW; APPEALS, FINDINGS OF FACT MADE BY THE TRIAL COURT, ESPECIALLY WHEN THE SAME ARE REITERATED BY THE COURT OF APPEALS, MUST BE GIVEN GREAT RESPECT IF NOT CONSIDERED AS FINAL.—** During the hearing before the CIAC, it was found that FSI failed to adduce admissible evidence in support of its claim for extended overhead cost. The pieces of evidence that it presented in support of its claim for extended overhead costs were summaries and not actual receipts, invoices, contracts and similar documents. Such finding is a factual question that cannot be raised before this Court. It is a well-settled principle that the Supreme Court is not a trier of facts, and findings of fact made by the trial court, especially when the same are reiterated by the CA, must be given great respect if not considered as final. Thus, we ruled in *Security Bank and Trust Company v. Gan*,

that: It is well established that under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before the Supreme Court. It must be stressed that this Court is not a trier of facts and it is not its function to re-examine and weigh anew the respective evidence of the parties. Factual findings of the trial court, especially those affirmed by the CA, are conclusive on this Court when supported by the evidence on record. To such general rule there are exceptions; however, the instant case does not fall under any of them.

7. **CIVIL LAW; DAMAGES; ACTUAL DAMAGES; DEFINED; ACTUAL DAMAGES MUST BE DULY PROVEN AND PROVED WITH A REASONABLE DEGREE OF CERTAINTY; PETITIONER IS NOT ENTITLED TO BE PAID AN EXTENDED OVERHEAD COST.—** FSI's claim for extended overhead cost may be classified as a claim for actual damages. Actual damages is defined as: Actual damages are such compensation or damages for an injury and will put the injured party in the position in which he was before he was injured. They are those damages which the injured party is entitled to recover, for the wrong done and injuries received when none was intended. They indicate such losses as are actually sustained and susceptible of measurement, and as used in this sense, the phrase, "determinate pecuniary loss" has been suggested as a more appropriate designation. They include all kinds of damages except exemplary or primitive damages. Compensatory damages are awarded as an equivalent for the injury done. It is synonymous with actual damages. Thus, as correctly argued by the CIAC, actual damages must be duly proven and so proved with a reasonable degree of certainty. Contrary to FSI's contention, it is not merely the general result of the evidence that is sought in the instant case. The very fact of such overhead cost is also in question and evidence must be adduced to support any claim such as receipts. FSI did not. It is therefore not entitled to be paid extended overhead cost.

8. **ID.; OBLIGATIONS AND CONTRACTS; CONTRACT FOR A PIECE OF WORK; INCREASES IN THE COST OF THE PROJECT UNLESS AUTHORIZED BY THE OWNER WILL NOT MAKE THE LATTER LIABLE FOR THE SAID COST; CASE AT BAR.—** xxx. As discussed above, findings of fact of the CA are binding upon this Court. Thus, increases in the cost of the Project unless authorized by the owner will not make

the latter liable for its cost. Here, no evidence supports the proposition that the owner authorized the change in construction methodology. FSI must bear the costs of such change in construction methodology having executed the same unilaterally.

9. **REMEDIAL LAW; ARBITRATION; RULES OF PROCEDURE GOVERNING CONSTRUCTION ARBITRATION; DECISION AS TO ARBITRATION COST, GENERAL RULE; PARTIES IN CASE AT BAR MUST EQUALLY SHARE THE ARBITRATION COSTS.—** *Philippine National Construction Corporation v. Court of Appeals* provides the general rule in the determination of who should bear the costs of arbitration, to wit: In respect of the costs of arbitration, Sec. 5, Article XV of the Rules of Procedure Governing Construction Arbitration states: *Decision as to Cost of Arbitration*. – In the case of non-monetary claims or where the parties agreed that the sharing of fees shall be determined by the Arbitrator(s), the award shall, in addition to dealing with the merits of the case, fix the cost of arbitration, and/or decide which of the parties shall bear the cost(s) or in what proportion the cost(s) shall be borne by each. Rule 142 of the Revised Rules of Court of the Philippines governing the imposition of costs likewise provides the following: Section 1. *Costs Ordinarily follow the result of suit*. Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power for special reasons, to adjudge that either party shall pay the cost of an action, or that the same shall be divided, as may be equitable. In the instant case, there is no basis for assessing the arbitration costs against one party or the other, as the parties' prayers were only partially granted. We find it is just and equitable that both parties equally share the costs of arbitration.

APPEARANCES OF COUNSEL

Villaraza & Angcangco Law Offices for petitioner.
Oscar M. Herrera for MRT Dev't. Corp.
Parlade Hildawa Parlade & Eco Law Offices and *Santiago & Santiago* for respondents.

DECISION

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 seeks to reverse and set aside the January 6, 2004 Decision[1] and April 8, 2005 Resolution[2] of the Court of Appeals (CA), dismissing petitioner's appeal and denying petitioner's February 4, 2004 Motion for Reconsideration,[3] respectively.

The Facts

The Metro Rail Transit Development Corporation (MRTDC) is the owner of the MRT-3 North Triangle Development Project located at the corner of Epifanio Delos Santos Avenue (EDSA) and North Avenue in Quezon City. The North Triangle Project was part of the Manila North Triangle Project, which was conceived as a major hub of the light rail transit line system along EDSA starting from the North Triangle area near the corner of Quezon Avenue and EDSA, and connecting to the Light Rail Transit-1 starting in Pasay City at the intersection of Taft Avenue and EDSA. Part of the North Triangle Project is a podium structure which would serve as the depot and maintenance area for the trains and would serve as the base or foundation for any commercial development.

MRTDC engaged Parsons Interpro JV (PIJV) to act as the Project Management Team (PMT) to supervise and monitor the project. PIJV was a joint venture company composed of Parsons International, an international project management firm, and Interpro, a local construction management company. Each

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[1] *Rollo*, pp. 127-201. The Decision was penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Conrado M. Vasquez, Jr. (Chairperson) and Arsenio J. Magpale.

[2] *Id*. at 202-220. The Resolution was penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Conrado M. Vasquez, Jr. (Chairperson) and Renato C. Dacudao.

[3] *Id*. at 221-320.

of these companies appointed a representative as project managers to supervise the project, namely: Engr. Augustus Salgado for Interpro and Arch. Melvin Satok for PIJV. As joint project managers, their duties were to monitor the progress of construction on behalf of the owner, to recommend the payment of regular progress billings, to ensure that work was being completed in accordance with the construction schedule, and other similar matters. Directly under them was David Sampson, who was designated as the Area Construction Manager, tasked to monitor the day-to-day activities on the site with the help of other PIJV area engineers.

There were six contractors who submitted their respective bids for the construction of the four-level podium facility (Project). The Project was initially awarded to the lowest bidder, Gammon Philippines, Inc. (GPI), while Filipinas Systems, Inc. (FSI) submitted the second lowest bid. Subsequently, MRTDC decided to construct levels one and two of the Project only with a third level to be constructed on the area above the workshop. Thus, GPI submitted another proposal on March 11, 1998 for the revised Project specifications. Later, GPI was issued a Notice of Award/Notice to Proceed (NOA/NTP) dated June 10, 1998 in its favor by MRTDC which required GPI to accept the award and NTP within five (5) business days from receipt, failing which the award and the NTP would be automatically withdrawn.

While negotiations with GPI were ongoing, MRTDC was conducting negotiations with FSI as the second lowest bidder to ensure that another contractor would be in a position to immediately accept the Project and start construction.

Accordingly, FSI submitted a letter-proposal dated June 6, 1998[4] proposing to construct the two-level podium facility within 180 days for PhP 878,888,888.88. Paragraph 12, page 3 of the proposal stated that:

12. In case of delayed payment by the Owner, after 30 days from receipt by the Construction Manager of approved progress billings, the Owner shall be charged at the rate of 2% per month

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[4] *Id.* at 538-543.

of delay and charge for standby time of equipment and manpower (direct cost + VAT) and shall give the Contractor an automatic time extension on the completion of the work of the same number of delays provided the works are in compliance with the plans and specifications. After 60 days of delay, the Contractor shall have the right to stop work and bill the Owner for remobilization expenses in case of resumption of work.

GPI refused the terms of the NOA/NTP dated June 10, 1998 due to the strict timetable imposed by MRTDC.

Thus, MRTDC issued a NOA/NTP dated June 17, 1998[5] to FSI which contained, among others, the following provision:

The successful operation of the depot and the related rail system is of national importance. In the light of this fact and to conform with the schedule provided for in the BLT Agreement, FSI in accepting this NTP agrees to finish the Work within 6 months from acceptance of this NTP, inclusive of any rain delays but subject to force majeure as defined in the BLT Agreement a photocopy of which is attached herewith. In addition, Filsystem hereby agrees to a bonus/penalty scheme as follows:

Liquidated Damages:	US$100,000.00 per day of delay based on the Six-month period.
Bonus:	US$30,000.00 per day of early accomplishment

FSI, through its President, Felipe A. Cruz, Jr., as indicated by his conformity on the NOA/NTP, accepted the NOA/NTP.

In a letter dated October 5, 1998 issued by MRTDC to FSI, day one of the construction period was reckoned on July 14, 1998 to end 180 days after or on January 14, 1999.

In the course of the construction, there were several change orders issued by MRTDC to FSI which included the realignment or shifting of several columns and the construction of a sewerage treatment plant and septic tank, among others.

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[5] *Id*. at 544-547.

FSI finished 98.7% of the Project on April 30, 1999 or 106 days from the original January 14, 1999 deadline. Full completion was achieved on May 17, 1999.

On October 8, 1999 or almost six months after the completion of the Project, FSI issued a letter to David Sampson, the PIJV Construction Manager, requesting an extension of 228 days. Attached to the letter was a spreadsheet showing the time extensions that they were entitled to, which allegedly moved the Project deadline to August 30, 1999. At the bottom right hand corner of the spreadsheet was the signature of David Sampson, ostensibly approving the extension but only until August 2, 1999 for a period of 200 days.[6]

Thereafter, FSI issued several letters to MRTDC asking for payment of additional amounts for owner-caused delays. FSI claimed that by virtue of par. 12 of its letter-proposal dated June 6, 1998, for each day MRTDC was delayed in paying FSI's progress billing, the latter was entitled to a corresponding additional day for the completion of the Project. FSI contended that payment of the progress billings had been delayed for 1,800 days. Adding that to the previous 200-day extension approved by David Sampson, the extension period would total 2,000 days.

Reckoning the completion of the Project on May 30, 1999 and taking into account the 2,000-day extension FSI claimed it was entitled to, FSI alleged that it completed the Project 1,894 days ahead of schedule which would amount to an early accomplishment bonus of USD 56,820,000.

FSI also demanded from MRTDC the payment of actual extended cost in the amount of PhP 33,145,515.13 due to the extended Project time attributable to MRTDC's change orders. Additionally, FSI claimed that MRTDC's change orders which affected the design of the Project necessarily required it to change the construction methodology from the sliding hydraulic-lift table formwork system to the conventional formworks, resulting in extra costs amounting to PhP 99,515,759.

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6 *Id*. at 1095.

MRTDC refused to pay the claims. It alleged that FSI failed to finish the construction of the Project within the 180-day period agreed upon and that it had already paid FSI the amounts due for work accomplished as well as for interest on delayed payments.

Thus, on June 5, 2002, FSI filed with the Construction Industry Arbitration Commission (CIAC) a Request for Adjudication of its claims against MRTDC. In its June 3, 2002 Complaint, FSI reduced its claim for early completion bonus to USD 19,590,000 allegedly to lower the prohibitive filing fees of the CIAC.

After due hearing, the CIAC issued an Award dated May 6, 2003 in favor of FSI for USD 2,820,000 as early completion bonus, denying FSI's other claims, the dispositive portion of which states:

WHEREFORE, in view of all the foregoing, the Arbitral Tribunal hereby renders the following award:

1. Filsystem's claim for early completion bonus in the amount of TWO MILLION EIGHT HUNDRED TWENTY THOUSAND US DOLLARS (US$2,820,000.00) is hereby granted.

2. Filsystems' claim for extra costs due to change in methodology in the amount of ₱99,515,790.00 is hereby denied.

3. Filsystems' claim for extra overhead costs in the amount of ₱33,140,515.13 is hereby denied.

4. MRTDC's claim for liquidated damages is hereby denied.

5. MRTDC's claim for reimbursement for interest is hereby denied.

6. Filsystems and MRTDC are ordered to share the cost of arbitration equally.

The foregoing monetary award shall bear interest at the rate of six percent (6%) per annum on the total amount due from the date hereof until finality of this Award, after which interest at the rate of twelve percent (12%) per annum shall be paid on the said total amount until full payment.

SO ORDERED.

In the Award, as there was no actual contract for the Project, the CIAC made a finding that the following documents shall govern in the relationship of the parties:

a. The NOA/NTP dated June 17, 1998;

b. The June 6, 1998 Letter of FSI to MRTDC;

c. The General Conditions and the Drawing and Specifications included with the Bid Documents except to the extent that the same is inconsistent with the two (2) previous documents.

The CIAC found that David Sampson was the Project Manager and thus could authorize change orders, contrary to MRTDC's allegation that he was not the Project Manager. It also found that no specific construction methodology was agreed upon.

With regard FSI's claim for early completion bonus, specifically as to the financial time extension, that is, time extension for delayed payment of progress billings, the CIAC found that MRTDC was already sufficiently penalized for any delay in payment by the two percent (2%) interest per month. Furthermore, the CIAC determined that additional time for delayed payment would amount to double payment and is unconscionable resulting in a 1,800-day time extension or 1000% increase from the original contract period of 180 days.

As to the technical time extension which arose from the change orders of MRTDC, the latter claimed that David Sampson was not the Project Manager and was not authorized to issue change orders in behalf of MRTDC. However, the CIAC found that MRTDC itself represented David Sampson as its Project Manager and that documentary exhibits prove that he was indeed the Project Manager. Thus, by virtue of Articles 20.07 and 21.04 of the General Conditions of Contract,[7] David Sampson could authorize change orders in behalf of MRTDC. This was further supported by the Construction Industry Authority of the Philippines (CIAP) Document No. 102, par. 21.04-A(a) which allows the adjustment of completion time due to delays caused by the owner.

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[7] *Id*. at 567 & 570.

The CIAC ruled that FSI is entitled to a technical time extension of 200 days or until August 2, 1999 as authorized by David Sampson. Therefore, FSI substantially finished construction of the Project on April 30, 1999 or 94 days before the deadline. This translates to an early accomplishment bonus of USD 2,820,000.

As to the extended overhead costs, the CIAC determined that such claim partakes of a claim for actual damages, and explained that jurisprudence dictates that such claim be established with actual pieces of evidence, which include receipts, invoices, and other similar documents. FSI failed to present any piece of evidence. Thus, this claim was denied by the CIAC.

With regard FSI's claim for extra cost due to construction methodology, the CIAC denied the claim holding that such claim was not supported by any contractual or legal basis as well as the fact that FSI could have used the sliding hydraulic-lift formworks in some areas, but chose not to.

From such Award, both parties filed their respective petition for review under Rule 43 of the Rules of Court with the CA.

On January 6, 2004, the CA issued the assailed Decision, the dispositive portion of which reads:

> WHEREFORE, in consideration of the foregoing premises, judgment is hereby rendered partially reversing and setting aside the Award of the Construction Industry Arbitration Commission (CIAC) in these consolidated cases and MODIFYING the same by deleting the award of US$2,820,000.00, representing early completion bonus in favor of Filsystems, while the rest of the Award is AFFIRMED.
>
> In view of the modification of the CIAC Award as stated above, MRTDC's application for the issuance of a temporary restraining order/writ of preliminary injunction is hereby declared moot and academic considering that the modified Award no longer contains monetary award that may be enforced by the CIAC pursuant to the provisions of Sec. 4 of the CIAC Rules of Procedure Governing Construction Arbitration.

In deleting the award for financial time extension, the CA reasoned that the consent of the Project Manager was insufficient as change orders require a modification of the contract which must be consented to by MRTDC itself.

Hence, FSI filed this Petition for Review on *Certiorari*.

The Issues

FSI raised the following issues in its petition:

Grounds For The Allowance Of The Petition

The Court of Appeals committed grave abuse reversible error and decided questions of substance in a way not in accordance with law and applicable decisions of the Honorable Court, and has departed from the accepted and usual course of judicial proceedings, necessitating the Honorable Court's exercise of its power of supervision, considering that:

I.

The Court of Appeals inexplicably reversed and supplanted the CIAC Arbitral Tribunal's expert and technical determination in its Award dated 06 May 2003 which ruled that the original contract period of 180 days was extended by 200 days of technical time extension, a conclusion determined by the said tribunal after extensive technical evidentiary hearings.

A. The minimum of 200 days of technical time extension as determined by the CIAC Arbitral Tribunal is generally conclusive as a specialized quasi-judicial body's factual and technical determination of equitable adjustment based on the evidence on record. This minimum equitable adjustment of 200 days is not only in accord with the governing contractual documents, but is demanded by applicable law, construction industry practice, and the approval by the Project Manager.

B. As correctly found by the CIAC Arbitral Tribunal, the governing contractual documents do not require the consent or approval of respondent MRTDC as a precondition to petitioner Filsystems's entitlement to technical time extension:

1. Under Article 20.07 of the General Conditions of the Bid Documents, if the owner orders changes in the work with cost and time impact, an equitable adjustment shall be made. In such cases, there is no requirement for petitioner Filsystems to submit a request for time extension and for the approval by the owner, PMT, or Project Manager.

2. Contrary to the ruling of the Court of Appeals, under Article 21.04 of the General Conditions of the Bid Documents, the PMT, through the Project Manager as its authorized representative, has the authority to grant time extensions independent of the approval of respondent MRTDC. As admitted by respondent MRTDC itself and as provided under the governing contractual documents, there is no requirement for another approval by respondent MRTDC of any time extension as determined and granted by the Project Manager.

3. The Court of Appeals arbitrarily disregarded the facts and conclusion correctly found by the CIAC Arbitral Tribunal and borne by the evidence on record, confirming that petitioner Filsystems complied with the contractual requirements for claiming time extension.

C. The determination of an equitable adjustment of time extension cannot be left solely to the discretion of one of the parties. If there is a dispute between the parties as to what the equitable adjustment should be, then resort may be had to the arbitration machinery as contractually agreed upon by the parties. In this case, the grant by the CIAC Arbitral Tribunal of the 200-day technical time extension is a factual and technical determination of the minimum equitable adjustment of the completion period to which petitioner Filsystems is, at the very least, entitled. There is nothing to show that the CIAC Arbitral Tribunal acted with grave abuse of discretion, arbitrarily arrived at its findings of facts, or disregarded evidence on record, in granting 200-day technical time extension, either as

approved by the Project Manager or as a determination of equitable adjustment.

D. Finally, assuming that the owner's approval is necessary, the 200-day technical time extension was deemed approved by respondent MRTDC considering that, as correctly found by the CIAC Arbitral Tribunal, the Project Manager in this case already approved/granted a technical time extension of 200 days which approval/grant, despite receipt by respondent MRTDC, has not been disapproved not revoked by the latter.

II.

The Court of Appeals erroneously denied petitioner Filsystems's claim for financial time extension when it ruled that the provision on automatic financial time extension stated in the accepted letter proposal does not apply for purposes of determining entitlement to early accomplishment bonus.

A. The governing contract documents, *i.e.,* bid documents, letter proposal and Notice of Award/Notice to Proceed, do not provide for a distinction between financial time extension and technical time extension insofar as bonus compensation is concerned. Thus, petitioner Filsystems's earned financial time extension should necessarily be credited also in determining early accomplishment bonus.

B. The application of financial time extension for purposes of determining entitlement to early accomplishment bonus is consistent with the basic principle of mutuality of the interests of the contracting parties, putting them in approximately equal footing, and with the principle of greater reciprocity of interests of the parties to an onerous contract, consistent with Articles 1350 and 1378 of the Civil Code.

C. Contrary to the ruling of the Court of Appeals, petitioner Filsystems's entitled to early accomplishment bonus based on financial time extension is not unconscionable for allegedly being a double financial penalty.

D. The fact that the intention of the parties was to consider also financial time extension for determining early

accomplishment bonus was even admitted by the PIJV personnel and engineers on site.

E. The Court of Appeals conveniently ignored the Letter dated 14 October 1998 of PIJV Vice-President Melvin Satok addressed to respondent MRTDC, which letter is respondent MRTDC's own evidence, and in fact corroborated by its witness, where the bonus clause was extensively discussed and petitioner Filsystems's anticipated claim for significant bonuses was acknowledged. That conclusively confirms that the parties were of the understanding that petitioner Filsystems would be entitled to early accomplishment bonus on account of financial time extensions beyond the original 180-day construction period.

F. Equitable considerations demand that financial time extension be applied in determining bonus compensation.

1. The foregoing ruling of the Court of Appeals overlooks the total train system project as a whole, of which the podium depot structure project is only a part.

2 Although contractually, as with liquidated damages, it is not necessary for petitioner Filsystems to prove actual damages, or to even have suffered damages at all; petitioner Filsystems did in fact suffer damages in the amount of around US Dollars Twenty-Seven Million Four Hundred Eight Thousand Seven Hundred Fifty (US$27,408,750) for which the early accomplishment bonus can equitably compensate.

3. MRTDC does not find inequitable its US Dollars One Hundred Thousand (US$100,000) per day liquidated damages, thus neither should the early accomplishment bonus of only US Dollars Thirty Thousand (US$30,000) a day be deemed inequitable.

4. It is inequitable not to apply extensions earned due to the owner's delays in payment (financial

time extension) for the purpose of determining early accomplishment bonus, since construction cannot proceed without funds and the owner can simply intentionally delay or refuse payment for several months or years just to defeat the contractor's claim for early accomplishment bonus.

5. The very purpose for early accomplishment bonus, which was to ensure that the project will be completed in time for the operation of the metro rail project, was actually served.

6. As borne by the Letter dated 14 October 1998, respondent MRTDC and PIJV already knew at the time that the project period would extend beyond 180 days and the petitioner Filsystems would be claiming early accomplishment bonus.

7. Even before the issuance of the Notice of Award/ Notice to Proceed to petitioner Filsystems, respondent MRTDC knew that the 180-day period would be inevitably extended.

8. The total amount of early accomplishment bonus that petitioner Filsystems is entitled to has already been equitably reduced.

G. At the very least, considering that respondent MRTDC itself admitted that it incurred 211 days of delay in its payment of petitioner Filsystems's progress billings, which fact of delay is even recognized by the CIAC Arbitral Tribunal, the equivalent amount of at least US Dollars Six Million Three Hundred Thirty Thousand (US$6,330,000.00) should have been additionally granted as early accomplishment bonus based on financial time extension.

III.

The Court of Appeals arbitrarily ignored petitioner Filsystems's claim for extended overhead cost despite the evidence on record and respondent MRTDC's own admission that extended overhead cost is claimed separately of and independently from the cost impact of the various change orders.

A. The Court of Appeals arbitrarily and completely ignored the evidence on record showing petitioner Filsystems's compliance with the contractual requirements for claiming extended overhead cost.

B. Since the business documents, *i.e.,* vouchers, receipts, billings, payments, petty cash replenishments, and similar documents, supporting petitioner Filsystems's claim for extended overhead cost are indisputably numerous and voluminous, and the fact sought to be established from them is only the general result of the whole, the originals thereof need not be presented pursuant to Section 3(c), Rule 130 of the Rules of Court. As proven during the trial, the originals thereof were actually available and manifested to be accessible for scrutiny but respondent MRTDC waived and squandered the same. Moreover, this issue was not even raised by respondent MRTDC in the course of the submission of its countervailing affidavits and evidence.

IV.

The Court of Appeals erred in denying petitioner Filsystems's claim for extra cost due to change in construction methodology considering that as found by the CIAC Arbitral Tribunal, petitioner Filsystems was indeed constrained to incur increased cost, *i.e.,* a "radical increase in manpower as well as formworks," to meet the construction deadline brought about by the several change orders issued by respondent MRTDC. Thus, petitioner Filsystems should be compensated for extra cost due to change in construction methodology pursuant to article 20.08 of the General Conditions of the Bid Documents, and based on the principle against unjust enrichment and on *quantum meruit*.

V.

Respondent MRTDC should bear the arbitration cost alone, considering the undisputed fact that petitioner Filsystems was constrained and forced to litigate and institute the arbitration proceedings below to protect its interest due to respondent MRTDC's bad faith and unjustified, malicious, unreasonable and fraudulent conduct.[8]

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[8] *Id*. at 34-40.

Summarized, the issues are:

1. Whether FSI is entitled to be paid early completion bonus based on technical time extension;
2. Whether FSI is entitled to be paid early compensation bonus based on financial time extension;
3. Whether FSI is entitled to be paid for extended overhead cost;
4. Whether FSI is entitled to be paid for costs due to change in construction methodology; and
5. Whether MRTDC should bear the arbitration costs alone.

The Court's Ruling

First Issue: FSI is entitled to be paid early completion bonus based on technical time extension

The CIAC granted FSI's claim for early completion bonus to the extent of 94 days, awarding FSI the amount of USD 2,820,000, based on a 200-day technical time extension.[9] There was no evidence presented before the CIAC to prove that MRTDC authorized any technical time extension. However, FSI presented a timetable[10] showing technical time extension up to August 2, 1999 which was approved by the Project Manager, David Sampson. FSI is not claiming payment for the change orders directed by MRTDC through David Sampson, such change orders having already been paid. What FSI is claiming is that it is entitled to an extension to the agreed completion date and consequently to early completion bonus.

This award was deleted by the CA in its assailed Decision on the ground that in order to bind MRTDC to the change orders issued by the Project Manager, the consent of MRTDC to modify its contract with FSI is required. Since MRTDC did

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[9] The reckoning date is April 30, 1999 or 106 days from the original January 14, 1999 deadline. Thus, 200 days less 106 days is equal to **94 days**.

[10] *Rollo*, p. 1095.

not order nor authorize the modification of the contract, it is not bound to honor or pay for the change orders. The CA reasoned, as follows:

> Thus, if the change orders caused an increase or decrease in the amount due, *i.e.,* contract cost, and in the time required for its performance, *i.e.*, completion period of the project, an equitable adjustment shall be made but it is a requirement that the "Contract shall be modified in writing accordingly."
>
> Inasmuch as an equitable adjustment required the modification of the contract in writing, We find and so rule that it should be MRTDC as a contracting party who should give its consent to such contractual modification. This was necessitated by the fact that in case of directed changes, the scope or nature of works to be performed were to be altered and there would be additional price or costs to be paid by the owner of the project. Necessarily, there was direct impact on performance period of the obligation. **Besides, this power was NOT delegated by MRTDC in the above-quoted Clause 20.07 because only the authority to make the change orders was given to the PMT but it did not extend such authority to bind MRTDC in modifying the contract in writing**. NO such provision could be read or even implied from the above-quoted contractual provision.[11]

The CA cited Article 20.07, pars. (a) and (c), and Article 21.04, par. (a) of the General Conditions of Contract, which provide:

> Art. 20: WORK
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> x x x x x x x x x
>
> 20.07 CHANGES IN THE WORK:
>
> a. CHANGES ORDERED BY THE OWNER: The Owner may at any time, without invalidating the Contract and without notice to the sureties, order extra work or make changes by altering, adding to or deducting from the work, as covered by the Drawings and Specifications of this Contract and within the general scope thereof. Such changes shall be ordered by the Project Management Team in writing, and no change or omission from the Drawings and Specifications shall be

[11] *Id.* at 181.

considered to have been authorized without written instructions signed by the Project Manager.

x x x x x x x x x

c. ADJUSTMENT OF CONTRACT: All such work shall be executed under the conditions of the original contract. If such changes cause an increase or decrease in the amount due under this Contract, or in the time required for its performance, an equitable adjustment shall be made and the Contract shall be modified in writing accordingly. The express consent of the sureties shall be obtained in writing. In the event that the work involved is increased by such changes, the Contractor shall furnish proportionate additional performance bond.

x x x x x x x x x

Art. 21: TIME OF COMPLETION OF WORK

x x x x x x x x x

21.04 EXTENSION OF TIME: The Contractor will be allowed an extension of time based on the following conditions:

a. Should the Contractor be obstructed or delayed in the prosecution or completion of the work by the act, neglect, delay, or default of the Owner or any other contractor employed by the Owner on the work: by strikes, lockouts; by an Act of God or *Force Majeure* as defined in Article 1.26; by delay authorized by the PMT pending arbitration; then the Contractor shall within fifteen (15) days from the occurrence of such delay file the necessary request for extension, the PMT may grant the request for extension for such period of time as he considers reasonable.[12]

We do not agree with the CA. A plain reading of par. (c) of Art. 20.07 would show that change orders can be executed immediately and that contract modification is not a pre-condition for it. Nowhere in the above provisions is it stated that the modification of the contract is a requisite for the execution of the change orders. It only states that in the event that such changes cause an increase or decrease in the amount due under the contract, or in the time required for its performance, an

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[12] *Supra* note 7.

equitable adjustment shall be made and the contract shall be modified in writing accordingly. This means that the contract could be made to conform to the agreement that has already been agreed upon.

Besides, MRTDC's proposition is absurd.

MRTDC admits that the Project Manager could order changes in the Contract Work but cannot bind the owner to it. Having to await for the consent of the owner to change orders would defeat the purpose of authorizing the Project Manager to order such changes.

While the general rule is one cannot be bound to a contract entered into by another person, there are exceptions, such as when the contracting person was authorized to enter a contract on behalf of another, or when such contract was ratified, as enunciated in the Civil Code:

> Article 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.
>
> A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

Here, David Sampson was clearly authorized to issue change orders. The relationship between MRTDC as the owner, PIJV as the PMT, and David Sampson as the Project Manager is embodied in Sections 1.02, 1.03 and 1.05 of the General Conditions of the Bid Documents. Said provisions state:

> 1.02 *OWNER*: shall mean METRO RAIL TRANSIT DEVELOPMENT CORPORATION (abbreviated as "MRTDC" or "MRTDevCo"), the person or entity ordering the project for execution, including duly appointed successors, or authorized representatives.
>
> 1.03 *PROJECT MANAGEMENT TEAM (PMT)*: shall mean PARSONS-INTERPRO JV, the authorized representative of the Owner to oversee the execution of the Contract Work,

either directly or through the properly authorized agents. Such agents shall be acting within the scope of the particular duties to them. They are responsible to the Owner through the PARSONS-INTERPRO JV Program Director or Project Manager.

x x x x x x x x x

1.05 *PROJECT MANAGER (PROJECT MANAGER)*: shall mean the personally authorized representative of the PMT.

Evidently, David Sampson was the representative or agent of PIJV who was engaged as the Project Manager by MRTDC. However, the relationship between MRTDC and PIJV cannot be strictly characterized as a contract of agency. The practice in the construction industry is that the Project Manager exercises discretion on technical matters involving the construction work, such as change orders. This is because owners of the Project are oftentimes not technically suited to oversee the construction work and hire professional project managers precisely to oversee the day-to-day operations on the construction site and to exercise professional judgment when expedient. Thus, the CIAC ruled:

In practice, in case of a dispute between the owner and the contractor, the independent third party project manager will exercise his own independent professional judgment and render his independent decision on technical matters such as adjustments in cost and time occasioned by a change order which he issued.

This is the reason why the PMT and the Project Manager were authorized under Art. 20.07, par. (a) of the General Conditions of the Bid Documents to modify the Contract Work. It may thus be concluded that the PMT and consequently the Project Manager were authorized by the owner to modify the Contract or the Project Specifications.

Relative to the contract, the CIAC correctly held that:

The authority to issue the field instructions cannot be divorced from the corresponding authority to cause the appropriate adjustment in price and time resulting from these instructions; otherwise, the filed instructions will never be followed by the contractor without

the corresponding authority to adjust the price and time. While theoretically it is possible to divorce the two, it is not the norm specially in a project where the time for completion is tight as the separation would invariably lead to delay.[13]

Relying on Art. 1724 and *Powton Conglomerate, Inc. v. Agocolicol*,[14] it is argued that a written consent of the owner of a project in order that increased costs shall be binding is required and the Project Manager in this case had no such written consent.

Art. 1724 provides:

Article 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specification, provided:

(1) Such change has been authorized by the proprietor in writing; and

(2) The additional price to be paid to the contractor has been determined in writing by both parties.

In *Powton Conglomerate, Inc.*, we enunciated:

The present Civil Code added substantive requisites before recovery of the contractor may be validly had. It will be noted that while under the precursor provision, recovery for additional costs may be allowed if consent to make such additions can be proved, the present provision clearly requires that changes should be authorized, such authorization by the proprietor in writing. The evident purpose of the amendment is to prevent litigation for additional costs incurred by reason of additions or changes in the original plan. Undoubtedly, it was adopted to serve as a safeguard or a substantive condition precedent to recovery.[15]

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[13] *Rollo*, p. 495.

[14] G.R. No. 150978, April 3, 2003, 400 SCRA 523.

[15] *Id*. at 528-529.

We agree that indeed a written consent is needed. In the instant case, the written consent is embodied in the General Conditions of the Bid Documents issued by MRTDC and found by the CIAC as one of the documents comprising the contract between MRTDC and FSI.[16] Arts. 20.07 and 21.04 authorized the Project Manager to issue change orders and time extensions, respectively. And as discussed above, such authority extends to the modification of the contract between the parties.

Moreover, an examination of the records will show that PIJV issued several Certificates of Payment for progress billings covering Change Order Nos. 1 through 15.[17] One of these is Certificate of Payment No. JV4390[18] which was approved by David Sampson, endorsed for payment by Melvin Satok and Augustus Salgado and approved for payment by an Owner's Representative. Clearly, MRTDC cannot now question the authority of the Project Manager to bind MRTDC, as it is now estopped from so doing[19] having paid the change orders ordered by David Sampson thereby ratifying the same.

Verily, David Sampson was authorized to order changes in the Contract Work as well as binding MRTDC to it.

Additionally, the appellate court declared that the CIAC mistakenly quoted Article 21.04 as the basis in recognizing that David Sampson has the power or authority to bind MRTDC to a contract modification and that the situation was more properly covered by par. (c) of Article 20.07 of the General Conditions of the Bid Documents, to wit:

Furthermore, CIAC was guilty of misapprehension or misinterpretation of the contractual provisions by ruling that Clause

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[16] *Rollo*, p. 482.

[17] *Id*. at 1265-1350.

[18] *Id*. at 1265.

[19] Article 1431 of the Civil Code states:

Article 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

21.04 in relation to Construction Industry Authority of the Philippines (CIAP) Document No. 102, paragraph 21.04-A(a) should be applied to the instant case. The misinterpretation is confirmed by the fact that CIACs' premise had always been that the equitable adjustment of the contract cost and performance period was based on change orders or what is called "directed changes." On the other hand, Clause 21.04 covered extension of time due to obstruction or delay in the prosecution of the project, thus-

x x x   x x x   x x x

It is very clear from the above quoted contractual provisions that equitable adjustment of the cost and time were due to change orders or directed changes and they are different from the causes provided in Clause 21.04 which had reference to obstruction or delay in the prosecution or completion of the project by act, neglect, delay or default of the owner. Despite the glaring differences in the meaning and coverage of the foregoing contractual provisions, CIAC mistakenly quoted Clause 21.04 as the basis in recognizing that Mr. David Sampson had the power or authority to bind MRTDC to a contract modification, a situation clearly governed by paragraph c of Clause 20.07 of the General Conditions of the Bid Documents.[20]

This is wrong.

Actually, the CIAC stated in its Award that:

Also from the above discussion, it is the PMT or the PROJECT MANAGER as representative of the Owner MRTDC which has the authority to grant the technical time extensions based on change orders/deviation/act/neglect/delay or default of the Owner, in accordance with Articles 21.04 and 20.07. However, the formal approval of MRTDC of the time extensions as approved and recommended by the PMT/PROJECT MANAGER is of ministerial [sic] in nature, except for grave error or collusion which is not the case here. MRTDC should have acted upon recommendations by its technical personnel, the Project Manager, who had the direct knowledge and with accurate assessments of the construction activities in the project. It is not accurate to state that the whole PIJV is the Project Manager because it is composed of the President, the Vice-President, the Construction Manager and the Area Engineers. Looking at the technical functions and responsibilities, the Arbitral Tribunal

[20] *Rollo*, pp. 181-182.

holds that Dave Sampson is the Project Manager who had the authority to grant time extension being the highest technical personnel in the field for submittal to the Owner's formal approval.

While MRTDC did not formally grant or approve any technical time extension, nevertheless Filsystems is entitled to time extension based on the contract, the law and industry practice. This is clear from Articles 21.04 and 20.07 of the General Conditions of the Bid Documents which are part of the contract between the parties. This conclusion is likewise justified by the construction industry practice and that of Construction Industry Authority of the Philippines (CIAP) Document No. 102, paragraph 21.04-A(a), which states that "The Contractor shall be entitled to an equitable adjustment of Completion Time where the Contractor is obstructed or delayed in the prosecution of the Work by the act, neglect, delay or default of the Owner, or any other contractor employed by the Owner of the work."[21]

The appellate court erred in ruling that Arts. 20.07 and 21.04 of the General Conditions of the Bid Documents cannot be harmonized and applied simultaneously. To clarify, Art. 20.07 deals with changes in the Work, such as change orders and who may issue them. Art. 21.04, on the other hand, deals with the circumstances that could allow for extension of time for completion of the work. An order by the owner certainly is encompassed as an "act, neglect, delay, or default of the Owner."

In our view, the CIAC correctly cited Article 21.04 of the General Conditions of the Bid Documents and CIAP Document No. 102, par. 21.04-A(a) as giving authority to the Project Manager to modify the contract with regard the extension of the contract's completion date.

As to the observation that the performance period was extended after the completion of the Project, we note that the technical time extension on the change orders was the subject of evaluation from both FSI and Project Technical Group of PIJV. Thus, the CIAC noted, thus:

Both Filsystems and PTG's graphical representation had credited an average of 20-day technical time extensions for each change/extra/

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[21] *Id.* at 520-521.

variation orders affecting the critical path per project area. This average of 20-day technical time extension of all the change/extra/variation orders was derived from the joint evaluations per project area and agreed by both the engineers and technical personnel of Filsystems and the PTG who were directly involved in the field, and adopted by the Area Construction Manager, as duly authorized representatives of the Owner.

Clearly, it could be gleaned from the aforecited finding that the technical time extension could not have been submitted to MRTDC for approval prior to the completion of the Project.

As to David Sampson's authority to approve such time extension at a time when the Project was already completed and his term as Project Manager already terminated, note that he was the one who directed the change orders in the first place, and, thus, he was uniquely situated to approve the time extension relative to such change orders. He was the most competent person to do it. In addition, to delegate such function to another person not privy to the change orders would render their results questionable at best.

Furthermore, although the construction of the Project was already completed, the winding up of the contractual obligations relative to the Project was not yet finished. The bonus scheme employed by MRTDC could only be implemented upon the completion of the Project after computing for time extensions. Although David Sampson may have been already employed as a consultant by MRTDC at the time that he approved the 200-day technical time extension, it must be stressed that his engagement as the Project Manager did not end with the completion of the construction works. David Sampson signed Certificate of Payment No. MRT-1299 dated July 22, 1999[22] as the Area Construction Manager or Project Manager along with the signatures of: Gaudioso Del Rosario, AVP Operations; Augustus V. Salgado, President; and an Owner's Representative. Patently, David Sampson was still engaged as the Project Manager at the time that he approved the 200-day technical time extension.

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[22] *Id.* at 1350.

Hence, FSI is entitled to the 200-day Technical Time Extension and, consequently, to the 94-day early accomplishment bonus awarded by the CIAC.

Second Issue: FSI is not entitled to financial time extension

In FSI's letter-proposal dated June 6, 1998 found by the CIAC as one of the binding documents governing the relationship between the parties, par. 12 reads;

12. In case of delayed payment by the Owner, after 30 days from receipt by the Construction Manager of approved progress billings, the Owners shall be charged at the rate of 2% per month of delay and charge for standby time of equipment and manpower (direct cost + VAT) and shall give the Contractor an automatic time extension on the completion of the work of the same number of delays provided the works are in compliance with the plans and specifications. After 60 days of delay, the Contractor shall have the right to stop work and bill the Owner for remobilization expenses ion case of resumption of work.

FSI argues that delays in the payment of progress billings should also be counted in the computation for the early completion bonus in the NOA/NTP dated June 17, 1998 issued by MRTDC, classified as financial time extensions. An examination of the relevant contractual provisions would reveal that financial time extension should not be considered in the computation of early accomplishment bonus.

MRTDC's consistent position has been that time extensions, to be considered for the early completion bonus, must actually delay the construction project or cause the stoppage of construction work. Thus, in Art. 21.04 of the General Conditions of the Bid Documents which enumerated the instances when time extensions may be allowed, it is only when "the Contractor be obstructed or delayed in the prosecution or completion of the work" that the contractor will be allowed an extension of time. While in the NOA/NTP, the complete provision for early accomplishment bonus is as follows:

The successful operation of the depot and the related rail system is of national importance. In the light of this fact and to conform with the schedule provided in the BLT Agreement, FSI in accepting this NTP agrees to finish the Work within 6 months from acceptance of this NTP, inclusive of any rain delays but subject to force majeure as defined in the BLT Agreement a photocopy of which is attached herewith. In addition, Filsystem hereby agrees to a bonus/penalty scheme as follows:

Liquidated Damages:	US$100,000.00 per day of delay based on the Six-month period
Bonus:	US$30,000.00 per day of early accomplishment

(Emphasis supplied.)

Furthermore, the contemporaneous conduct of MRTDC in allowing long delays in the payment of the FSI's progress billings would indicate their belief that such automatic time extension shall not be included in the computation of early accomplishment bonus. Certainly, MRTDC never intended that it should be liable to FSI for 1,800 days[23] of delay amounting to USD 54,000,000 of early completion bonus.

Such financial time extension must be distinguished from the earlier discussed technical time extension. The technical time extension resulted from change orders issued by the Project Manager on the so-called "critical path" of the Project, whereby the construction could not proceed until such change orders were completed. Clearly, in the computation for early accomplishment bonus, MRTDC only contemplated time extensions when the actual work had to cease.

It thus becomes clear that MRTDC never consented to nor ratified the inclusion of financial time extensions in the computation of early accomplishment bonus.

It must also be pointed out that FSI was sufficiently indemnified for the delay in the payment of its progress billings with the payment of interest at the rate of 2% per month, or 24% per annum, on the amount due.

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[23] *Id.* at 507.

Thus, FSI is not entitled to financial time extension.

Third Issue: FSI is not entitled to be paid for extended overhead cost

During the hearing before the CIAC, it was found that FSI failed to adduce admissible evidence in support of its claim for extended overhead cost. The pieces of evidence that it presented in support of its claim for extended overhead costs were summaries and not actual receipts, invoices, contracts and similar documents. Such finding is a factual question that cannot be raised before this Court. It is a well-settled principle that the Supreme Court is not a trier of facts, and findings of fact made by the trial court, especially when the same are reiterated by the CA, must be given great respect if not considered as final. Thus, we ruled in *Security Bank and Trust Company v. Gan*, that:

> It is well established that under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before the Supreme Court. It must be stressed that this Court is not a trier of facts and it is not its function to re-examine and weigh anew the respective evidence of the parties. Factual findings of the trial court, especially those affirmed by the CA, are conclusive on this Court when supported by the evidence on record.[24]

To such general rule there are exceptions; however, the instant case does not fall under any of them.

The reason propounded by FSI why it presented mere summaries and not the actual documents to prove the extended overhead cost is anchored on Rule 130, Section 3, par. (c) of the Rules of Court:

> Section 3. Original document must be produced; exceptions.–– When the subject of the inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
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> x x x x x x x x x

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[24] G.R. No. 150464, June 27, 2006, 493 SCRA 239, 242-243.

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole.

FSI claims that what is sought to be established with the evidence in question is merely the general result of the evidence or the amount of extended overhead cost that it suffered.

FSI's claim for extended overhead cost may be classified as a claim for actual damages.[25] Actual damages is defined as:

Actual damages are such compensation or damages for an injury and will put the injured party in the position in which he was before he was injured. They are those damages which the injured party is entitled to recover, for the wrong done and injuries received when none was intended. They indicate such losses as are actually sustained and susceptible of measurement, and as used in this sense, the phrase, "determinate pecuniary loss" has been suggested as a more appropriate designation. They include all kinds of damages except exemplary or primitive damages. Compensatory damages are awarded as an equivalent for the injury done. It is synonymous with actual damages.

Thus, as correctly argued by the CIAC, actual damages must be duly proven and so proved with a reasonable degree of certainty.[26]

Contrary to FSI's contention, it is not merely the general result of the evidence that is sought in the instant case. The very fact of such overhead cost is also in question and evidence must be adduced to support any claim such as receipts. FSI did not. It is therefore not entitled to be paid extended overhead cost.

Fourth Issue: FSI is not entitled to be paid for costs due to change in construction methodology

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[25] *Rollo*, pp. 528-529.

[26] *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 110053, October 16, 1995, 249 SCRA 331.

The factual findings of the CIAC on this matter, which were reiterated by the CA, are:

> **There were no prior notice by Filsystems to MRTDC regarding the changed of methodology, and its financial consequences to MRTDC. Filsystems should have included this as extra cost or additional costs during the billings of the respective change orders. The absence of any contractual commitment on the part of MRTDC, there can be no legal basis to hold MRTDC liable for the extra cost in the alleged changed of methodology.** If at all, Filsystems should have asserted this claim as a consequence of the change in methodology but it did not. There was likewise no reservation when Filsystems accepted payment for the several Change Orders. (Emphasis supplied.)

As discussed above, findings of fact of the CA are binding upon this Court. Thus, increases in the cost of the Project unless authorized by the owner will not make the latter liable for its cost. Here, no evidence supports the proposition that the owner authorized the change in construction methodology. FSI must bear the costs of such change in construction methodology having executed the same unilaterally.

Fifth Issue: The parties must equally share the arbitration costs

Philippine National Construction Corporation v. Court of Appeals provides the general rule in the determination of who should bear the costs of arbitration, to wit:

> In respect of the costs of arbitration, Sec. 5, Article XV of the Rules of Procedure Governing Construction Arbitration states:
>
> *Decision as to Cost of Arbitration*. – In the case of non-monetary claims or where the parties agreed that the sharing of fees shall be determined by the Arbitrator(s), the award shall, in addition to dealing with the merits of the case, fix the cost of arbitration, and/or decide which of the parties shall bear the cost(s) or in what proportion the cost(s) shall be borne by each.
>
> Rule 142 of the Revised Rules of Court of the Philippines governing the imposition of costs likewise provides the following:

Section 1. *Costs Ordinarily follow the result of suit*. Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power for special reasons, to adjudge that either party shall pay the cost of an action, or that the same shall be divided, as may be equitable.[27]

In the instant case, there is no basis for assessing the arbitration costs against one party or the other, as the parties' prayers were only partially granted. We find it is just and equitable that both parties equally share the costs of arbitration.

WHEREFORE, the petition is hereby *PARTIALLY GRANTED*. The January 6, 2004 CA Decision is hereby *MODIFIED* with the reinstatement of the CIAC's award to FSI of early accomplishment bonus in the amount of **TWO MILLION EIGHT HUNDRED TWENTY THOUSAND US DOLLARS (USD 2,820,000).** The May 6, 2003 Award of the CIAC is *AFFIRMED* ***IN TOTO***. No pronouncement as to costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Austria-Martinez,*[*] *JJ.,* concur.

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[27] G.R. No. 165433, February 6, 2007, 514 SCRA 569, 574-575.

[*] As per September 5, 2007 raffle.

SECOND DIVISION

[G.R. No. 142803. November 20, 2007]

ARTURO M. ROMERO, *petitioner, vs.* **COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, CBM INTERNATIONAL MANPOWER SERVICES, HADI HAIDER & BROS. CO., and ELPIDIO TAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; 60-DAY REGLEMENTARY PERIOD, MANNER OF COMPUTATION.—** Romero's argument that 26 April 1999, which is a Monday, should be considered as the 10th day considering that the 10th day, 24 April 1999, fell on a Saturday is bereft of merit. The case of *Narzoles v. NLRC* is instructive on the manner of computation of the 60-day period under Circular No. 39-98: There is no question that the amendments brought about by Circular No. 39-98, which took effect on September 1, 1998, were already in force, and therefore applicable when petitioners filed their petition. Statutes regulating the procedure of the courts are applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense. No vested rights attach to procedural laws. **Consequently, the CA, in accordance with Circular No. 39-98, correctly deducted the 16 days (the fifteenth day was a Sunday) it took for petitioners to file their motion for reconsideration from the 60 day reglementary period. As petitioners only had the remaining period of 44 days from 19 October 1998, when it received a copy of the resolution denying reconsideration, to file the petition for *certiorari,* or until 8 December 1998, the filing of the petition on 17 December 1998 was nine (9) days too late.** At the time Romero filed his petition for *Certiorari* before the appellate court, Circular No. 39-98 was already in force, hence the appellate court correctly dismissed his petition. Likewise, Circular No. 39-98 was still in force when Romero filed his motion for reconsideration, thus the appellate

court correctly dismissed his motion on the ground that his petition was filed two days late.

2. **ID.; ID.; ID.; A.M. NO. 00-2-03-SC; SHOULD BE APPLIED RETROACTIVELY; RATIONALE; 60-DAY PERIOD OF FILING PETITION, WHEN IT STARTS TO RUN.—** However, on 1 September 2000, A.M. No. 00-2-03-SC took effect amending Section 4, Rule 65 of the 1997 Rules of Civil Procedure whereby the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed. This Court has in several cases ruled that A.M. No. 00-2-03-SC, being a curative statute, should be applied retroactively. In the case of *Narzoles v. NLRC*, we explained the rationale for this retroactive application: The Court has observed that Circular No. 39-98 has generated tremendous confusion resulting in the dismissal of numerous cases for late filing. This may have been because, historically, *i.e.,* even before the 1997 revision to the Rules of Civil Procedure, a party had a fresh period from receipt of the order denying the motion for reconsideration to file a petition for *certiorari*. Were it not for the amendments brought about by Circular No. 39-98, the cases so dismissed would have been resolved on the merits. Hence, the Court deemed it wise to revert to the old rule allowing a party a fresh 60-day period from notice of the denial of the motion for reconsideration to file a petition for *certiorari*. Earlier this year, the Court resolved, in A.M. No. 00-2-03-SC, to further amend Section 4, Rule 65 to read as follows: xxx. In view of the application of A.M. No. 00-2-03-SC, Romero's petition before the Court of Appeals was filed on time.

APPEARANCES OF COUNSEL

Potenciano A. Flores, Jr. for petitioner.
Mamerto S. Villanueva for CBM Int'l. Manpower Services.
The Solicitor General for public respondent.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This petition for review assails the Resolutions dated 29 October 1999[1] and 6 March 2000[2] of the Court of Appeals in CA-G.R. SP No. 55119. The Court of Appeals dismissed the petition for *certiorari* filed by petitioner Arturo M. Romero (Romero) questioning the Resolutions dated 12 March 1999 and 31 May 1999 of the National Labor Relations Commission (NLRC).

The Antecedent Facts

On 3 July 1995, Hadi Haider & Bros. Co. (HHBC) hired Romero and deployed him to Saudi Arabia. In October of 1995, HHBC sent back Romero to the Philippines to recruit workers for deployment to Syria. According to Romero, HHBC did not remit his full salary for the period beginning October to December 1995. Romero thus requested for the differential. Instead of receiving his salary differential, Romero received on 6 March 1996 a notice from HHBC terminating his employment as of 19 February 1996. HHBC further instructed Romero to cease recruiting workers in Manila and to return to Saudi Arabia.

Instead of returning to Saudi Arabia, Romero filed a complaint for illegal dismissal against HHBC before the Labor Arbiter. Romero likewise impleaded in his complaint CBM International Manpower Services (CBM), the local recruiter, and its owner Elpidio Tan.

In its Answer, CBM alleged that Romero has no cause of action against it because it was not the agency responsible for deploying Romero to Saudi Arabia.

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[1] *Rollo*, p. 43. Penned by Hon. Angelina Sandoval-Gutierrez, concurred in by Hon. Romeo A. Brawner and Martin S. Villarama, Jr.

[2] *Id.* at 44-45.

In a Decision[3] dated 27 April 1998, the Labor Arbiter ruled that Romero failed to establish that CBM processed his employment papers and was responsible for his deployment to Saudi Arabia. Hence, the Labor Arbiter dismissed Romero's complaint for lack of merit:

> Nowhere in the records of the case, specially in the evidence presented by the complainant, would show or establish the fact that it was the respondent agency which processed the employment papers and was therefore responsible for his deployment in Saudi Arabia. Although it is an established principle in law that in illegal dismissal cases, it is the employer (or the respondent) that has the burden of proof in showing that the employee concerned was dismissed for a just cause, it is, however, incumbent upon the complainant employee to show the existence of employee-employer relationship, or in this case complainant has to show his relationship with the respondent placement agency and the fact that it was said agency which caused his employment to Saudi Arabia, failing such, his action must necessarily fail.[4]

On appeal, the NLRC sustained the decision of the Labor Arbiter in a Resolution dated 12 March 1999.[5] The NLRC likewise denied Romero's motion for reconsideration.[6]

<u>The Court of Appeals' Ruling</u>

The Court of Appeals dismissed the petition based on Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended by Circular No. 39-98, which took effect on 1 September 1998.

The Court of Appeals stated that when Romero filed his motion for reconsideration on 26 April 1999, twelve (12) days had elapsed from 14 April 1999, the day Romero received the NLRC Resolution dated 12 March 1999. Since Romero received the denial of his motion for reconsideration on 9 August 1999,

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[3] *Id.* at 106-109. Penned by Labor Arbiter Emerson C. Tumanon.

[4] *Id.* at 108-109.

[5] *Id.* at 137-143. Penned by Commissioner Angelita A. Gacutan concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano T. Calaycay.

[6] *Id.* at 157.

the Court of Appeals held that when Romero filed his petition for *certiorari* on 28 September 1999, sixty-two (62) days had lapsed since his receipt of the NLRC Resolution of 12 March 1999. The Court of Appeals thus dismissed Romero's petition for being filed out of time.

The Issues

Petitioner raises the following issues before this Court:[7]

I. Whether the Court of Appeals committed reversible error in dismissing Romero's petition for *certiorari* for being filed out of time;

II. Whether the NLRC erred in finding that HHBC did not illegally dismiss Romero; and

III. Whether the NLRC erred in finding that CBM was not responsible for the recruitment and deployment of Romero.

The Court's Ruling

The petition has merit.

When the Court of Appeals dismissed Romero's petition, Circular No. 39-98, which embodied the amendments to Section 4, Rule 65 of the 1997 Rules of Civil Procedure, was already in effect. The Circular provides:

> SEC. 4. *Where and when petition to be filed.* – The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

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[7] *Id.* at 275-276.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

However, Romero claims that the Court of Appeals erred in dismissing his petition since he filed the same within the 60-day reglementary period. According to Romero, he received the Resolution of the NLRC on 14 April 1999 and he filed his Motion for Reconsideration on 26 April 1999, since the 10th day, 24 April 1999, fell on a Saturday. Romero posits that 26 April 1999 should now be considered as the 10th day, thus he still had a period of fifty (50) days upon receipt of the denial of his motion for reconsideration to file a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure. Since he received the denial of his motion for reconsideration on 9 August 1999, Romero argues that he filed the petition on time on 29 September 1999.

Romero's argument that 26 April 1999, which is a Monday, should be considered as the 10th day considering that the 10th day, 24 April 1999, fell on a Saturday is bereft of merit. The case of *Narzoles v. NLRC*[8] is instructive on the manner of computation of the 60-day period under Circular No. 39-98:

There is no question that the amendments brought about by Circular No. 39-98, which took effect on September 1, 1998, were already in force, and therefore applicable when petitioners filed their petition. Statutes regulating the procedure of the courts are applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense. No vested rights attach to procedural laws. **Consequently, the CA, in accordance with Circular No. 39-98, correctly deducted the 16 days (the fifteenth day was a Sunday) it took for petitioners to file their motion for reconsideration from the 60 day reglementary period. As petitioners only had the**

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[8] 395 Phil. 758 (2000).

remaining period of 44 days from 19 October 1998, when it received a copy of the resolution denying reconsideration, to file the petition for *certiorari*, or until 8 December 1998, the filing of the petition on 17 December 1998 was nine (9) days too late.[9] (Emphasis supplied)

At the time Romero filed his petition for *Certiorari* before the appellate court, Circular No. 39-98 was already in force, hence the appellate court correctly dismissed his petition. Likewise, Circular No. 39-98 was still in force when Romero filed his motion for reconsideration, thus the appellate court correctly dismissed his motion on the ground that his petition was filed two days late.

However, on 1 September 2000, A.M. No. 00-2-03-SC took effect amending Section 4, Rule 65 of the 1997 Rules of Civil Procedure whereby the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed. This Court has in several cases[10] ruled that A.M. No. 00-2-03-SC, being a curative statute, should be applied retroactively. In the case of *Narzoles v. NLRC*, we explained the rationale for this retroactive application:

The Court has observed that Circular No. 39-98 has generated tremendous confusion resulting in the dismissal of numerous cases for late filing. This may have been because, historically, *i.e.,* even before the 1997 revision to the Rules of Civil Procedure, a party had a fresh period from receipt of the order denying the motion for reconsideration to file a petition for *certiorari*. Were it not for the amendments brought about by Circular No. 39-98, the cases so dismissed would have been resolved on the merits. Hence, the Court deemed it wise to revert to the old rule allowing a party a fresh 60-day period from notice of the denial of the motion for reconsideration to file a petition for *certiorari*. Earlier this year, the Court resolved, in A.M. No. 00-2-03-SC, to further amend Section 4, Rule 65 to read as follows:

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[9] *Id*. at 763.

[10] *Dela Cruz v. Golar Maritime Services, Inc.,* G.R. No. 141277, 16 December 2005, 478 SCRA 173; *Ramatek Philippines, Inc. v. De Los Reyes,* G.R. No. 139526, 25 October 2005, 474 SCRA 129; *PCI Leasing and Finance, Inc. v. Go Ko,* G.R. No. 148641, 31 March 2005, 454 SCRA 586.

Sec. 4. *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

The latest amendments took effect on September 1, 2000, following its publication in the Manila Bulletin on August 4, 2000 and in the Philippine Daily Inquirer on August 7, 2000, two newspapers of general circulation.

In view of its purpose, the Resolution further amending Section 4, Rule 65 can only be described as curative in nature, and the principles governing curative statutes are applicable.

Curative statutes are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements. They are intended to supply defects, abridge superfluities and curb certain evils. They are intended to enable persons to carry into effect that which they have designed or intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action. They make valid that which, before the enactment of the statute was invalid. Their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with. Curative statutes, therefore, by their very essence, are retroactive.

Accordingly, while the Resolution states that the same "shall take effect on September 1, 2000, following its publication in two (2) newspapers of general circulation," its retroactive application cannot be denied. In short, the filing of the petition for *certiorari* in this Court on 17 December 1998 is deemed to be timely, the same having been made within the 60-day period provided under the curative Resolution. We reach this conclusion bearing in mind that the substantive aspects of this case involves the rights and benefits, even the livelihood, of petitioner-employees.[11] (Citations omitted)

In view of the application of A.M. No. 00-2-03-SC, Romero's petition before the Court of Appeals was filed on time.

Considering that the issues on whether HHBC illegally dismissed Romero and whether CBM was responsible for Romero's foreign employment are factual in nature, there is a need to remand this case to the Court of Appeals for proper determination of these issues.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Court of Appeals' Resolutions of 29 October 1999 and 6 March 2000. We *REMAND* this case to the Court of Appeals for appropriate action.

SO ORDERED.

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

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[11] *Supra* note 8, at 763-765.

SECOND DIVISION

[G.R. No. 152396. November 20, 2007]

EX-BATAAN VETERANS SECURITY AGENCY, INC., *petitioner, vs.* **THE SECRETARY OF LABOR BIENVENIDO E. LAGUESMA, REGIONAL DIRECTOR BRENDA A. VILLAFUERTE, ALEXANDER POCDING, FIDEL BALANGAY, BUAGEN CLYDE, DENNIS EPI, DAVID MENDOZA, JR., GABRIEL TAMULONG, ANTON PEDRO, FRANCISCO PINEDA, GASTON DUYAO, HULLARUB, NOLI DIONEDA, ATONG CENON, JR., TOMMY BAUCAS, WILLIAM PAPSONGAY, RICKY DORIA, GEOFREY MINO, ORLANDO RILLASE, SIMPLICIO TELLO, M. G. NOCES, R. D. ALEJO, and P. C. DINTAN,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; DISPOSITION OF LABOR STANDARDS CASES IN THE REGIONAL OFFICES; RULES; SERVICE OF NOTICES AND COPIES OF ORDERS, TO WHOM SERVED. —** The Rules on the Disposition of Labor Standards Cases in the Regional Offices (rules) specifically state that notices and copies of orders shall be served on the parties or their duly authorized representatives at their last known address or, if they are represented by counsel, through the latter. The rules shall be liberally construed and only in the absence of any applicable provision will the Rules of Court apply in a suppletory character. In this case, EBVSAI does not deny having received the notices of hearing. In fact, on 29 March and 13 June 1996, Danilo Burgos and Edwina Manao, detachment commander and bookkeeper of EBVSAI, respectively, appeared before the Regional Director. They claimed that the 22 March 1996 notice of hearing was received late and manifested that the notices should be sent to the Manila office. Thereafter, the notices of hearing were sent to the Manila office. They were also informed of EBVSAI's violations and were asked to present the employment records of the private respondents

for verification. They were, moreover, asked to submit, within 10 days, proof of compliance or their position paper. The Regional Director validly acquired jurisdiction over EBVSAI. EBVSAI can no longer question the jurisdiction of the Regional Director after receiving the notices of hearing and after appearing before the Regional Director.

2. **ID.; ID.; ID.; THE VISITORIAL AND ENFORCEMENT POWERS OF THE DOLE REGIONAL DIRECTOR TO ORDER AND ENFORCE COMPLIANCE WITH LABOR STANDARD LAWS CAN BE EXERCISED EVEN WHERE THE INDIVIDUAL CLAIMS EXCEED ₱5,000. —** In *Allied Investigation Bureau, Inc. v. Sec. of Labor,* ruled that: While it is true that under Articles 129 and 217 of the Labor Code, the Labor Arbiter has jurisdiction to hear and decide cases where the aggregate money claims of each employee exceeds ₱5,000.00, said provisions of law do not contemplate nor cover the visitorial and enforcement powers of the Secretary of Labor or his duly authorized representatives. Rather, said powers are defined and set forth in Article 128 of the Labor Code (as amended by R. A. No. 7730) thus: xxx This was further affirmed in our ruling in *Cirineo Bowling Plaza, Inc. v. Sensing,* where we sustained the jurisdiction of the DOLE Regional director and held that **"the visitorial and enforcement powers of the DOLE Regional Director to order and enforce compliance with labor standard laws can be exercised even where the individual claim exceeds ₱5,000."**

3. **ID.; ID.;, ID.; ID.; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.—** However, if the labor standards case is covered by the exception clause in Article 128(b) of the Labor Code, then the Regional director will have to endorse the case to the appropriate Arbitration Branch of the NLRC. In order to divest the Regional director or his representatives of jurisdiction, the following elements must be present: (a) that the employer contests the findings of the labor regulations officer and raises issues thereon; (b) that in order to resolve such issues, there is a need to examine evidentiary matters; and (c) that such matters are not verifiable in the normal course of inspection. The rules also provide that the employer shall raise such objections during the hearing of the case or at any time after receipt of the notice of inspection results. In this case, the Regional Director validly assumed jurisdiction over the money claims of private

respondents even if the claims exceeded ₱5,000 because such jurisdiction was exercised in accordance with Article 128(b) of the Labor Code and the case does not fall under the exception clause.

APPEARANCES OF COUNSEL

Filio & Filio Law Office for petitioner.
The Solicitor General for public respondents.
Ernesto B. Wagang for private respondents.

D E C I S I O N

CARPIO, *J*.:

The Case

This is a petition for review[1] with prayer for the issuance of a temporary restraining order or writ of preliminary injunction of the 29 May 2001 Decision[2] and the 26 February 2002 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 57653. The 29 May 2001 Decision of the Court of Appeals affirmed the 4 October 1999 Order of the Secretary of Labor in OS-LS-04-4-097-280. The 26 February 2002 Resolution denied the motion for reconsideration.

The Facts

Ex-Bataan Veterans Security Agency, Inc. (EBVSAI) is in the business of providing security services while private respondents are EBVSAI's employees assigned to the National Power Corporation at Ambuklao Hydro Electric Plant, Bokod, Benguet (Ambuklao Plant).

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 125-133. Penned by Associate Justice Alicia L. Santos with Associate Justices Ramon A. Barcelona and Rodrigo V. Cosico, concurring.

[3] *Id*. at 144-145. Penned by Associate Justice Alicia L. Santos with Associate Justices Rodrigo V. Cosico and Candido V. Rivera, concurring.

On 20 February 1996, private respondents led by Alexander Pocding (Pocding) instituted a complaint[4] for underpayment of wages against EBVSAI before the Regional Office of the Department of Labor and Employment (DOLE).

On 7 March 1996, the Regional Office conducted a complaint inspection at the Ambuklao Plant where the following violations were noted: (1) non-presentation of records; (2) non-payment of holiday pay; (3) non-payment of rest day premium; (4) underpayment of night shift differential pay; (5) non-payment of service incentive leave; (6) underpayment of 13th month pay; (7) no registration; (8) no annual medical report; (9) no annual work accidental report; (10) no safety committee; and (11) no trained first aider.[5] On the same date, the Regional Office issued a notice of hearing[6] requiring EBVSAI and private respondents to attend the hearing on 22 March 1996. Other hearings were set for 8 May 1996, 27 May 1996 and 10 June 1996.

On 19 August 1996, the Director of the Regional Office (Regional Director) issued an Order, the dispositive portion of which reads:

> WHEREFORE, premises considered, respondent **EX-BATAAN VETERANS SECURITY AGENCY** is hereby **ORDERED** to pay the computed deficiencies owing to the affected employees in the total amount of **SEVEN HUNDRED SIXTY-THREE THOUSAND NINE HUNDRED NINETY-SEVEN PESOS and 85/PESOS** within ten (10) calendar days upon receipt hereof. Otherwise, a Writ of Execution shall be issued to enforce compliance of this Order.

	NAME	DEFICIENCY
1.	ALEXANDER POCDING	₱ 36,380.85
2.	FIDEL BALANGAY	36,380.85
3.	BUAGEN CLYDE	36,380.85
4.	DENNIS EPI	36,380.85

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[4] *Id.* at 46.

[5] *Id.* at 47.

[6] *Id.*

5.	DAVID MENDOZA, JR.	36,380.85
6.	GABRIEL TAMULONG	36,380.85
7.	ANTON PEDRO	36,380.85
8.	FRANCISCO PINEDA	36,380.85
9.	GASTON DUYAO	36,380.85
10.	HULLARUB	36,380.85
11.	NOLI D[EO]NIDA	36,380.85
12.	ATONG CENON, JR.	36,380.85
13.	TOMMY BAUCAS	36,380.85
14.	WILIAM PAPSONGAY	36,380.85
15.	RICKY DORIA	36,380.85
16.	GEOFREY MINO	36,380.85
17.	ORLANDO R[IL]LASE	36,380.85
18.	SIMPLICO TELLO	36,380.85
19.	NOCES, M.G.	36,380.85
20.	ALEJO, R.D.	36,380.85
21.	D[I]NTAN, P.C.	36,380.85
	TOTAL	₱ 763,997.85

x x x x x x x x x

SO ORDERED.[7]

EBVSAI filed a motion for reconsideration[8] and alleged that the Regional Director does not have jurisdiction over the subject matter of the case because the money claim of each private respondent exceeded ₱5,000. EBVSAI pointed out that the Regional Director should have endorsed the case to the Labor Arbiter.

In a supplemental motion for reconsideration,[9] EBVSAI questioned the Regional Director's basis for the computation of the deficiencies due to each private respondent.

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[7] *Id*. at 50-52.

[8] *Id*. at 53-62.

[9] *Id*. at 63-68.

In an Order[10] dated 16 January 1997, the Regional Director denied EBVSAI's motion for reconsideration and supplemental motion for reconsideration. The Regional Director stated that, pursuant to Republic Act No. 7730 (RA 7730),[11] the limitations under Articles 129[12] and 217 (6)[13] of the Labor Code no longer apply to the Secretary of Labor's visitorial and enforcement powers under Article 128 (b).[14] The Secretary of Labor or his

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[10] *Id.* at 70-73.

[11] Entitled "AN ACT FURTHER STRENGTHENING THE VISITORIAL AND ENFORCEMENT POWERS OF THE SECRETARY OF LABOR AND EMPLOYMENT, AMENDING FOR THE PURPOSE ARTICLE 128 OF P.D. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," dated 2 June 1994.

[12] Article 129 of the Labor Code provides:

Article 129. RECOVERY OF WAGES, SIMPLE MONEY CLAIMS AND OTHER BENEFITS. — Upon complaint of any interested party, the regional director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceeding and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or househelper under this Code, arising from employer-employee relations: *Provided*, That such complaint does not include a claim for reinstatement; *Provided, further,* That the aggregate money claim of each employee or househelper does not exceed Five Thousand pesos (₱5,000.00). . . .

[13] Article 217(6) of the Labor Code provides:

Article 217. JURISDICTION OF LABOR ARBITERS AND THE COMMISSION. — (a) Except as otherwise provided under this Code, the Labor Arbiter shall have original and exclusive jurisdiction to hear and decide within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

x x x x x x x x x

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

[14] Article 128 of the Labor Code provides:

Article 128. VISITORIAL AND ENFORCEMENT POWER. — x x x

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee

duly authorized representatives are now empowered to hear and decide, in a summary proceeding, any matter involving the recovery of any amount of wages and other monetary claims arising out of employer-employee relations at the time of the inspection.

EBVSAI appealed to the Secretary of Labor.

The Ruling of the Secretary of Labor

In an Order[15] dated 4 October 1999, the Secretary of Labor affirmed with modification the Regional Director's 19 August 1996 Order. The Secretary of Labor ordered that the ₱1,000 received by private respondents Romeo Alejo, Atong Cenon, Jr., Geofrey Mino, Dennis Epi, and Ricky Doria be deducted from their respective claims. The Secretary of Labor ruled that, pursuant to RA 7730, the Court's decision in the *Servando*[16] case is no longer controlling insofar as the restrictive effect of Article 129 on the visitorial and enforcement power of the Secretary of Labor is concerned.

The Secretary of Labor also stated that there was no denial of due process because EBVSAI was accorded several opportunities to present its side but EBVSAI failed to present any evidence to controvert the findings of the Regional Director. Moreover, the Secretary of Labor doubted the veracity and authenticity of EBVSAI's documentary evidence. The Secretary of Labor noted that these documents were not presented at the initial stage of the hearing and that the payroll documents

still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

[15] *Rollo*, pp. 107-111.

[16] G.R. No. 85840, 26 April 1990, 184 SCRA 664.

did not indicate the periods covered by EBVSAI's alleged payments.

EVBSAI filed a motion for reconsideration which was denied by the Secretary of Labor in his 3 January 2000 Order.[17]

EBVSAI filed a petition for *certiorari* before the Court of Appeals.

The Ruling of the Court of Appeals

In its 29 May 2001 Decision, the Court of Appeals dismissed the petition and affirmed the Secretary of Labor's decision. The Court of Appeals adopted the Secretary of Labor's ruling that RA 7730 repealed the jurisdictional limitation imposed by Article 129 on Article 128 of the Labor Code. The Court of Appeals also agreed with the Secretary of Labor's finding that EBVSAI was accorded due process.

The Court of Appeals also denied EBVSAI's motion for reconsideration in its 26 February 2002 Resolution.

Hence, this petition.

The Issues

This case raises the following issues:

1. Whether the Secretary of Labor or his duly authorized representatives acquired jurisdiction over EBVSAI; and

2. Whether the Secretary of Labor or his duly authorized representatives have jurisdiction over the money claims of private respondents which exceed ₱5,000.

The Ruling of the Court

The petition has no merit.

On the Regional Director's Jurisdiction over EBVSAI

EBVSAI claims that the Regional Director did not acquire jurisdiction over EBVSAI because he failed to comply with

[17] *Rollo*, pp. 122-123.

Section 11, Rule 14 of the 1997 Rules of Civil Procedure.[18] EBVSAI points out that the notice of hearing was served at the Ambuklao Plant, not at EBVSAI's main office in Makati, and that it was addressed to Leonardo Castro, Jr., EBVSAI's Vice-President.

The Rules on the Disposition of Labor Standards Cases in the Regional Offices[19] (rules) specifically state that notices and copies of orders shall be served on the parties or their duly authorized representatives at their last known address or, if they are represented by counsel, through the latter.[20] The rules shall be liberally construed[21] and only in the absence of any applicable provision will the Rules of Court apply in a suppletory character.[22]

In this case, EBVSAI does not deny having received the notices of hearing. In fact, on 29 March and 13 June 1996, Danilo Burgos and Edwina Manao, detachment commander and bookkeeper of EBVSAI, respectively, appeared before the Regional Director. They claimed that the 22 March 1996 notice of hearing was received late and manifested that the notices should be sent to the Manila office. Thereafter, the notices of hearing were sent to the Manila office. They were also informed of EBVSAI's violations and were asked to present the employment records of the private respondents for verification. They were, moreover, asked to submit, within 10 days, proof of compliance or their position paper. The Regional Director

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[18] Section 11, Rule 14 of the 1997 Rules of Civil Procedure provides:

SEC.11. *Service upon domestic private juridical entity.* — When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

[19] Dated 16 September 1987.

[20] Department of Labor and Employment, Rules on the Disposition of Labor Standard Cases in the Regional Offices, Section 4, Rule II (1987).

[21] *Id.*, Section 5, Rule I.

[22] *Id.*, Section 6, Rule I.

validly acquired jurisdiction over EBVSAI. EBVSAI can no longer question the jurisdiction of the Regional Director after receiving the notices of hearing and after appearing before the Regional Director.

On the Regional Director's Jurisdiction over the Money Claims

EBVSAI maintains that under Articles 129 and 217 (6) of the Labor Code, the Labor Arbiter, not the Regional Director, has exclusive and original jurisdiction over the case because the individual monetary claim of private respondents exceeds ₱5,000. EBVSAI also argues that the case falls under the exception clause in Article 128 (b) of the Labor Code. EBVSAI asserts that the Regional Director should have certified the case to the Arbitration Branch of the National Labor Relations Commission (NLRC) for a full-blown hearing on the merits.

In *Allied Investigation Bureau, Inc. v. Sec. of Labor*, we ruled that:

> While it is true that under Articles 129 and 217 of the Labor Code, the Labor Arbiter has jurisdiction to hear and decide cases where the aggregate money claims of each employee exceeds ₱5,000.00, said provisions of law do not contemplate nor cover the visitorial and enforcement powers of the Secretary of Labor or his duly authorized representatives.
>
> Rather, said powers are defined and set forth in Article 128 of the Labor Code (as amended by R.A. No. 7730) thus:
>
> Art. 128 Visitorial and enforcement power. — x x x
>
> (b) *Notwithstanding the provisions of Article[s] 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to [the labor standards provisions of this Code and other] labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection.* The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor

employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

x x x x x x x x x

The aforequoted provision explicitly excludes from its coverage Articles 129 and 217 of the Labor Code by the phrase "(N)otwithstanding the provisions of Articles 129 and 217 of this Code to the contrary x x x" thereby retaining and further strengthening the power of the Secretary of Labor or his duly authorized representatives to issue compliance orders to give effect to the labor standards provisions of said Code and other labor legislation based on the findings of labor employment and enforcement officer or industrial safety engineer made in the course of inspection.[23] (Italics in the original)

This was further affirmed in our ruling in *Cirineo Bowling Plaza, Inc. v. Sensing*,[24] where we sustained the jurisdiction of the DOLE Regional Director and held that **"the visitorial and enforcement powers of the DOLE Regional Director to order and enforce compliance with labor standard laws can be exercised even where the individual claim exceeds ₱5,000."**

However, if the labor standards case is covered by the exception clause in Article 128 (b) of the Labor Code, then the Regional Director will have to endorse the case to the appropriate Arbitration Branch of the NLRC. In order to divest the Regional Director or his representatives of jurisdiction, the following elements must be present: (a) that the employer contests the findings of the labor regulations officer and raises issues thereon; (b) that in order to resolve such issues, there is a need to examine evidentiary matters; and (c) that such matters are not verifiable in the normal course of inspection.[25] The rules also provide

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[23] 377 Phil. 80, 88-90 (1999).

[24] G.R. No. 146572, 14 January 2005, 448 SCRA 175, 186.

[25] *Batong Buhay Gold Mines, Inc. v. Sec. Dela Serna*, 370 Phil. 872 (1999), citing *SSK Parts Corporation v. Camas*, G.R. No. 85934, 30 January 1990, 181 SCRA 675.

that the employer shall raise such objections during the hearing of the case or at any time after receipt of the notice of inspection results.[26]

In this case, the Regional Director validly assumed jurisdiction over the money claims of private respondents even if the claims exceeded ₱5,000 because such jurisdiction was exercised in accordance with Article 128(b) of the Labor Code and the case does not fall under the exception clause.

The Court notes that EBVSAI did not contest the findings of the labor regulations officer during the hearing or after receipt of the notice of inspection results. It was only in its supplemental motion for reconsideration before the Regional Director that EBVSAI questioned the findings of the labor regulations officer and presented documentary evidence to controvert the claims of private respondents. But even if this was the case, the Regional Director and the Secretary of Labor still looked into and considered EBVSAI's documentary evidence and found that such did not warrant the reversal of the Regional Director's order. The Secretary of Labor also doubted the veracity and authenticity of EBVSAI's documentary evidence. Moreover, the pieces of evidence presented by EBVSAI were verifiable in the normal course of inspection because all employment records of the employees should be kept and maintained in or about the premises of the workplace, which in this case is in Ambuklao Plant, the establishment where private respondents were regularly assigned.[27]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 29 May 2001 Decision and the 26 February 2002 Resolution of the Court of Appeals in CA-G.R. SP No. 57653.

SO ORDERED.

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

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[26] Department of Labor and Employment, Rules on the Disposition of Labor Standard Cases in the Regional Offices, Section 1(b), Rule III (1987).

[27] Implementing Rules of Book III, Rule X, Section 11.

SECOND DIVISION

[G.R. No. 155374. November 20, 2007]

DR. ANTONIO C. SANTOS, *petitioner, vs.* **COURT OF APPEALS, EMMANUEL B. JUAN, and CARMELITA JUAN DELOS SANTOS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MOTION FOR RECONSIDERATION; FILING THEREOF IS INDISPENSABLE.—** The general rule is that the filing of a motion for reconsideration is indispensable before a party can resort to the special civil action for *certiorari* to afford the court or tribunal the opportunity to correct its error, if any. While this rule is subject to exceptions, petitioner fails to show that this case falls under any of the exceptions. Besides, in this case, petitioner filed an Urgent Motion for Reconsideration but, without waiting for its resolution, filed a petition for *certiorari* before the Court of Appeals. Petitioner claims that the resolution of his Urgent Motion for Reconsideration is not forthcoming. In the same way that the parties may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not, it is not up to petitioner to preempt the trial court's action on his Urgent Motion for Reconsideration. Petitioner's recourse should have been to move for the trial court's resolution of his Urgent Motion for Reconsideration instead of filing a petition for *certiorari* before the Court of Appeals. The Court of Appeals correctly ruled that the petition for *certiorari* was prematurely filed.

2. **ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; PREMATURELY FILED BY PETITIONER IN CASE AT BAR.—** However, after ruling that the petition was prematurely filed, the Court of Appeals should have refrained from further ruling on the merits of the 9 June 1999 Order of the trial court. The ruling of the Court of Appeals on the validity of the 9 June 1999 Order preempted the trial court's resolution of petitioner's Urgent Motion for Reconsideration. Considering the pendency of petitioner's Urgent Motion for Reconsideration before the trial

court, it follows that the petition before this Court is also premature.

APPEARANCES OF COUNSEL

Francisco D. Estrada for petitioner.
Amado Auditor Caballero for respondents.

R E S O L U T I O N

CARPIO, *J*.:

This case originated from an action for Injunction with Damages with prayer for the issuance of a preliminary injunction or temporary restraining order filed by Emmanuel B. Juan and Carmelita Juan Delos Santos (respondents) against Dr. Antonio C. Santos (petitioner) and Rolando Lim (Lim), Officer In Charge of the City Engineer's Office of Valenzuela City. Respondents alleged that they are the registered owners of a parcel of land located in Barangay Ugong, Valenzuela City. They developed a passage over the land leading to Barangay Que Grande Street and allowed adjoining property owners, including petitioner, to use the passage. In March 1999, respondents decided to construct commercial buildings on the land. Respondents fenced the land and closed the passage. However, respondents opened another passage on another side of their land. The new passage also leads to the same *barangay* road.

In May 1999, petitioner, with the help of armed men, demolished the concrete fence blocking the old passage. Respondents alleged that the demolition was done without any court order but with the support of Lim.

In an Order dated 24 May 1999,[1] Judge Floro P. Alejo (Judge Alejo) of the Regional Trial Court of Valenzuela City, Branch 172 (trial court), issued an order setting for hearing the issuance of a temporary restraining order on 27 May 1999. On 27 May 1999, the trial court issued an Order (27 May 1999 Order), as follows:

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[1] Records, p. 19.

When the plaintiffs' prayer in the complaint for the issuance of a temporary restraining order was called for hearing this morning, the parties, upon suggestion of the Court, agreed to submit in connection with said incident their respective position papers attaching thereto the affidavits of their respective witnesses and whatever documents they may wish to submit as evidence in support of their respective contentions within five (5) days from today, after which the incident of temporary retraining order shall be considered submitted for resolution.

SO ORDERED.[2]

On 9 June 1999, the trial court issued another Order (9 June 1999 Order), thus:

For resolution is the prayer in the complaint for the issuance of a writ of preliminary injunction restraining "the defendants from entering or passing on the property described in T.C.T. No. V-52589 and from interfering with any improvement being constructed by plaintiffs."

x x x x x x x x x

WHEREFORE, upon the posting by the plaintiffs of a bond in the amount of ₱50,000.00 to the effect that the plaintiffs will pay the defendants all the damages which they may sustain by reason of the injunction if the Court should finally decide that the plaintiffs are not entitled thereto, let the writ of preliminary injunction prayed for be issued accordingly.

SO ORDERED.[3]

On 14 June 1999, the trial court issued a writ of preliminary injunction.[4] Petitioner filed an Urgent Motion for Reconsideration.[5]

In an Order[6] dated 15 June 1999, the trial court set an ocular inspection of the property and held in abeyance petitioner's

[2] *Rollo*, p. 41.

[3] *Id*. at 51, 53.

[4] *Id*. at 63-64.

[5] *Id*. at 54-56.

[6] *Id*. at 65.

Urgent Motion for Reconsideration. Petitioner filed a motion for the inhibition of Judge Alejo on the ground that he uttered a statement that he could not reverse himself on his 9 June 1999 Order.[7] The trial court denied the motion for inhibition in its Order dated 23 June 1999 (23 June 1999 Order).[8]

Petitioner filed a petition for *certiorari* and prohibition with the Court of Appeals, docketed as CA-G.R. SP No. 53627, assailing the 9 June 1999 Order, the writ of preliminary injunction, and the 23 June 1999 Order issued by the trial court.

In its 23 April 2002 Decision,[9] the Court of Appeals denied the petition and affirmed the 9 June 1999 and 23 June 1999 Orders of the trial court.

The Court of Appeals ruled that the grant or denial of an injunction rests upon the sound discretion of the trial court. The Court of Appeals ruled that Judge Alejo did not commit grave abuse of discretion in issuing the writ of preliminary injunction. The Court of Appeals did not agree with petitioner that the writ of preliminary injunction was issued without a hearing. A hearing was set on 27 May 1999 during which the parties agreed to submit their position papers. The Court of Appeals also ruled that the petition was prematurely filed because petitioner's Urgent Motion for Reconsideration had not yet been acted upon by the trial court. The Court of Appeals ruled that petitioner failed to show that the case falls under the exceptional circumstances where a petition for *certiorari* may be filed even without filing a motion for reconsideration.

Petitioner filed a motion for reconsideration. In its 26 September 2002 Resolution,[10] the Court of Appeals denied petitioner's motion for reconsideration.

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[7] Not 7 June 1999 as stated in the Order.

[8] *Rollo*, pp. 66-67.

[9] *Id.* at 157-166. Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Eugenio S. Labitoria and Teodoro P. Regino, concurring.

[10] *Id.* at 182. Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Teodoro P. Regino and Remedios Salazar-Fernando, concurring.

Petitioner came to this Court via a petition for review,[11] raising the following issues:

1. Whether the Court of Appeals erred in ruling that the trial court did not commit grave abuse of discretion in issuing the 9 June 1999 Order, the writ of preliminary injunction, and the 23 June 1999 Order; and

2. Whether the Court of Appeals erred in ruling that the petition for *certiorari* was prematurely filed.

In its 23 June 1999 Order, the trial court denied petitioner's motion for the inhibition of Judge Alejo. Petitioner raises as one of the issues the alleged error committed by the Court of Appeals in affirming the trial court's 23 June 1999 Order. However, in his Memorandum, petitioner failed to present any argument to show that the Court of Appeals committed a reversible error in affirming the 23 June 1999 Order.

This Court's 22 May 2004 Resolution[12] is clear: the memorandum of the party shall contain "a clear and concise presentation of the argument in support of each issue." For petitioner's failure to present any argument on this issue, this Court will not rule on the merit of the denial of petitioner's motion for inhibition as contained in the trial court's 23 June 1999 Order.

Petitioner alleges that the Court of Appeals erred in ruling that the petition for *certiorari* was prematurely filed. Petitioner admits that he filed the petition for certiorari before the Court of Appeals while his Urgent Motion for Reconsideration before the trial court was still pending. However, petitioner claims that the urgent necessity of resolving the issue justifies the filing of the petition for *certiorari*. Petitioner argues that respondents closed a public road. At the time of the closure, petitioner was constructing his house and the delivery trucks and the laborers could not pass through the street. Petitioner alleges that it would be fatal for him to wait for the resolution

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[11] Under Rule 45 of the 1997 Rules of Civil Procedure.

[12] *Rollo*, pp. 202-203.

of his Urgent Motion for Reconsideration. Petitioner alleges that the resolution of his Urgent Motion for Reconsideration is not forthcoming, given the actuation of Judge Alejo.

In a Resolution dated 14 February 2007, we required the parties to inform the Court of the status of petitioner's Urgent Motion for Reconsideration and to furnish the Court of any order or resolution issued by the trial court on the matter. In their Compliance with Manifestation dated 8 March 2007,[13] respondents informed the Court that they could not produce any document, resolution, or order on the matter because the trial court forwarded the records of the case to this Court. Respondents manifested that the Urgent Motion for Reconsideration was still unresolved when CA-G.R. SP No. 53627 was filed before the Court of Appeals. In his Compliance with Manifestation[14] dated 14 March 2007, petitioner informed the Court that he has not received any order or action of the trial court on his Urgent Motion for Reconsideration up to the filing of said Compliance with Manifestation.

The general rule is that the filing of a motion for reconsideration is indispensable before a party can resort to the special civil action for *certiorari* to afford the court or tribunal the opportunity to correct its error, if any.[15] While this rule is subject to exceptions, petitioner fails to show that this case falls under any of the exceptions. Besides, in this case, petitioner filed an Urgent Motion for Reconsideration but, without waiting for its resolution, filed a petition for *certiorari* before the Court of Appeals. Petitioner claims that the resolution of his Urgent Motion for Reconsideration is not forthcoming. In the same way that the parties may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not,[16] it

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[13] *Id.* at 278-284.

[14] *Id.* at 307-310.

[15] *Metro Transit Organization, Inc. v. Court of Appeals*, 440 Phil. 743 (2002).

[16] *Id.*

is not up to petitioner to preempt the trial court's action on his Urgent Motion for Reconsideration. Petitioner's recourse should have been to move for the trial court's resolution of his Urgent Motion for Reconsideration instead of filing a petition for *certiorari* before the Court of Appeals. The Court of Appeals correctly ruled that the petition for *certiorari* was prematurely filed.

However, after ruling that the petition was prematurely filed, the Court of Appeals should have refrained from further ruling on the merits of the 9 June 1999 Order of the trial court. The ruling of the Court of Appeals on the validity of the 9 June 1999 Order preempted the trial court's resolution of petitioner's Urgent Motion for Reconsideration.

Considering the pendency of petitioner's Urgent Motion for Reconsideration before the trial court, it follows that the petition before this Court is also premature.

WHEREFORE, we *DENY* the petition for premature filing. We *SET ASIDE* the 23 April 2002 Decision of the Court of Appeals in CA-G.R. SP No. 53627 insofar as it affirmed the 9 June 1999 Order of the trial court.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 158031. November 20, 2007]

TEODORO, GABRIEL, GLORIA, LORENZA, VICENTA, RODOLFO, NELIA, FERNANDO, and JOCELYN, all surnamed CALINISAN, *petitioners, vs.* **COURT OF APPEALS and BROWN EAGLE PROPERTIES, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; FORUM SHOPPING; NOT COMMITTED BY THE PETITIONERS IN CASE AT BAR.—** While petitioners' application for land registration was pending in the RTC, respondent's registration application in the MCTC was dismissed for lack of jurisdiction, which dismissal became final on 27 November 2000. From then on, there appears no other registration application involving the parties in this case and the subject parcels of land covered by Cad. 452-D except petitioners' application in the RTC. Thus, the evil sought to be prevented by the rule against forum shopping, which is the pendency of multiple suits involving the same parties and causes of action and the possibility of two different tribunals rendering conflicting decisions, no longer exists.

2. **ID.; ID.; ID.; RULE AGAINST FORUM SHOPPING SHOULD NOT BE INTERPRETED WITH SUCH ABSOLUTE LITERALNESS AS TO DEFEAT ITS PRIMARY OBJECTIVE OF FACILITATING THE SPEEDY DISPOSITION OF CASES.—** The Court finds that the continuation of the proceedings in the RTC, rather than the dismissal of the petitioners' registration application, will best serve the interest of substantial justice. Dismissing the RTC land registration case will leave petitioners, as well as respondent, without a remedy in view of the earlier dismissal of the MCTC case. Therefore, it is ultimately for the benefit of both parties that the RTC case continues. In this way, the parties' respective claims over the property will properly be litigated upon and will finally be resolved by the court of competent jurisdiction. The rule against forum shopping was formulated to serve as an instrument to promote and facilitate the orderly administration of justice. It should not be

interpreted with such absolute literalness as to defeat its primary objective of facilitating the speedy disposition of cases.

3. **ID.; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; NOT PRESENT IN CASE AT BAR.—** Petitioners' registration application involved a much bigger tract of land which includes the lots applied for by respondent and Blue Balls. Respondent applied for registration of title of adjoining lots with a total area of **93,868 square meters** whereas petitioners applied for the registration of **404,139 square meters** of the land covered by Cad. 452-D. Clearly, the land area subject matter of the petitioners' application is much larger than that of the respondent's and Blue Balls' combined applications. The great disparity in the size of the lots subject of the two registration applications warrants the non-dismissal of the petitioners' application in the RTC. Even if the proceedings in the MCTC continued, it would only have resolved the rights to the title over 93,868 square meters of Cad. 452-D. There would be no *res judicata* as to the remaining larger portion of roughly 300,000 square meters of Cad. 452-D.

APPEARANCES OF COUNSEL

Lontok Law Offices and *The Firm of Sarmiento Delson Dakanay & Resurreccion* for petitioners.
Aspiras & Aspiras Law Office and *Delima & Meñez Law Offices* for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] of the Decision dated 5 September 2002[2] and the Resolution dated 25 April

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

[2] *Rollo*, pp. 129-133. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Rodrigo V. Cosico and Perlita J. Tria Tirona, concurring.

2003[3] of the Court of Appeals in CA-G.R. SP No. 68752. The assailed decision dismissed petitioners' application for land registration on the ground of forum shopping. The resolution denied petitioners' motion for reconsideration.

The Facts

On 21 November 1997, respondent Brown Eagle Properties, Inc. filed with the Municipal Circuit Trial Court of Silang-Amadeo, Cavite (MCTC) seven applications for registration of title over nine adjoining lots[4] with a total area of 93,868 square meters and covered by Cad. 452-D. The seven applications were docketed as LRC Case Nos. 97-112 to 97-116 and 97-120 to 97-121.

On the same date, Blue Balls Properties, Inc. (Blue Balls) also filed with the MCTC three applications for registration of title involving portions of the same property with a total area of 73,436 square meters. The applications were docketed as LRC Case Nos. 97-117 to 97-119.

On 18 May 1999, six of the petitioners, namely, Teodoro, Gabriel, Gloria, Lorenza, Vicenta, and Rodolfo, all surnamed Calinisan, opposed the applications of respondent and Blue Balls. They claimed that they own 442,892 square meters of the land covered by Cad. 452-D, which include the areas applied for by respondent and Blue Balls.

On 9 September 1999, petitioners Teodoro, Gabriel, Gloria, Lorenza, Vicenta, Rodolfo, Nelia, Fernando, and Jocelyn, all surnamed Calinisan, filed with the Regional Trial Court of Tagaytay City (RTC) an application for registration of title over two parcels of land covered by Cad. 452-D with a total area of 435,947 square meters. The application was docketed as LRC Case No. TG-897. Petitioners filed an amended application[5] for registration of Lot 10033, Cad. 452-D with an area of 404,139 square meters.

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[3] *Id*. at 143-144.

[4] *Id*. at 46.

[5] *Id*. at 22-27.

On 28 August 2000, respondent moved to dismiss the application of petitioners on the grounds of forum shopping and *litis pendentia*.[6] Respondent alleged that petitioners asked the MCTC that their opposition be treated as their application for registration of title. Respondent claimed that petitioners, in effect, had two pending applications for registration of title covering the same property.

Meanwhile, the MCTC dismissed respondent's and Blue Balls' applications for registration of title in a Resolution dated 3 January 2000.[7] The MCTC held that the RTC has jurisdiction over the case because the issues pertained to the title to and possession of the lots in question.[8] The dispositive portion of the MCTC resolution reads as follows:

> WHEREFORE, PREMISES CONSIDERED, the above stated Applications for Registration of title filed by Brown Eagle Properties, Inc. and Blue Balls Properties, Inc. are hereby DISMISSED, WITHOUT PREJUDICE TO THE REFILING THEREOF WITH THE REGIONAL TRIAL COURT, TAGAYTAY CITY.
>
> SO ORDERED.[9]

Respondent and Blue Balls elevated the matter to this Court by filing a petition for review on *certiorari*.

In its Resolution of 2 October 2000, the Court denied the petition for being a wrong mode of appeal.[10] In a Resolution dated 27 November 2000, the Court resolved to deny with finality the motion for reconsideration filed by respondent and Blue Balls.[11]

Upon petitioners' manifestation of the finality of the dismissal of respondent's registration application in the MCTC, the RTC

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[6] *Id*. at 28-39.

[7] *Id*. at 43-47. Penned by Judge Ma. Victoria N. Cupin-Tesorero.

[8] *Id*. at 46.

[9] *Id*. at 47.

[10] *Id*. at 65.

[11] *Id*. at 66.

denied respondent's motion to dismiss in its Order dated 9 January 2001.[12]

Respondent filed a motion for reconsideration, which the RTC denied in its Order of 13 December 2001.[13]

Respondent filed a special civil action for *certiorari* with the Court of Appeals.

In its Decision of 5 September 2002, the Court of Appeals granted respondent's petition and set aside the Orders of the RTC. The Court of Appeals denied petitioners' motion for reconsideration in its Resolution of 25 April 2003.

Hence, this petition.

The Ruling of the Court of Appeals

The Court of Appeals ruled that petitioners were guilty of forum shopping. The 21 November 1997 applications for registration filed by respondent in the MCTC and the 9 September 1999 application filed by petitioners in the RTC involved the same parties. Petitioners opposed the registration application of respondent while respondent moved to dismiss the registration application of petitioners. Both cases involved the same property, particularly lands in Barangay Kaong, Silang, Cavite covered by Cad. 452-D.

The Court of Appeals further held that both cases involved identical rights and reliefs asserted by petitioners. The petitioners' opposition filed in the MCTC against the respondent's registration application also served as an application for registration of title. Therefore, when petitioners filed an application for registration before the RTC after they had already filed their opposition in the MCTC, they committed forum shopping.

The Court of Appeals disposed of the case as follows:

WHEREFORE, the petition is hereby GRANTED and the orders of the trial court, dated 09 January 2001 and 13 December 2001 are SET

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[12] *Id*. at 70-72. Penned by Judge Alfonso S. Garcia.

[13] *Id*. at 85-86.

ASIDE. The application for land registration filed by the Calinisans, docketed as LRC Case No. TG-897 is DISMISSED. No costs.

SO ORDERED.[14]

The Issue

The lone issue for resolution in this case is whether petitioners committed forum shopping warranting the dismissal of their application for land registration in the RTC.

The Ruling of this Court

The petition has merit.

Respondent contends that petitioners committed forum shopping with their filing of an application for land registration in the RTC while another case for land registration was pending before the MCTC involving the same parties and the same property. Respondent points out that petitioners themselves asked the MCTC that the opposition they filed be treated as an application for registration. According to respondent, this resulted, in effect, to two registration applications filed by petitioners. Respondent further maintains that whatever decision the MCTC will render, regardless of which party succeeds, amounts to *res judicata* in the action in the RTC.

We disagree.

First. While petitioners' application for land registration was pending in the RTC, respondent's registration application in the MCTC was dismissed for lack of jurisdiction, which dismissal became final on 27 November 2000. From then on, there appears no other registration application involving the parties in this case and the subject parcels of land covered by Cad. 452-D except petitioners' application in the RTC. Thus, the evil sought to be prevented by the rule against forum shopping, which is the pendency of multiple suits involving the same parties and causes of action and the possibility of two different tribunals rendering conflicting decisions,[15] no longer exists.

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[14] *Id*. at 133.

[15] See *Guaranteed Hotels, Inc. v. Baltao*, G.R. No. 164338, 17 January 2005, 448 SCRA 738, 746.

Second. Petitioners did not file multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. Petitioners' opposition to respondent's registration application is but an expected legal strategy since petitioners were claiming the entire property. Petitioners' submission of an opposition does not amount to a filing of a registration application for all the lots comprising Cad. 452-D which will bar the initiation of land registration proceedings for the whole property.

Third. Petitioners' registration application involved a much bigger tract of land which includes the lots applied for by respondent and Blue Balls. Respondent applied for registration of title of adjoining lots with a total area of **93,868 square meters** whereas petitioners applied for the registration of **404,139 square meters** of the land covered by Cad. 452-D. Clearly, the land area subject matter of the petitioners' application is much larger than that of the respondent's and Blue Balls' combined applications. The great disparity in the size of the lots subject of the two registration applications warrants the non-dismissal of the petitioners' application in the RTC. Even if the proceedings in the MCTC continued, it would only have resolved the rights to the title over 93,868 square meters of Cad. 452-D. There would be no *res judicata* as to the remaining larger portion of roughly 300,000 square meters of Cad. 452-D.

Fourth. The Court finds that the continuation of the proceedings in the RTC, rather than the dismissal of the petitioners' registration application, will best serve the interest of substantial justice.[16] Dismissing the RTC land registration case will leave petitioners, as well as respondent, without a remedy in view of the earlier dismissal of the MCTC case.[17] Therefore, it is ultimately for the benefit of both parties that the RTC case continues. In this way, the parties' respective

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[16] See *San Miguel Corporation v. Aballa*, G.R. No. 149011, 28 June 2005, 461 SCRA 392, 414, citing *Manila Hotel Corporation v. Court of Appeals*, 433 Phil. 911 (2002).

[17] See *Calo v. Tan*, G.R. No. 151266, 29 November 2005, 476 SCRA 426, 442.

claims over the property will properly be litigated upon and will finally be resolved by the court of competent jurisdiction. The rule against forum shopping was formulated to serve as an instrument to promote and facilitate the orderly administration of justice.[18] It should not be interpreted with such absolute literalness as to defeat its primary objective of facilitating the speedy disposition of cases.[19]

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision dated 5 September 2002 and the Resolution dated 25 April 2003 of the Court of Appeals in CA-G.R. SP No. 68752.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 160530. November 20, 2007]

CYNTHIA V. NITTSCHER, *petitioner, vs.* **DR. WERNER KARL JOHANN NITTSCHER (Deceased), ATTY. ROGELIO P. NOGALES and THE REGIONAL TRIAL COURT OF MAKATI (Branch 59)**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICE; CERTIFICATION AGAINST FORUM SHOPPING; NON-INCLUSION THEREOF IN THE PETITION FOR THE

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[18] *Gabionza v. Court of Appeals*, G.R. No. 112547, 18 July 1994, 234 SCRA 192, 198.

[19] *Id*.

ISSUANCE OF LETTERS TESTAMENTARY IS NOT A GROUND FOR THE OUTRIGHT DISMISSAL OF THE PETITION.— As to the *first* issue, Revised Circular No. 28-91 and Administrative Circular No. 04-94 of the Court require a certification against forum-shopping for all initiatory pleadings filed in court. However, in this case, the petition for the issuance of letters testamentary is not an initiatory pleading, but a mere continuation of the original petition for the probate of Dr. Nittscher's will. Hence, respondent's failure to include a certification against forum-shopping in his petition for the issuance of letters testamentary is not a ground for outright dismissal of the said petition.

2. **ID.; EVIDENCE; THE SUPREME COURT WILL NOT ANALYZE AND WEIGH EVIDENCE ALL OVER AGAIN UNLESS THE FINDINGS OF THE LOWER COURT ARE TOTALLY DEVOID OF SUPPORT OR GLARINGLY ERRONEOUS.—** In this case, the RTC and the Court of Appeals are one in their finding that Dr. Nittscher was a resident of Las Piñas, Metro Manila at the time of his death. Such factual finding, which we find supported by evidence on record, should no longer be disturbed. Time and again we have said that reviews on *certiorari* are limited to errors of law. Unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous, this Court will not analyze or weigh evidence all over again. Hence, applying the aforequoted rule, Dr. Nittscher correctly filed in the RTC of Makati City, which then covered Las Piñas, Metro Manila, the petition for the probate of his will and for the issuance of letters testamentary to respondent.

3. **POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; NO DENIAL THEREOF IN CASE AT BAR.—** Regarding the *third* and *fourth* issues, we note that Dr. Nittscher asked for the allowance of his own will. In this connection, Section 4, Rule 76 of the Rules of Court states: **SEC. 4**. *Heirs, devisees, legatees, and executors to be notified by mail or personally*. – … If the testator asks for the allowance of his own will, notice shall be sent only to his compulsory heirs. In this case, records show that petitioner, with whom Dr. Nittscher had no child, and Dr. Nittscher's children from his previous marriage were all duly notified, by registered mail, of the probate proceedings. Petitioner even appeared in court to oppose respondent's petition for the issuance of letters testamentary

and she also filed a motion to dismiss the said petition. She likewise filed a motion for reconsideration of the issuance of the letters testamentary and of the denial of her motion to dismiss. We are convinced petitioner was accorded every opportunity to defend her cause. Therefore, petitioner's allegation that she was denied due process in the probate proceedings is without basis.

4. **REMEDIAL LAW; SPECIAL PROCEEDINGS; ALLOWANCE OF A WILL; CONCLUSIVE ONLY AS TO THE DUE EXECUTION OF THE WILL.—** As a final word, petitioner should realize that the allowance of her husband's will is conclusive only as to its due execution. The authority of the probate court is limited to ascertaining whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law. Thus, petitioner's claim of title to the properties forming part of her husband's estate should be settled in an ordinary action before the regular courts.

APPEARANCES OF COUNSEL

Potenciano A. Flores, Jr. for petitioner.
R.P. Nogales Law Offices for private respondents.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* are the Decision[1] dated July 31, 2003 and Resolution[2] dated October 21, 2003 of the Court of Appeals in CA-G.R. CV No. 55330, which affirmed the Order[3] dated September 29, 1995 of the Regional Trial Court (RTC), Branch 59, Makati City, in SP Proc. No. M-2330 for the probate of a will.

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[1] *Rollo*, pp. 79-93. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Roberto A. Barrios and Arturo D. Brion concurring.

[2] *Id.* at 95.

[3] CA *rollo*, pp. 81-85. Penned by Judge Lucia Violago Isnani.

The facts are as follows.

On January 31, 1990, Dr. Werner Karl Johann Nittscher filed with the RTC of Makati City a petition for the probate of his holographic will and for the issuance of letters testamentary to herein respondent Atty. Rogelio P. Nogales.

On September 19, 1991, after hearing and with due notice to the compulsory heirs, the probate court issued an order allowing the said holographic will, thus:

> WHEREFORE, premises considered, the Holographic Will of the petitioner-testator Dr. Werner J. Nittscher executed pursuant to the provision of the second paragraph of Article 838 of the Civil Code of the Philippines on January 25, 1990 in Manila, Philippines, and proved in accordance with the provision of Rule 76 of the Revised Rules of Court is hereby allowed.
>
> SO ORDERED.[4]

On September 26, 1994, Dr. Nittscher died. Hence, Atty. Nogales filed a petition for letters testamentary for the administration of the estate of the deceased. Dr. Nittscher's surviving spouse, herein petitioner Cynthia V. Nittscher, moved for the dismissal of the said petition. However, the court in its September 29, 1995 Order denied petitioner's motion to dismiss, and granted respondent's petition for the issuance of letters testamentary, to wit:

> In view of all the foregoing, the motion to dismiss is DENIED. The petition for the issuance of Letters Testamentary, being in order, is GRANTED.
>
> Section 4, Rule 78 of the Revised Rules of Court, provides "when a will has been proved and allowed, the court shall issue letters testamentary thereon to the person named as executor therein, if he is competent, accepts the trust and gives a bond as required by these rules." In the case at bar, petitioner Atty. Rogelio P. Nogales of the R.P. Nogales Law Offices has been named executor under the Holographic Will of Dr. Werner J. Nittscher. As prayed for, let Letters Testamentary be issued to Atty. Rogelio P. Nogales, the executor named in the Will, without a bond.

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[4] *Rollo*, p. 167.

SO ORDERED.[5]

Petitioner moved for reconsideration, but her motion was denied for lack of merit. On May 9, 1996, Atty. Nogales was issued letters testamentary and was sworn in as executor.

Petitioner appealed to the Court of Appeals alleging that respondent's petition for the issuance of letters testamentary should have been dismissed outright as the RTC had no jurisdiction over the subject matter and that she was denied due process.

The appellate court dismissed the appeal, thus:

> WHEREFORE, the foregoing considered, the appeal is hereby **DISMISSED** and the assailed Order is **AFFIRMED** ***in toto*****.** The court *a quo* is ordered to proceed with dispatch in the proceedings below.
>
> SO ORDERED.[6]

Petitioner's motion for reconsideration of the aforequoted decision was denied for lack of merit. Hence, the present petition anchored on the following grounds:

I.

BOTH THE CA AND THE LOWER COURT ERRED IN NOT DISMISSING OUTRIGHT THE PETITION FOR LETTERS ... TESTAMENTARY FILED BY ATTY. NOGALES WHEN, OBVIOUSLY, IT WAS FILED IN VIOLATION OF REVISED CIRCULAR NO. 28-91 AND ADMINISTRATIVE CIRCULAR NO. 04-94 OF THIS HONORABLE COURT.

II.

THE CA ERRED IN NOT DECLARING THAT THE LOWER COURT [HAS] NO JURISDICTION OVER THE SUBJECT MATTER OF THE PRESENT SUIT.

III.

THE CA ERRED IN CONCLUDING THAT SUMMONS WERE PROPERLY ISSUED TO THE PARTIES AND ALL PERSONS

[5] *Id*. at 79-80.

[6] *Id*. at 93.

INTERESTED IN THE PROBATE OF THE HOLOGRAPHIC WILL OF DR. NITTSCHER.

IV.

THE CA ERRED IN CONCLUDING THAT THE PETITIONER WAS NOT DEPRIVED OF DUE PROCESS OF LAW BY THE LOWER COURT.[7]

Petitioner contends that respondent's petition for the issuance of letters testamentary lacked a certification against forum-shopping. She adds that the RTC has no jurisdiction over the subject matter of this case because Dr. Nittscher was allegedly not a resident of the Philippines; neither did he leave real properties in the country. Petitioner claims that the properties listed for disposition in her husband's will actually belong to her. She insists she was denied due process of law because she did not receive by personal service the notices of the proceedings.

Respondent Atty. Nogales, however, counters that Dr. Nittscher did reside and own real properties in Las Piñas, Metro Manila. He stresses that petitioner was duly notified of the probate proceedings. Respondent points out that petitioner even appeared in court to oppose the petition for the issuance of letters testamentary and that she also filed a motion to dismiss the said petition. Respondent maintains that the petition for the issuance of letters testamentary need not contain a certification against forum-shopping as it is merely a continuation of the original proceeding for the probate of the will.

We resolve to deny the petition.

As to the *first* issue, Revised Circular No. 28-91[8] and Administrative Circular No. 04-94[9] of the Court require a

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[7] *Id*. at 459-460.

[8] Additional Requisites for Petitions Filed with the Supreme Court and the Court of Appeals to Prevent Forum Shopping or Multiple Filing of Petitions and Complaints. Effective April 1, 1994.

[9] Additional Requisites for Civil Complaints, Petitions and Other Initiatory Pleadings Filed in All Courts and Agencies, Other Than the Supreme Court and the Court of Appeals, to Prevent Forum Shopping or Multiple Filing of Such Pleadings. Effective April 1, 1994.

certification against forum-shopping for all initiatory pleadings filed in court. However, in this case, the petition for the issuance of letters testamentary is not an initiatory pleading, but a mere continuation of the original petition for the probate of Dr. Nittscher's will. Hence, respondent's failure to include a certification against forum-shopping in his petition for the issuance of letters testamentary is not a ground for outright dismissal of the said petition.

Anent the *second* issue, Section 1, Rule 73 of the Rules of Court provides:

> **SECTION 1**. *Where estate of deceased persons settled.* – **If the decedent is an inhabitant of the Philippines at the time of his death**, whether a citizen or an alien, **his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance (now Regional Trial Court) in the province in which he resides at the time of his death**, and if he is an inhabitant of a foreign country, the Court of First Instance (now Regional Trial Court) of any province in which he had estate. … (Emphasis supplied.)

In this case, the RTC and the Court of Appeals are one in their finding that Dr. Nittscher was a resident of Las Piñas, Metro Manila at the time of his death. Such factual finding, which we find supported by evidence on record, should no longer be disturbed. Time and again we have said that reviews on certiorari are limited to errors of law. Unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous, this Court will not analyze or weigh evidence all over again.[10]

Hence, applying the aforequoted rule, Dr. Nittscher correctly filed in the RTC of Makati City, which then covered Las Piñas, Metro Manila, the petition for the probate of his will and for the issuance of letters testamentary to respondent.

Regarding the *third* and *fourth* issues, we note that Dr. Nittscher asked for the allowance of his own will. In this connection, Section 4, Rule 76 of the Rules of Court states:

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[10] *Quezon City Government v. Dacara*, G.R. No. 150304, June 15, 2005, 460 SCRA 243, 245.

SEC. 4. *Heirs, devisees, legatees, and executors to be notified by mail or personally. – …*

If the testator asks for the allowance of his own will, notice shall be sent only to his compulsory heirs.

In this case, records show that petitioner, with whom Dr. Nittscher had no child, and Dr. Nittscher's children from his previous marriage were all duly notified, by registered mail, of the probate proceedings. Petitioner even appeared in court to oppose respondent's petition for the issuance of letters testamentary and she also filed a motion to dismiss the said petition. She likewise filed a motion for reconsideration of the issuance of the letters testamentary and of the denial of her motion to dismiss. We are convinced petitioner was accorded every opportunity to defend her cause. Therefore, petitioner's allegation that she was denied due process in the probate proceedings is without basis.

As a final word, petitioner should realize that the allowance of her husband's will is conclusive only as to its due execution.[11] The authority of the probate court is limited to ascertaining whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law.[12] Thus, petitioner's claim of title to the properties forming part of her husband's estate should be settled in an ordinary action before the regular courts.

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Decision dated July 31, 2003 and Resolution dated October 21, 2003 of the Court of Appeals

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[11] CIVIL CODE, Article 838.

Art. 838. No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court.

x x x x x x x x x

Subject to the right of appeal, the allowance of the will, either during the lifetime of the testator or after his death, shall be conclusive as to its due execution.

[12] *Maloles II v. Phillips*, G.R. Nos. 129505 & 133359, January 31, 2000, 324 SCRA 172, 180.

in CA-G.R. CV No. 55330, which affirmed the Order dated September 29, 1995 of the Regional Trial Court, Branch 59, Makati City, in SP Proc. No. M-2330 are *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 164305. November 20, 2007]

JULIANA SUDARIA, *petitioner, vs.* **MAXIMILLIANO QUIAMBAO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FAILURE TO ATTACH CLEARLY LEGIBLE DUPLICATE ORIGINALS OR TRUE COPIES OF THE FINAL ORDERS OF THE LOWER COURT SHALL BE SUFFICIENT GROUND FOR THE DISMISSAL OF THE PETITION.— The Court of Appeals correctly denied the petition for failure to attach clearly legible duplicate originals or photocopies of the MTC judgment and copies of the material portions of the record, specifically the *Kasunduan* dated 21 March 1965 which is integral to the complaint (Annex "B" thereof). The case of *Atillo v. Bombay* reiterates the mandatory tenor of Section 2 (d), Rule 42 with respect to the requirement of attaching clearly legible duplicate originals or true copies of the judgments or final orders of the lower courts. As for the phrase "of the pleadings and other material portions of the record as would support the allegations of the petition" in the same provision of law, the *Atillo* case likewise tells us that

while this contemplates the exercise of discretion on the part of the petitioner, such discretion in choosing the documents to be attached to the petition is not unbridled, to wit: The [Court of Appeals] has the duty to check the exercise of this discretion to see to it that the submission of supporting documents is not merely perfunctory. The practical aspect of this duty is to enable the CA to determine at the earliest possible time the existence of *prima facie* merit in the petition. Moreover, Section 3 of Rule 42 of the Rules of Court provides that if petitioner fails to comply with the submission of "documents which should accompany the petition," it "shall be sufficient ground for the dismissal thereof."

2. **ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; JURISDICTION OF THE COURT ON EJECTMENT CASES IS DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT AND THE CHARACTER OF THE RELIEF SOUGHT.—** It is settled that jurisdiction of the court in ejectment cases is determined by the allegations of the complaint and the character of the relief sought. xxx. It was clearly alleged that petitioner unlawfully withheld possession of the land despite respondent's demand to vacate the premises, which demand respondent made after petitioner had failed to pay the rent. Based on the averment in the complaint, the MTC properly acquired jurisdiction over the ejectment case.

3. **ID.; ID.; ID.; THE COURT CANNOT BE DEPRIVED OF JURISDICTION THEREON BASED MERELY ON DEFENDANT'S ASSERTION OF OWNERSHIP OVER THE LITIGATED PROPERTY; REASON.—** Petitioner's naked claim in her answer that the subject property is her homelot is not sufficient to divest the MTC of jurisdiction over the ejectment case. The court could not be deprived of jurisdiction over an ejectment case based merely on defendant's assertion of ownership over the litigated property. The underlying reason for this rule is to prevent the defendant from trifling with the summary nature of an ejectment suit by the simple expedient of asserting ownership over the disputed property.

4. **ID.; ID.; ID.; SOLE ISSUE IS PHYSICAL OR MATERIAL POSSESSION OF THE PREMISES OR POSSESSION *DE FACTO*.—** Ejectment proceedings are summary proceedings intended to provide an expeditious means of protecting actual

possession or right to possession of property. Title is not involved. The sole issue to be resolved is who is entitled to the physical or material possession of the premises or possession *de facto*.

5. **ID.; ID.; ID.; INITIAL DETERMINATION OF OWNERSHIP OVER THE DISPUTED PROPERTY IS ONLY FOR THE PURPOSE OF SETTLING THE ISSUE OF POSSESSION.—** Anent the issue of rightful possession, it is clear that it belongs to respondent. Petitioner failed to show that the Department of Agrarian Reform had awarded the property in her favor as her homelot. Instead, the clear preponderance of evidence is on the side of respondent. He presented the Torrens title covering the lot in his name. It must be stressed, however, that the Court has engaged in this initial determination of ownership over the lot in dispute only for the purpose of settling the issue of possession.

APPEARANCES OF COUNSEL

Antonio V. Reyes for petitioner.
Rodriguez Laluces & Ecarma Law Offices for respondent.

DECISION

TINGA, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Juliana Sudaria (petitioner) assails the Decision[2] dated 8 March 2004 of the Ninth Division of the Court of Appeals in CA-G.R. SP No. 75560 and its Resolution[3] dated 10 June 2004 denying her Motion for Reconsideration.[4]

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[1] *Rollo*, pp. 9-22; dated 9 August 2004.

[2] *Id*. at 118-123; penned by Associate Justice Eliezer R. De Los Santos with the concurrence of Associate Justices B.A. Adefuin-De La Cruz and Jose C. Mendoza.

[3] *Id*. at 133.

[4] *Id*. at 124-131; dated 19 March 2004.

The antecedents follow.

On 11 October 2001, respondent Maximilliano Quiambao filed a Complaint[5] for unlawful detainer against petitioner before the Municipal Trial Court (MTC) of San Miguel, Bulacan docketed as Civil Case No. 2557. Respondent stated that he was the owner of a parcel of land with an area of 354 sq. m. situated in Barrio Sta. Rita, Bata, San Miguel, Bulacan and covered by Transfer Certificate of Title No. T-113925. He also averred that in 1965, by virtue of a *Kasunduan*,[6] his predecessor-in-interest, Alfonsa C. *Vda. de* Viola, leased the said piece of land to petitioner's late husband, Atanacio Sudaria, for a monthly rental of ₱2.00 which was later increased to ₱873.00 per annum in 1985. According to respondent, in the same year, petitioner, who took over the lease after her husband's death, stopped paying the rentals on the property. In April 2001, respondent made a demand[7] for petitioner to pay the overdue rentals and vacate the premises. However, petitioner refused to leave the premises despite the lapse of the fifteen (15-) day period given by respondent. Because no settlement was reached at the conciliation proceedings before the *barangay* captain, respondent was constrained to file the ejectment case.[8]

In her Answer with Motion to Dismiss,[9] petitioner averred that the subject property was previously owned by Alfonsa C. *Vda. de* Viola and later inherited by Leticia and Asuncion Viola as evidenced by an agricultural leasehold contract. She claimed that she had not been remiss in paying the lease rentals, as the payment for the years between 1980 and 1999 were evidenced by receipts except that the receipts for 1998 and 1999 were withheld by respondent. Petitioner also maintained that she refused to pay the lease rentals to respondent because he was

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[5] CA *rollo*, pp. 21-25.

[6] Exhibit "B" of the Complaint; *id*. at 40.

[7] *Id*. at 26.

[8] *Id*. at 23.

[9] *Rollo*, pp. 33-35; dated 24 October 2001.

not the registered lessor, and that as *bona fide* tenant-successor of her deceased husband, she was entitled to security of tenure, as well as to the homelot which formed part of the leasehold under agrarian laws. She further contended that the MTC could not have taken cognizance of the case as there had been no prior recourse to the Barangay Agrarian Reform Council as provided for in Section 53 of Republic Act No. 6657. Finally, petitioner asserted that the MTC had no jurisdiction over the case as it involved an agrarian dispute.[10]

In a Decision[11] dated 10 May 2002, the MTC held that there existed a tenancy relationship between the parties and that since the subject lot was petitioner's homelot, the instant controversy is an agrarian dispute over which the courts have no jurisdiction.[12]

On appeal, the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 9 reversed the decision of the MTC.[13] The key portions of said decision read as follows:

To begin with, it bears stressing that the 354-square meter residential lot covered by the *KASUNDUAN* (Exh. B) and the 1.076-hectare parcel of riceland covered by both the Agricultural Leasehold Contract (Exh. 1) and the *Kasunduan Buwisan Sa Sakahan* (Exh. 3) are separate and distinct from one another; they are parcels of realty differently located.

Having been originally established in December 1979 (Exh. 1), the agricultural leasehold relation between herein contending parties, specifically with respect to a "home lot," is governed by pertinent provisions of Rep. Act No. 3844 ("Agricultural Land Reform Code") which took effect upon its approval on August 8, 1968, as amended by Rep. Act No. 6389 ("Code of Agrarian Reforms of the Philippines") which took effect upon its approval on September 10, 1971. Having taken effect upon its approval on August 30, 1954, Rep. Act No.

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[10] *Id*. at 33-34.

[11] CA *rollo,* pp. 70-76; penned by Hon. Teodulo B. Ronquillo.

[12] *Id*. at 74-75.

[13] *Id*. at 97-102; In a Decision dated 10 October 2002 in Civil Case No. 495-M-2002; penned by Hon. D. Roy A. Masadao, Jr.

1199 is not applicable to herein parties' leasehold relation (*Bunye v. Aquino*, 342 SCRA 360, 369).

x x x x x x x x x

With the aforecited provisions of prevailing agrarian laws to go by, it becomes all too clear that the 354-square meter residential lot aforementioned, located as it is outside the 1.076-hectare landholding, cannot be considered a "home lot" inasmuch as the same has not yet been expropriated by the Department of Agrarian Reform for "resale at cost" to herein defendant-appellee. By such token, the instant controversy falls under the jurisdiction of civil courts to the exclusion of the Department of Agrarian Reform Adjudication Board.[14]

Consequently, petitioner elevated the case to the Court of Appeals in a petition for review under Rule 42 of the 1997 Rules of Civil Procedure.

The Court of Appeals denied the petition and affirmed the decision of the RTC. The denial of the petition was based on petitioner's failure to attach clearly legible copies of the judgments of the lower courts and of the pleadings and documents material to the judicious consideration of the case, in violation of Section 2, Rule 42[15] of the 1997 Rules of Civil Procedure.[16]

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[14] *Id.* at 99-100.

[15] RULES OF CIVIL PROCEDURE, Rule 42, Sec. 2 reads in part as follows:

SEC. 2. *Form and contents.*—The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall x x x (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

x x x x x x x x x

[16] *Rollo*, p. 120; Pursuant to Section 3, Rule 42 of the 1997 Rules of Civil Procedure which states:

SEC. 3. *Effect of failure to comply with requirements.*—The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Even on the merits, the appellate court held that the petition must be denied as petitioner's occupation of the subject property was in the concept of civil law lease and had no reference at all to agricultural lease.[17]

Petitioner filed a motion for reconsideration of the Court of Appeals decision but the same was denied.[18] Hence, this appeal by *certiorari*, whereby she asserts that the Court of Appeals erred when it affirmed the decision of the RTC and ruled that the civil courts did have jurisdiction over the instant case.[19] She insists that since the subject property is her homelot, she is entitled to continue in the exclusive possession and enjoyment thereof.[20]

For his part, respondent maintains that petitioner occupied the subject property by virtue of a lease agreement and not by virtue of any tenancy relationship with its previous owner.[21]

The petition must fail.

First, the procedural aspects. The Court of Appeals correctly denied the petition for failure to attach clearly legible duplicate originals or photocopies of the MTC judgment and copies of the material portions of the record, specifically the *Kasunduan* dated 21 March 1965 which is integral to the complaint (Annex "B" thereof). The case of *Atillo v. Bombay*[22] reiterates the mandatory tenor of Section 2 (d), Rule 42 with respect to the requirement of attaching clearly legible duplicate originals or true copies of the judgments or final orders of the lower courts. As for the phrase "of the pleadings and other material portions of the record as would support the allegations of the petition" in the same provision of law, the *Atillo* case likewise tells us

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[17] *Rollo,* p. 122.

[18] *Rollo*, p. 133; Resolution dated 10 June 2004.

[19] *Rollo*, p. 13.

[20] *Id*. at 16.

[21] *Id*. at 139.

[22] 404 Phil. 179, 188 (2001).

that while this contemplates the exercise of discretion on the part of the petitioner, such discretion in choosing the documents to be attached to the petition is not unbridled, to wit:

> The [Court of Appeals] has the duty to check the exercise of this discretion to see to it that the submission of supporting documents is not merely perfunctory. The practical aspect of this duty is to enable the CA to determine at the earliest possible time the existence of *prima facie* merit in the petition. Moreover, Section 3 of Rule 42 of the Rules of Court provides that if petitioner fails to comply with the submission of "documents which should accompany the petition," it "shall be sufficient ground for the dismissal thereof."[23]

In any event, petitioner's contentions on the substantive aspect of the case fail to invite judgment in her favor.

It is settled that jurisdiction of the court in ejectment cases is determined by the allegations of the complaint and the character of the relief sought.[24]

The Complaint[25] filed by petitioner alleged these material facts:

> ***Cause of Action***
>
> 3. Plaintiff is the owner of that certain parcel of land situated in Bo. Sta Rita, Bata, San Miguel, Bulacan, with a total area of 354 square meters, more or less, and covered by TCT No. T-113925 of the Registry of Deeds for the Province of Bulacan. A copy of the said title hereto attached is made on (*sic*) integral part hereof as Annex "A".
>
> 4. On 21 May 1965, the said piece of land was leased to the defendant's predecessor-in-interest, her late husband Atanacio Sudaria, for a monthly rental of ₱2.00 which was later increased to ₱873/year in 1985. A copy of the lease contract is hereto attached and is made an integral part hereof as Annex "B".
>
> 5. Defendant took over the lease of the said property after her husband's death.

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[23] *Id*. at 191-192.

[24] *Cajayon v. Batuyong*, G.R. No. 149118, 16 February 2006, 482 SCRA 461, 469.

[25] *Supra* note 5.

6. In 1985, defendant stopped paying the rentals for the said property which, as of 4 April 2001, amounted to ₱13,095.00.

7. On 4 April 2001, plaintiff sent [to] defendant a notice to vacate and demand to pay but the defendant refused, and still refuses, to vacate the leased property despite the lapse of the fifteen (15) day period given [to] her. A copy of the said notice is hereto attached and is made an integral part hereof as Annex "C".[26]

It was clearly alleged that petitioner unlawfully withheld possession of the land despite respondent's demand to vacate the premises, which demand respondent made after petitioner had failed to pay the rent. Based on the averment in the complaint, the MTC properly acquired jurisdiction over the ejectment case.

Petitioner's naked claim in her answer that the subject property is her homelot is not sufficient to divest the MTC of jurisdiction over the ejectment case. The court could not be deprived of jurisdiction over an ejectment case based merely on defendant's assertion of ownership over the litigated property. The underlying reason for this rule is to prevent the defendant from trifling with the summary nature of an ejectment suit by the simple expedient of asserting ownership over the disputed property.[27]

Ejectment proceedings are summary proceedings intended to provide an expeditious means of protecting actual possession or right to possession of property. Title is not involved. The sole issue to be resolved is who is entitled to the physical or material possession of the premises or possession *de facto*.[28] On this point, the pronouncements in *Pajuyo v. Court of Appeals*[29] are enlightening, thus:

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[26] CA *rollo*, p. 22.

[27] *Tecson v. Gutierrez*, G.R. No. 152978, 4 March 2005, 452 SCRA 781, 787.

[28] *David v. Cordova*, G.R. No. 152992, 28 July 2005, 464 SCRA 384, 402.

[29] G.R. No. 146364, 3 June 2004, 430 SCRA 492.

The only question that the courts must resolve in ejectment proceedings is who—is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable, or when both parties intruded into public land and their applications to own the land have yet to be approved by the proper government agency. Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.

Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.[30]

Anent the issue of rightful possession, it is clear that it belongs to respondent. Petitioner failed to show that the Department of Agrarian Reform had awarded the property in her favor as her homelot. Instead, the clear preponderance of evidence is on the side of respondent. He presented the Torrens title covering the lot in his name.

It must be stressed, however, that the Court has engaged in this initial determination of ownership over the lot in dispute only for the purpose of settling the issue of possession.

WHEREFORE, the petition is DENIED. The Decision dated 8 March 2004 of the Court of Appeals in CA-G.R. SP No. 75560 and its Resolution[31] dated 10 June 2004 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

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[30] *Id.* at 510-511.

[31] *Supra* note 18.

SECOND DIVISION

[G.R. No. 165943. November 20, 2007]

ELIODORO ALELIGAY, substituted by CEFERINO ALELIGAY, *petitioner, vs.* **TEODORICO LASERNA, PRISCILLA VILLAGRACIA and ANGUSTIA VILLAGRACIA,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE; WHEN DEEMED AN EQUITABLE MORTGAGE.— Now, on the claim of petitioner that what he entered into was an equitable mortgage and not a contract of sale. Under Article 1602, in relation to Article 1604 of the Civil Code, the instances when a contract – regardless of its nomenclature – may be presumed to be an equitable mortgage are as follows: (1) When the price of a sale with right to repurchase is unusually inadequate; (2) When the vendor remains in possession as lessee or otherwise; (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; (4) When the purchaser retains for himself a part of the purchase price; (5) When the vendor binds himself to pay the taxes on the thing sold; (6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation. x x x x The presence of any of these circumstances is sufficient for a contract to be deemed an equitable mortgage. Both the trial and appellate courts, however, found none of the circumstances enumerated in Article 1602 of the Civil Code. Neither do we find any cogent reason to reverse their findings. *Actori incumbit onus probandi*. (Upon the plaintiff in a civil case lies the burden of proof.) Plaintiff must therefore establish his case by preponderance of evidence; failing to do so results in his defeat.

2. ID.; ID.; ID.; ID.; CONTRACT BETWEEN THE PARTIES IN CASE AT BAR IS ONE OF SALE AND NOT AN EQUITABLE MORTGAGE.— On this point, we are in agreement that records

on hand show that the questioned deed of sale is really one of sale and not an equitable mortgage. Eliodoro's assertion of continued possession over Lot No. 1235 was not substantiated by any indubitable evidence nor was it attested to by any other witness. Except for his self-serving claims, Eliodoro could not refute the overwhelming evidence of respondents that the disputed contract is one of sale. First, being a notarized document, the questioned deed of sale carries the evidentiary weight conferred by law upon duly executed instruments; it is entitled to full faith and credit upon its face. Second, not one of the Aleligays, except for petitioner, appeared in court to deny under oath their respective signatures and fingerprints appearing on the questioned deed of sale. On the contrary, respondents presented in evidence the Dactyloscopic Report FP Case No. 84-66 conducted by the NBI confirming the genuineness and authenticity of Eliodoro's signature and the fingerprints of other signatory heirs, namely Maura and Rosario, in the questioned Deed of Sale. Third, respondents presented a joint affidavit executed on September 9, 1967 by petitioner and one Presentacion Sion *Vda. de* Estialbo, both attesting to the fact of Laserna's continuous possession over Lot No. 1235 for about 20 years up to said date. Fourth, the lease granted in favor of Gregorio Gecarane, Jr. affirms Laserna's possession over Lot No. 1235. Finally, respondents' payment of realty taxes after the consummation of the sale, though not conclusive evidence of ownership, bolsters their right over the property in dispute.

3. ID.; ID.; ID.; BUYER IN GOOD FAITH; GOOD FAITH IS ALWAYS PRESUMED.— Finally, we need not tarry on the alleged issue on good faith. Good faith is always presumed, unless convincing evidence to the contrary is adduced. Eliodoro failed to submit such contrary proof. Thus, the presumption of good faith in favor of the Villagracias stands. Whether there was good or bad faith on their part as buyers, in our view, is a non-issue, raised mainly by petitioner to beef up his scanty contention.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
*Lumawag & Benliro Office*s for respondents.

DECISION

QUISUMBING, *J.*:

This petition assails the Decision[1] and the Resolution[2] dated April 27, 2004 and October 25, 2004, respectively, of the Court of Appeals in CA-G.R. CV No. 18688, which had affirmed the Decision[3] dated March 21, 1988 of the Regional Trial Court (RTC) of Roxas City, Branch 18, in Civil Case No. V-4098 for Annulment of Deed of Sale, Damages, Recovery of Ownership, and Reconveyance.

Subject of the present controversy is a 124,554 sq. m. parcel of land located in the Barrios of Daplas and Matagnop, Dao, Capiz, identified as Lot No. 1235 of Cadastral Survey of Dao, originally owned by Anselmo Aleligay. Upon Anselmo's death in 1927, the lot passed on to his heirs, namely: Eleno, Maura, Juan, Consolacion, Rosario and herein petitioner Eliodoro (now deceased), all surnamed Aleligay.[4] At present, the lot is covered by Original Certificate of Title (OCT) No. 0-995 issued by the Register of Deeds of the Province of Capiz in the name of respondents Priscilla and Angustia Villagracia (the Villagracias).

In his Complaint, Eliodoro claimed that after inheriting Lot No. 1235, he mortgaged it in 1946 to respondent Teodorico Laserna although he retained its possession. He also averred he tried several times to redeem the property from Laserna but was persuaded by the latter not to hurry. He alleged that it was only in 1976 when he discovered a deed of sale in Laserna's favor. Allegedly it was signed by him, but he insisted that his purported signature was a forgery committed by Laserna.

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[1] *Rollo*, pp. 82-89. Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Portia Aliño-Hormachuelos and Josefina Guevara-Salonga concurring.

[2] *Id*. at 95.

[3] *Id*. at 53-64. Penned by Judge Jonas A. Abellar.

[4] Records, p. 110.

Hence, Laserna's sale of the lot to the Villagracias, according to complainant, was illegal and void.

In his Answer, Laserna alleged that in 1946, he and Diosdado Martirez bought the property from Eliodoro and his siblings.[5] Martirez later on sold his portion to Laserna.[6] In 1969, Laserna sold the entire property to the Villagracias. Contrary to Eliodoro's claim, Laserna insisted he had been in possession of the property since 1946.

For their part, the Villagracias averred that Laserna had been the owner of Lot No. 1235 since 1946 and had in fact leased the lot to one Gregorio Gecarane, Jr. They also claimed to have bought[7] the lot in good faith from Laserna on August 12, 1969 and had later on secured an order for the registration of said lot from the Court of First Instance (CFI) of Capiz; hence, OCT No. 0-995 was issued in their favor.

During the pre-trial, the parties, in the stipulation of facts,[8] admitted the authenticity and due execution of the August 12, 1969 Deed of Absolute Sale[9] between Laserna and the Villagracias.

On March 21, 1988, the RTC dismissed Eliodoro's complaint and disposed of the case as follows:

WHEREFORE, a decision is rendered dismissing plaintiff's complaint for lack of a (sic) cause of action, and;

1. Declaring defendants Priscil[l]a Villagracia and Angustia Villagracia owners of Lot No. 1235 of the Cadastral Survey of Dao, Capiz, with right of possession, and ordering plaintiff and all persons under him, their agents and representatives to vacate the land;

2. Ordering plaintiff to pay defendants the sum of ₱7,000.00 as attorney's fees and to pay defendants the sum of ₱10,000.00 as litigation expenses; and,

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[5] *Id*. at 109.

[6] *Id*. at 111.

[7] *Id*. at 108.

[8] *Rollo,* pp. 84-85.

[9] *Supra* note 7.

3. To pay the costs of suit.

SO ORDERED.[10]

While the case was pending appeal, Eliodoro died and he was substituted by his son, Ceferino Aleligay. Thereafter, the Court of Appeals rendered its decision affirming the trial court's ruling. It also held that a valid Deed of Absolute Sale existed among respondents Laserna and the Villagracias. The dispositive portion of the appellate court's decision reads:

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Roxas City, Branch 18 dated March 21, 1988 in Civil Case No. V-4098 is hereby **AFFIRMED.**

SO ORDERED.[11]

In the instant petition, petitioner raises the following issues:

I.

WHETHER THE CONTRACT BETWEEN RESPONDENT [TEODORICO LASERNA] AND [ELIODORO ALELIGAY] WAS A MERE MORTGAGE AND NOT SALE.

II.

WHETHER RESPONDENTS PRISCILLA AND ANGUSTIA VILLAGRACIA WERE BUYERS IN GOOD FAITH.[12]

Simply stated, the issues raised are: (1) Is the Deed of Sale dated July 21, 1946 executed by the heirs of Aleligay and respondent Laserna only an equitable mortgage? (2) Did respondents Villagracias act as buyers in good faith?

Eliodoro contends that the questioned deed of sale should be declared as an equitable mortgage, because he had continued possession of Lot No. 1235 since 1946, which proves his ownership of Lot No. 1235. He further contends that if it was

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[10] *Rollo,* p. 64.

[11] *Id.* at 88.

[12] *Id.* at 17.

really intended by the parties to convey ownership over Lot No. 1235, then Laserna should have occupied the lot after the alleged transaction. Eliodoro insists that his possession had remained uninterrupted, public, adverse and in the concept of an owner.[13]

On the other hand, respondents Laserna and Villagracias were one in the assertion that they, in succession, owned and had possessed Lot No. 1235. Laserna, on his part, testified that he bought the lot from Eliodoro and his siblings, as evidenced by the Deed of Sale dated July 21, 1946 and duly registered with the Office of the Register of Deeds of Capiz. He also identified the signatures and thumbmarks appearing in the deed, including his own and those of the heirs.

Laserna also testified that he occupied the lot immediately after the sale and that he has consistently declared it in his name for taxation purposes.[14] He likewise presented a Joint Affidavit[15] executed by Eliodoro and one Presentacion Sion *Vda. de* Estialbo, both adjoining owners, attesting that Laserna owned Lot No. 1235.

Laserna also presented as witness, a certain Gregorio Gecarane, Jr., a government employee and resident of Matagnop, Dao, Capiz, who testified that he once leased the lot from Laserna. This fact was evidenced by a notarized lease contract.[16] Gregorio also testified that before he leased it from January 1969 to February 1971, Laserna had occupied it.

Most significant, the Dactyloscopic Report FP Case No. 84-66[17] of the National Bureau of Investigation (NBI) confirmed the genuineness and authenticity of Eliodoro's signature and the fingerprints of other heirs, Maura and Rosario, on the questioned Deed of Sale.

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[13] *Id*. at 120-121.

[14] Records, pp. 121-123.

[15] *Id*. at 149.

[16] *Id*. at 150-151.

[17] *Id*. at 300.

The records also revealed that the Villagracias testified that they filed a case against Eliodoro for forcible entry docketed as Civil Cases Nos. 95[18] and 97.[19] They then possessed the lot after the sheriff turned over possession to them. However, Eliodoro re-entered the lot forcing them to file another case against him. For the record, another witness for respondents, namely Quirubin Franco, the officer-in-charge of the Municipal Trial Court of Dao-Ivisan, Capiz, identified the decision of the Court in Civil Cases Nos. 95 and 97. That decision ordered Eliodoro to vacate Lot No. 1235 or the portion illegally possessed by him.

Now, on the claim of petitioner that what he entered into was an equitable mortgage and not a contract of sale. Under Article 1602, in relation to Article 1604[20] of the Civil Code, the instances when a contract – regardless of its nomenclature – may be presumed to be an equitable mortgage are as follows:

(1) When the price of a sale with right to repurchase is unusually inadequate;

(2) When the vendor remains in possession as lessee or otherwise;

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

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[18] *Id.* at 565-566.

[19] *Rollo,* pp. 145-148.

[20] Art. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale.

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The presence of any of these circumstances is sufficient for a contract to be deemed an equitable mortgage. Both the trial and appellate courts, however, found none of the circumstances enumerated in Article 1602 of the Civil Code. Neither do we find any cogent reason to reverse their findings. *Actori incumbit onus probandi*. (Upon the plaintiff in a civil case lies the burden of proof.) Plaintiff must therefore establish his case by preponderance of evidence; failing to do so results in his defeat.[21]

On this point, we are in agreement that records on hand show that the questioned deed of sale is really one of sale and not an equitable mortgage. Eliodoro's assertion of continued possession over Lot No. 1235 was not substantiated by any indubitable evidence nor was it attested to by any other witness. Except for his self-serving claims, Eliodoro could not refute the overwhelming evidence of respondents that the disputed contract is one of sale.

First, being a notarized document, the questioned deed of sale carries the evidentiary weight conferred by law upon duly executed instruments; it is entitled to full faith and credit upon its face.[22] Second, not one of the Aleligays, except for petitioner, appeared in court to deny under oath their respective signatures and fingerprints appearing on the questioned deed of sale. On the contrary, respondents presented in evidence the Dactyloscopic Report FP Case No. 84-66 conducted by the NBI confirming the genuineness and authenticity of Eliodoro's signature and the fingerprints of other signatory heirs, namely Maura and Rosario, in the questioned Deed of Sale. Third, respondents presented a joint affidavit executed on September 9, 1967 by petitioner and one Presentacion Sion *Vda. de* Estialbo, both attesting to the fact of Laserna's continuous possession over Lot No. 1235 for about 20 years up to said date. Fourth,

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[21] *San Pedro v. Lee*, G.R. No. 156522, May 28, 2004, 430 SCRA 338, 347-348.

[22] *Id*. at 352.

the lease granted in favor of Gregorio Gecarane, Jr. affirms Laserna's possession over Lot No. 1235.[23] Finally, respondents' payment of realty taxes after the consummation of the sale, though not conclusive evidence of ownership, bolsters their right over the property in dispute.[24]

Finally, we need not tarry on the alleged issue on good faith. Good faith is always presumed, unless convincing evidence to the contrary is adduced.[25] Eliodoro failed to submit such contrary proof. Thus, the presumption of good faith in favor of the Villagracias stands. Whether there was good or bad faith on their part as buyers, in our view, is a non-issue, raised mainly by petitioner to beef up his scanty contention.

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Decision and Resolution dated April 27, 2004 and October 25, 2004, respectively, of the Court of Appeals in CA-G.R. CV No. 18688, are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[23] *Rollo*, pp. 63 and 88.

[24] See *Tuazon v. Court of Appeals*, G.R. No. 119794, October 3, 2000, 341 SCRA 707, 720.

[25] *Heirs of Severa P. Gregorio v. Court of Appeals*, G.R. No. 117609, December 29, 1998, 300 SCRA 565, 575.

SECOND DIVISION

[G.R. No. 168100. November 20, 2007]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MATEO DALEBA, JR.,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; BURDEN OF PROVING THE ELEMENTS THEREOF LIES WITH THE ACCUSED. —** Since appellant invoked self-defense, he effectively admitted committing the acts leading to Renato's death albeit under circumstances justifying its commission. Appellant bears the burden of proving such circumstances and we sustain the lower courts' findings that appellant failed to discharge this burden as he did not prove the elements of self-defense. As the trial court noted, appellant's uncorroborated version of the events leading to Renato's death strains credulity. If, indeed, Renato suddenly attacked appellant inside a bus terminal in broad daylight by grabbing him by the neck and dragging appellant towards the back of the terminal, the ensuing commotion would have attracted the attention of the people around them. Appellant does not explain why no one came to his rescue. In contrast, the testimonies of the prosecution's two eyewitnesses dovetailed on how appellant, moments after quarreling with Renato, ran up to the latter and stabbed him from behind, just above the waistline.

2. **ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN PRESENT; APPRECIATED AGAINST THE ACCUSED IN CASE AT BAR. —** We also find merit in the lower courts' finding that treachery qualified Renato's killing. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense that the offended party might make. This circumstance will be appreciated if (1) at the time of the attack, the victim was not in a position to defend himself and (2) the offender consciously adopted the form of attack he employed. Here, Renato was walking away

from appellant with no inkling of what would soon befall him, when appellant stealthily came up behind Renato, held the latter's shoulder, slashed his forearm and stabbed him just above the waistline. In *People v. Delada, Jr.,* we held that treachery qualified the stabbing from behind of a victim who, minutes earlier, had quarreled with the assailant.

3. **ID.; MURDER; CIVIL LIABILITY OF THE ACCUSED-APPELLANT. —** Consistent with prevailing jurisprudence, appellant must further pay the heirs of Renato exemplary damages in the amount of ₱25,000.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

R E S O L U T I O N

CARPIO, *J*.:

This is an appeal from the Decision[1] dated 19 April 2005 of the Court of Appeals affirming with modification the decision of the Regional Trial Court of Pasay City, Branch 116 (trial court), finding appellant Mateo Daleba, Jr. (appellant) guilty of Murder under Article 248 of the Revised Penal Code, as amended.

Around noon of 18 March 1997, appellant and the victim, Renato Angeles (Renato), "barkers" in a bus terminal in Pasay City, quarreled over the division of their earnings. A certain Edwin Bernarte (Bernarte) intervened and pacified appellant and Renato. Renato walked away and headed to his house which was near the terminal. For his part, appellant joined Bernarte's group who had just taken their lunch nearby. Suddenly, appellant ran after Renato, pulled a knife from his waistline, held Renato's shoulder by his left hand, slashed Renato on the right forearm and stabbed him at the back, above the right side

[1] Penned by Associate Justice Jose Catral Mendoza with Associate Justices Romeo L. Brawner and Edgardo P. Cruz, concurring.

of the waistline. Renato died that evening from the stab wound. Appellant, who had gone to his home province in Camarines Sur, was arrested four years after the stabbing incident.

Appellant was charged before the trial court with Murder qualified by treachery and evident premeditation.[2]

Appellant invoked self-defense, claiming that around noon of 18 March 1997, he went to the Pasay City bus terminal and, once inside, Renato suddenly grabbed his neck, dragged him to the back of the terminal, and, using his right hand which also held a knife, repeatedly boxed appellant in the face. When appellant was able to free himself from Renato's hold, he grabbed a knife lying at a nearby table and stabbed Renato with it. Appellant also claimed that Renato had earlier assaulted him at around 9:00 a.m. of the same day.

In a Decision dated 28 February 2002, the trial court found appellant guilty as charged, sentenced him to *reclusion perpetua*, and ordered him to pay ₱100,000 actual damages, ₱75,000 indemnity, and ₱165,000 for loss of Renato's earning capacity. The trial court gave credence to the testimonies of Bernarte and another eyewitness, Federico Angeles (Federico), over the uncorroborated claims of appellant. The trial court also held that (1) the killing was qualified by treachery as appellant stabbed Renato at the back, while the latter was walking away; (2) evident premeditation did not attend the killing as appellant had no time to mull over his resolve to attack Renato; and (3) appellant's flight should be taken against him as further evidence of guilt.

Appellant appealed to this Court, contending that the trial court erred in appreciating the qualifying circumstance of treachery since the quarrel which preceded the killing must have put Renato on-guard. Appellant pointed to the testimony of Dr. Ravell Ronald Baluyot (Dr. Baluyot), the physician who autopsied Renato, that the incised wound on Renato's forearm was a defensive wound. Appellant also took exception to the

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[2] Criminal Case No. 97-0386.

trial court's finding that his flight proves his guilt since he left for fear of retaliation from Renato's father who was a policeman.

Following the ruling in *People v. Mateo*,[3] we transferred the case to the Court of Appeals.

In its Decision dated 19 April 2005, the Court of Appeals affirmed the trial court's ruling except for the amount of the indemnity which it lowered to ₱50,000. The Court of Appeals sustained the trial court's finding of treachery because there was an interval after the time appellant and Renato quarreled until appellant stabbed Renato. On the import of appellant's flight, the Court of Appeals found merit in appellant's claim that the same should not be taken against him as appellant feared retaliation from Renato's policeman father.

Hence, this appeal. In separate manifestations, the parties informed the Court that they are no longer filing supplemental briefs.

We affirm the Court of Appeals' ruling with the modification that appellant is further ordered to pay ₱25,000 as exemplary damages.

Since appellant invoked self-defense, he effectively admitted committing the acts leading to Renato's death albeit under circumstances justifying its commission. Appellant bears the burden of proving such circumstances[4] and we sustain the lower courts' findings that appellant failed to discharge this burden as he did not prove the elements of self-defense.[5] As the trial court noted, appellant's uncorroborated version of the events leading to Renato's death strains credulity. If, indeed, Renato suddenly attacked appellant inside a bus terminal in broad daylight by grabbing him by the neck and dragging appellant towards

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[3] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[4] *People v. Astudillo*, 449 Phil. 778 (2003).

[5] Namely (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself (*People v. Astudillo*, *supra*).

the back of the terminal, the ensuing commotion would have attracted the attention of the people around them. Appellant does not explain why no one came to his rescue. In contrast, the testimonies of the prosecution's two eyewitnesses dovetailed on how appellant, moments after quarreling with Renato, ran up to the latter and stabbed him from behind, just above the waistline.

We also find merit in the lower courts' finding that treachery qualified Renato's killing. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense that the offended party might make.[6] This circumstance will be appreciated if (1) at the time of the attack, the victim was not in a position to defend himself and (2) the offender consciously adopted the form of attack he employed.[7]

Here, Renato was walking away from appellant with no inkling of what would soon befall him, when appellant stealthily came up behind Renato, held the latter's shoulder, slashed his forearm and stabbed him just above the waistline. In *People v. Delada, Jr.*,[8] we held that treachery qualified the stabbing from behind of a victim who, minutes earlier, had quarreled with the assailant.

Regarding Dr. Baluyot's testimony on the nature of the wound Renato sustained in his forearm, what Dr. Baluyot stated was that the same "**maybe** considered as defense [*sic*] wound."[9] The sketch of the wound[10] shows that it is located **at the back** of Renato's right forearm, highlighting Dr. Baluyot's ambivalent statement.

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[6] Article 14(16), Revised Penal Code.

[7] *Martinez v. Court of Appeals*, G.R. No. 168827, 13 April 2007, 521 SCRA 176.

[8] 447 Phil. 678 (2003).

[9] TSN, 26 June 2001, p. 14.

[10] Records, p. 44.

Consistent with prevailing jurisprudence, appellant must further pay the heirs of Renato exemplary damages in the amount of ₱25,000.[11]

WHEREFORE, we *AFFIRM* the Decision dated 19 April 2005 of the Court of Appeals with the *MODIFICATION* that appellant Mateo Daleba, Jr. is further ordered to pay ₱25,000 as exemplary damages.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173249. November 20, 2007]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **AMANDO GANNABAN, JR.** ***y*** **PATTUNG,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT WITH RESPECT THERETO ARE BINDING AND CONCLUSIVE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.—** The Court of Appeals was correct in affirming the ruling of the trial court that double murder was clearly established by the prosecution's witnesses who were then elementary pupils at the time of the incident. The assessment of the credibility of witnesses and their testimonies is best undertaken by the trial court due to its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. These significant factors are needed in unearthing the truth,

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[11] *People v. Alcodia*, 446 Phil. 881 (2003) citing *People v. Catubig*, 416 Phil. 102 (2001).

especially in conflicting testimonies. The findings of the trial court on such matters are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted, which is not true in the present case. Moreover, the prosecution witnesses' testimonies were worthy of belief since the witnesses were young and they had no ill-motive to falsely testify and impute a serious crime against appellant.

2. **ID.; ID.; ALIBI; TO PROSPER, ACCUSED MUST PROVE PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE AT THE TIME OF THE INCIDENT.—** Appellant's alibi that he was at Buelta's house in the evening of 6 October 1991 cannot prevail over the positive and categorical testimonies of Arnel and Airene Vista. Appellant's testimony as corroborated by his witnesses, Buelta and Pagaduan, does not prove that appellant arrived at Buelta's house at exactly 6:00 p.m. because none of them had a watch. It was not physically impossible for appellant to be at the crime scene at the time of the incident. As found by the trial court and attested by appellant himself, it would only take 15 minutes to walk from Gabot to Damurog.

3. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCE; TREACHERY; DEFINED; PRESENT IN CASE AT BAR.—** The trial court was correct in finding appellant guilty of double murder as the killing was attended by treachery. The evidence shows that the accused suddenly and unexpectedly attacked the victims, who were resting in their house. Treachery has been defined as "the deliberate employment of means, methods, or forms in the execution of a crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the intended victim might raise."

4. **ID.; MURDER; CIVIL LIABILITY OF ACCUSED-APPELLANT.—** The Court of Appeals correctly imposed the penalty of double *reclusion perpetua* on appellant. The appellate court also correctly awarded ₱100,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as temperate damages. Finally, the victims' heirs are likewise entitled to exemplary damages since the qualifying circumstance of treachery was firmly established by the prosecution. We have held that if a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000 as exemplary damages is justified under Article

2230 of the New Civil Code. This kind of damages serves as deterrent to serious wrongdoings, as vindication of undue suffering and wanton invasion of the rights of an injured person, and as punishment for those guilty of outrageous conduct.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

R E S O L U T I O N

CARPIO, *J.*:

This is an appeal from the 27 February 2006 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00613. The Court of Appeals affirmed with modification the decision of the Regional Trial Court, Branch 4, Tuguegarao City, Cagayan finding appellant Amando Gannaban, Jr. *y* Pattung guilty beyond reasonable doubt of double murder.

In two separate Informations dated 6 November 1992, appellant together with Alberto Bernales *y* Cardenas, who eventually died during the trial, were charged with the murder of spouses Amado and Rosita Vista.

Appellant pleaded not guilty upon arraignment.

During the trial, the prosecution presented Arnel and Airene Vista, the victims' minor children. The children testified that on 6 October 1991 at about 7:00 p.m., the whole family was in their house in Damurog, Alcala when four armed men approached their parents asking for the whereabouts of the *barangay* captain. The armed men forced the children's father, Amado, to accompany them but the children's mother, Rosita, tried to prevent the armed men from taking Amado. The armed men, sensing that Rosita recognized them, fired two shots causing her death. Amado ran towards Rosita but the armed men chased

[1] Penned by Associate Justice Edgardo F. Sundiam with Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao, concurring.

and shot him as well. The children positively identified appellant and Alberto Bernales as the persons who shot their parents.

On the other hand, appellant denied the charges and alleged that he was in the house of Isabelo Buelta (Buelta)[2] at Gabot, Amulung, Cagayan with Eduardo Tabay (Tabay) and Plaridel Pagaduan (Pagaduan) shelling corn. He arrived at the house around 6:00 p.m. and went home after his job was done at 10:00 p.m. Appellant claimed that he is being implicated in this case because he shot to death Dionisio Vista (Amado's father) when the latter was continuously stabbing his cousin Alberto Bernales.

Defense witnesses Pagaduan and Buelta corroborated appellant's testimony and claimed that they were together on the night of 6 October 1991 shelling corn at Buelta's house. However, in their Joint Affidavit, Buelta, Tabay, and Pagaduan declared that on the same evening, they were just conversing with the appellant at Buelta's house, contrary to their testimonies that they were shelling corn.

The trial court gave premium to the testimonies of the victims' minor children. Appellant's alibi that he was at Buelta's house cannot prevail over the positive identification and unwavering positive assertions of the prosecution witnesses. Besides, it was not impossible for appellant to be at the crime scene considering the proximity of Gabot, Amulung to Damurog, Alcala. Appellant himself testified that it would only take 15 minutes to walk from Gabot to Damurog.

On 27 June 2000, the trial court rendered its decision, finding appellant guilty of double murder under Article 248 of the Revised Penal Code. The trial court sentenced appellant to suffer the penalty of double *reclusion perpetua*, and to pay the heirs of the victims ₱140,000 as indemnity and ₱40,000 as actual damages.

On appeal, appellant contended that the trial court erred in giving weight and credence to the incredulous testimonies of the prosecution's witnesses which were conflicting and

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[2] Spelled as "Vuelta" in Exhibit "D".

inconsistent. Appellant alleged that the prosecution failed to prove his guilt beyond reasonable doubt. Appellant also questioned the award of actual damages despite the lack of evidence to prove the same.

In its 27 February 2006 Decision, the Court of Appeals affirmed the trial court's decision with modification, reducing the civil indemnity to ₱100,000 and awarding moral damages of ₱50,000 and temperate damages of ₱25,000. The appellate court deleted the award of actual damages of ₱40,000. The appellate court ruled that the discrepancies in the testimonies of the prosecution's witnesses refer to immaterial and collateral matters that do not affect the credibility of the witnesses, especially since their answers to the questions were brief, direct, and firm in positively identifying appellant as one of the gunmen. The appellate court held that appellant's alibi and denial are bereft of merit. Appellant failed to convincingly prove that it was physically impossible for him to be at the place of the crime considering the close proximity of Gabot and Damurog. The appellate court also upheld the ruling of the trial court that the crime of double murder was attended by treachery because the attack against the victims, who were unarmed, was sudden, unexpected, and without any opportunity for the victims to defend themselves.

Hence, this appeal.

We find the appeal without merit. The Court of Appeals was correct in affirming the ruling of the trial court that double murder was clearly established by the prosecution's witnesses who were then elementary pupils at the time of the incident. The assessment of the credibility of witnesses and their testimonies is best undertaken by the trial court due to its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination.[3] These significant factors are needed in unearthing the truth, especially in conflicting testimonies.

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[3] *People v. Lopez*, G.R. No. 172369, 7 March 2007, 517 SCRA 749, 760.

The findings of the trial court on such matters are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted,[4] which is not true in the present case. Moreover, the prosecution witnesses' testimonies were worthy of belief since the witnesses were young and they had no ill-motive to falsely testify and impute a serious crime against appellant.

The clear and convincing testimonies of Arnel and Airene Vista, children of the victim spouses, positively point to appellant as one of those armed men who shot their parents. Arnel testified that he was just a few feet away from his parents and the assailants.[5] Thus, it was unlikely that he could not recognize the appellant considering that they belong to the same *barrio*.[6] Airene also testified that she recognized appellant's face[7] and saw how appellant shot her mother.[8]

Appellant's alibi that he was shelling corn at Buelta's house in the evening of 6 October 1991[9] cannot prevail over the positive and categorical testimonies of Arnel and Airene Vista. Appellant's testimony as corroborated by his witnesses, Buelta and Pagaduan, does not prove that appellant arrived at Buelta's house at exactly 6:00 p.m. because none of them had a watch. It was not physically impossible for appellant to be at the crime scene at the time of the incident. As found by the trial court and attested by appellant himself, it would only take 15 minutes to walk from Gabot to Damurog.

The trial court was correct in finding appellant guilty of double murder as the killing was attended by treachery. The evidence

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[4] *People v. Alarcon*, G.R. No. 174199, 7 March 2007, 517 SCRA 778, 784.

[5] TSN, 29 August 1994, pp. 5-6.

[6] *Id*. at 2.

[7] TSN, 30 March 1995, p. 11.

[8] *Id*. at 17-18.

[9] TSN, 19 May 1997, p. 2.

shows that the accused suddenly and unexpectedly attacked the victims, who were resting in their house.

Treachery has been defined as "the deliberate employment of means, methods, or forms in the execution of a crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the intended victim might raise."[10]

The Court of Appeals correctly imposed the penalty of double *reclusion perpetua* on appellant. The appellate court also correctly awarded ₱100,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as temperate damages.

Finally, the victims' heirs are likewise entitled to exemplary damages since the qualifying circumstance of treachery was firmly established by the prosecution. We have held that if a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000 as exemplary damages is justified under Article 2230 of the New Civil Code.[11] This kind of damages serves as deterrent to serious wrongdoings, as vindication of undue suffering and wanton invasion of the rights of an injured person, and as punishment for those guilty of outrageous conduct.

WHEREFORE, we *AFFIRM* the 27 February 2006 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00613 finding appellant Amando Gannaban, Jr. *y* Pattung guilty beyond reasonable doubt of two counts of murder with the *MODIFICATION* that the victims' heirs are also entitled to the award of exemplary damages of ₱25,000.

SO ORDERED.

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

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[10] *People v. Cabinan*, G.R. No. 176158, 27 March 2007, 519 SCRA 133, 140-141.

[11] *People v. Ausa*, G.R. No. 174194, 20 March 2007, 518 SCRA 602, 618-619.

EN BANC

[G.R. No. 177244. November 20, 2007]

TEODULO V. LARGO, *petitioner, vs.* **THE COURT OF APPEALS, THE CIVIL SERVICE COMMISSION, THE NATIONAL POWER CORPORATION and ALAN OLANDESCA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; CESSATION FROM OFFICE BY REASON OF RESIGNATION, DEATH, OR RETIREMENT DOES NOT WARRANT THE DISMISSAL OF THE ADMINISTRATIVE CASE FILED AGAINST A PUBLIC OFFICER WHILE HE WAS STILL IN THE SERVICE, OR RENDER THE SAID CASE ACADEMIC; RATIONALE.—** The settled rule in this jurisdiction is that cessation from office by reason of resignation, death, or retirement does not warrant the dismissal of the administrative case filed against a public officer while he or she was still in the service, or render the said case academic. The jurisdiction of the disciplining authority attaches at the time of the filing of the administrative complaint and is not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. This rule applies to all employees in the civil service, mindful of the constitutional precept that public office is a public trust for which all government employees and officials are accountable to the people. The rationale for this doctrine, as applied to government employees and officials in the judiciary, was explained in *Perez v. Abiera* in this wise: [T]he jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For, what remedy would the people have against a civil servant who resorts to wrongful and illegal conduct during his last days in office? What would prevent a corrupt and unscrupulous

government employee from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

2. **REMEDIAL LAW; EVIDENCE; DENIAL; TO BE BELIEVED, IT MUST BE BUTTRESSED BY A STRONG EVIDENCE OF NON-CULPABILITY; OTHERWISE, SUCH DENIAL IS PURELY SELF-SERVING AND WITHOUT EVIDENTIARY VALUE.—** The retirement of petitioner effective January 1, 1998, did not render moot the instant case. The filing of the administrative complaint against petitioner on December 17, 1997, prior to his retirement, effectively conferred upon the NPC, the CSC, and this Court, the jurisdiction to resolve the case until its conclusion. Hence, the guilt or innocence of petitioner can be validly addressed by the Court in the instant administrative case. Anent the acts constituting the administrative charge, we find that the positive and categorical declarations of Olandesca's witnesses prevail over the negative allegation of petitioner that he did not utter threatening words when he went to the quarters of Olandesca. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value. Like the defense of alibi, petitioner's denial crumbles in the light of the positive declarations of the witnesses that petitioner uttered threats to kill Olandesca. It was established that petitioner entered the ARHEP, proceeded to Olandesca's quarters, specifically to the dirty kitchen where the wife, two children, sister-in-law, and mother-in-law of Olandesca were gathered. Thereat, petitioner fired his gun twice and hurled threats to kill Olandesca. His acts of entering the quarters without permission, hurling threats, and discharging a gun, even assuming that the same were merely to scare a dog, are blatant

displays of arrogance and recklessness and do not speak well of his character as a public officer.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; MISCONDUCT; THE ACT MUST HAVE A DIRECT RELATION TO AND BE CONNECTED WITH THE PERFORMANCE OF THE EMPLOYEE'S OFFICIAL DUTIES.—** However, the administrative offense committed by petitioner is not "misconduct." To constitute misconduct, the act or acts must have a direct relation to and be connected with the performance of his official duties. In *Manuel v. Calimag, Jr.*, it was held that: Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x x It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x More specifically, in *Buenaventura v. Benedicto,* an administrative proceeding against a judge of the court of first instance, the present Chief Justice defines misconduct as referring 'to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."

4. **ID.; ID.; ID.; ID.; EMPLOYEE CANNOT BE HELD LIABLE THEREFOR WHERE THE SAME ACTED IN HIS PRIVATE CAPACITY; IN ADMINISTRATIVE PROCEEDINGS, THE BURDEN OF PROVING THE ACTS COMPLAINED OF, PARTICULARLY THE RELATION THEREOF TO THE OFFICIAL FUNCTIONS OF THE PUBLIC OFFICER, RESTS ON THE COMPLAINANT.—** In the instant case, it was not proven that petitioner's acts of trespassing in the quarters, threatening to kill Olandesca, and firing his gun, were related to, or performed by petitioner by taking advantage of his functions as Section Chief, Administrative/General Services. In fact, Olandesca argued that the authority to carry a gun inside

NPC premises was not among the powers vested in petitioner. Also, it was not established that the gun used by petitioner was issued by the NPC. Evidence reveals that the position of petitioner is not among those vested with authority to carry a gun in the premises of the NPC. His act of entering the NPC ARHEP carrying a firearm was in violation of NPC Circular No. 97-66 dated August 6, 1997. Under said circular, only those directly involved in the security of an installation shall be allowed to enter the premises with their firearm. Moreover, it was never alleged or proven that petitioner could not have gained access to Olandesca's quarters were it not for his position. In administrative proceedings, the burden of proving the acts complained of, particularly the relation thereof to the official functions of the public officer, rests on the complainant. This, Olandesca failed to discharge. The inevitable conclusion therefore is that petitioner acted in his private capacity, and hence, cannot be held liable for misconduct, which must have a direct relation to and be connected with the performance of official duties.

5. **ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; ACTS COMPLAINED OF NEED NOT BE RELATED OR CONNECTED TO THE PUBLIC OFFICER'S OFFICIAL FUNCTIONS; THE ACT OF ERRING PUBLIC OFFICER OR EMPLOYEE MUST HAVE TARNISHED THE IMAGE AND INTEGRITY OF HIS PUBLIC OFFICE.—** Nevertheless, the complained acts of petitioner constitute the administrative offense of conduct prejudicial to the best interest of the service, which need not be related or connected to the public officer's official functions. As long as the questioned conduct tarnished the image and integrity of his/her public office, the corresponding penalty may be meted on the erring public officer or employee. The Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) enunciates, *inter alia*, the State policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 4 (c) of the Code commands that "[public officials and employees] shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest." By his actuations, petitioner failed to live up to such standard.

6. ID.; ID.; ID.; ID.; PETITIONER FOUND GUILTY THEREOF IN CASE AT BAR; IMPOSABLE PENALTY.— In sum, we find petitioner guilty of conduct prejudicial to the best interest of the service, which under Section 52 of Rule IV of Civil Service Commission Memorandum Circular No. 19, series of 1999, is classified as a grave administrative offense punishable by suspension of six (6) months and 1 day to one (1) year if committed for the first time. Considering the retirement of petitioner, the penalty of suspension is no longer viable. Thus, in lieu of suspension, the penalty of fine equivalent to his salary for a period of six (6) months may be imposed. This ruling is in line with Section 19 of the Omnibus Rules Implementing Book V of Executive Order No. 292, which provides: The penalty of transfer, or demotion, or fine may be imposed instead of suspension from one month and one day to one year except in case of fine which shall not exceed six months.

APPEARANCES OF COUNSEL

Dante G. Huerta, MNSA for petitioner.
The Solicitor General for public respondents.
V.V. Orocio and Associates Law Offices for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Assailed in this petition for review[1] is the March 23, 2007 Decision[2] of the Court of Appeals in CA-G.R. SP No. 84984 which affirmed the July 4, 2003 Resolution[3] of the Civil Service

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[1] The petition was filed under Rule 43 of the Rules of Court but was treated in the Court's Resolution dated June 5, 2007, as a petition under Rule 45. (*Rollo*, p. 154). This is in accordance with the liberal spirit which pervades the Rules of Court, more so because the petition was filed within the reglementary period. (*Nunez v. GSIS Family Bank*, G.R. No. 163988, November 17, 2005, 475 SCRA 305, 316).

[2] *Rollo*, pp. 33-42. Penned by Associate Justice Aurora Santiago-Lagman, and concurred in by Associate Justices Bienvenido L. Reyes and Enrico A. Lanzanas.

[3] *Id.* at 50-60. Resolution No. 030728.

Commission (CSC) finding petitioner guilty of grave misconduct and imposing upon him the penalty of dismissal from service.

On December 17, 1997, petitioner Teodulo V. Largo, Section Chief, Administrative/General Services of the National Power Corporation (NPC) in Angat River Hydroelectric Power Plant (ARHEP), Norzagaray, Bulacan, was administratively charged with grave misconduct, conduct prejudicial to the best interest of the service, oppression, or unlawful exercise of power by an officer or employee as to harm anyone in his person or property while purporting to act under the color of authority and willfull violation of NPC Circular No. 97-66, which prohibits personnel from carrying firearms inside the NPC premises. These charges were based on the complaint filed by Alan A. Olandesca (Olandesca), former property officer of the NPC at ARHEP.

The NPC investigation revealed that on October 30, 1997, petitioner and Olandesca attended a birthday party where petitioner claimed to have been humiliated by Olandesca who threw a piece of paper at him and shouted, "*Ikaw ang magnanakaw*." At around 5:05 in the afternoon of the same day, petitioner went to the quarters of Olandesca at ARHEP shouting invectives and threatening to kill Olandesca. Petitioner proceeded to the dirty kitchen at the back of the quarters where he met Olandesca's wife. While they were conversing, a dog suddenly appeared and barked at petitioner. Claiming to have been frightened by the incessant barking of the dog which was about to attack him, petitioner fired two shots which scared the wife of Olandesca, as well as his 2 children, sister-in-law and mother-in law who were then gathered at the dirty kitchen. The first shot hit the flooring, while the other hit the water hose. Unable to find Olandesca, petitioner left the compound.[4]

Meanwhile, petitioner retired from service effective January 1, 1998 under the NPC SDP Retirement Plan.[5]

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[4] *Id*. at 124-125.

[5] *Id*. at 70.

On March 19, 1998, the NPC Regional Board of Inquiry & Discipline conducted a pre-hearing conference. On motion of Olandesca, the NPC President approved the transfer of the formal investigation to the Board of Inquiry and Discipline of the NPC Head Office, which recommended that petitioner be held liable for simple misconduct with the minimum penalty of suspension for one month and one day to two months.[6]

In his Memorandum[7] dated January 3, 2001, President and Chief Executive Officer Federico Puno found petitioner guilty of grave misconduct and imposed upon him the penalty of dismissal from service.

On petitioner's motion for reconsideration, NPC President Jesus N. Alcordo reduced the penalty to one year suspension, taking into consideration that this was petitioner's first offense, the absence of physical harm caused by the shots he fired, his 21 years of service, his consistent very satisfactory performance, and Olandesca's act of humiliating him prior to the incident. Considering, however, the retirement of petitioner, the NPC directed the execution of the penalty by deducting an amount equivalent to one year suspension without pay, from his retirement benefits.[8]

Petitioner appealed to the CSC which on July 4, 2003, affirmed the finding of the NPC that petitioner was guilty of grave misconduct but modified the penalty to dismissal from service. The dispositive portion of the CSC Resolution, provides:

> WHEREFORE, the appeal of Teodulo V. Largo from the Decision dated August 15, 2001 of National Power Corporation President Jesus N. Alcordo, finding him guilty of Grave Misconduct, is DISMISSED. The penalty of one-year suspension to be executed by deducting an amount equivalent to one-year salary from the retirement benefits of Largo is hereby MODIFIED to dismissal from service. Largo's dismissal from the service carries with it cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.[9]

[6] *Id*. at 127-128.

[7] *Id*. at 74-75.

[8] *Id*. at 65-71.

[9] *Id*. at 60.

On June 21, 2004, the CSC denied petitioner's motion for reconsideration in Resolution No. 040690.[10]

On petition with the Court of Appeals, the latter rendered a decision affirming the Resolution of the CSC. The decretal portion thereof provides:

> WHEREFORE, the instant petition is DENIED and the assailed Orders of the Civil Service Commission dated July 4, 2003 and June 21, 2004 are AFFIRMED.
>
> SO ORDERED.[11]

Hence, the instant petition.

Petitioner contends that the administrative case against him should be dismissed, the same having been rendered academic by his retirement from service. He further claims that there is no case against him and, assuming that he is guilty of an administrative offense, his liability could only be for simple misconduct. Petitioner further prays for the imposition of a lighter penalty instead of dismissal from service.

The issues for resolution are: (1) whether the retirement of petitioner rendered moot the resolution of the instant administrative case; and (2) whether petitioner was validly dismissed for serious misconduct.

The settled rule in this jurisdiction is that cessation from office by reason of resignation,[12] death, or retirement[13] does not warrant the dismissal of the administrative case filed against a public officer while he or she was still in the service, or render the said case academic. The jurisdiction of the disciplining authority attaches at the time of the filing of the administrative

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[10] *Id.* at 43-49.

[11] *Id.* at 42.

[12] *Reyes, Jr. v. Cristi*, A.M. No. P-04-1801, April 2, 2004, 427 SCRA 8, 12.

[13] *Report on the Judicial Audit Conducted in the Regional Trial Court Branch 8, Cebu City*, A.M. No. 05-2-101-RTC, April 26, 2005, 457 SCRA 1, 11.

complaint and is not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. This rule applies to all employees in the civil service,[14] mindful of the constitutional precept that public office is a public trust for which all government employees and officials are accountable to the people. The rationale for this doctrine, as applied to government employees and officials in the judiciary, was explained in *Perez v. Abiera*[15] in this wise:

> [T]he jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For, what remedy would the people have against a civil servant who resorts to wrongful and illegal conduct during his last days in office? What would prevent a corrupt and unscrupulous government employee from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

The retirement of petitioner effective January 1, 1998, did not render moot the instant case. The filing of the administrative complaint against petitioner on December 17, 1997, prior to his retirement, effectively conferred upon the NPC, the CSC, and

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[14] In *Sevilla v. Gocon* (G.R. No. 148445, February 16, 2004, 423 SCRA 98), the Court proceeded to resolve the administrative charge and impose the appropriate penalty on the Principal of the Quezon National High School in Lucena City IV, notwithstanding his retirement during the pendency of the case.

[15] Adm. Case No. 223-J, June 11, 1975, 64 SCRA 302, 306-307.

this Court, the jurisdiction to resolve the case until its conclusion. Hence, the guilt or innocence of petitioner can be validly addressed by the Court in the instant administrative case.

Anent the acts constituting the administrative charge, we find that the positive and categorical declarations of Olandesca's witnesses[16] prevail over the negative allegation of petitioner that he did not utter threatening words when he went to the quarters of Olandesca. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by a strong evidence of non-culpability; otherwise, such denial is purely self-serving and without evidentiary value.[17] Like the defense of alibi, petitioner's denial crumbles in the light of the positive declarations of the witnesses that petitioner uttered threats to kill Olandesca. It was established that petitioner entered the ARHEP, proceeded to Olandesca's quarters, specifically to the dirty kitchen where the wife, two children, sister-in-law, and mother-in-law of Olandesca were gathered. Thereat, petitioner fired his gun twice and hurled threats to kill Olandesca. His acts of entering the quarters without permission, hurling threats, and discharging a gun, even assuming that the same were merely to scare a dog, are blatant displays of arrogance and recklessness and do not speak well of his character as a public officer.

However, the administrative offense committed by petitioner is not "misconduct." To constitute misconduct, the act or acts must have a direct relation to and be connected with the performance of his official duties. In *Manuel v. Calimag, Jr.*,[18] it was held that:

> Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal

[16] Ma. Azucena Formoso-Manao, sister-in-law of Olandesca and Olandesca's neighbor, Normita Cruz-Espiritu.

[17] *Salvador v. Serrano*, A.M. No. P-06-2104, January 31, 2006, 481 SCRA 55, 67-68.

[18] RTJ-99-1441, May 28, 1999, 307 SCRA 657, 661-662.

definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x x It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x More specifically, in *Buenaventura v. Benedicto,* an administrative proceeding against a judge of the court of first instance, the present Chief Justice defines misconduct as referring 'to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."

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In *Salcedo v. Inting* we also ruled –

It is to be noted that the acts of the respondent judge complained of have no direct relation with his official duties as City Judge. The misfeasance or malfeasance of a judge, to warrant disciplinary action must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of said judge.

In *Milanes v. De Guzman*,[19] a mayor collared a person, shook him violently, and threatened to kill him in the course of a political rally of the Nacionalista Party where said mayor was acting as the toastmaster. The Court held that the acts of the mayor cannot come under the class of the administrative offense of misconduct, considering that as the toastmaster in a non-governmental rally, he acted in his private capacity, for said function was not part of his duties as mayor. In *Amosco v. Magro*,[20] the respondent Judge was charged with grave misconduct for his alleged failure to pay the amount of ₱215.80 for the purchase of empty Burma sacks. In dismissing the case,

[19] L-23967, November 29, 1968, 26 SCRA 163, 168-169.

[20] A.M. No. 439-MJ, September 30, 1976, 73 SCRA 107, 108-109.

the Court sustained, among others, the argument of respondent Judge that the charge did not constitute misconduct because it did not involve the discharge of his official duties. It was further held that misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. So also, a Judge's abandonment of, and failure to give support to his family;[21] and alleged sale of carnapped motor vehicles,[22] do not fall within the species of misconduct, not being related to the discharge of official functions.

In the instant case, it was not proven that petitioner's acts of trespassing in the quarters, threatening to kill Olandesca, and firing his gun, were related to, or performed by petitioner by taking advantage of his functions as Section Chief, Administrative/General Services. In fact, Olandesca argued that the authority to carry a gun inside NPC premises was not among the powers vested in petitioner. Also, it was not established that the gun used by petitioner was issued by the NPC. Evidence reveals that the position of petitioner is not among those vested with authority to carry a gun in the premises of the NPC. His act of entering the NPC ARHEP carrying a firearm was in violation of NPC Circular No. 97-66 dated August 6, 1997. Under said circular, only those directly involved in the security of an installation shall be allowed to enter the premises with their firearm. Moreover, it was never alleged or proven that petitioner could not have gained access to Olandesca's quarters were it not for his position. In administrative proceedings, the burden of proving the acts complained of,[23] particularly the relation thereof to the official functions of the public officer, rests on the complainant. This, Olandesca failed to discharge. The inevitable conclusion therefore is that petitioner acted in

[21] *Apiag v. Cantero*, A.M. No. MTJ-95-1070, February 12, 1997, 268 SCRA 47, 59-60.

[22] *Manuel v. Calimag, Jr.*, *supra* at 663.

[23] *Talag v. Reyes*, A.M. No. RTJ-04-1852, June 3, 2004, 430 SCRA 428, 435.

his private capacity, and hence, cannot be held liable for misconduct, which must have a direct relation to and be connected with the performance of official duties.

Nevertheless, the complained acts of petitioner constitute the administrative offense of conduct prejudicial to the best interest of the service, which need not be related or connected to the public officer's official functions. As long as the questioned conduct tarnished the image and integrity of his/her public office, the corresponding penalty may be meted on the erring public officer or employee. The Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) enunciates, *inter alia*, the State policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 4 (c) of the Code commands that "[public officials and employees] shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest." By his actuations, petitioner failed to live up to such standard.

In *Cabalitan v. Department of Agrarian Reform*,[24] the Court sustained the ruling of the CSC that the offense committed by the employee in selling fake Unified Vehicular Volume Program exemption cards to his officemates during office hours was not grave misconduct, but conduct prejudicial to the best interest of the service. In *Mariano v. Roxas*,[25] the Court held that the offense committed by a Court of Appeals employee in forging some receipts to avoid her private contractual obligations, was not misconduct but conduct prejudicial to the best interest of the service because her acts had no direct relation to or connection with the performance of official duties. Then too, the Court considered the following conduct as prejudicial to the best interest of the service, to wit: a Judge's act of brandishing a gun and threatening the complainants during a traffic altercation;[26] and a court interpreter's participation in the execution of a document

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[24] G.R. No. 162805, January 23, 2006, 479 SCRA 452, 456 & 461.

[25] A.M. No. CA-02-14-P, July 31, 2002, 385 SCRA 500, 506.

[26] *Alday v. Cruz, Jr.*, RTJ-00-1530, March 14, 2001, 354 SCRA 322, 336.

conveying complainant's property which resulted in a quarrel in the latter's family.[27]

In sum, we find petitioner guilty of conduct prejudicial to the best interest of the service, which under Section 52 of Rule IV of Civil Service Commission Memorandum Circular No. 19, series of 1999, is classified as a grave administrative offense punishable by suspension of six (6) months and 1 day to one (1) year if committed for the first time.

Considering the retirement of petitioner, the penalty of suspension is no longer viable. Thus, in lieu of suspension, the penalty of fine equivalent to his salary for a period of six (6) months may be imposed. This ruling is in line with Section 19 of the Omnibus Rules Implementing Book V of Executive Order No. 292,[28] which provides:

> The penalty of transfer, or demotion, or fine may be imposed instead of suspension from one month and one day to one year except in case of fine which shall not exceed six months.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The March 23, 2007 Decision of the Court of Appeals in CA-G.R. SP No. 84984 affirming the July 4, 2003 Resolution of the Civil Service Commission finding petitioner guilty of grave misconduct and imposing upon him the penalty of dismissal is *REVERSED* and *SET ASIDE*. Petitioner is declared *GUILTY* of conduct prejudicial to the best interest of the service and is directed to pay a *FINE* equivalent to his salary for six (6) months, to be deducted from his retirement benefits.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and *Reyes, JJ.,* concur.

Sandoval-Gutierrez, J., on official leave.

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[27] *Dino v. Dumukmat*, A.M. No. P-00-1380, June 29, 2001, 360 SCRA 317, 320-321.

[28] *Sevilla v. Gocon*, *supra* at 107.

EN BANC

[A.M. No. 04-5-20-SC. November 21, 2007]

IN RE: AFFIDAVIT OF FRANKIE N. CALABINES, A MEMBER OF THE CO-TERMINUS STAFF OF JUSTICE JOSEFINA GUEVARRA-SALONGA, RELATIVE TO SOME ANOMALIES RELATED TO CA-G.R CV NO. 73287, "*CANDY MAKER, INC. v. REPUBLIC OF THE PHILIPPINES*."

FRANKIE N. CALABINES, Utility Worker I-CT, *complainant-respondent, vs.* **LUIS N. GNILO, Utility Worker I,** *respondent.*

DOLOR M. CATOC, *complainant, vs.* **FELICIANO S. CALINGA, Utility Worker I; EVELYN L. CAGUITLA, Court Stenographer IV; LUIS N. GNILO, Utility Worker I; and ATTY. EDWIN MICHAEL P. MUSICO, Court Attorney IV-CT,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE PENALTY OF DISMISSAL IMPOSED ON THE RESPONDENTS FOR GRAVE MISCONDUCT CARRIES WITH IT DISQUALIFICATION FROM EMPLOYMENT IN ANY GOVERNMENT OFFICE AND FORFEITURE OF BENEFITS, EXCEPT FOR ACCRUED LEAVES.— In a Decision promulgated on March 14, 2007, the Court found the respondents in this case guilty of grave misconduct for the anomalies committed in connection with the case of *Candy Maker, Inc. v. Republic of the Philippines*, docketed as CA-G.R. CV No. 73287. xxx On October 4, 2007, the Court received from respondent Evelyn L. Caguitla a motion for clarification of the dispositive portion of the Decision. She stated that the penalty imposed upon the respondents is dismissal from the service with disqualification from employment in any government agency **and/or** forfeiture of benefits, except accrued leaves. She questions whether the penalty is in the alternative, that is,

respondents may either be dismissed from the service with disqualification from employment in any government agency **or** their benefits will be forfeited, except accrued leaves. If the penalty is in the alternative, she prays that all benefits due her for 23 years of government service be ordered released to her since she has already been dismissed from the service. The Court holds that the penalty is not in the alternative.

APPEARANCES OF COUNSEL

Allene M. Anigan for F. Calinga.
Edwin P. Cruz for D. Catoc & F. Calabines.
De Castro & Cagampang Law Offices counsel *de oficio* for E. Caguitla.

R E S O L U T I O N

PER CURIAM:

In a Decision promulgated on March 14, 2007, the Court found the respondents in this case guilty of grave misconduct for the anomalies committed in connection with the case of *Candy Maker, Inc. v. Republic of the Philippines*, docketed as CA-G.R. CV No. 73287. The dispositive portion of the Decision states:

WHEREFORE, respondents **Feliciano S. Calinga, Evelyn L. Caguitla, Luis N. Gnilo** and **Atty. Edwin Michael P. Musico** are found **GUILTY OF GRAVE MISCONDUCT** and are meted the penalty of **DISMISSAL**, pursuant to Section 22 (a) and (c), Rule XIV of the Omnibus Rules implementing Book V of Executive Order 292 and Other Pertinent Civil Service Laws, as amended by Section 52 (A), paragraphs 1 and 3 of CSC Memorandum Circular No. 19, Series of 1999, with disqualification from employment in any government office and/or forfeiture of benefits, except for accrued leaves. The charges of DISHONESTY and GRAVE MISCONDUCT against complainant-respondent **Frankie N. Calabines** are **DISMISSED** for lack of sufficient evidence. No costs.

SO ORDERED.

On October 4, 2007, the Court received from respondent Evelyn L. Caguitla a motion for clarification of the dispositive portion of

the Decision. She stated that the penalty imposed upon the respondents is dismissal from the service with disqualification from employment in any government agency **and/or** forfeiture of benefits, except accrued leaves. She questions whether the penalty is in the alternative, that is, respondents may either be dismissed from the service with disqualification from employment in any government agency **or** their benefits will be forfeited, except accrued leaves. If the penalty is in the alternative, she prays that all benefits due her for 23 years of government service be ordered released to her since she has already been dismissed from the service.

The Court holds that the penalty is not in the alternative. In its Decision, the Court sustained the findings in the Report of Investigating Justice Martin S. Villarama, Jr. and approved his recommendation, thus:

> 1) That respondents **Feliciano S. Calinga, Evelyn L. Caguitla, Luis N. Gnilo and Atty. Edwin P. Musico** be held liable for GRAVE MISCONDUCT and be meted the corresponding penalty of DISMISSAL, pursuant to Section 22 (a) and (c), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292 and Other Pertinent Civil Service Laws, as amended by Section 52 (A), paragraphs 1 and 3 of CSC Memorandum Circular No. 19, Series of 1999, with disqualification from employment in any government office and with forfeiture of benefits, except for accrued leaves; and
>
> 2) That the charges of DISHONESTY and GRAVE MISCONDUCT against complainant-respondent **Frankie N. Calabines** be DISMISSED for lack of sufficient evidence.

The dispositive portion of the Decision is therefore corrected, thus:

> WHEREFORE, respondents **Feliciano S. Calinga, Evelyn L. Caguitla, Luis N. Gnilo** and **Atty. Edwin Michael P. Musico** are found **GUILTY OF GRAVE MISCONDUCT** and are meted the penalty of **DISMISSAL**, pursuant to Section 22 (a) and (c), Rule XIV of the Omnibus Rules implementing Book V of Executive Order 292 and Other Pertinent Civil Service Laws, as amended by Section 52 (A), paragraphs 1 and 3 of CSC Memorandum Circular No. 19, Series of 1999, with disqualification

from employment in any government office and forfeiture of benefits, except for accrued leaves. The charges of DISHONESTY and GRAVE MISCONDUCT against complainant-respondent **Frankie N. Calabines** are **DISMISSED** for lack of sufficient evidence. No costs.

SO ORDERED.

IN VIEW OF THE FOREGOING, it is hereby clarified that the penalty of dismissal imposed on respondents **Feliciano S. Calinga, Evelyn L. Caguitla, Luis N. Gnilo** and **Atty. Edwin Michael P. Musico** carries with it disqualification from employment in any government office and forfeiture of benefits, except for accrued leaves.

No costs.

SO ORDERED.

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

Sandoval-Gutierrez, J., on official leave.

EN BANC

[G.R. No. 146824. November 21, 2007]

ENCARNACION E. SANTIAGO, *petitioner, vs.* **COMMISSION ON AUDIT and THE DIRECTOR OF THE COMMISSION ON AUDIT, REGIONAL OFFICE NO. V,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; THE COMMISSION ON AUDIT IS AUTHORIZED TO WITHHOLD THE SALARY AND OTHER EMOLUMENTS DUE TO THE EMPLOYEE UP TO THE

AMOUNT OF HIS ALLEGED CASH SHORTAGE.— The issue, as stated in the Decision, clearly shows that the Court considered for resolution whether or not the **salary and other emoluments** of petitioner may be withheld by respondents and applied to her cash shortage determined merely in an audit examination. In the body of the Decision, the Court held that "[r]egarding the propriety of withholding the petitioner's salary, **the Court holds that COA can direct the proper officer to withhold petitioner's salary and other emoluments** under Section 21, Chapter 4, Subtitle B, Book V of the Administrative Code of 1987, which is substantially the same as Section 37 of PD No. 1445, the legal basis of COA. . . ." Immediately before the dispositive portion of the Decision, the Court stated: As a result, the amount of petitioner's salary remitted to the local government treasurer as payment of petitioner's cash shortage should be considered merely withheld until final resolution on her indebtedness. In the event that petitioner is found not liable for the cash shortage, the **withheld salary and other emoluments** will be released to her; otherwise, it will be applied in payment of her indebtedness. Hence, it is clear that respondent COA can withhold the salary and other emoluments due petitioner up to the amount of her alleged shortage.

APPEARANCES OF COUNSEL

Estanislao L. Cesa, Jr., Marc Raymund S. Cesa & Maria Rosario S. Cesa for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

AZCUNA, *J.*:

On September 13, 2007, petitioner filed a motion for clarification of the dispositive portion of the Decision in this case which was promulgated on June 15, 2006. The dispositive portion reads:

WHEREFORE, the petition is **PARTLY GRANTED** in that respondent COA is authorized merely to withhold petitioner's salary but not to apply it to the alleged shortage for which her liability is still being litigated. No costs.

SO ORDERED.

Petitioner informed the Court that upon the directive of the Bureau of Local Government Finance Executive Director Ma. Presentacion R. Montesa, she is back to her regular station and formally assumed office as the Municipal Treasurer of Goa, Camarines Sur, on February 26, 2007.

In a letter dated August 13, 2007, petitioner requested respondents and the Municipal Mayor of Goa, Camarines Sur, to pay her representation allowance, additional compensation allowance, productivity bonus, year-end bonus, clothing allowance and other benefits, excluding her salary, from October 1998 up to the present based on the dispositive portion of the Decision.

In a letter dated August 22, 2007, respondent Commission on Audit (COA), through the Regional Cluster Director, replied that the items requested cannot be paid to petitioner because this Court has already clarified the issue when it stated in the body of the Decision that ". . . COA can direct the proper officer to withhold petitioner's salary and other emoluments. . . ." According to COA, "emoluments" necessarily include all allowances and any money due petitioner.

Petitioner prays that the dispositive portion of the Decision be clarified as to whether the emoluments due her as Municipal Treasurer are excluded from the item that respondents can withhold, so that in the event that the said emoluments are excluded, the same can be paid to her.

The *Philippine Law Dictionary*, third edition, by Federico B. Moreno, defines "emolument" as:

> Fees, fixed salary, and compensation which the incumbent of an office is by law entitled to receive because he holds such office or performed some service required of the occupant thereof.
>
> The term "emolument" includes salary, fees, compensation, perquisites, pensions and retirement benefits. — *Philippine Constitutional Association Inc. v. Gimenez,* 122 Phil. 904.

In petitioner's special civil action for *certiorari*, she prayed that judgment be issued setting aside the Director's First

Indorsement dated January 25, 2000, the Commission's Letters dated December 8, 2000 and January 22, 2001, the Second Indorsement dated December 8, 2000; **and that the respondents, including the Municipal Mayor of Goa, Camarines Sur, be ordered to immediately pay her salary in the accumulated amount of ₱124,606.21, and the salary accruing after the month of July 1999 to which she may be entitled**.[1]

The Court took cognizance of the petition insofar as it raised this question of law:

> Can the salary of a government employee be ordered withheld, retained and applied to the payment of public funds [in the amount of ₱3,580,378.80] allegedly embezzled under the employee's care on the basis of an audit report and the filing of an administrative case and a criminal case for malversation of public funds?
>
> Stated otherwise, may State Auditor del Rosario direct that the salary and other emoluments of petitioner be withheld and applied to her cash shortage determined merely in an audit examination?[2]

The Court held:

> Regarding the propriety of withholding the petitioner's salary, **the Court holds that COA can direct the proper officer to withhold petitioner's salary and other emoluments** under Section 21, Chapter 4, Subtitle B, Book V of the Administrative Code of 1987, which is substantially the same as Section 37 of PD No. 1445, the legal basis of COA. . . .
>
> x x x x x x x x x
>
> It is noted that the directive of State Auditor Del Rosario to the Municipal Mayor of Goa, Camarines Sur to withhold the salary of petitioner is in accordance with the COA Guidelines to the Examiner/Auditor in case of a cash shortage contained in Chapter 3 of the COA Handbook on Cash Examination . . . .
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> x x x x x x x x x

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[1] *Rollo*, p. 16. Emphasis supplied.

[2] Decision, p. 8. Emphasis supplied.

The State Auditors' finding of cash shortage against petitioner municipal treasurer, which has not been satisfactorily disputed, is *prima facie* evidence against her. The *prima facie* evidence suffices for the withholding of petitioner's salary, in order to safeguard the interest of the Government.

However, it must be stated that although State Auditor del Rosario properly directed the Municipal Mayor of Goa, Camarines Sur to withhold **petitioner's salary and other emoluments**, she incorrectly directed that the same be applied or set off against petitioner's cash shortage. As ruled in *Villanueva*, before set-off can take place under Section 624 of the Revised Administrative Code of 1919, as amended, now Section 21 of the Administrative Code of 1987, a person's indebtedness to the government must be one that is admitted by him or pronounced by final judgment of a competent court. In this case, the indebtedness was not admitted by petitioner and a competent court has not yet pronounced final judgment thereon.

As a result, the amount of petitioner's salary remitted to the local government treasurer as payment of petitioner's cash shortage should be considered merely withheld until final resolution on her indebtedness. In the event that petitioner is found not liable for the cash shortage, the **withheld salary and other emoluments** will be released to her; otherwise, it will be applied in payment of her indebtedness.

WHEREFORE, the petition is **PARTLY GRANTED** in that respondent COA is authorized merely to withhold petitioner's salary but not to apply it to the alleged shortage for which her liability is still being litigated. No costs.

SO ORDERED.[3]

The issue, as stated in the Decision, clearly shows that the Court considered for resolution whether or not the **salary and other emoluments** of petitioner may be withheld by respondents and applied to her cash shortage determined merely in an audit examination.

In the body of the Decision, the Court held that "[r]egarding the propriety of withholding the petitioner's salary, **the Court holds that COA can direct the proper officer to withhold**

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[3] *Id*. at 10, 12-13. Emphasis supplied.

petitioner's salary and other emoluments under Section 21, Chapter 4, Subtitle B, Book V of the Administrative Code of 1987, which is substantially the same as Section 37 of PD No. 1445, the legal basis of COA. . . ."[4]

Immediately before the dispositive portion of the Decision, the Court stated:

> As a result, the amount of petitioner's salary remitted to the local government treasurer as payment of petitioner's cash shortage should be considered merely withheld until final resolution on her indebtedness. In the event that petitioner is found not liable for the cash shortage, the **withheld salary and other emoluments** will be released to her; otherwise, it will be applied in payment of her indebtedness.

Hence, it is clear that respondent COA can withhold the salary and other emoluments due petitioner up to the amount of her alleged shortage.

WHEREFORE, it is hereby clarified that respondent COA is authorized to withhold petitioner's salary and other emoluments up to the amount of her alleged shortage, but not to apply the withheld amount to the alleged shortage for which her liability is still being litigated.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and *Reyes, JJ.,* concur.

Sandoval-Gutierrez, J., on official leave.

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[4] Emphasis supplied.

EN BANC

[G.R. No. 172693. November 21, 2007]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RICARDO SOLANGON**[1] **@ KA RAMIL,** *appellant.*

SYLLABUS

1. **CIVIL LAW; KIDNAPPING FOR RANSOM AND MURDER; COMMITTED WHERE THE VICTIM WAS KIDNAPPED NOT FOR THE PURPOSE OF KILLING HIM BUT WAS SUBSEQUENTLY SLAIN AS AN AFTERTHOUGHT; CASE AT BAR.—** We find that two separate crimes of kidnapping for ransom and murder were committed. The present case falls under paragraph (b) of the foregoing rule that where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, two (2) separate crimes of kidnapping and murder were committed. In the instant case, the records clearly show the elements of kidnapping, to wit: On March 26, 1992, appellant together with six (6) other armed men abducted Libertador for the purpose of extorting ransom money. They blocked Libertador's convoy and demanded payment of campaign fee. However, when the payment was not forthcoming right away, they hogtied Libertador and brought him to the mountains. On April 4, 1992, Libertador's relatives paid the ransom money of ₱50,000.00 to appellant's group at Brgy. Kurtingan, Sta. Cruz, Occidental Mindoro, but the latter reneged on *its* promise to release Libertador and killed him instead.

2. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.—** As regards the crime of murder, it is true that there is no direct evidence of the actual killing of the victim. Nevertheless, direct evidence of the commission of the crime is not the only matrix whereby the trial court may draw its conclusions and findings of guilt. It is settled that conviction may be based on circumstantial evidence provided that the

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[1] Also referred to as Rolando Solangon in other parts of the records.

following requisites must concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Circumstantial evidence is of a nature identically the same with direct evidence. It is equally direct evidence of minor facts of such a nature that the mind is led intuitively or by a conscious process of reasoning to the conviction that from them some other fact may be inferred. No greater degree of certainty is required when the evidence is circumstantial than when it is direct. In either case, what is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime.

3. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; WHEN PRESENT; CASE AT BAR.—** While the combination of said circumstances is insufficient to establish the qualifying circumstance of treachery, considering the absence of eyewitness to the actual killing of the victim; however, it is enough to sustain the guilt of appellant for the crime of murder qualified by abuse of superior strength, which was alleged in the information and proved during trial. This qualifying circumstance is present where there is proof of gross physical disparity between the protagonists or when the force used by the assailant is out of proportion to the means available to the victim. In the case at bar, there was superiority not only in strength but in number as well. The lone victim was unarmed and was hogtied by seven (7) armed men who demonstrably abused their excessive force which was out of proportion to the defenses available to the deceased.

4. **ID.; ID.; EVIDENT PREMEDITATION; IT IS NOT ENOUGH THAT THE EVIDENT PREMEDITATION IS SUSPECTED OR SURMISED, BUT CRIMINAL INTENT MUST BE EVIDENCED BY NOTORIOUS OUTWARD ACTS EVINCING DETERMINATION TO COMMIT THE CRIME.—** Evident premeditation cannot be considered in the instant case. The careful selection of an ideal site wherein to block the convoy of vehicles may have been premeditated so that the kidnapping of the victim would be carried out successfully; but the same cannot be said as regards the killing. It is not enough that evident premeditation is suspected or surmised, but criminal intent must be evidenced by notorious outward acts evincing

determination to commit the crime. In order to be considered an aggravation of the offense, the circumstance must not merely be "premeditation"; it must be "evident premeditation."

5. ID.; KIDNAPPING FOR RANSOM; IMPOSABLE PENALTY.— The penalty for kidnapping for the purpose of extorting ransom from the victim or any other person under Article 267 of the Revised Penal Code is death. However, the imposition of the death penalty has been prohibited in view of the passage of R.A. No. 9346, *An Act Prohibiting the Imposition of the Death Penalty in the Philippines*. Thus, in lieu thereof, the penalty of *reclusion perpetua* should be imposed on appellant, without eligibility for parole.

6. ID.; MURDER; IMPOSABLE; PENALTY.— On the other hand, as the crime was committed prior to the amendment of Article 248 of the Revised Penal Code by R.A. No. 7659, the appropriate penalty for Murder is *reclusion temporal* in its maximum period, to death. Under Article 64 (1) of the Revised Penal Code, in cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, and there are neither aggravating nor mitigating circumstances that attended the commission of the crime, the penalty prescribed by law in its medium period shall be imposed, which in this case *is reclusion perpetua*. The Indeterminate Sentence Law is not applicable when the penalty actually imposed is *reclusion perpetua*.

7. ID.; KIDNAPPING FOR RANSOM AND MURDER; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Actual damages may be awarded representing the amount of ransom paid. In *People v. Morales* and *People v. Ejandra*, the Court awarded actual damages representing the amounts of the ransom paid. In the instant case, the heirs of the victim are entitled to the award of ₱50,000.00 as actual damages, which is equivalent to the amount of the ransom paid. The heirs of the victim are also entitled to civil indemnity in the amount of ₱50,000.00. In *People v. Yambot*, the Court awarded civil indemnity of ₱50,000.00 after finding the accused guilty of the crime of kidnapping for ransom aside from ordering the return of the amount of the ransom. In addition, the heirs of the victim are also entitled to an award of moral damages in the amount of ₱50,000.00. In *People v. Baldogo* and *People v. Garcia*, the Court affirmed the awards of moral damages in the amounts of ₱100,000.00

and ₱200,000.00, respectively, predicated on the fact that the victims suffered serious anxiety and fright when they were kidnapped. Thus, for the crime of kidnapping for ransom, appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole pursuant to R.A. No. 9346 and to pay the heirs of Libertador Vidal the amounts of ₱50,000.00 as actual damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages; and for the crime of murder, appellant is sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages in line with prevailing jurisprudence.

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 February 7, 2000, an Information was filed against appellant Ricardo Solangon, Apolonio Haniel and other John Does, the accusatory portion of which reads as follows:

That on or about March 26, 1992 at around 4:30 o'clock in the afternoon, more or less, in Sitio Calamintao, Barangay Alacaak, Sta. Cruz, Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in band, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously kidnapped for ransom one Libertador F. Vidal @ Ador, while the latter was in the aforesaid place and was forcibly taken away to Sitio Tuoyan, Barangay Balao, Abra de Ilog, Occidental Mindoro where the said accused with intent to kill, with treachery and evident premeditation and abuse of superior strength, killed the said victim Libertador F. Vidal resulting to his untimely death.

CONTRARY TO LAW.[2]

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[2] Records, p. 12.

Only appellant Solangon was arrested while the rest of the accused remain at large. During arraignment, Solangon pleaded not guilty.[3]

The facts of the case as summarized by the Court of Appeals are as follows:

During the 1992 local elections, Libertador F. Vidal *alias* Ador was a mayoralty candidate for the municipality of Sta. Cruz, Occ. Mindoro. On March 26, 1992, he was in the company of his sister Eden Vidal and other candidates for board members in the *Sangguniang Panlalawigan*. They were on their way home aboard four (4) vehicles from a campaign trail at Sitio Calamintao, Alakaac, Sta. Cruz, Occ. Mindoro. When they reached Balao river, they were blocked by seven (7) armed men, including appellant alias *Ka Ramil*, who introduced themselves allegedly as members of New People's Army (NPA). The latter ordered the campaigners to alight from their vehicles down to the river and commanded them to fall in line. While the alleged rebels aimed their guns at Ador's group, one *Ka Emil* asked "who is Ador Vidal?" When Ador identified himself, appellant immediately tied his hands behind his back with a nylon rope. The appellant's group then demanded campaign permit fee of ₱50,000.00 and for the release of Ador. Apparently failing in the negotiation, appellant's group forcibly abducted Ador and took him to a mountain.

After a week, or on April 4, 1992, heeding the earlier instruction of the bandits, Marilou Vidal, Ador's wife, with Rodrigo Alcantara and Lando Mendoza, delivered the ransom money to appellant's group at a far place in Brgy. Kurtinganan, Sta. Cruz, Occ. Mindoro. When they asked the whereabouts of Ador, the appellant said that Ador would be home the following night. However, appellant's group did not honor their promise. Since then, Ador's relatives had never seen him alive.

On July 9, 1999, at about 3:00 p.m., appellant was arrested by the PNP Mobile Group, Mamburao, Occ. Mindoro while inside a bus going to San Jose, Occ. Mindoro. According to prosecution witness SPO2 Nelson Soquilon, he first met appellant on July 26, 1999 at the police barracks in Mamburao, Occ. Mindoro. There, appellant was investigated by P/Insp. Edilberto Ama. P/Insp. Ama instructed Soquilon and 13 other policemen to accompany appellant to a remote

[3] *Id*. at 26.

place where Ador's skeleton could be found, as earlier pointed by appellant. At the mountainous area of Brgy. Balao, Abra de Ilog, Occ. Mindoro, at which the policemen were unaware of the exact whereabouts of Ador, appellant dug about two (2) feet. A cadaver, including *maong* jacket and shorts believed to be that of Ador were found and retrieved.

Thereafter, Ador's relatives requested Dr. Edison Tan, Municipal Health Officer of Mamburao, Occ. Mindoro to arrange the skeleton. Ador's relatives were certain that the remains belonged to Ador, after recognizing his forehead, chin and lower dentures. The exact cause of death could not be determined. On July 28, 1999, the relatives of the victim brought the latter's skeleton to the house of Eden Vidal. On July 30, 1999, Ador's body was finally laid to rest.

Appellant's defense is alibi. He also denied being a member of the NPA. He claims that on March 26, 1992, he was in Sitio Langka, Abra de Ilog, Occ. Mindoro planting coconut trees; that in the years 1992 and 1993, he was just farming in their place and sometimes went to his sister who previously stayed in San Jose then transferred to Sablayan; that he is "tagalog" but his wife belongs to the minority; that on July 9, 1999 at about 3:00 p.m., as he was on board a bus from Abra de Ilog, at *Stop Over* restaurant in Brgy. 9, Mamburao, Occ. Mindoro, some soldiers boarded the bus with their long firearms pointed to him; that he was surprised as he just wanted to go to Sablayan to borrow *palay* seedlings; and that he was suddenly arrested and brought to the barracks.[4]

On August 31, 2004, the Regional Trial Court of Mamburao, Occidental Mindoro, Branch 44, rendered a Decision finding appellant guilty of the complex crime of kidnapping with murder. The dispositive portion of the Decision reads:

WHEREFORE, the Court finds that the guilt of the accused, Ricardo Solangon, in the commission of offense in the information, has been established with proof beyond reasonable doubt, it is hereby imposes upon him the mandatory penalty of death, and ordered him to pay the heirs of Libertador Vidal the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages and costs of the suit.

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[4] *Rollo*, pp. 3-5.

With the findings of guilt on Ricardo Solangon and the imposition of sentence upon him, the "Motion for Reconsideration" filed by him, thru Public Attorney's Office which seeks to reconsider the Order of this Court dated June 17, 2004 denying his release on recognizance is hereby DENIED for being moot and academic.

Since Ricardo Solangon has been classified or recognized as political offender under the Oslo Agreement entered into between the Negotiating Panel of the Government of the Republic of the Philippines (GNP) and the Negotiating Panel of the National Democratic Front of the Philippines (NDFP), the Court opines that the executive branch of the government that should now grant him a pardon or executive clemency in compliance with its commitment toward Peace Progress.

In view of the imposition of the death penalty upon Ricardo Solangon @ Ka Ramil, let the original folio of this case, together with the evidence, oral and documentary, be forthwith elevated to the Honorable Supreme Court for automatic review.

SO ORDERED.[5]

Appellant appealed to the Court of Appeals contending that, granting *arguendo* that he participated in the abduction of Libertador, such act will not constitute the crime of kidnapping because it is absorbed in the crime of rebellion penalized under Article 134 of the Revised Penal Code. He alleged that the skeletal remains were not properly identified as Libertador's for failure of the prosecution to subject the skeletal remains to DNA or dental analysis. He also alleged that his confession could not be used against him as it was made during custodial investigation and under duress.

The Court of Appeals affirmed the Decision of the trial court that appellant committed the complex crime of kidnapping for ransom with murder with the modification that appellant could not be considered a political offender.[6] The appellate court

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[5] Records, pp. 237-238; penned by Judge Inocencio M. Jaurigue.

[6] Penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo; *rollo*, pp. 2-17.

held that the kidnapping of Libertador, a mere mayoralty candidate, without evidence to indicate public uprising or taking arms against the government, and without any evidence of removing allegiance therefrom, does not constitute rebellion. It found that the kidnapping was done for the purpose of coercing the victim and his relatives to pay campaign money. It also noted that the acts of killing and burying the victim were incidental and could have been used only as means to compel the payment of the ransom money and to avoid the discovery of the crime. The appellate court likewise held that DNA examination was no longer necessary as the relatives of the victim had identified the same as Libertador's; and that appellant's act of voluntarily leading the police in retrieving the victim's body was not a confession but a strong indicium of guilt.

Hence, this petition.

The abduction and killing of Libertador happened on March 26, 1992 or prior to the date of effectivity of Republic Act (R.A.) No. 7659 or *The Death Penalty Law* on December 31, 1993. As held in *People v. Ramos*:[7]

> Prior to 31 December 1993, the date of effectivity of RA No. 7659, the rule was that where the kidnapped victim was subsequently killed by his abductor, the crime committed would either be a complex crime of kidnapping with murder under Art. 48 of The Revised Penal Code, or two (2) separate crimes of kidnapping and murder. Thus, where the accused kidnapped the victim for the purpose of killing him, and he was in fact killed by his abductor, the crime committed was the complex crime of kidnapping with murder under Art. 48 of The Revised Penal Code, as the kidnapping of the victim was a necessary means of committing the murder. **On the other hand, where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, two (2) separate crimes of kidnapping and murder were committed.** (Emphasis supplied)

Thus, the applicable rule when the abduction and killing happened before December 31, 1993, as in the present case, is:

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[7] G.R. No. 118570, October 12, 1998, 297 SCRA 618, 640-641.

a) Where the accused kidnapped the victim for the purpose of killing him, and he was in fact killed by his abductor, the crime committed was the complex crime of kidnapping with murder under Art. 48 of the Revised Penal Code, as kidnapping of the victim was a necessary means of committing the murder.

b) Where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, two (2) separate crimes of kidnapping and murder were committed.

The trial court found that "the kidnapping was committed for the purpose of extorting ransom from the victim."[8] Similarly, the Court of Appeals noted that the obvious purpose of Libertador's abduction "was to coerce him to pay campaign money"[9] and that "the acts of killing and burying him were incidental and could have been used only as a means absolutely to compel the payment of the ransom money, and to avoid the discovery of the crime."[10] However, both courts found that the crime committed was the complex crime of kidnapping with murder.

We do not agree. We find that two separate crimes of kidnapping for ransom and murder were committed.

The present case falls under paragraph (b) of the foregoing rule that where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, two (2) separate crimes of kidnapping and murder were committed.

In the instant case, the records clearly show the elements of kidnapping, to wit: On March 26, 1992, appellant together with six (6) other armed men abducted Libertador for the purpose of extorting ransom money. They blocked Libertador's convoy and demanded payment of campaign fee. However, when the payment was not forthcoming right away, they hogtied Libertador and brought him to the mountains. On April 4, 1992, Libertador's relatives paid the ransom money of ₱50,000.00 to appellant's

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[8] CA *rollo*, p. 20.

[9] *Rollo*, p. 8.

[10] *Id.* at 8-9.

group at Brgy. Kurtingan, Sta. Cruz, Occidental Mindoro, but the latter reneged on its promise to release Libertador and killed him instead.

As regards the crime of murder, it is true that there is no direct evidence of the actual killing of the victim. Nevertheless, direct evidence of the commission of the crime is not the only matrix whereby the trial court may draw its conclusions and findings of guilt. It is settled that conviction may be based on circumstantial evidence provided that the following requisites must concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Circumstantial evidence is of a nature identically the same with direct evidence. It is equally direct evidence of minor facts of such a nature that the mind is led intuitively or by a conscious process of reasoning to the conviction that from them some other fact may be inferred. No greater degree of certainty is required when the evidence is circumstantial than when it is direct. In either case, what is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime.[11]

The evidence is replete with details to prove that appellant and his at-large co-accused were responsible for the abduction and death of the victim. These are:

a) On March 26, 1992, appellant together with six (6) other armed men, introducing themselves to be members of the New People's Army (NPA), blocked the convoy of the victim and demanded payment of a campaign fee of ₱50,000.00;

b) When the amount was not produced right away, they hogtied the victim with a nylon rope and brought him to the mountains;

c) Despite payment of the ransom money, the victim was not released and was never seen alive again;

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[11] *People v. Oliva*, 402 Phil. 482, 493-494 (2001).

d) After his arrest, appellant disclosed to the authorities the place where they buried the victim at Brgy. Balao, Abra de Ilog, Occidental Mindoro, and thereat they recovered the skeleton of Libertador from a shallow grave; and

e) The victim's relatives were certain that the remains belonged to Libertador.

While the combination of said circumstances is insufficient to establish the qualifying circumstance of treachery, considering the absence of eyewitness to the actual killing of the victim; however, it is enough to sustain the guilt of appellant for the crime of murder qualified by abuse of superior strength, which was alleged in the information and proved during trial. This qualifying circumstance is present where there is proof of gross physical disparity between the protagonists or when the force used by the assailant is out of proportion to the means available to the victim.[12]

In the case at bar, there was superiority not only in strength but in number as well. The lone victim was unarmed and was hogtied by seven (7) armed men who demonstrably abused their excessive force which was out of proportion to the defenses available to the deceased.

Evident premeditation cannot be considered in the instant case. The careful selection of an ideal site wherein to block the convoy of vehicles may have been premeditated so that the kidnapping of the victim would be carried out successfully; but the same cannot be said as regards the killing. It is not enough that evident premeditation is suspected or surmised, but criminal intent must be evidenced by notorious outward acts evincing determination to commit the crime. In order to be considered an aggravation of the offense, the circumstance must not merely be "premeditation"; it must be "evident premeditation."

The penalty for kidnapping for the purpose of extorting ransom from the victim or any other person under Article 267 of the

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[12] *People v. Ponce*, 395 Phil. 563, 575 (2000).

Revised Penal Code is death. However, the imposition of the death penalty has been prohibited in view of the passage of R.A. No. 9346, *An Act Prohibiting the Imposition of the Death Penalty in the Philippines*. Thus, in lieu thereof, the penalty of *reclusion perpetua* should be imposed on appellant, without eligibility for parole.[13]

On the other hand, as the crime was committed prior to the amendment of Article 248 of the Revised Penal Code by R.A. No. 7659, the appropriate penalty for Murder is *reclusion temporal* in its maximum period, to death. Under Article 64 (1) of the Revised Penal Code, in cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, and there are neither aggravating nor mitigating circumstances that attended the commission of the crime, the penalty prescribed by law in its medium period shall be imposed, which in this case *is reclusion perpetua*. The Indeterminate Sentence Law is not applicable when the penalty actually imposed is *reclusion perpetua*.

Actual damages may be awarded representing the amount of ransom paid. In *People v. Morales*[14] and *People v. Ejandra*,[15] the Court awarded actual damages representing the amounts of the ransom paid. In the instant case, the heirs of the victim are entitled to the award of ₱50,000.00 as actual damages, which is equivalent to the amount of the ransom paid. The heirs of the victim are also entitled to civil indemnity in the amount of ₱50,000.00. In *People v. Yambot*,[16] the Court awarded civil indemnity of ₱50,000.00 after finding the accused guilty of the crime of kidnapping for ransom aside from ordering the return of the amount of the ransom. In addition, the heirs of the victim are also entitled to an award of moral damages in

[13] See *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006.

[14] G.R. No. 148518, April 15, 2004, 427 SCRA 765, 789.

[15] G.R. No. 134203, May 27, 2004, 429 SCRA 364, 383.

[16] 397 Phil. 23, 28 & 47 (2000).

the amount of ₱50,000.00. In *People v. Baldogo*[17] and *People v. Garcia*,[18] the Court affirmed the awards of moral damages in the amounts of ₱100,000.00 and ₱200,000.00, respectively, predicated on the fact that the victims suffered serious anxiety and fright when they were kidnapped.

Thus, for the crime of kidnapping for ransom, appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole pursuant to R.A. No. 9346 and to pay the heirs of Libertador Vidal the amounts of ₱50,000.00 as actual damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages; and for the crime of murder, appellant is sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages in line with prevailing jurisprudence.[19]

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals which affirmed with modification the Decision of the Regional Trial Court of Mamburao, Occidental Mindoro, Branch 44, finding appellant guilty of the complex crime of kidnapping with murder is *MODIFIED*. Appellant Ricardo Solangon is hereby found *GUILTY* beyond reasonable doubt of two separate crimes of kidnapping for ransom and murder.

For the crime of kidnapping for ransom, appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole pursuant to R.A. No. 9346 and to pay the heirs of Libertador Vidal the amounts of ₱50,000.00 as actual damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages.

For the crime of murder, appellant is sentenced to suffer the indeterminate penalty of *reclusion perpetua* and to pay

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[17] 444 Phil. 35, 66 (2003).

[18] 424 Phil. 158, 194 (2002).

[19] *Marzonia v. People*, G.R. No. 153794, June 26, 2006, 492 SCRA 629, 637.

the heirs of the victim the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., and *Reyes, JJ.,* concur.

Saldoval-Gutierrez, J., on official leave.

Nachura, J., no part, Solicitor General.

SECOND DIVISION

[G.R. No. 149238. November 22, 2007]

SIXTO ANTONIO, *petitioner, vs.* **SPS. SOFRONIO SANTOS & AURORA SANTOS, SPS. LUIS LIBERATO & ANGELINA LIBERATO and SPS. MARIO CRUZ & VICTORIA CRUZ,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; RULE WHEN CERTIFICATE OF TITLE COVERING THE SAME PROPERTY IS ISSUED TO TWO DIFFERENT PERSONS.—** But we agree with respondents that petitioner cannot rely on the decision in LRC No. 142-A. As pointed out by the Court of Appeals, even if a title had been issued to petitioner based on said decision, his title would be of a later date than the title of respondents, hence inefficacious and ineffective. This Court has ruled that, when two certificates of title are issued to different persons covering the same land in whole or in part, the earlier in date must prevail; and in case of successive registrations where more than one certificate is issued over the same land, the person holding a prior certificate is entitled to the land as against a person who relies on a subsequent certificate.

2. **ID.; ID.; ACTION FOR RECONVEYANCE BASED ON FRAUD; TO PROSPER, TITLE TO THE PROPERTY AND THE FACT**

OF FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE.— For an action for reconveyance based on fraud to prosper, this Court has held that the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud. The RTC, in making the abovementioned findings, was not treating petitioner's action for reconveyance as one for titling of property. But it was weighing whether petitioner has, by clear and convincing evidence, proven his title to the property. Moreover, the RTC, in its decision, discussed the merits of petitioner's ground for his action for reconveyance, *i.e.* whether or not respondents committed fraud in titling the subject property in their names. The RTC held that as shown by public records in the custody of the RTC, Pasig City and the Land Registration Authority, petitioner's claim that the property was fraudulently titled in the names of respondents is baseless. Thus, petitioner's contention that the RTC and the Court of Appeals treated his action for reconveyance as one for titling of property lacks any persuasive basis.

3. **ID.; ID.; ID.; PRESCRIPTIVE PERIOD.—** Note, however, should be taken of the established doctrine that an action for reconveyance resulting from fraud prescribes four years from the discovery of the fraud. Such discovery is deemed to have taken place upon the issuance of the certificate of title over the property. Registration of real property is considered a constructive notice to all persons, thus, the four-year period shall be counted therefrom. It appears that OCT No. 108 was issued to respondents by the Register of Deeds for Metro Manila on May 20, 1977. From the time of registration of the land in the name of respondents on May 20, 1977 to the filing of the complaint on September 19, 1988, more than four years had already elapsed. Hence, it cannot be denied that petitioner's action had already prescribed. Based on the foregoing considerations, we find that the Court of Appeals did not err in affirming the decision of the RTC dismissing petitioner's action for reconveyance.

4. **ID.; DAMAGES; MORAL DAMAGES; AWARD THEREOF, WHEN UNWARRANTED.—** Finally, concerning the deletion of moral damages and attorney's fees, we agree with the ruling of the Court of Appeals that here an award of moral damages is not warranted since the record is bereft of any proof that Antonio acted maliciously or in bad faith in filing the action.

5. ID.; ID.; ATTORNEY'S FEES; REASON FOR THE AWARD THEREOF MUST BE STATED IN THE TEXT OF THE TRIAL COURT'S DECISION; OTHERWISE, IT SHALL BE DISALLOWED IF THE SAME IS STATED ONLY IN THE DISPOSITIVE PORTION.— Neither should attorney's fees be awarded. The accepted rule is that the reason for the award of attorney's fees must be stated in the text of the trial court's decision; otherwise, if it is stated only in the dispositive portion of the decision, the same must be disallowed. In this case, we find that the trial court's decision failed to show the reason for the award of attorney's fees, hence it was properly deleted by the appellate court.

6. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; LIMITED TO QUESTIONS OF LAW ONLY.— On the third and fourth issues, we find them to be factual issues, hence beyond our jurisdiction to resolve. In a petition for review under Rule 45 of the 1997 Rules of Civil Procedure, this Court's power of review is limited to questions of law only.

APPEARANCES OF COUNSEL

E.G. Ferry Law Office for petitioner.
Felicisimo N. Geronimo, Jr. for respondents.

R E S O L U T I O N

QUISUMBING, *J.*:

This is an appeal from the Decision[1] dated July 31, 2001 of the Court of Appeals in CA-G.R. CV No. 58246, affirming, with modification, the Decision[2] dated October 7, 1997 of Branch 72, Regional Trial Court (RTC) in Antipolo, Rizal in Civil Case No. 1261-A. The RTC had dismissed the complaint for Reconveyance, Annulment of Title and Damages filed by petitioner Sixto Antonio against respondents.

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[1] *Rollo*, pp. 32-45. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices B.A. Adefuin-De La Cruz and Josefina Guevara-Salonga concurring.

[2] Records, Vol. I, pp. 616-635. Penned by Judge Rogelio L. Angeles.

The antecedent facts, culled from the records, are as follows:

On September 19, 1988, petitioner Sixto Antonio filed before Branch 72, RTC, Antipolo, Rizal, a complaint for Reconveyance, Annulment of Title and Damages against respondents spouses Sofronio and Aurora Santos, Luis and Angelina Liberato, and Mario and Victoria Cruz. The complaint was docketed as Civil Case No. 1261-A.

In his complaint,[3] Antonio alleged that he is the absolute owner of a 13,159-square meter parcel of land denominated as Lot No. 11703, CAD 688-D, Cainta-Taytay Cadastre, situated in Barangay San Juan, Cainta, Rizal. He averred that, as evidenced by certificates of payment of realty taxes for the years 1918 and 1919, the property was previously owned by his father and that in 1984, he filed before Branch 71, RTC, Antipolo, Rizal, an application for the registration of two parcels of land, one of which was Lot No. 11703, CAD 688-D, situated in Barangay San Juan, Cainta, Rizal. His application was docketed as Land Registration Case No. 142-A (LRC No. 142-A).

Although the RTC, Branch 71, declared him the true and absolute owner in fee simple of the two parcels of land he applied for, it set aside its decision with respect to Lot No. 11703, CAD 688-D in an Order dated August 21, 1986, to avoid duplication of issuance of titles.

Antonio said that after investigation, he discovered that Lot No. 11703, CAD 688-D was already titled in the name of respondents. He then filed the complaint for Reconveyance, Annulment of Title and Damages against respondents, averring that respondents committed fraud in their application for titling because they made it appear in their application for registration that the subject property was located in Pinagbuhatan, Pasig, Rizal, when in fact, the property is located in Barangay San Juan, Cainta, Rizal. He added, respondents also made it appear in their application for registration that the subject property is bound on the North East by the Pasig River when in fact it is bound on the North East by the Tapayan River. Furthermore,

[3] *Id.* at 1-6.

the Pasig River does not traverse any portion of the jurisdiction of Cainta, Rizal. He argued that Original Certificate of Title No. 108 (OCT No. 108) in respondents' names, insofar as it included Lot No. 11703, CAD 688-D, is, therefore, null and void because it was obtained through fraudulent misrepresentations and machinations.

In their Answer[4] dated July 26, 1989, respondents averred that OCT No. 108 was duly issued to them by the Register of Deeds for Metro Manila, District II, on May 20, 1977. They alleged that prior to the issuance of OCT No. 108, they, as registered owners, had always been in peaceful possession of the property and at no time had Antonio possessed the property, nor did he ever make any claim against the said property.

The RTC of Antipolo, Rizal, Branch 72, in a Decision dated October 7, 1997 dismissed the complaint and ordered Antonio to pay respondents moral damages and attorney's fees. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaint, and orders plaintiff as follows:

1. To pay defendants Sofronio Santos, Aurora Santos, Sps. Luis Liberato and Angelina Santos, the amount of ₱100,000.00 each, by way of moral damages;

2. To pay defendants the amount of ₱60,000.00, by way of attorney's fees, and costs of suit.

SO ORDERED.[5]

The Court of Appeals in a Decision dated July 31, 2001 affirmed with modification the abovementioned decision by deleting the award of moral damages and attorney's fees. The dispositive portion of the decision of the Court of Appeals states:

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[4] *Id*. at 66-71.

[5] *Id*. at 635.

WHEREFORE, with modification deleting [or] setting aside the award for moral damages and attorney's fees, the decision appealed from is **AFFIRMED** with costs against the plaintiff-appellant.

SO ORDERED.[6]

Hence, the instant petition, raising the following issues:

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT THE DECISION IN LAND REGISTRATION CASE NO. 142-A, LRC RECORD NO. 58707, REGIONAL TRIAL COURT OF ANTIPOLO CITY, BRANCH 71, IS SUFFICIENT BASIS OF PETITIONER'S CLAIM OF RIGHT OF OWNERSHIP OVER THE PROPERTY SUBJECT OF ACTION FOR RECONVEYANCE.

II.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN TREATING PETITIONER'S ACTION FOR RECONVEYANCE AS ONE FOR TITLING OF A PARCEL OF LAND.

III.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT RESPONDENTS HAVE FRAUDULENTLY REGISTERED AND TITLED SUBJECT PROPERTY IN THEIR NAMES.

IV.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT RESPONDENTS' MOTHER ACQUIRED SUBJECT PROPERTY FROM HER FATHER, GAVINO SANTOS, WHICH THE LATTER ALLEGEDLY PURCHASED FROM LADISLAO RIVERA.

V.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE DECISION OF THE COURT *A QUO* DISMISSING PETITIONER'S ACTION FOR RECONVEYANCE.[7]

Simply put, the issues raised are: (1) Did the Court of Appeals err in not holding that the decision in LRC No. 142-A was

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[6] *Rollo*, p. 45.

[7] *Id*. at 15-16.

sufficient basis of petitioner's claim of ownership over the subject property? (2) Did the Court of Appeals and RTC erroneously treat petitioner's action for reconveyance as one for titling of a parcel of land? (3) Did respondents fraudulently title the subject property in their names? (4) Did the Court of Appeals err in finding that respondents' mother acquired the subject property from her father, Gavino Santos, who purchased it from Ladislao Rivera? and (5) Did the Court of Appeals err in affirming the decision of the RTC dismissing petitioner's action for reconveyance?

Petitioner argues that the Court of Appeals erred in not holding that the decision in LRC No. 142-A is sufficient basis for his claim of ownership over the property; in treating his action for reconveyance as one for titling; in not holding that respondents had fraudulently registered the property in their names; and in holding that respondents' mother had acquired the subject property from her father, Gavino Santos, who allegedly bought the property from Ladislao Rivera.

Respondents, on the other hand, in their Comments,[8] contend that they have proved they have a better title to the property. They argue that petitioner's attempt to register Lot No. 11703, CAD 688-D in his name is tainted with fraud, and that petitioner had failed to adduce any evidence of fraud on their part. They assert that their documentary and testimonial evidence which were unrebutted by petitioner show original ownership of the land by Ladislao Rivera from whom their grandfather bought the property.

After serious consideration, we find that petitioner's arguments lack merit.

On the first issue, petitioner argues that in LRC No. 142-A, the RTC of Antipolo, Branch 71, rendered a Decision on January 7, 1986 adjudicating ownership of two lots, including Lot No. 11703, CAD 688-D, in his favor. He adds that on February 19, 1986, after said decision has become final and executory, the said RTC issued a certification for issuance of decree, directing

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[8] *Id*. at 124-148.

the Land Registration Commission to issue the corresponding decree of registration. Hence, he argues, his right of ownership over the land has already been fully established, but no certificate of title was issued to him only because the property was already registered in the name of respondents.

But we agree with respondents that petitioner cannot rely on the decision in LRC No. 142-A. As pointed out by the Court of Appeals, even if a title had been issued to petitioner based on said decision, his title would be of a later date than the title of respondents, hence inefficacious and ineffective. This Court has ruled that, when two certificates of title are issued to different persons covering the same land in whole or in part, the earlier in date must prevail; and in case of successive registrations where more than one certificate is issued over the same land, the person holding a prior certificate is entitled to the land as against a person who relies on a subsequent certificate.[9]

On the second issue, petitioner contends that it is very apparent the RTC and Court of Appeals had the notion that his case *a quo* was not an action for reconveyance, but rather an application for registration of land where the applicant and oppositor had to prove their respective registrable titles. This, he adds, could be gleaned from the RTC's findings that "the claim of plaintiff on the basis of said documents cannot prevail over the adverse, public, open, peaceful and continuous possession by the defendants over the subject property," and that "it was indubitably shown that the defendants have occupied said property since time immemorial while plaintiff has never at anytime taken possession of said property."

We find petitioner's contentions unconvincing. For an action for reconveyance based on fraud to prosper, this Court has held that the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact

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[9] *Chan v. Court of Appeals (Special Seventh Division)*, G.R. No. 118516, November 18, 1998, 298 SCRA 713, 725.

of fraud.[10] The RTC, in making the abovementioned findings, was not treating petitioner's action for reconveyance as one for titling of property. But it was weighing whether petitioner has, by clear and convincing evidence, proven his title to the property. Moreover, the RTC, in its decision, discussed the merits of petitioner's ground for his action for reconveyance, *i.e.* whether or not respondents committed fraud in titling the subject property in their names. The RTC held that as shown by public records in the custody of the RTC, Pasig City and the Land Registration Authority, petitioner's claim that the property was fraudulently titled in the names of respondents is baseless. Thus, petitioner's contention that the RTC and the Court of Appeals treated his action for reconveyance as one for titling of property lacks any persuasive basis.

On the third and fourth issues, we find them to be factual issues, hence beyond our jurisdiction to resolve. In a petition for review under Rule 45 of the 1997 Rules of Civil Procedure, this Court's power of review is limited to questions of law only.[11]

Note, however, should be taken of the established doctrine that an action for reconveyance resulting from fraud prescribes four years from the discovery of the fraud. Such discovery is deemed to have taken place upon the issuance of the certificate of title over the property. Registration of real property is considered a constructive notice to all persons, thus, the four-year period shall be counted therefrom.[12] It appears that OCT No. 108 was issued to respondents by the Register of Deeds for Metro Manila on May 20, 1977. From the time of registration of the land in the name of respondents on May 20, 1977 to the filing of the complaint on September 19, 1988, more than four

[10] *Barrera v. Court of Appeals*, G.R. No. 123935, December 14, 2001, 372 SCRA 312, 316.

[11] *Guanga v. Dela Cruz*, G.R. No. 150187, March 17, 2006, 485 SCRA 80, 88-89.

[12] *Philippine Economic Zone Authority v. Fernandez*, G.R. No. 138971, June 6, 2001, 358 SCRA 489, 498.

years had already elapsed. Hence, it cannot be denied that petitioner's action had already prescribed.

Based on the foregoing considerations, we find that the Court of Appeals did not err in affirming the decision of the RTC dismissing petitioner's action for reconveyance.

Finally, concerning the deletion of moral damages and attorney's fees, we agree with the ruling of the Court of Appeals that here an award of moral damages is not warranted since the record is bereft of any proof that Antonio acted maliciously or in bad faith in filing the action.[13] Neither should attorney's fees be awarded. The accepted rule is that the reason for the award of attorney's fees must be stated in the text of the trial court's decision; otherwise, if it is stated only in the dispositive portion of the decision, the same must be disallowed.[14] In this case, we find that the trial court's decision failed to show the reason for the award of attorney's fees, hence it was properly deleted by the appellate court.

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Decision dated July 31, 2001 of the Court of Appeals in CA-G.R. CV No. 58246 is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[13] *Francel Realty Corporation v. Court of Appeals*, G.R. No. 117051, January 22, 1996, 252 SCRA 127, 134.

[14] *Agustin v. Court of Appeals*, G.R. No. 84751, June 6, 1990, 186 SCRA 375, 384.

THIRD DIVISION

[G.R. No. 150305. November 22, 2007]

HONOFRE FUENTES, *petitioner, vs.* **FELOMINO CAGUIMBAL,** *respondent.*[*]

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; THE MUNICIPAL TRIAL COURT DOES NOT LOSE JURISDICTION THEREON BY THE SIMPLE EXPEDIENT OF A PARTY RAISING THE ISSUE OF TENANCY.—** While it is beyond question that under Republic Act (R.A.) No. 6657, it is the Department of Agrarian Reform Adjudication Board (DARAB) that has authority to hear and decide cases when the issue of tenancy is legitimately involved, the MTC does not lose jurisdiction over an ejectment case by the simple expedient of a party raising as a defense therein. However, it is the duty of the MTC to receive evidence to determine the then allegation of tenancy; and if after hearing, tenancy had in fact been shown to be the real issue, the court should dismiss the case for lack of jurisdiction.

2. **ID.; EVIDENCE; ABSENT ANY ERRORS, THE SUPREME COURT WILL NOT DISTURB THE FACTUAL FINDINGS OF THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS.—** However, before proceeding to resolve said issue, it is necessary that we first clear the air on the matter involving the identity of the subject property. Contrary to the findings of the MTC, the RTC found that the property referred to by the MTC as being cultivated by respondent and his predecessor is actually the same property subject of this case, *viz.*: xxx The CA found no cogent reason to disturb the RTC findings. Even as petitioner argues in his present petition that both the RTC and the CA failed to respect the finding of the MTC, petitioner failed to demonstrate any error committed by the RTC and the CA except to quote the pertinent portion of the MTC decision.

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[*] Pursuant to Section 4(a), Rule 45 of the Rules of Court, the name of the Court of Appeals is deleted from the title.

Consequently, the Court finds no compelling reason to disturb the findings of the RTC and the CA on this matter.

3. ID.; PLEADINGS AND PRACTICES; MEMORANDUM; THE COURT WILL NOT INTERFERE WITH THE LOWER COURT'S DISCRETION NOT TO DISMISS THE APPEAL FOR FAILURE OF THE PARTY TO SUBMIT A MEMORANDUM.— As regards the RTC's non-dismissal of respondent's appeal due to his failure to file his memorandum appeal on time, the Court will not interfere with the RTC's exercise of its discretion. True, Rule 40, Section 7(b) provides that "it shall be the duty of the appellant to submit a memorandum" and failure to do so "shall be a ground for dismissal of the appeal"; and that said provision uses the word "shall", which expresses a mandatory or compulsory duty to submit a memorandum. Nevertheless, it has also been held that the word "shall" does not always denote an imperative duty. It may also be consistent with an exercise of discretion. In this jurisdiction, the tendency has been to interpret "shall" as the context or a reasonable construction of the statute in which it is used demands or requires. Inasmuch as the RTC already absolved respondent of his tardy filing of the memorandum appeal, then the Court will not substitute its judgment with that of the RTC's.

4. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; ESSENCE.— It cannot be said that petitioner was deprived of due process when he was not able to file his own memorandum, for as borne by the records, petitioner was able to ventilate his side anent the correctness of the RTC Decision from the CA up to this Court. The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to seek a reconsideration of the action or ruling complained of. Due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.

5. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; ESSENTIAL REQUISITES; MUST ALL BE PRESENT TO DEPRIVE THE MUNICIPAL TRIAL COURTS OF JURISDICTION OVER THE CASE.— Section 3 of R.A. No. 1199 or The Agricultural Tenancy Act of the Philippines

defines agricultural tenancy as "the physical possession by a person of land devoted to agriculture belonging to, or legally possessed by another, for the purpose of production through the labor of the former and of the members of his immediate farm household, in consideration of which the former agrees to share the harvest with the latter, or to pay a price certain, either in produce or in money, or in both." In *Vda. de Victoria v. Court of Appeals*, the Court enumerated the essential requisites of tenancy, to wit: (1) The parties are the landowner and the tenant or agricultural lessee; (2) The subject of the relationship is agricultural land; (3) There is mutual consent to the tenancy between the parties; (4) The purpose of the relationship is agricultural production; (5) There is personal cultivation by the tenant or agricultural lessee; and (6) There is a sharing of harvests between the parties. and emphasized that to deprive the MTC of jurisdiction, they must all be shown to be present.

6. **ID.; ID.; ID.; CLAIMS OF TENANCY DO NOT AUTOMATICALLY GIVE RISE TO SECURITY OF TENURE; THERE MUST BE EVIDENCE TO PROVE THE ALLEGATION THAT AN AGRICULTURAL TENANT TILLED THE LAND IN QUESTION.—** Tenancy relationship cannot be presumed. Claims that one is a tenant do not automatically give rise to security of tenure. The elements of tenancy must first be proved in order to entitle the claimant to security of tenure. There must be evidence to prove the allegation that an agricultural tenant tilled the land in question. As we earlier noted, petitioner does not dispute that all the pleadings and the evidence necessary to prove the respective claims of the parties have been submitted to the MTC. We find that there is a dearth of evidence in the present case that will sufficiently establish respondent's claim that he or his predecessor was installed by petitioner or his predecessor as a tenant of the property in dispute. The fact that respondent or his father before him, personally cultivated the property does not, by itself, prove that they were tenants of petitioner or his predecessor-in-interest. Except for the self-serving affidavits/statements of his witnesses, no other proof was presented by respondent proving that he and his deceased father were actual tenants of petitioner.

7. **ID.; ID.; TO ESTABLISH TENANCY RELATIONSHIP, INDEPENDENT EVIDENCE, ASIDE FROM SELF-SERVING**

STATEMENTS, IS NEEDED TO PROVE PERSONAL CULTIVATION, SHARING OF HARVESTS, OR CONSENT OF THE LANDOWNER.— Notably, in the separate *Sinumpaang Salaysay* of Leoncio Caguimbal and Samuel Deverla, they attested that the property was first tilled by respondent's father, Andres Caguimbal, together with petitioner's father, Epifanio Fuentes, until respondent took over in 1976; that petitioner refused to acknowledge respondent as tenant and to accept any share in the *palay;* that there is no other property being cultivated by respondent except the one in dispute. The foregoing merely established the fact that respondent succeeded his father in tilling the property in question, and that petitioner refused to receive his share in the *palay*. It does not indicate any working tenancy relationship between the parties. As ruled in *Heirs of Jugalbot v. Court of Appeals*, to establish a tenancy relationship, independent evidence, aside from self-serving statements, is needed to prove personal cultivation, sharing of harvests, or consent of the landowner.

8. **ID.; ID.; THE FACT ALONE OF WORKING ON ANOTHER'S LANDHOLDING DOES NOT RAISE A PRESUMPTION OF THE EXISTENCE OF AGRICULTURAL TENANCY.—** Except for the sweeping conclusion made by the RTC that respondent continued the tenancy relationship of his father with petitioner, there is no mention of evidence in the decision of the RTC that would sustain its finding that respondent or his predecessor-in-interest is an agricultural tenant of the property in question. It was not shown how respondent or his father was instituted as an agricultural tenant thereof; neither was the existence of a sharing agreement between respondent and petitioner shown. The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. In fact, the RTC even noted that there was a standing feud between petitioner and respondent's father over the property. This negates the proposition that there was a consensual institution of respondent or his father as an agricultural tenant of the property.

9. **ID.; ID.; ABSENT AGRICULTURAL TENANCY RELATIONSHIP, THE EJECTMENT CASE FALLS WITHIN THE JURISDICTION OF THE MUNICIPAL TRIAL COURT.—** There being no agricultural tenancy relationship in this case, the MTC correctly took jurisdiction over the ejectment case filed by

petitioner; and finding that the MTC Decision is in accordance with the law and the facts of the case, the same should be reinstated. The CA erred in affirming the RTC Decision. Consequently, respondent must vacate the subject property.

10. **REMEDIAL LAW; APPEALS; ONLY ERRORS SPECIFICALLY ASSIGNED AND PROPERLY ARGUED IN THE BRIEF WILL BE CONSIDERED; EXCEPTIONS.—** Finally, petitioner laments the award of attorney's fees by the RTC which was affirmed by the CA despite the fact that it was not assigned as an error by respondent in his Memorandum on Appeal. The fundamental rule of procedure is that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. On appeal, only errors specifically assigned and properly argued in the brief will be considered, with the exception of those affecting jurisdiction over the subject matter as well as plain and clerical errors. Inasmuch as attorney's fees were never sought or raised by respondent, its award was therefore uncalled for.

APPEARANCES OF COUNSEL

Herminio L. Ruiz for petitioner.
Aquino Law Office for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J*.:

Honofre Fuentes (petitioner) is the owner of the property being claimed in this case. Said property is located in Calatagan, Batangas, covered by Transfer Certificate of Title No. T-51758. On January 18, 2000, petitioner filed an action for unlawful detainer against Felomino Caguimbal (respondent) with the Municipal Trial Court (MTC) of Batangas, alleging that in 1991, he allowed respondent to occupy the property rent-free, subject to the condition that the latter will vacate the property when petitioner returns from abroad. However, upon his return, respondent refused to vacate the property, forcing petitioner to file the case.

Respondent denied petitioner's allegations, claiming that his father started occupying the property in 1928 as agricultural tenant until his disability in 1976, after which he (respondent) took over.

In a Decision dated August 21, 2000, the MTC ruled in favor of petitioner. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Honofre Fuentes and against the defendant Felomino Caguimbal ordering the latter and all persons claiming rights under him to vacate and surrender possession of the land covered by TCT No. T-51758 located at Barangay Sambungan, Calatagan, Batangas with an area of 12,382 square meters registered in the name of plaintiff, Honofre Fuentes.
>
> Calatagan, Batangas, August 21, 2000.[1]

On appeal, the Regional Trial Court of Balayan, Batangas, Branch 11, in a Decision dated March 13, 2001, reversed and set aside the MTC Decision, and dismissed the case. The dispositive portion of the Decision reads:

> WHEREFORE, under the foregoing, the decision of the Municipal Trial Court of Calatagan, Batangas is hereby reversed and set aside, thereby dismissing this case. Ordering Plaintiff-Appellee to pay Twenty Thousand Pesos (₱20,000.00) as attorney's fee.
>
> SO ORDERED.[2]

Petitioner then filed a petition for review with the Court of Appeals (CA), docketed as CA-G.R. SP No. 63990. On September 3, 2001, the CA rendered its Decision[3] denying due course to the petition. The dispositive portion of the Decision reads:

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[1] *Rollo*, pp. 194-195.

[2] CA *rollo,* p. 49.

[3] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Eliezer R. De Los Santos, concurring; *id.* at 244-250.

WHEREFORE, premises considered, the present petition for review is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit. The Decision dated March 13, 2001 which was rendered by Branch XI of the Regional Trial Court of Balayan, Batangas in *Civil Case No. 3782*, dismissing the complaint for unlawful detainer in *Civil Case No. 188*, entitled *"Honofre Fuentes v. Felomino Caguimbal,"* is hereby AFFIRMED and REITERATED.

No pronouncement as to costs.

SO ORDERED.[4]

His motion for reconsideration having been denied,[5] petitioner is now before us on a petition for review under Rule 45 of the Rules of Court, raising the following issues:

First Question of law:

Whether or not there is an agricultural tenancy relation between the appellant Honofre Fuentes and the respondent Felomino Caguimbal which materialy [sic] affects the cause of action of the plaintiff-appellant;

Second Question of law:

Whether or not the Regional Trial Court of Balayan, Batangas acted without or in excess of jurisdiction or with grave abuse of discretion tantamount to lack of jurisdiction when it failed to dismiss the defendant (respondent's) appeal despite the fact that the respondent failed to file his memorandum on appeal within the fifteen (15) days [sic] period provided for by law and in admitting and granting the respondent's motion to admit appeal memorandum and appeal memorandum which is not even verified, without any affidavit of merit, not even set for hearing and in immediately submitting the case for decision without even giving the plaintiff (Petitioner-Appellant) an opportunity to file appellee's memorandum on appeal;

Third Question of law:

Whether or not the appellate court have [sic] jurisdiction to award attorney's fee even if the same have [sic] not been assigned as an error in the respondent memorandum on appeal and no

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[4] *Id*. at 250.

[5] *Id*. at 269.

evidence was presented to show that the filing of this case was made in bad faith.

Fourth Question of law:

Whether or not the plaintiff-appellant as an owner of the lot in question have [sic] the right to eject the defendant-appellee on the premises in question;[6]

The MTC found that petitioner had a cause of action for ejectment against respondent on the sole ground that the property allegedly being cultivated by respondent as a tenant is not the property subject of the present controversy.

On appeal, the Regional Trial Court (RTC) reversed the MTC and dismissed the petition, finding that the property claimed by petitioner and the property allegedly being cultivated by respondent are one and the same; and that there exists an agricultural tenancy relationship between the parties.

While it is beyond question that under Republic Act (R.A.) No. 6657, it is the Department of Agrarian Reform Adjudication Board (DARAB) that has authority to hear and decide cases when the issue of tenancy is legitimately involved, the MTC does not lose jurisdiction over an ejectment case by the simple expedient of a party raising as a defense therein.[7] However, it is the duty of the MTC to receive evidence to determine the then allegation of tenancy; and if after hearing, tenancy had in fact been shown to be the real issue, the court should dismiss the case for lack of jurisdiction.[8]

There is no dispute that all the pleadings and the evidence necessary to prove the respective claims of the parties were submitted to the MTC.

The main issue raised in the present petition is whether the CA erred in affirming the RTC that respondent is an agricultural tenant of petitioner.

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[6] *Rollo*, p. 33.

[7] *Hilado v. Chavez*, G.R. No. 134742, September 22, 2004, 438 SCRA 623, 641.

[8] *Id*. at 641-642.

However, before proceeding to resolve said issue, it is necessary that we first clear the air on the matter involving the identity of the subject property. Contrary to the findings of the MTC, the RTC found that the property referred to by the MTC as being cultivated by respondent and his predecessor is actually the same property subject of this case, *viz.*:

x x x Culled from the records, there was an agrarian case before, between the father of defendant-appellant, Andres Caguimbal and the father of the plaintiff-appellee, Epifanio Caguimbal (sic), docketed as DAR Case No. 1438, Quezon City. Furthermore, a later or subsequent case was filed by plaintiff-appellee against the father of the defendant-appellant for Recovery of Possession at the former CFI, Br. VII, Balayan, Batangas, docketed as Civil Case No. 1083. (Annex "1", Position Paper of Defendant-Appellant). Said case was filed on March 24, 1977. It was, however, dismissed for non-suit on July 20, 1984. (Annex "2", Position Paper of Defendant-Appellant). In the said case, the title pleaded in the complaint was TCT No. T-34791 and not TCT No. T-31760 acquired by plaintiff-appellee way back in 1975. (Exhibit "A", Plaintiff-Appellee). The present title of plaintiff-appellee pleaded in the case is TCT No. T-51758, Exhibit "5", derived from TCT No. T-31760. Defendant-Appellant claims that plaintiff-appellee pleaded the wrong TCT number reason why he allowed the case to be dismissed for non-suit. The Court is inclined to believe such claim of defendant-appellant because the land covered by TCT No. T-34971 (subject of Civil Case No. 1083, for Recovery of Possession) was later sold by plaintiff-appellee in 1982 to a certain Florida Butiong, resident of Calatagan, Batangas. TCT No. T-34971 was cancelled by TCT No. 42785 in the name of said Florida Butiong. (Annex "D", Position Paper of Defendant-Appellant). Yet from 1982 to the present, Florida Butiong never claimed ownership of the land subject of the case, neither did she demand share from the *palay* harvest of Defendant-Appellant. Thus, for the last 18 years, Florida Butiong never asserted ownership over the subject land simply because her land is different from and apart from the subject land. Error in the pleading was quite probable in the light of averment of Andres Caguimbal in the Answer in Civil Case No. 1083 that Honofre Fuentes had several applications at the DAR covering different parcels of land with a total area of eight (8) hectares.[9]

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[9] CA *rollo*, pp. 45-47.

The CA found no cogent reason to disturb the RTC findings. Even as petitioner argues in his present petition that both the RTC and the CA failed to respect the finding of the MTC, petitioner failed to demonstrate any error committed by the RTC and the CA except to quote the pertinent portion of the MTC decision. Consequently, the Court finds no compelling reason to disturb the findings of the RTC and the CA on this matter.

As regards the RTC's non-dismissal of respondent's appeal due to his failure to file his memorandum appeal on time, the Court will not interfere with the RTC's exercise of its discretion.

True, Rule 40, Section 7(b) provides that "it shall be the duty of the appellant to submit a memorandum" and failure to do so "shall be a ground for dismissal of the appeal"; and that said provision uses the word "shall", which expresses a mandatory or compulsory duty to submit a memorandum. Nevertheless, it has also been held that the word "shall" does not always denote an imperative duty. It may also be consistent with an exercise of discretion. In this jurisdiction, the tendency has been to interpret "shall" as the context or a reasonable construction of the statute in which it is used demands or requires.[10] Inasmuch as the RTC already absolved respondent of his tardy filing of the memorandum appeal, then the Court will not substitute its judgment with that of the RTC's.

It cannot be said that petitioner was deprived of due process when he was not able to file his own memorandum, for as borne by the records, petitioner was able to ventilate his side anent the correctness of the RTC Decision from the CA up to this Court. The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to seek a reconsideration of the action or ruling complained of. Due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.[11]

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[10] *Spouses Montecer v. Court of Appeals*, 368 Phil. 121, 129 (1999).

[11] *Berboso v. Court of Appeals*, G.R. Nos. 141593-94, July 12, 2006, 494 SCRA 583, 608.

Back to the main issue. Petitioner argues that there is no agricultural tenancy between him and respondent, as respondent failed to prove its existence. On the other hand, respondent insists that there is a tenancy relationship between them.

Both the CA and the RTC found that there exists an agricultural tenancy relationship between the parties. Quoting the RTC, the CA ruled -

> At this juncture, the crucial reason why We are convinced that the complaint in *Civil Case No. 188* was correctly dismissed is the *rationale* made by the RTC anent the findings, which We are now upholding, on the incidental issue of agricultural tenancy, which materially affects the cause of action of the plaintiff:
>
>> As to the issue of agricultural tenancy, based on the record of DAR Case No. 1438, the father of Defendant-Appellant, Andres Caguimbal, had been possessing and planting the land with palay even before 1976. According to the father, he had been possessing and cultivating the land since 1928 when the land was part of Hacienda Calatagan; that Defendant-Appellant had been helping his father since he was a young boy under (sic) his father became physically incapacitated to continue farming in 1976. Defendant-Appellant took over the possession and cultivation of land from his incapacitated father. **He continued the tenancy relationship of his father with Plaintiff-Appellee, however, the latter refused to recognize him as tenant and refused to receive his share from *palay*. These facts were not disputed by Plaintiff-Appellee** and his witnesses either in the pleadings or their affidavits. On the other hand, Defendant-Appellant and his witnesses are united to state that Defendant-Appellant had been cultivating the land since 1976, not since 1991 when he substituted his incapacitated father; that, prior to Defendant-Appellant **and his deceased father had no other land that they cultivate (sic) except the land subject of the case**. These lend credence to the claim of the Defendant-Appellant that he is the agricultural tenant of Plaintiff-Appellee through succession from his deceased father, Andres Caguimbal.[12] (Emphasis supplied)

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[12] CA *rollo*, pp. 248-249.

The Court finds merit in the petition.

Section 3 of R.A. No. 1199 or The Agricultural Tenancy Act of the Philippines defines agricultural tenancy as "the physical possession by a person of land devoted to agriculture belonging to, or legally possessed by another, for the purpose of production through the labor of the former and of the members of his immediate farm household, in consideration of which the former agrees to share the harvest with the latter, or to pay a price certain, either in produce or in money, or in both."

In *Vda. de Victoria v. Court of Appeals*,[13] the Court enumerated the essential requisites of tenancy, to wit:

(1) The parties are the landowner and the tenant or agricultural lessee;

(2) The subject of the relationship is agricultural land;

(3) There is mutual consent to the tenancy between the parties;

(4) The purpose of the relationship is agricultural production;

(5) There is personal cultivation by the tenant or agricultural lessee; and

(6) There is a sharing of harvests between the parties.[14]

and emphasized that to deprive the MTC of jurisdiction, they must all be shown to be present.[15]

Tenancy relationship cannot be presumed. Claims that one is a tenant do not automatically give rise to security of tenure. The elements of tenancy must first be proved in order to entitle the claimant to security of tenure. There must be evidence to prove the allegation that an agricultural tenant tilled the land in question.[16]

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[13] G.R. No. 147550, January 26, 2005, 449 SCRA 319.

[14] *Id*. at 335.

[15] *Id*.

[16] *Heirs of Jugalbot v. Court of Appeals*, G.R. No. 170346, March 12, 2007; *Valencia v. Court of Appeals*, 449 Phil. 711, 736 (2003).

As we earlier noted, petitioner does not dispute that all the pleadings and the evidence necessary to prove the respective claims of the parties have been submitted to the MTC. We find that there is a dearth of evidence in the present case that will sufficiently establish respondent's claim that he or his predecessor was installed by petitioner or his predecessor as a tenant of the property in dispute. The fact that respondent or his father before him, personally cultivated the property does not, by itself, prove that they were tenants of petitioner or his predecessor-in-interest. Except for the self-serving affidavits/ statements of his witnesses, no other proof was presented by respondent proving that he and his deceased father were actual tenants of petitioner.

Notably, in the separate *Sinumpaang Salaysay* of Leoncio Caguimbal and Samuel Deverla, they attested that the property was first tilled by respondent's father, Andres Caguimbal, together with petitioner's father, Epifanio Fuentes, until respondent took over in 1976; that petitioner refused to acknowledge respondent as tenant and to accept any share in the *palay;* that there is no other property being cultivated by respondent except the one in dispute.[17]

The foregoing merely established the fact that respondent succeeded his father in tilling the property in question, and that petitioner refused to receive his share in the *palay*. It does not indicate any working tenancy relationship between the parties. As ruled in *Heirs of Jugalbot v. Court of Appeals*,[18] to establish a tenancy relationship, independent evidence, aside from self-serving statements, is needed to prove personal cultivation, sharing of harvests, or consent of the landowner. The Court also stated in *Heirs of Jugalbot* that:

> In *Berenguer, Jr. v. Court of Appeals*, we ruled that the respondents' self-serving statements regarding their tenancy relations could not establish the claimed relationship. The fact alone of working on another's landholding does not raise a presumption of the existence

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[17] *Rollo*, pp. 148, 149.

[18] *Supra* note 16.

of agricultural tenancy. Substantial evidence does not only entail the presence of a mere scintilla of evidence in order that the fact of sharing can be established; there must be concrete evidence on record adequate enough to prove the element of sharing. We further observed in *Berenguer, Jr.*:

> With respect to the assertion made by respondent Mamerto Venasquez that he is not only a tenant of a portion of the petitioner's landholding but also an overseer of the entire property subject of this controversy, there is no evidence on record except his own claim in support thereof. The witnesses who were presented in court in an effort to bolster Mamerto's claim merely testified that they saw him working on the petitioner's landholding. More importantly, his own witnesses even categorically stated that they did not know the relationship of Mamerto and the petitioner in relation to the said landholding. x x x **The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. Other factors must be taken into consideration like compensation in the form of lease rentals or a share in the produce of the landholding involved**. (Underscoring supplied)
>
> x x x x x x x x x
>
> In the absence of any substantial evidence from which it can be satisfactorily inferred that a sharing arrangement is present between the contending parties, we, as a court of last resort, are duty-bound to correct inferences made by the courts below which are manifestly mistaken or absurd. x x x
>
> **Without the essential elements of consent and sharing, no tenancy relationship can exist between the petitioner and the private respondents**.[19]

In concluding that there is a tenancy relationship between the parties, the RTC, as affirmed by the CA, held:

As to the issue of agricultural tenancy, based on the record of DAR Case No. 1438, the father of Defendant-Appellant, Andres Caguimbal, had been possessing and planting the land with palay even before 1976. According to the father, he had been possessing and cultivating the land since 1928 when the land was part of Hacienda

[19] *Id.* at 8-9.

Calatagan; that Defendant-Appellant had been helping his father since he was a young boy under [sic] his father became physically incapacitated to continue farming in 1976. Defendant-Appellant took over the possession and cultivation of land from his incapacitated father. **He continued the tenancy relationship of his father with Plaintiff-Appellee**, however, the latter refused to recognize him as tenant and refused to receive his share from *palay*. These facts were not disputed by Plaintiff-Appellee and his witnesses, either in the pleadings or their affidavits. On the other hand, Defendant-Appellant and his witnesses are untied to state that Defendant-Appellant had been cultivating the land since 1976, not since 1991 when he substituted his incapacitated father; that, prior to 1976, his father was cultivating the land as early as 1928; that, Defendant-Appellant and his deceased father had no other land that they cultivate except the land subject of the case. These land credence to the claim of Defendant-Appellant that he is the agricultural tenant of Plaintiff-Appellee through succession from his deceased father, Andres Caguimbal.[20] (Emphasis supplied).

What was established by the evidence in the present case was that respondent and his predecessor had been planting on the property since 1928. What is wanting, however, is proof showing the sharing of harvests or that petitioner, as landowner of the subject property ever gave his consent to establish or maintain a tenancy relationship.

Except for the sweeping conclusion made by the RTC that respondent continued the tenancy relationship of his father with petitioner, there is no mention of evidence in the decision of the RTC that would sustain its finding that respondent or his predecessor-in-interest is an agricultural tenant of the property in question. It was not shown how respondent or his father was instituted as an agricultural tenant thereof; neither was the existence of a sharing agreement between respondent and petitioner shown. The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy.[21] In fact, the RTC even noted that there

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[20] RTC Decision, CA *rollo*, pp. 48-49.

[21] *VHJ Construction and Development Corporation v. Court of Appeals*, G.R. No. 128534, August 13, 2004, 436 SCRA 392, 399.

was a standing feud between petitioner and respondent's father over the property. This negates the proposition that there was a consensual institution of respondent or his father as an agricultural tenant of the property.

There being no agricultural tenancy relationship in this case, the MTC correctly took jurisdiction over the ejectment case filed by petitioner; and finding that the MTC Decision is in accordance with the law and the facts of the case, the same should be reinstated. The CA erred in affirming the RTC Decision. Consequently, respondent must vacate the subject property.

Finally, petitioner laments the award of attorney's fees by the RTC which was affirmed by the CA despite the fact that it was not assigned as an error by respondent in his Memorandum on Appeal.[22] The fundamental rule of procedure is that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. On appeal, only errors specifically assigned and properly argued in the brief will be considered, with the exception of those affecting jurisdiction over the subject matter as well as plain and clerical errors.[23] Inasmuch as attorney's fees were never sought or raised by respondent, its award was therefore uncalled for.

WHEREFORE, the petition is *GRANTED*. The Decision dated September 3, 2001 of the Court of Appeals in CA-G.R. SP No. 63990 is *REVERSED* and *SET ASIDE*. The Decision dated August 21, 2000 rendered by the Municipal Trial Court of Batangas is *REINSTATED*.

SO ORDERED.

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

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[22] *Rollo*, p. 203.

[23] *Development Bank of the Philippines v. West Negros College, Inc.*, G.R. No. 152359, May 21, 2004, 429 SCRA 50, 60.

THIRD DIVISION

[G.R. No. 155604. November 22, 2007]

COLLEGE ASSURANCE PLAN and COMPREHENSIVE ANNUITY PLAN and PENSION CORPORATION, *petitioners, vs.* **BELFRANLT DEVELOPMENT, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; LEASE; LESSEE IS PRESUMED TO BE LIABLE FOR THE DETERIORATION OR LOSS OF THE THING LEASED; EXCEPTION. —** Article 1667 of the Civil Code, which provides: The lessee is responsible for the deterioration or loss of the thing leased, unless he proves that it took place without his fault. This burden of proof on the lessee does not apply when the destruction is due to earthquake, flood, storm or other natural calamity creates the presumption that the lessee is liable for the deterioration or loss of a thing leased. To overcome such legal presumption, the lessee must prove that the deterioration or loss was due to a fortuitous event which took place without his fault or negligence.

2. **ID.; ID.; ID.; ID.; FORTUITOUS EVENT; DEFINED AND CONSTRUED. —** Article 1174 of the Civil Code defines a fortuitous event as that which could not be foreseen, or which, though foreseen, was inevitable. Whether an act of god or an act of man, to constitute a fortuitous event, it must be shown that: a) the cause of the unforeseen and unexpected occurrence or of the failure of the obligor to comply with its obligations was independent of human will; b) it was impossible to foresee the event or, if it could have been foreseen, to avoid it; c) the occurrence rendered it impossible for the obligor to fulfill its obligations in a normal manner; and d) said obligor was free from any participation in the aggravation of the injury or loss. If the negligence or fault of the obligor coincided with the occurrence of the fortuitous event, and caused the loss or damage or the aggravation thereof, the fortuitous event cannot shield the obligor from liability for his negligence.

3. REMEDIAL LAW; APPEALS; FACTUAL FNDINGS OF THE COURT OF APPEALS; CONCLUSIVE AND BINDING UPON THE SUPREME COURT; EXCEPTIONS. — The established rule is that the factual findings of the CA affirming those of the RTC are conclusive and binding on us. We are not wont to review them, save under exceptional circumstances as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.

4. ID.; ID.; DOCTRINE OF *RES IPSA LOQUITOR*; REQUISITES. — The CA correctly applied the doctrine of *res ipsa loquitur* under which expert testimony may be dispensed with to sustain an allegation of negligence if the following requisites obtain: a) the accident is of a kind which does not ordinarily occur unless someone is negligent; b) the cause of the injury was under the exclusive control of the person in charge and c) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured. The fire that damaged Belfranlt Building was not a spontaneous natural occurrence but the outcome of a human act or omission. It originated in the store room which petitioners had possession and control of. Respondent had no hand in the incident. Hence, the convergence of these facts and circumstances speaks for itself: petitioners alone having knowledge of the cause of the fire or the best opportunity to ascertain it, and respondent having no means to find out for itself, it is sufficient for the latter to merely allege that the cause of the fire was the negligence of the former and to rely on the occurrence of the fire as proof of such negligence. It was all up to petitioners to dispel such inference of negligence, but their bare denial only left the matter unanswered.

5. CIVIL LAW; DAMAGES; TEMPERATE OR MODERATE DAMAGES; WHEN AWARD THEREOF PROPER. — Temperate or moderate damages may be availed when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory. Without a doubt, respondent suffered some form of pecuniary loss for the impairment of the structural integrity of its building as a result of the fire. However, as correctly pointed out by the CA, because of respondent's inability to present proof of the exact amount of such pecuniary loss, it may only be entitled to temperate damages in the amount of ₱500,000.00, which we find reasonable and just.

APPEARANCES OF COUNSEL

Jimenez Gonzales Liwanag Bello Valdez Caluya and Fernandez for petitioners.
Yulo Aliling Pascua & Zuñiga for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the February 28, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 63283, which modified the April 14, 1999 Decision[2] of the Regional Trial Court (Branch 221), Quezon City (RTC) in Civil Case No. Q-95-23118.

The antecedent facts are as summarized by the RTC.

Belfranlt Development, Inc. (respondent) is the owner of Belfranlt Building in Angeles City, Pampanga. It leased to

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[1] Penned by Associate Justice Edgardo P. Cruz, and concurred in by Associate Justices Hilarion L. Aquino and Amelita G. Tolentino, *rollo*, p. 42.

[2] *Rollo*, p. 52.

petitioners College Assurance Plan Phil., Inc. (CAP) and Comprehensive Annuity Plans and Pension Corporation (CAPP) several units on the second and third floors of the building.[3]

On October 8, 1994, fire destroyed portions of the building, including the third floor units being occupied by petitioners. An October 20, 1994 field investigation report by an unnamed arson investigator assigned to the case disclosed:

0.5 Origin of Fire: Store room occupied by CAP, located at the 3rd floor of the bldg.

0.6 Cause of Fire: Accidental (overheated coffee percolator).[4]

These findings are reiterated in the October 21, 1994 certification which the BFP City Fire Marshal, Insp. Teodoro D. del Rosario issued to petitioners as supporting document for the latter's insurance claim.[5]

Citing the foregoing findings, respondent sent petitioners on November 3, 1994 a notice to vacate the leased premises to make way for repairs, and to pay reparation estimated at ₱1.5 million.

On November 11, 1994, petitioners vacated the leased premises, including the units on the second floor,[6] but they did not act on the demand for reparation.

Respondent wrote petitioners another letter, reiterating its claim for reparation, this time estimated by professionals to be no less than ₱2 million.[7] It also clarified that, as the leased units on the second floor were not affected by the fire, petitioners had no reason to vacate the same; hence, their lease on said units is deemed still subsisting, along with their obligation to pay for the rent.[8]

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[3] RTC Decision, *rollo*, p. 52.

[4] Exh. "P-2", *id*. at 89.

[5] Exh. "P-3", *id*. at 91.

[6] *Id*. at 71.

[7] *Id*. at 81.

[8] *Rollo*, p. 81.

In reply, petitioners explained that they could no longer re-occupy the units on the second floor of the building for they had already moved to a new location and entered into a binding contract with a new lessor. Petitioners also disclaimed liability for reparation, pointing out that the fire was a fortuitous event for which they could not be held responsible.[9]

After its third demand[10] went unheeded, respondent filed with the RTC a complaint against petitioners for damages. The RTC rendered a Decision dated April 14, 1999, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff [respondent] and against the herein defendants [petitioners]. Defendants are ordered to pay the plaintiff joint [sic] and severally the following amounts:

1) ₱2.2 Million Pesos cost of rehabilitation (repairs, replacements and renovations) of the Belfranlt building by way of Actual and Compensatory damages;

2) ₱14,000.00 per month of unpaid rentals on the third floor of the Belfranlt building for the period from October 1994 until the end of the two year lease contract on May 10, 1996 by way of Actual and Compensatory damages;

3) ₱18,000.00 per month of unpaid rentals on the second floor of the Belfanlt building for the period from October 1994 until the end of the two year lease contract on May 10, 1996 by way of Actual or Compensatory damages;

4) ₱8,400.00 per month as reimbursement of unpaid rentals on the other leased areas occupied by other tenants for the period from October 1994 until the time the vacated leased areas were occupied by new tenants;

5) ₱200,000.00 as moral damages;

6) ₱200,000.00 as exemplary damages;

7) ₱50,000.00 plus 20% of Actual damages awarded as reasonable Attorney's fees; and

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[9] *Id.* at 84.

[10] *Id.* at 86.

8) Costs of suit.

SO ORDERED.[11]

Petitioners appealed to the CA which, in its February 28, 2002 Decision, modified the RTC Decision, thus:

WHEREFORE, the appealed decision is MODIFIED in that the award of (i) actual and compensatory damages in the amounts of ₱2.2 Million as cost of rehabilitation of Belfranlt Building and ₱8,400.00 per month as reimbursement of unpaid rentals on the areas leased by other tenants, (ii) moral damages, (iii) exemplary damages and (iv) attorney's fees is DELETED, while defendants-appellants are ordered to pay to plaintiff-appellee, jointly and severally, the amount of ₱500,000.00 as temperate damages. The appealed judgment is AFFIRMED in all other respects.

SO ORDERED.[12]

Respondent did not appeal from the CA decision.[13]

Petitioners filed the present petition, questioning the CA decision on the following grounds:

I

The honorable Court of Appeals erred in not holding that the fire that partially burned respondent's building was a fortuitous event.

II

The honorable Court of Appeals erred in holding that petitioner failed to observe the due diligence of a good father of a family.

III

The honorable Court of Appeals erred in holding petitioners liable for certain actual damages despite plaintiffs' failure to prove the damage as alleged.

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[11] *Id.* at 68.

[12] *Rollo*, p. 49.

[13] *Id.* at 232-234.

IV

The honorable Court of Appeals erred in holding petitioners liable for temperate damages.[14]

The petition lacks merit.

Article 1667 of the Civil Code, which provides:

> The lessee is responsible for the deterioration or loss of the thing leased, unless he proves that it took place without his fault. This burden of proof on the lessee does not apply when the destruction is due to earthquake, flood, storm or other natural calamity.

creates the presumption that the lessee is liable for the deterioration or loss of a thing leased. To overcome such legal presumption, the lessee must prove that the deterioration or loss was due to a fortuitous event which took place without his fault or negligence.[15]

Article 1174 of the Civil Code defines a fortuitous event as that which could not be foreseen, or which, though foreseen, was inevitable. Whether an act of god[16] or an act of man,[17] to constitute a fortuitous event, it must be shown that: a) the cause of the unforeseen and unexpected occurrence or of the failure of the obligor to comply with its obligations was independent of human will; b) it was impossible to foresee the event or, if it could have been foreseen, to avoid it; c) the occurrence rendered it impossible for the obligor to fulfill its obligations in a normal manner; and d) said obligor was free from any participation in the aggravation of the injury or loss.[18] If the

[14] *Id.* at 17.

[15] *Mindex v. Morillo*, 428 Phil. 934, 943 (2002).

[16] *Guevent Industrial Development Corporation v. Philippine Lexus Amusement Corporation*, G.R. No. 159279, July 11, 2006, 494 SCRA 555, 558.

[17] *Philippine Communications Satellite Corp. v. Globe Telecom, Inc.*, G.R. No. 147324, May 25, 2004, 429 SCRA 153, 160.

[18] *Real v. Belo*, G.R. No. 146224, January 26, 2007, 513 SCRA 111, 124.

negligence or fault of the obligor coincided with the occurrence of the fortuitous event, and caused the loss or damage or the aggravation thereof, the fortuitous event cannot shield the obligor from liability for his negligence.[19]

In the present case, it was fire that caused the damage to the units being occupied by petitioners. The legal presumption therefore is that petitioners were responsible for the damage. Petitioners insist, however, that they are exempt from liability for the fire was a fortuitous event that took place without their fault or negligence.[20]

The RTC saw differently, holding that the proximate cause of the fire was the fault and negligence of petitioners in using a coffee percolator in the office stockroom on the third floor of the building and in allowing the electrical device to overheat:

> Plaintiff has presented credible and preponderant evidence that the fire was not due to a fortuitous event but rather was due to an overheated coffee percolator found in the leased premises occupied by the defendants. The certification issued by the Bureau of Fire Protection Region 3 dated October 21, 1994 clearly indicated that the cause of the fire was an overheated coffee percolator. This documentary evidence is credible because it was issued by a government office which conducted an investigation of the cause and circumstances surrounding the fire of October 8, 1994. Under Section 4, Rule 131 of the Revised Rules of Court, there is a legal presumption that official duty has been regularly performed. The defendants have failed to present countervailing evidence to rebut or dispute this presumption. The defendants did not present any credible evidence to impute any wrongdoing or false motives on the part of Fire Department Officials and Arson investigators in the preparation and finalization of this certification. This Court is convinced that the Certification is genuine, authentic, valid and issued in the proper exercise and regular performance of the issuing authority's official duties. The written certification cannot be considered self-serving to the plaintiff because as clearly indicated

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[19] *Sicam v. Jorge*, G.R. No. 159617, August 8, 2007; *MIAA v. Ala Industries Corporation*, 467 Phil. 229, 247 (2004).

[20] RTC Decision, *rollo,* p. 54.

on its face the same was issued not to the plaintiff but to the defendant's representative Mr. Jesus V. Roig for purposes of filing their insurance claim. This certification was issued by a government office upon the request of the defendant's authorized representative. The plaintiff also presented preponderant evidence that the fire was caused by an overheated coffee percolator when plaintiff submitted in evidence not only photographs of the remnants of a coffee percolator found in the burned premises but the object evidence itself. Defendants did not dispute the authenticity or veracity of these evidence. Defendants merely presented negative evidence in the form of denials that defendants maintained a coffee percolator in the premises testified to by employees of defendants who cannot be considered totally disinterested.[21] (Citations omitted)

The CA concurred with the RTC and noted additional evidence of the negligence of petitioners:

The records disclose that the metal base of a heating device which the lower court found to be the base of a coffee percolator, was retrieved from the stockroom where the fire originated. The metal base contains the inscription "CAUTION DO NOT OPERATE WHEN EMPTY," which is a warning against the use of such electrical device when empty and an indication that it is a water-heating appliance. Its being an instrument for preparing coffee is demonstrated by its retrieval from the stockroom, particularly beside broken drinking glasses, Nescafe bottle, metal dish rack and utensils.

Appellants assert that it had an airpot – not a coffee percolator - near the Administration Office on the third floor. For unexplained reasons, however, they did not present the airpot to disprove the existence of the coffee percolator. The fire did not raze the entire third floor and the objects therein. Even the stack of highly combustible paper on the third floor was not totally gutted by the fire. Consequently, it is not farfetched that the burnt airpot, if any, could have been recovered by appellants from the area where it was supposedly being kept.

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The defense that the fire was a fortuitous event is untenable. It is undisputed that the fire originated from appellants' stockroom

[21] *Id.* at 333-334.

located on the third floor leased premises. Said stockroom was under the control of appellants which, on that fateful day (a Saturday), conducted a seminar in the training room which was adjoining the stockroom. Absent an explanation from appellants on the cause of the fire, the doctrine of *res ipsa loquitur* applies.[22]

Petitioners impugn both findings. They claim that the BFP field investigation report (Exh. "P-2") and the BFP certification (Exh. "P-3") are hearsay evidence because these were presented during the testimony of Fireman Gerardo Sitchon (Fireman Sitchon) of the Bureau of Fire Protection (BFP), Angeles City, who admitted to having no participation in the investigation of the fire incident or personal knowledge about said incident,[23] making him incompetent to testify thereon. Petitioners argue that, with Exh. "P-2" and Exh. "P-3" and the testimony of Fireman Sitchon that are flawed, there is virtually no evidence left that the cause of the fire was an overheated coffee percolator. Petitioners insist that they own no such percolator.[24]

We find no cogent reason to disturb the finding of the RTC and CA.

The finding that the negligence of petitioners was the proximate cause of the fire that destroyed portions of the leased units is a purely factual matter which we cannot pass upon, [25] lest we overstep the restriction that review by *certiorari* under Rule 45 be limited to errors of law only.[26]

Moreover, the established rule is that the factual findings of the CA affirming those of the RTC are conclusive and binding on us.[27] We are not wont to review them, save under exceptional

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[22] CA Decision, *rollo*, pp. 46-47.

[23] Petition, *rollo*, p. 26.

[24] *Id.* at 18-19.

[25] *Philippine National Railways v. Brunty*, G.R. No. 169891, November 2, 2006, 506 SCRA 685, 697.

[26] *Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc.*, G.R. No. 159831, October 14, 2005, 473 SCRA 151, 161.

[27] *Quezon City Government v. Dacara*, G.R. No. 150304, June 15, 2005, 460 SCRA 243, 253.

circumstances as**:** (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[28]

The exceptions do not obtain in the present case. In fact, the findings of the RTC and CA are fully supported by the evidence.

Contrary to petitioners' claim, Fireman Sitchon is competent to identify and testify on Exh. "P-2" and Exh. "P-3" because, although he did not sign said documents, he personally prepared the same.[29] What Fireman Sitchon did not prepare were the documents which his investigation witnesses presented.[30] However, Fireman Sitchon emphasized that he interviewed said investigation witnesses namely, Ronald Estanislao, the security guard on duty at the time of fire; and Dr. Zenaida Arcilla, manager of CAPP, before he prepared Exh. "P-2" and Exh. "P-3".[31] Hence, while Fireman Sitchon may have had no personal knowledge of the fire incident, Exh. "P-2" and Exh. "P-3", which he prepared based on the statements of his investigation witnesses, especially that of Ronald Estanislao whose official duty it was to report on the incident, are exceptions to the

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[28] *Estacion v. Bernardo*, G.R. No. 144724, February 27, 2006, 483 SCRA 222, 231-232.

[29] TSN, March 19, 1996, p. 9, *rollo*, p. 157.

[30] TSN, March 19, 1996, pp. 10-11, *rollo*, pp. 158-159.

[31] *Id.* at 160-161.

hearsay rule because these are entries in official records.[32] Consequently, his testimony on said documents are competent evidence of the contents thereof.[33]

Furthermore, the petitioners are estopped from contesting the veracity of Exh. "P-3" because, as the CA correctly pointed out, "the aforesaid certification was used by appellants [petitioners] in claiming insurance for their office equipment which were destroyed by the fire."[34]

Even without the testimony of Fireman Sitchon and the documents he prepared, the finding of the RTC and CA on the negligence of petitioners cannot be overturned by petitioners' bare denial. The CA correctly applied the doctrine of *res ipsa loquitur* under which expert testimony may be dispensed with[35] to sustain an allegation of negligence if the following requisites obtain: a) the accident is of a kind which does not ordinarily occur unless someone is negligent; b) the cause of the injury was under the exclusive control of the person in charge and c) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured.[36] The fire that damaged Belfranlt Building was not a spontaneous natural occurrence but the outcome of a human act or omission. It originated in the store room which petitioners had possession and control of. Respondent had no hand in the incident. Hence, the convergence of these facts and circumstances speaks for itself: petitioners alone having knowledge of the cause of the fire or the best opportunity to ascertain it, and respondent having no means to find out for itself, it is sufficient for the latter to

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[32] *DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc.*, G.R. No. 147039, January 27, 2006, 480 SCRA 314, 326.

[33] *Country Bankers Insurance Corporation v. Liangga Bay and Community Multi-Purpose Cooperative, Inc.,* 425 Phil. 511, 521 (2002).

[34] CA Decision, *rollo*, pp. 46-47.

[35] *Reyes v. Sisters of Mercy Hospital*, 396 Phil. 87, 96 (2000).

[36] *DM Consunji v. Court of Appeals*, G.R. No. 137873, April 20, 2001, 357 SCRA 249, 259.

merely allege that the cause of the fire was the negligence of the former and to rely on the occurrence of the fire as proof of such negligence.[37] It was all up to petitioners to dispel such inference of negligence, but their bare denial only left the matter unanswered.

The CA therefore correctly affirmed the RTC in holding petitioners liable to respondent for actual damages consisting of unpaid rentals for the units they leased.

The CA deleted the award of actual damages of ₱2.2 million which the RTC had granted respondent to cover costs of building repairs. In lieu of actual damages, temperate damages in the amount of ₱500,000.00 were awarded by the CA. We find this in order.[38]

Temperate or moderate damages may be availed when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[39] The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.[40] Without a doubt, respondent suffered some form of pecuniary loss for the impairment of the structural integrity of its building as a result of the fire. However, as correctly pointed out by the CA, because of respondent's inability to present proof of the exact amount of such pecuniary loss, it may only be entitled to temperate damages in the amount of ₱500,000.00,[41] which we find reasonable and just.

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[37] *Perla Compania de Seguros v. Sarangaya III*, G.R. No. 147746, October 25, 2005, 474 SCRA 191, 199.

[38] *Victory Liner v. Gammad*, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 370.

[39] *Republic v. Tuvera*, G.R. No. 148246, February 16, 2007, 516 SCRA 113, 152.

[40] *Hernandez v. Dolor*, G.R. No. 160286, July 30, 2004, 435 SCRA 668, 677-678.

[41] CA Decision, *rollo,* pp. 47-48.

WHEREFORE, the petition is *DENIED* for lack of merit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 157806. November 22, 2007]

SPOUSES SHEIKDING BOOC and BILY BOOC, *petitioners, vs.* **FIVE STAR MARKETING CO., INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; IN A CIVIL CASE, THE PARTY MUST ESTABLISH HIS CASE BY A PREPONDERANCE OF EVIDENCE; PREPONDERANCE OF EVIDENCE, DEFINED. —** It is a basic rule in civil cases that the party having the burden of proof must establish his case by a preponderance of evidence. *Preponderance of evidence* simply means evidence which is of greater weight, or more convincing than that which is offered in opposition to it.
2. **CIVIL LAW; TRUSTS; THE BURDEN OF PROVING ITS EXISTENCE IS ON THE PARTY ASSERTING IT. —** As a rule, the burden of proving the existence of a trust is on the party asserting its existence and such proof must be clear and satisfactorily show the existence of the trust and its elements.
3. **ID.; PROPERTY; OWNERSHIP; CERTIFICATE OF TITLE IS A CONCLUSIVE EVIDENCE OF OWNERSHIP; APPLICATION IN CASE AT BAR. —** It is settled that a certificate of title is a conclusive evidence of ownership; it does not even matter if the title is questionable, the instant action being an ejectment

suit. In addition, the age-old rule is that the person who has a Torrens Title over a land is entitled to possession thereof.

4. **ID.; ID.; ID.; TAX DECLARATIONS ARE GOOD INDICIA OF POSSESSION IN THE CONCEPT OF OWNER. —** As to the tax declarations over the property in the name of respondent, the rule is that while tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.

5. **ID.; DAMAGES; ACTUAL DAMAGES; FAIR RENTAL VALUE, WHEN RECOVERABLE IN THE CONCEPT OF ACTUAL DAMAGES. —** Fair rental value is recoverable in the concept of actual damages. 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 rental value refers to the value as ascertained by proof of how much the rent would be for the property or by evidence of other facts from which the fair rental value may be determined. Hence, the plaintiff must offer proof of such claim. Section 17, Rule 70 of the 1997 Rules of Civil Procedure, as amended, clearly provides that the trial court is empowered to award reasonable compensation for the use and occupation of the premises sought to be recovered in a forcible entry or unlawful detainer case only if the claim is true. This Court has held that a court may fix the reasonable amount of rent, but must still base its action on the evidence adduced by the parties.

6. ID.; ID.; ID.; INTEREST ON RENTAL DUES, SUSTAINED. — The rental due respondent, being in the concept of actual or compensatory damages, shall earn interest in accordance with this Court's ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals,* to wit: I. When an obligation, regardless of its source, *i.e.,* law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages. 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 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.

APPEARANCES OF COUNSEL

Padilla and Padilla for petitioners.
Oliver T. Booc 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 Rules of Court assailing the Decision[1] of the Court of Appeals (CA) dated September 30, 2002 and its Resolution of March 17, 2003 in CA-G.R. SP No. 64960.

On August 17, 1999, Five Star Marketing Co., Inc. (respondent) filed with the Municipal Trial Court in Cities (MTCC) of Iligan City a Complaint for unlawful detainer against the spouses Sheikding and Bily Booc (petitioners), pertinent portions of which read as follows:

x x x   x x x   x x x

2. That plaintiff is the owner of the land and building situated in Quezon Avenue, Iligan City;

3. That defendants are the present occupants of the 3rd floor premises of the building, who were allowed to live temporarily in the premises for free;

4. That on March 15, 1999 the plaintiff notified all building occupants that it had withdrawn the privilege granted (rental free) to them coupled with a notice of rental rates in each premises concerned, and further required to any interested occupants to negotiate and sign a lease agreement with plaintiff;

5. That the defendants were notified that the rental for the 3rd floor premises is ₱40,000.00 per month effective April 1, 1999, and if he desires to lease, he should enter a lease contract before such date;

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[1] Penned by Justice Eloy R. Bello, Jr. with the concurrence of Justices Buenaventura J. Guerrero and Juan Q. Enriquez, Jr.

6. That plaintiff has given more than enough time for the defendants either to vacate or lease the said premises, but the latter still ignored the demand, so that on June 28, 1999, a letter of demand to vacate the premises was sent to the defendants;

7. That the defendants have failed and refused, and still fails and refuses, to vacate the premises up to the present time despite repeated demands;

x x x x x x x x x[2]

In their Answer,[3] petitioners contended that Five Star has no cause of action against them as they are actually the owners of the portion of the building that they are occupying; that the said property is owned in common by petitioner Sheikding and his brother, Rufino Booc; that the complaint for unlawful detainer is a mere offshoot of two complaints earlier filed before the Securities and Exchange Commission (SEC) in Cagayan de Oro City by Sheikding and his son James, the first of which is against the board of directors of Five Star, questioning, among others, the validity of the election of the members of the said board; and second, a criminal complaint for falsification of public documents against Salvador Booc, in his capacity as the President of Five Star. The spouses Booc filed a counterclaim for damages.

Thereafter, the parties filed their respective Position Papers.

On September 20, 2000, the MTCC of Iligan City, Branch II rendered a Decision, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered in favor of the defendants [herein petitioners] and against the plaintiff [herein respondent], dismissing the above-entitled case and ordering the plaintiff to pay the defendants the following sum of money:

a) ₱40,000.00 – As moral damages

b) 25,000.00 – As attorney's fee; and

c) 1,000.00 – As appearance fee.

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[2] Complaint, CA *rollo*, pp. 27-28.

[3] *Id*. at 30-33.

The counterclaim for exemplary damages is denied for lack of merit.

SO ORDERED.[4]

Petitioners appealed to the Regional Trial Court (RTC) of Lanao del Norte. In its Decision dated April 6, 2001, the RTC of Lanao del Norte, Branch 5 affirmed with modification the assailed Decision of the MTCC. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the following reliefs are granted:

a) The Court declares that plaintiff [herein respondent] has no cause of action against defendants [herein petitioners], hence the instant action is ordered dismissed. The same is true with the claim of plaintiff for damages registered in its pleading.

b) The moral damages and attorney's fees asserted by defendants are granted for this is sustained by the evidence on record, and in addition therefor exemplary damages is also awarded in favor of defendants and against the plaintiff in the conservative sum of Ten Thousand Pesos (₱10,000.00).

SO ORDERED.[5]

Aggrieved by the judgment of the RTC, respondent filed a petition for review with the CA. On September 30, 2002, the CA promulgated the presently assailed Decision, disposing as follows:

WHEREFORE, the instant petition is hereby GRANTED. The assailed decision of the Regional Trial Court, Branch V, Iligan City dated April 6, 2001 is hereby ANNULLED and SET ASIDE. It is therefore ORDERED that:

1. respondents [herein petitioners] and other persons claiming rights under them vacate the premises in question, and return the possession thereof to petitioner [herein respondent]; and

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[4] CA *rollo*, p. 52.

[5] *Id*. at 58-59.

2. respondents pay the petitioner the amount of ₱40,000.00 for every month that they occupied the premises, beginning April 1999 until the same is surrendered to the petitioner.

SO ORDERED.[6]

The petitioners filed a Motion for Reconsideration but the same was denied by the CA in its Resolution of March 17, 2003.[7]

Hence, the instant petition with the following assignment of errors:

[1] The Court of Appeals erred in not dismissing the Petition filed before it as the herein respondent failed to attach to its petition pleadings and other material portions of the records to support the allegations in the petition.

[2] The Court of Appeals erroneously relied on evidence that were not presented by herein respondent at the MTCC but were only presented for the first time on appeal at the RTC.

[3] The Court of Appeals erred in holding that there is no evidence to prove the existence of the implied trust; and

[4] The Court of Appeals erred in directing the petitioners to pay rental at the exorbitant amount of ₱40,000.00 per month.[8]

Parties filed their respective Memoranda.[9]

The Court finds the petition partly meritorious.

The first assigned error is not plausible. The Court, in *Atillo v. Bombay*,[10] interpreted the provisions of Section 2(d), Rule 42 of the Rules of Court and ruled as follows:

The phrase "of the pleadings and other material portions of the record" in Section 2(d), Rule 42 is followed by the phrase "as would

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[6] CA *rollo*, p. 128.

[7] *Id*. at. 263-264.

[8] *Rollo*, p. 22.

[9] *Id*. at 331 and 426.

[10] 404 Phil. 179 (2001).

support the allegations of the petition" clearly contemplates the exercise of discretion on the part of the petitioner in the selection of documents that are deemed to be relevant to the petition. However, while it is true that it is petitioner who initially exercises the discretion in selecting the relevant supporting documents that will be appended to the petition, it is the CA that will ultimately determine if the supporting documents are sufficient to even make out a *prima facie* case. It can be fairly assumed that the CA took pains in the case at bar to examine the documents attached to the petition so that it could discern whether on the basis of what have been submitted it could already judiciously determine the merits of the petition x x x[11]

Thus, in the present case, the Court finds no reversible error that can be attributed to the CA in choosing to proceed and decide the petition filed before it on the basis of what had been submitted by the parties.

The second assigned error is likewise untenable. Petitioners contend that the CA erred in relying on evidence that were presented by respondent for the first time when the case was appealed to the RTC. Petitioners refer to the Joint Affidavit,[12] dated December 1, 1999, executed by Teodora Abarca del Mar (Teodora) and Preciosa Abarca Talamera (Preciosa) repudiating their claim in their earlier Joint Affidavit,[13] dated November 18, 1999, that it was petitioner Sheikding and his brother Rufino who paid for the subject lot.

The Court agrees with petitioners that the Joint Affidavit of Teodora and Preciosa dated December 1, 1999 should not have been considered since the said document was only presented when the case was appealed to the RTC and was not previously filed with the MTCC in the original case.[14]

Nonetheless, the CA adequately explained in its presently assailed Resolution, denying petitioners' motion for reconsideration, that its Decision was arrived at not only on

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[11] *Id*. at 188.

[12] CA *rollo*, p. 60.

[13] *Rollo*, p. 49.

[14] *Corpin v. Vivar*, 389 Phil. 355, 363 (2000).

the basis of the above-mentioned Joint Affidavit but after a consideration of other factors, to wit:

(a) that no evidence was adduced to prove that respondents purchased the lot, and constructed the building in question with their own money; and

(b) the subject lot was titled in the name of petitioner, and that both land and building are declared in the latter's name for purposes of taxation.[15]

The resolution of the third assigned error boils down to a determination of who between petitioners and respondent is entitled to the physical possession of the subject properties.

Both parties anchor their right of material possession of the disputed lot and building on their respective claims of ownership.

In *Arambulo v. Gungab,*[16] this Court held:

> The sole issue for resolution in an unlawful detainer case is physical or material possession. But even if there was a claim of juridical possession or an assertion of ownership by the defendant, the MTCC may still take cognizance of the case. All that the trial court can do is to make an initial determination of who is the owner of the property so that it can resolve who is entitled to its possession absent other evidence to resolve ownership. Courts in ejectment cases decide questions of ownership only as it is necessary to decide the question of possession. The reason for this rule is to prevent the defendant from trifling with the summary nature of an ejectment suit by the simple expedient of asserting ownership over the disputed property.[17]

In addition, it is a basic rule in civil cases that the party having the burden of proof must establish his case by a preponderance of evidence.[18]

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[15] *Rollo*, p. 338.

[16] G.R. No. 156581, September 30, 2005, 471 SCRA 640.

[17] *Arambulo v. Gungab*, *supra* note 16, at 649.

[18] *Montañez v. Mendoza*, 441 Phil. 47, 56 (2002).

Preponderance of evidence simply means evidence which is of greater weight, or more convincing than that which is offered in opposition to it.[19]

In the present case, the Court finds no cogent reason to depart from the findings of the CA that respondent has proved, by preponderance of evidence, its claim that it is the owner of the disputed properties and, therefore, has the right of material possession over the same.

Petitioners' claim of co-ownership is anchored on their assertion that it was petitioner Sheikding together with Rufino who actually purchased the subject lot; that they were also the ones who financed the construction of the subject building; and that they paid the taxes due on the subject properties. Both the MTCC and the RTC gave credence to the allegations of petitioners.

In claiming that the subject lot and building were bought and constructed with the money of petitioner Sheikding and Rufino, petitioners, in effect, aver that respondent is merely holding the property in trust for them.

As a rule, the burden of proving the existence of a trust is on the party asserting its existence and such proof must be clear and satisfactorily show the existence of the trust and its elements.[20]

To prove that they are co-owners of the disputed lot, petitioners presented the Joint Affidavit[21] of Teodora and Preciosa, dated November 18, 1999, wherein they assert that petitioner Sheikding and Rufino paid for the subject lot. However, aside from the Joint Affidavit, no other competent evidence was presented to support petitioners' allegation of ownership of the lot in question.

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[19] *Id*.

[20] *Tigno v. Court of Appeals*, 345 Phil. 486, 499 (1997) citing *Morales v. Court of Appeals*, G.R. No. 117228, June 19, 1997, 274 SCRA 282, 300.

[21] See note 12.

The Affidavit of Flordeliza D. Villaver[22] and the letters of Rufino Booc to Sheikding's son, James Booc (James), dated September 3, 1998[23] and October 16, 1998,[24] submitted by petitioners, diluted whatever evidentiary weight could have been assigned to the Joint Affidavit of Teodora and Preciosa. The Affidavit of Flordeliza and the letters of Rufino purportedly show that it was Rufino, and not respondent company, who rented out the first floor of the said building to James and to the Shooters and Guns Ammo Corporation, formerly known as De Leon Gun Store, the company where Flordeliza served as the Officer-in-Charge. However, these pieces of evidence could not be given credence in light of the established fact that Rufino served as the authorized representative of respondent company. Rufino's function as representative of respondent is proven by the Transfer Certificate of Title[25] and the Deed of Sale[26] of the subject lot and the Tax Declarations[27] covering the disputed lot and building. Hence, being the authorized representative of respondent, it is only normal that he is the one who enters into transactions involving the subject properties. Petitioners failed to present evidence that Rufino entered into a contract of lease with them in his personal capacity and not as representative of respondent.

Neither do the Official Receipts[28] evidencing petitioner Bily's payment of electric bills prove that petitioners are co-owners of the subject building. At best, these official receipts only show that petitioners are in possession of the subject property, which in this case, is undisputed.

Further, petitioners failed to present any tax declaration or payment of taxes due on the subject premises.

[22] *Rollo*, p. 57.

[23] *Id*. at 70.

[24] *Id*. at 71.

[25] *Id*. at 91.

[26] *Id*. at 50.

[27] *Id*. at 72-73.

[28] *Rollo*, pp. 60 and 63.

On the other hand, the following documents, some of which were presented in evidence by petitioners themselves, prove respondent's ownership of the disputed properties, to wit: Deed of Sale dated December 12, 1979,[29] Transfer Certificate of Title No. T-19209 (a.f.)[30] and Tax Declaration No. 94-16562[31] over the subject lot, Tax Declaration No. 94-23619[32] over the subject building, and Official Receipt Nos. 1092361 and 8812411[33] for the payment of real property tax, all of which are in respondent's name.

It is settled that a certificate of title is a conclusive evidence of ownership; it does not even matter if the title is questionable, the instant action being an ejectment suit.[34] In addition, the age-old rule is that the person who has a Torrens Title over a land is entitled to possession thereof.[35]

As to the tax declarations over the property in the name of respondent, the rule is that while tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession.[36] They constitute at least proof that the holder has a claim of title over the property.[37] The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other

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[29] *Id*. at 50.

[30] *Id*. at 91.

[31] *Id*. at 72.

[32] *Id*. at 73.

[33] *Id*. at 74-75.

[34] *Carreon v. Court of Appeals*, 353 Phil. 271, 282 (1998) citing *Dizon v. Court of Appeals*, 332 Phil. 429, 434 (1996).

[35] *Arambulo v. Gungab*, *supra* note 16, at 649.

[36] *Director of Lands v. Court of Appeals*, 367 Phil. 597, 604 (1999).

[37] *Id*. at 604.

interested parties, but also the intention to contribute needed revenues to the Government.[38] Such an act strengthens one's *bona fide* claim of acquisition of ownership.[39]

On the basis of the foregoing, the Court finds no error in the ruling of the CA that the preponderance of evidence lies in favor of respondent's claim of ownership. Surely, the Deed of Sale, TCT, Tax Declarations and Official Receipts of tax payments in the name of respondent are more convincing than the evidence submitted by petitioners.

The Court stresses, however, that its determination of ownership in the instant case is not final. It is only a provisional determination for the sole purpose of settling the issue of possession.[40] **It would not bar or prejudice a separate action between the same parties involving the quieting of title to the subject property.**[41]

As to the last assigned error, petitioners contend that the monthly rental being charged by respondent is exorbitant considering that the rentals being paid by James for his use of one-half of the first floor of the disputed building from September 1995 to August 1998 is only ₱10,000.00. This is not disputed by respondent.

In its assailed ruling, the CA awarded the amount of ₱40,000.00 as monthly rental for petitioners' use and occupation of the premises, beginning April 1999 until the same is surrendered to respondent. The award granted by the CA is based on respondent's prayer in its complaint filed with the MTCC.

It must be stressed, however, that it was not enough for the respondent as plaintiff in the MTCC to make a claim for reasonable compensation for the use of its property. The respondent, as plaintiff therein, had the burden to prove its

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[38] *Id*.

[39] *Id*.

[40] *Rosa Rica Sales Center, Inc. v. Ong*, G.R. No. 132197, August 16, 2005, 467 SCRA 35, 50.

[41] *Id*.

claim by a preponderance of evidence, which, as earlier defined, means evidence of greater weight or more convincing than that which is offered in opposition to it.

Fair rental value is recoverable in the concept of actual damages.[42] 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.[43] The rental value refers to the value as ascertained by proof of how much the rent would be for the property or by evidence of other facts from which the fair rental value may be determined.[44] Hence, the plaintiff must offer proof of such claim.[45]

Section 17, Rule 70 of the 1997 Rules of Civil Procedure, as amended, clearly provides that the trial court is empowered to award reasonable compensation for the use and occupation of the premises sought to be recovered in a forcible entry or unlawful detainer case only if the claim is true. This Court has held that a court may fix the reasonable amount of rent, but must still base its action on the evidence adduced by the parties.[46]

In the present case, the CA made no ratiocination as to how it arrived at the amount of ₱40,000.00. In fact, a review of the evidence presented shows that there is no factual or evidentiary basis to sustain respondent's prayer in its complaint.

However, considering that there is no dispute that petitioners had been in possession of the subject properties since 1982, it

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[42] *Asian Transmission Corporation v. Canlubang Sugar Estates*, 457 Phil. 260, 289 (2003).

[43] *Id*. at 228.

[44] *Id*.

[45] *Id*. at 290.

[46] *Asian Transmission Corporation v. Canlubang Sugar Estates*, *supra* note 42, at 290.

is only just and equitable that they pay a reasonable amount for their continued use and occupation of the disputed premises from the time a demand was made for them to vacate the said premises in April 1999 until the same is returned to respondent.

Considering the undisputed facts that until August 1998 the rental paid by James for one-half of the subject building's first floor was ₱10,000.00, making the rental for the entire first floor amount to ₱20,000.00, and the customary business practice that the higher the floor, the cheaper the rental, the Court finds that the amount of ₱10,000.00 per month constitutes a fair rental value for the third floor of the subject building being occupied by herein petitioners.

The rental due respondent, being in the concept of actual or compensatory damages, shall earn interest in accordance with this Court's ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[47] to wit:

> I. When an obligation, regardless of its source, *i.e.,* law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
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> 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:
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>> 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.
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>> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages

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[47] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

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 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.[48]

In the instant case, respondent's extra-judicial demand on petitioners was made on April 1, 1999.[49] Hence, from this date, the rentals due from petitioners shall earn interest at 6% per annum until the judgment in this case becomes final and executory. After the finality of judgment and until full payment of the rentals and interests due, the legal rate of interest to be imposed shall be 12%.

WHEREFORE, the instant petition is *DENIED*. The assailed Decision of the Court of Appeals dated September 30, 2002 and its Resolution dated March 17, 2003 in CA-G.R. SP No. 64960 are *AFFIRMED* with *MODIFICATION* by directing petitioners to pay respondent the amount of ₱10,000.00 for every month that they occupied the subject premises, with 6% interest per annum from April 1, 1999 until finality of this Decision and 12% thereafter, until full payment.

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[48] *Id*. at 95-97.

[49] See Letter dated March 15, 1999, *rollo*, p. 94.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 171029. November 22, 2007]

HERMINIA ESTRELLA, *petitioner, vs.* **GREGORIO ROBLES, JR.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT CASES; POWER TO RESOLVE CONFLICTS OF POSSESSION IS RECOGNIZED WITHIN THE LEGAL COMPETENCE OF THE CIVIL COURTS; SUSTAINED. —** It must be stated that the power to resolve conflicts of possession is recognized to be within the legal competence of the civil courts and its purpose is to extend protection to the actual possessors and occupants with a view to quell social unrest. A judgment of the court ordering restitution of the possession of a parcel of land to the actual occupant, who has been deprived thereof by another through the use of force or in any other illegal manner, should never be construed as an interference with the disposition and alienation of public lands. The Bureau of Lands determines the respective rights of rival claimants to public lands, but it does not have the wherewithal to police public lands. Neither does it have the means to prevent disorders or breaches of peace among the occupants. Its power is clearly limited to disposition and alienation and any power to decide disputes over possession is but in aid of making the proper awards.

2. **ID.; ID.; ID.; UNLAWFUL DETAINER; ELEMENTS.—** In a case for unlawful detainer, the possession is unlawfully withheld

after the expiration or termination of the right to hold possession under any contract, express or implied. The only elements that need to be proved are the fact of the lease, the pertinent contract in this case, and the expiration of its terms. x x x In an unlawful detainer case, the defendant's possession was originally lawful but ceased to be so by the expiration of his right to possess. Hence the phrase *unlawful withholding* has been held to imply possession on the part of the defendant, which was legal from the beginning, having no other source than a contract, express or implied, and which later expired as a right and is being withheld by defendant. The issue of *rightful* possession is the one decisive, for in such action, the defendant is the party in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession. Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession. Nor does the law require one in possession of a house to reside in the house to maintain his possession. As lessor of the subject property, respondent is legally considered as being in possession thereof. Hence, the fact of actual possession becomes a non-issue.

3. **ID.; EVIDENCE; IN THE ABSENCE OF AN OPPORTUNITY TO CROSS– EXAMINE THE AFFIANTS, THE AFFIDAVITS ARE CONSIDERED HEARSAY. —** Where the adverse party is deprived of the opportunity to cross-examine the affiants, affidavits are generally rejected for being hearsay. Even if they were admissible in evidence, they only testified to the actual physical possession of the petitioner and failed to establish privity to any lease agreement between the petitioner and the respondent.

4. **ID.; APPEALS; FINDINGS OF ADMINISTRATIVE AGENCIES; WHEN ACCORDED RESPECT.—** Findings of administrative agencies, which have acquired expertise because of their jurisdiction, are confined to specific matters and are accorded respect, if not finality, by the courts. Even if they are not binding as to civil courts exercising jurisdiction over ejectment cases, such factual findings deserve great consideration and are accorded much weight.

APPEARANCES OF COUNSEL

Karaan & Karaan Law Office for petitioner.
Isagani M. Jungco for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated 15 September 2005 rendered by the Court of Appeals in CA-G.R. SP No. 78672. In reversing the Decision,[2] dated 16 July 2003, rendered by Branch 74 of the Regional Trial Court (RTC) of Olongapo City, the Court of Appeals declared that petitioner Herminia Estrella is liable to respondent Gregorio Robles, Jr. for unpaid rent and should be ejected from the leased premises due to her continued refusal to pay the accrued rentals.

On 8 August 2001, respondent filed a Complaint for Unlawful Detainer against the petitioner before the Municipal Trial Court in Cities (MTCC) of Olongapo City docketed as Civil Case No. 5031. He alleged therein that he is the owner of the subject property - a building and a parcel of land consisting of 370 square meters situated at 19 Otero Avenue, Mabayuan, Olongapo City. He allegedly acquired the land from the government on 20 June 1983 through a previously filed Miscellaneous Sales Application.[3] He presented a copy of the Notice dated 20 June 1983 issued by then Director of Lands Ramon Casanova, informing the public of the sale of the subject property to the respondent, and a copy of a Certification dated 4 June 1992 by the City Treasurer of Olongapo City that the purchase price had been paid on 20 June 1984.[4]

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[1] Penned by Associate Justice Santiago Javier Ranada with Associate Justices Marina L. Buzon and Juan Q. Enriquez, Jr., concurring. *Rollo*, pp. 118-126.

[2] *Rollo,* pp. 95-97.

[3] *Id*. at 32-36.

[4] *Id*. at 38-39.

Respondent also claimed that after purchasing the land, he constructed a building thereon. To support his claim, he submitted a copy of the receipts of payments made as early as 10 October 1979 for building permit fee and other fees that he was required to pay for the construction of the building.[5] Also attached was a receipt for light connection fee, dated 22 December 1965, paid by the respondent's father and predecessor-in-interest, Gregorio Robles.[6]

Respondent averred that he leased the building to Virginia Fernandez, the mother of petitioner at a monthly rental of ₱1,200.00 from February 1991 to December 1994. After December 1994, petitioner replaced her mother as lessee and occupied the subject property and continued to pay monthly rentals of ₱1,000.00 until September 1996. Thereafter, she refused to pay rentals despite repeated spoken and written demands. Receipts issued by the respondent showing rental payments made by petitioner were attached to the Complaint.[7] On 11 June 2001, respondent wrote petitioner a letter terminating the lease and demanding payment of rentals in arrears, but petitioner refused to comply with the demand.[8]

Several years after the government had awarded the land to the respondent, petitioner belatedly filed a protest to respondent's Miscellaneous Sales Application on 5 October 1998. The said protest was denied in an Order dated 24 January 2000 issued by Department of Environment and Natural Resources (DENR) Regional Executive Director Gregorio Nisperos.[9] In the said Order, it was stressed that while petitioner was in actual possession of the subject property, nevertheless, her possession thereof was not in the concept of an owner:

> After a careful evaluation of the evidence submitted, it was observed that though protestant is in actual occupation of the disputed property,

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[5] *Id*. at 41.

[6] *Id*. at 40.

[7] *Id*. at 42-44.

[8] *Id* at 45.

[9] *Id*. at 45-49.

her possession and occupation could not be considered as that in the concept of an owner which is the ultimate requirement in public land grant. This observation is supported by the receipts corresponding to the payment of lease rentals by protestant. This will connote to nothing less than to establish the fact that the possession thereof by the protestant was merely tolerated by the protestee by virtue of a lease contract by and between the parties. That sufficient evidence were presented supporting the ownership of the property by the protestee. x x x.[10]

Petitioner filed a Motion for Reconsideration which was denied in an Order dated 12 March 2001. On appeal, the DENR Secretary, in a Decision dated 29 January 2004, affirmed the findings of Regional Executive Director Gregorio Nisperos.[11]

During the proceedings before the Olongapo MTCC, petitioner denied ever having leased the subject property claiming that the receipts that the respondent presented as evidence were falsified. She insisted that she was now the owner of the property after occupying the same for 30 years by reason of acquisitive prescription. She averred that she built improvements therein which she used for her funeral parlor business. She questioned the award of the land to respondent by way of Miscellaneous Sales Application as he purportedly never even set foot in the property.[12] She asserted that her Miscellaneous Sales Application filed on 11 December 1997[13] should have been given due course. She added that the respondent was merely a professional squatter or land speculator.[14]

The Olongapo MTCC rendered a decision in favor of the respondent. Although there was no contract of lease executed between the parties, the Olongapo MTCC took into account the receipts presented by the respondent showing that petitioner paid rent on the subject property. It declared that the petitioner's

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[10] *Id.* at 47-48.

[11] CA *rollo*, pp. 98-102.

[12] *Rollo*, pp. 53-56.

[13] *Id.* at 83.

[14] *Id.* at 60.

long years of stay in the subject property did not vest ownership in her as her Miscellaneous Sales Application was never granted by the government. It ruled that the respondent presented a better right to possess the subject property since he was able to present proof that he bought it from the government and paid for it. Thus, the MTCC ordered the eviction of the petitioner from the subject property.

On 14 August 1998, petitioner appealed the Decision of the Olongapo MTCC, and it was raffled to Branch 74 of the RTC of Olongapo City and docketed as Civil Case No. 150-0-03. The Olongapo RTC reversed the Decision rendered by the Olongapo MTCC and ordered the dismissal of the complaint filed by the respondent against petitioner. The RTC gave little probative value to the receipts presented by the respondent as evidence of rentals paid by the petitioner since these receipts were unsigned by the petitioner. Thus, it ruled that respondent had not been able to prove ownership, and that the case should be resolved in favor of who had actual possession of the subject property. In interpreting Article 538 of the Civil Code,[15] the RTC ruled that petitioner had the preferred right as she was in actual possession of the subject property. The dispositive part of the Decision dated 16 July 2003 reads:

> WHEREFORE, foregoing considered, the appeal is hereby granted. The Decision appealed from is **REVERSED** and **SET ASIDE.** The complaint below is **DISMISSED.** No pronouncements as to costs.[16]

On appeal, the Court of Appeals in CA-G.R. SP No. 78672 reversed the Decision rendered by the Olongapo RTC and reinstated the Judgment rendered by the Olongapo MTCC. The

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[15] ART 538. Possession as a fact cannot be recognized at the same time in two different personalities except in the cases of co-possession. Should a question arise regarding the fact of possession, the present possessor shall be preferred; if there are two possessors, the one longer in possession; if the dates of the possession are the same, the one who presents a title; and if all these conditions are equal, the thing shall be placed in judicial deposit pending determination of its possession or ownership through proper proceedings.

[16] *Rollo,* p. 97.

appellate court adjudged that the respondent adequately proved that he possessed the property in the concept of an owner, and that the petitioner failed to refute this by contrary proof. Moreover, it stated that the DENR's Decision to affirm the decision of the Bureau of Lands granting the respondent's Miscellaneous Sales Application was conclusive upon the courts as to who should be granted the subject property, which was formerly a public lot. It further ruled that petitioner occupied the subject property merely as the respondent's lessee. Since the petitioner continually refused to pay rent, she should be ejected from the property and pay rentals in arrears. However, it clarified the Judgment rendered by the MTCC by setting the monthly rental payable to respondent at ₱1,000.00. The appellate court, in its Decision in CA-G.R. SP No. 78672, declared that:

> WHEREFORE, judgment is hereby rendered, reinstating the decision dated 24 February 2003 of the Municipal Trial Court, Branch 4, Olongapo, in Civil Case No. 5031, with the following modification: respondent Herminia Estrella is ordered to pay petitioner Gregorio Robles, Jr. the amount of ₱1,000.00 per month from September 1996 until said respondent vacates the building at No. 19 Otero Avenue, Mabayuan, Olongapo.[17]

Petitioner filed a Motion for Reconsideration of the Decision of the Court of Appeals wherein she presented for the first time a copy of a Miscellaneous Sales Application which was supposedly filed on 14 December 1971. The said motion was denied in a Resolution dated 13 January 2006.[18]

Hence, in the present Petition, petitioner relies on the following grounds:[19]

I

THE COURT OF APPEALS GROSSLY ERRED IN MAKING THE FINDINGS OF FACTS IN ITS ASSAILED DECISION WARRANTING A REVIEW OF THE SAME BY THIS HONORABLE COURT

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[17] *Id*. at 126.

[18] *Id*. at 158.

[19] *Id*. at 15.

II

THE COURT OF APPEALS GROSSLY ERRED IN GIVING DUE CREDENCE TO THE FINDINGS OF FACTS OF THE DENR.

III

THE COURT OF APPEALS GROSSLY ERRED IN HOLDING THAT THE CLAIM OF OWNERSHIP AND POSSESSION BY THE PETITIONER OF THE SUBJECT PROPERTY SINCE 1969 IS NOT SUPPORTED BY CREDIBLE EVIDENCE.

IV

THE COURT OF APPEALS GROSSLY ERRED IN FINDING THAT THE RESPONDENT HAS PROVEN HIS OWNERSHIP OF THE SUBJECT PROPERTY

V

THE COURT OF APPEALS GROSSLY ERRED IN FINDING THAT THE PETITIONER IS A LESSEE OF THE RESPONDENT IN THE SUBJECT PROPERTY

VI

THE COURT OF APPEALS GROSSLY ERRED IN NOT (sic) HOLDING THAT THE RESPONDENT HAS A BETTER RIGHT TO POSSESS THE SUBJECT PROPERTY.

First off, it must be stated that the power to resolve conflicts of possession is recognized to be within the legal competence of the civil courts and its purpose is to extend protection to the actual possessors and occupants with a view to quell social unrest. A judgment of the court ordering restitution of the possession of a parcel of land to the actual occupant, who has been deprived thereof by another through the use of force or in any other illegal manner, should never be construed as an interference with the disposition and alienation of public lands.[20]

The Bureau of Lands determines the respective rights of rival claimants to public lands, but it does not have the wherewithal to police public lands. Neither does it have the means to prevent

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[20] *Solis v. Intermediate Appellate Court*, G.R. No. 72486, 19 June 1991, 198 SCRA 267, 272-273.

disorders or breaches of peace among the occupants. Its power is clearly limited to disposition and alienation and any power to decide disputes over possession is but in aid of making the proper awards.[21]

We now proceed to the core issues raised by the petitioner.

Petitioner stubbornly insists that she, not the respondent, is in actual possession of the subject property.

In a case for unlawful detainer, the possession is unlawfully withheld after the expiration or termination of the right to hold possession under any contract, express or implied.[22] The only elements that need to be proved are the fact of the lease, the pertinent contract in this case, and the expiration of its terms.[23]

In *Barba v. Court of Appeals*,[24] this Court categorically ruled that:

Where the cause of action is unlawful detainer, prior possession is not always a condition *sine qua non*. A complaint for unlawful

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[21] *Id.*

[22] *Espiritu v. Court of Appeals*, 368 Phil. 669, 674 (1999).

Section 1, Rule 70 of the Rules of Court provides:

Section 1. *Who may institute proceedings, and when.* Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, **or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied**, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. (Emphasis provided.)

[23] *Manuel v. Court of Appeals*, G.R. No. 95469, 25 July 1991, 199 SCRA 603, 608; *Ocampo v. Tirona*, G.R. No. 147812, 6 April 2005, 455 SCRA 62, 72.

[24] *Barba v. Court of Appeals*, 426 Phil. 598, 607-608 (2002).

detainer should be distinguished from that of forcible entry. In forcible entry, the plaintiff has prior possession of the property and he is deprived thereof by the defendant through force, intimidation, threat, strategy or stealth. In an unlawful detainer, the defendant unlawfully withholds possession of the property after the expiration or termination of his right thereto under any contract, express or implied; hence, prior physical possession is not required. x x x. In ejectment cases, therefore, possession of land does not only mean actual or physical possession or occupation but also includes the subjection of the thing to the action of one's will or by the proper acts and legal formalities established for acquiring such right, such as the execution of a deed of sale over a property.

In an unlawful detainer case, the defendant's possession was originally lawful but ceased to be so by the expiration of his right to possess. Hence the phrase *unlawful withholding* has been held to imply possession on the part of the defendant, which was legal from the beginning, having no other source than a contract, express or implied, and which later expired as a right and is being withheld by defendant.[25] The issue of *rightful* possession is the one decisive, for in such action, the defendant is the party in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.[26] Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession. Nor does the law require one in possession of a house to reside in the house to maintain his possession.[27] As lessor of the subject property, respondent is legally considered as being in possession thereof. Hence, the fact of actual possession becomes a non-issue.

Next, petitioner denies the existence of any lease agreement between petitioner and respondent. She maintains that she was in possession of the subject property as early as 1969.

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[25] *Id.* at 605-606.

[26] *Sumulong v. Court of Appeals*, G.R. No. 108817, 10 May 1994, 232 SCRA 372, 382-383.

[27] *De la Rosa v. Carlos*, 460 Phil. 367, 373 (2003).

To bolster her contentions, petitioner presented before the Court of Appeals and this Court a Miscellaneous Sales Application different from that which she presented before the Olongapo MTCC. The Miscellaneous Sales Application presented before the Court of Appeals in the Motion for Reconsideration was supposedly filed on 14 December 1971, as marked in the application itself.[28] The Miscellaneous Sales Application presented before the Olongapo MTCC was supposedly filed on 11 December 1997.[29] No mention was made of the 1971 Miscellaneous Sales Application in the protest before the DENR, which only took notice of the 1997 application.

In the 1971 Miscellaneous Sales Application, petitioner alleged that she was in actual possession of the subject property as early as 1969.[30] But in the 1997 application, petitioner claimed that she took possession of the subject property only in 1972.[31] Even assuming that the petitioner actually filed two Miscellaneous Sales Applications, it is highly incomprehensible that the petitioner would state that she occupied the land in 1972 in the 1997 application, when she had already filed one on an earlier date in 1971, when she allegedly took possession of the land in 1969.

There seems to be an attempt to mislead this Court as to when the petitioner filed a Miscellaneous Sales Application. No mention was made of the 1997 application in the Petition for Review.[32] Moreover, it was made to appear as if the letter dated 5 February 1998 of Atty. Ricardo G. Lazaro, Jr. was in response to the 1971 application, when in fact it was made in response to the one filed in 1997. Given the foregoing considerations, very little weight can be given to the 1971 application.

Petitioner presented as supporting documents to the 1971 Miscellaneous Sales Application the Indorsement issued by City

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[28] *Rollo,* p. 141.

[29] Records, p. 134.

[30] *Rollo*, p. 141.

[31] Records, p. 134.

[32] *Rollo*, pp. 12-14.

Engineer Domingo Farin dated 17 December 1971 and a Certification issued by then Mayor Amelia Gordon dated 22 December 1971, which were not even presented before the MTCC.[33]

Petitioner also submitted affidavits designated as *Pinagsanib na Sinumpaang Salaysay ni Azucena Gracia at Cristina v. Gonzales* dated 20 July 2001 and *Pinagsanib na Sinumpaang Salaysay ni Delfin Manguino at Duisaldo Fernando* dated 20 July 2001.

It should be noted that the aforementioned documents were belatedly presented only before the Court of Appeals, and not during the proceedings before the Olongapo MTCC and Olongapo RTC. Therefore, respondent was not given an opportunity to examine and verify the authenticity of these documents before the trial court. Further, no justification was supplied by the petitioner for the belated presentation of these pieces of evidence. Hence, these are not admissible. Where the adverse party is deprived of the opportunity to cross-examine the affiants, affidavits are generally rejected for being hearsay.[34] Even if they were admissible in evidence, they only testified to the actual physical possession of the petitioner and failed to establish privity to any lease agreement between the petitioner and the respondent.

Similarly, the *Sinumpaang Salaysay of Severino Ferrer* dated 13 October 2001 and the Certification issued by Barangay Captain Danilo S. Fernandez on 22 October 2001 — both attesting that petitioner, and not the respondent, resided on the subject property — do not disprove the existence of a lease agreement between petitioner and respondent. And, as earlier demonstrated, neither do they bear significance on the right of possession of respondent.

The Affidavit of then Mayor Amelia Gordon dated 10 February 2000 was to the effect that she permitted the petitioner to occupy

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[33] *Id*. at 162-163.

[34] *Hornales v. National Labor Relations Commission*, 417 Phil. 263, 273 (2001).

the subject property in 1969; that she never saw the respondent occupy the premises; and therefore the lease agreement between petitioner and respondent was preposterous. Again, these statements cannot be given credence over the findings of DENR. The Office of the Mayor is not authorized to dispose of or authorize the use of public lands, as this duty lies with the Bureau of Lands.

The tax receipts presented by the petitioner were evidence of payments made from 1998 to 2002, while the Tax Declaration of Real Property was issued no later than 1999, the date of effectivity of assessment.[35] Tax declarations are not conclusive proofs of ownership,[36] or even of possession. Remarkably, payments were made after 1996, at the time when the respondent alleged that the petitioner had refused to pay rentals and committed acts of dispossession of the subject property against the respondent. Stated differently, payments were made soon after the dispute arose between the parties.

IN STARK CONTRAST, respondent presented receipts of the rentals paid by the petitioner's mother, in whose name the lease was taken, for the period starting December 1994 until July 1996.[37] The lease agreement between petitioner and respondent is also confirmed by the findings of DENR Regional Executive Director Gregorio Nisperos, who sent representatives to inspect the subject premises.[38] In a letter dated 11 June 2001,[39] respondent, through counsel, demanded that petitioner vacate the premises, but notwithstanding such demand, petitioner refused to vacate the same. *Such act amounted to an unlawful withholding of the subject property by petitioner because she refused to vacate the premises after the lease agreement had already been terminated by her failure to pay rentals despite the notices sent to her to that effect.*

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[35] *Rollo,* pp. 70-77, 82.

[36] *Seville v. National Development Company*, 403 Phil. 843, 855 (2001).

[37] *Rollo*, pp. 42-44.

[38] *Id.* at 46-47.

[39] *Id.* at 45.

What cannot be brushed aside are the findings of the DENR on the status of petitioner as lessee after it sent its representatives to inspect the subject property to determine who between the petitioner and respondent had a better claim on the subject property, which cannot be defeated by the casual observations of the petitioner's witnesses.

> After a careful evaluation of the evidence submitted, it was observed that though protestant is in actual occupation of the disputed property, her possession and occupation could not be considered as that in the concept of an owner which is the ultimate requirement in the public land grant. This observation is supported by the receipts corresponding to the payment of lease rentals by protestant. This will connote nothing less than to establish the fact that the possession thereof by the protestant was merely tolerated by the protestee by virtue of a lease contract by and between the parties. That sufficient evidence were presented supporting the ownership of the property by the protestee, who paid the same in full per O.R. No. 6186377, the announcement of Director of Lands of the sale of the property in favor of the protestee by virtue of his Miscellaneous Sales Application No. (III-4)9822 for commercial purposes per his Notice dated June 20, 1986 (sic), the declaration of the property per Tax Declaration No. 11615 dated March 15, 1963, Tax Declaration No. 16888 dated April 29, 1965 where it was revealed that a portion of the subject lot was even donated by the protestee to the Bo. Mabayuan to be used as a playground per amicable settlement by the protestee and the Barrio Council of Mabayuan, Olongapo City, and tax receipts corresponding to the payment of realty taxes due thereon as paid by the protestee up to the present. These evidence protestant were not able to overcome.
>
> Thus, if it were true that protestant's status of occupation on the disputed lot since 1969 is in the concept of an owner continuously, publicly and adversely as she claimed, then, thirty (30) years is quite too long for her to have not acquired a patent and corresponding title on the land as it normally happens to persons similarly situated who can avail of a public land grant in just a couple of years or earlier as when the government is fast-tracking and or conducting what we call "Oplan Handog Titulo." In other words, protestant's actuations under the circumstances are contrary to human experience and actual course of things.

Ostensibly, protestee, indeed merely tolerated and allowed the respondents to stay on the subject property by virtue of a lease agreement. Hence, protestant's, whose length of possession, however long, cannot ripen into ownership, this is so, because that is not in the concept of an owner. Under the law, "acts merely tolerated and those executed clandestinely and without knowledge of the possessor of the thing, or by violence, do not affect possession (Art. 537, New Civil Code)." Thus, lawful owners have the right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated. This right is never barred by laches, because, possession by merely tolerance does not start the running of the prescriptive period.

All told, this Office finds in the protestee all the qualifications and none of the disqualifications to avail of the public land grant over the disputed lot.[40]

Factual considerations relating to lands of the public domain properly rest within the administrative competence of the Director of Lands and the DENR.[41] Findings of administrative agencies, which have acquired expertise because of their jurisdiction, are confined to specific matters and are accorded respect, if not finality, by the courts.[42] Even if they are not binding as to civil courts exercising jurisdiction over ejectment cases, such factual findings deserve great consideration and are accorded much weight.

Finally, petitioner questions the propriety of the award by the DENR of the Miscellaneous Sales Application to the respondent.

The DENR Secretary, in denying the appeal filed by the petitioner questioning the granting of respondent's Miscellaneous Sales Application, took note of the following

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[40] *Rollo,* pp. 47-49.

[41] *Solis v. Intermediate Appellate Court*, *supra* note 20 at 273; and *Garcia v. Aportadera*, G.R. No. L-34122, 29 August 1988, 164 SCRA 705, 710.

[42] *Lapanday Agricultural & Development Corporation v. Estita*, G.R. No. 162109, 21 January 2005, 449 SCRA 240, 255; *Junio v. Garilao*, G.R. No. 147146, 29 July 2005, 465 SCRA 173, 186.

evidence, in addition to the evidence presented before the Olongapo MTCC:[43]

1. 3rd Indorsement issued by the Department of Public Utilities and Safety of the Municipality of Olongapo dated 23 March 1966, which stated that respondent's father and predecessor-in-interest, Gregorio A. Robles, was the lawful occupant of the subject property and had been in possession since 1962;

2. Real Property Tax Receipts (Official Receipts No. 7639431, 313300, and 463315) for payments made by respondent's father as early as 1962 to 1964; and

3. A letter dated 9 November 1960 written by then Mayor Ruben Geronimo thanking the respondent's father for the help providing filling materials for Bouzer Avenue (Otero Avenue at present), Mabayuan, Olongapo, where the subject property is located.

Based on the aforementioned evidence, the DENR found that the petitioner's protest of the disposition of the subject land in favor of the respondent was without basis. The disposition of the subject land cannot be questioned in a case for unlawful detainer. Under the Public Land Act, the Director of Lands primarily and the DENR Secretary ultimately have the authority to dispose of and manage public lands. And while the DENR's jurisdiction over public lands does not negate the authority of courts of justice to resolve questions of possession, the DENR's decision would prevail with regard to the respective rights of public land claimants. Regular courts would have no jurisdiction to inquire into the validity of the award of the public land.[44]

IN SUM, the records are bereft of proof that petitioner had indeed occupied the premises prior to the possession of the respondent and his predecessor. The pieces of evidence presented by the petitioner were either inconsistent, dubious in character, irrelevant, or issued by an unauthorized public official. On the

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[43] CA *rollo*, pp. 100-101.

[44] *Omandam v. Court of Appeals*, G.R. No. 128750, 18 January 2001, 349 SCRA 483, 489-490.

other hand, respondent's evidence is consistent, straightforward and derived from public officers tasked to perform official functions. The notices, certifications and receipts were issued soon after the supposed event occurred and before any dispute arose between the parties. Respondent has sufficiently established a case for unlawful detainer.

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED* and the assailed Decision of the Court of Appeals in CA-G.R. SP No. 78672, promulgated on 15 September 2005, is *AFFIRMED*. Petitioner is ordered to vacate the subject property and to pay respondent the amount of ₱1,000.00 per month from September 1996 until she vacates the building at No. 19 Otero Avenue, Mabayuan, Olongapo. Costs against the petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172891. November 22, 2007]

SPOUSES HENRY LANARIA and THE LATE BELEN LANARIA as SUBSTITUTED BY FRANCIS JOHN LANARIA, *petitioners, vs.* **FRANCISCO M. PLANTA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SUBSTANTIAL COMPLIANCE WITH THE RULES OF PROCEDURE, SUSTAINED. —** Section 2, Rule 42 of the 1997 Rules of Civil Procedure embodies the procedure for appeals

from the Decision of the RTC in the exercise of its appellate jurisdiction. Jurisprudence pertaining to the same has established that "submission of a document together with the motion for reconsideration constitutes substantial compliance with the requirement that relevant or pertinent documents be submitted along with the petition, and calls for the relaxation of procedural rules." There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure. This ruling is in consonance with the fact that the Rules do not specify the precise documents, pleadings or parts of the records which must be annexed to the petition, apart from the assailed judgment, final order, or resolution.

2. ID.; ID.; ID.; DUPLICATE ORIGINAL OR TRUE COPY OF THE JUDGMENT OF THE LOWER COURT, REQUIRED TO ACCOMPANY PETITION FOR REVIEW; EXPLAINED. — Section 2(d), Rule 42 of the 1997 Rules of Civil Procedure requires that petitions for review from the decision of the Regional Trial Courts must be accompanied by *clearly legible duplicate originals* OR *true copies of the judgments or orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court,* the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition. Evidently, only the judgments or orders of the lower courts must be duplicate originals or be duly certified true copies. Moreover, the phrases "duplicate originals" and "true copies" of the judgments or orders of both lower courts, being separated by the disjunctive word "OR" indicate that only the latter are required to be certified correct by the clerk of court. In an *En Banc* Decision promulgated on 3 February 2000, this Court declared that Rule 42, governing petitions for review from the RTC to the Court of Appeals, requires that only the judgments or final orders of the lower courts need to be certified true copies or duplicate originals. This rule was reiterated in *Cusi-Hernandez v. Diaz* emphasizing that supporting documents of the petition are not required to be certified true copies. *Cusi-Hernandez v. Diaz* stressed: In *Cadayona v. CA*, the Court interpreted the requirement under Section 6(c) of Rule 43, which was similar to Section 2(d) of Rule 42, and held that "we do not construe the above-quoted section as imposing the requirement that all supporting papers accompanying the petition should be certified

true copies." It is sufficient that the assailed judgment, order or resolution be a certified true copy. Jurisprudence on this matter has consistently held that in petitions for review as governed under Rule 42 of the Revised Rules of Court, only judgments or final orders of the lower courts need to be certified true copies or duplicate originals. Section 4(d), Rule 45, is clearly worded. A Petition for Review on *Certiorari* filed before this Court *via* Rule 45 must contain a certified true copy or duplicate original of the assailed decision, final order or judgment. It is not mandated under the aforesaid rule that other pleadings attached thereto be duplicate originals or be duly certified copies thereof.

3. **ID.; ID.; ID.; THE RIGHT TO APPEAL IS A STATUTORY RIGHT AND ONE WHO SEEKS TO AVAIL OF IT MUST COMPLY WITH THE STATUTE OR RULES; CLARIFIED. —** The law abhors technicalities that impede the cause of justice. The primary function of procedural rules is to pursue and not defeat the ends of justice. The circumstances of this case present compelling reasons to disregard petitioners' procedural lapses and to allow them to properly present their case in order to pursue the ends of justice. As revealed by preceding events, petitioners have, at the very least, substantially complied with the procedural requirements embodied in Rule 42 and Rule 45 of the 1997 Rules of Civil Procedure. The right to appeal is a statutory right and one who seeks to avail of it must comply with the statute or rules. At the same time, the provisions of the Rules of Court under Section 6, Rule 1 thereof states that the Rules "shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding." It has been held that courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. We therefore find that this ruling, as applied in the instant case, is more in consonance with the enshrined policy that the ends of justice be served. The policy of courts is to encourage the full adjudication of the merits of an appeal. The Court is fully aware that procedural rules are not to be belittled or simply disregarded precisely because these prescribed procedures exist to insure an orderly and speedy administration of justice. However, it is equally true that "while the right to appeal is a statutory, not a natural right, nonetheless, it is an essential part of our judicial system; and courts should proceed with caution so as not to

deprive a party of the right to appeal, but rather, ensure that every party-litigant has the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities." Dismissal of cases purely on technical grounds is frowned upon and the rules of procedure ought not to be applied in a very rigid, technical sense for they are adopted to help secure, not override, substantial justice, and not defeat their very ends. We stress that cases should be determined on the merits, after all parties have been given full opportunity to ventilate their causes and defenses, rather than on technicalities or procedural imperfections.

APPEARANCES OF COUNSEL

Jun Eric C. Cabardo for petitioners.
Alcantara Law Office for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

The appeal brought before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, with petitioners seeking the setting aside of the (a) Resolution[1] of the Court of Appeals, dated 27 August 2004, outrightly dismissing due to deficiency in form and substance the Petition for Review with Prayer for Preliminary Injunction and Temporary Restraining Order and/or Status Quo Order[2] filed by petitioners in CA-G.R. SP No. 85755 entitled, "*Spouses Henry & the Late Belen Lanaria, et al. v. Francisco M. Planta*"; and (b) Resolution[3] of the Court of Appeals, dated 12 April 2006, denying the Motion for Reconsideration.

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[1] Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices Pampio A. Abarintos and Ramon A. Bato, Jr., concurring; *rollo,* p. 70.

[2] Hereinafter referred to as Petition for Review; *rollo,* pp. 18-47.

[3] Penned by Associate Justice Pampio A. Abarintos with Associate Justices Isaias P. Dicdican and Ramon M. Bato, Jr., concurring (Court of Appeals, Cebu City, Special Former 19th Division); *rollo*, pp. 165-166.

The following factual antecedents led to the filing of the instant petition:

Petitioner Francis John Lanaria is the son of decedent Belen M. Lanaria, while respondent Francisco M. Planta is the nephew and one of the heirs of the late Rosario Planta. Rosario Planta was the registered owner and possessor of a parcel of land identified as Lot 1, Plan PSU-198719, Oton Cadastre, situated at Barangay Alegre, Municipality of Oton, Iloilo, Philippines, occupying an area of 3,273 square meters, more or less. The subject lot, registered in the name of Rosario Planta under Transfer Certificate of Title (TCT) No. T-14,420,[4] is particularly described as:

> A parcel of Land (Lot 1, Plan Psu-198719, Oton Cad.), situated in the Brgy. of Alegre, Mun. of Oton, Prov. of Iloilo, Island of Panay. Bounded on the NE., along line 1-2 by Mun. Road; on the SE., along line 2-3 by Gorgonia Guzman; on the SW., along line 3-4 by Guimaras Strait; and the NW., along line 4-1 by Petronila Planta. x x x. Containing an area of THREE THOUSAND TWO HUNDRED AND SEVENTY-THREE (3,273) SQUARE METERS. x x x.[5]

Respondent was the plaintiff[6] in a Complaint[7] for Unlawful Detainer filed against the spouses Henry Lanaria and the late Belen M. Lanaria[8] before the Municipal Trial Court (MTC) of Oton, Iloilo. The Complaint alleged that sometime in 1950, Rosario Planta, through her permission and generosity, allowed the grandparents and parents of Belen Lanaria to construct their house on a portion of the parcel of land with an implied promise to vacate the premises and restore possession thereof to her or her heirs upon demand. A formal demand to vacate was sent to defendants on 4 July 2003, but they refused to heed the same.

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[4] Petitioner admits the existence of Transfer Certificate of Title T-14,420 covering the lot in question, with the qualification that there is no admission that the lot belongs to Rosario Planta.

[5] CA *rollo*, p. 69.

[6] As heir of plaintiff's aunt Rosario Planta.

[7] *Rollo*, pp. 77-85.

[8] Now substituted by her son Francis John Lanaria.

During the preliminary conference, the parties stipulated the following facts:

1. The defendants admit the existence of TCT No. T-14,420 covering the lot in question with the qualification that they don't admit that the said lot belongs to Rosario Planta.
2. The defendants admit having received Letter of Demand to Vacate the subject lot by the plaintiff dated 4 July 2003, with the qualification that they denied the truth of its content.
3. The defendants admit that they are occupying the lot in question and are not paying rentals to the plaintiff in the belief that it is a public land and it is not owned by the Planta family.
4. The plaintiff admits that TCT No. T-14,420 issued to Rosario Planta was derived from the pre-patent issued to the late Fancisco Planta.
5. The plaintiff admits that there was a pending protest filed before the Land Management Division, Region VI, Iloilo City, with the qualification that it was filed after the Complaint for Ejectment were filed against the defendants in these cases.

Upon submission of the position papers of the respective parties, the MTC rendered its Decision,[9] ruling in favor of respondent Francisco M. Planta. Respondent was declared the lawful co-owner of Lot 1, Plan PSU-198719. Petitioners were ordered to vacate the lot and to deliver physical possession thereof to the respondent, and to remove and transfer at their expense the house and other improvements introduced on the lot.

Seeking recourse from the adverse Decision, petitioners elevated the case to the Regional Trial Court (RTC) of Iloilo, Branch 38. The case was docketed as Civil Case No. 04-28007. In its Order[10] dated 16 April 2004, the RTC affirmed with modification the Decision of the MTC, deleting the award of attorney's fees and litigation expenses. The RTC agreed with the MTC in finding that the registered owner Rosario Planta

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[9] *Rollo,* pp. 48-59.

[10] Penned by Presiding Judge Roger B. Patricio; CA *rollo*, pp. 45-53.

and her heirs, one of whom is respondent, are entitled to the possession of the parcel of land considering that the subject lot is titled property. The RTC and the MTC explained that respondent is under the protective mantle of the Torrens Title so that even if the registered owner and successor-in-interest are not in actual possession of the property, they are nevertheless considered owners thereof and, as such, have the right to recover or vindicate it from any person found to be unlawfully possessing it.

Petitioner filed a Motion for Reconsideration dated 12 May 2004 but it was denied by the RTC in an Order issued on 20 July 2004.

On 3 August 2004, petitioners filed a Petition for Review with the Court of Appeals, Manila. The Petition for Review sought the reversal of the MTC and RTC Decisions, and prayed for the dismissal of the unlawful detainer case. Petitioners argued the lack of a cause of action on the part of respondent. Attached to the Petition for Review were original or certified true copies of the decisions and orders of both lower courts.[11]

On 27 August 2004, the Court of Appeals, finding petitioners' Petition for Review *deficient in form and substance*, resolved to outrightly dismiss the petition as follows:

> It appearing that after a careful reading of the contents of this petition, it shows that it failed to attach plain copies of the pleadings and other material portions of the record such as, Complaint for

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[11] The following were annexed to the Petition for Review filed before the Court of Appeals:

(a) MTC Decision in the Complaint for Ejectment, docketed as Civil Case No. 847; penned by Municipal Trial Judge Ernesto H. Mendiola; *id.* at 33-45.

(b) RTC Decision in the Complaint for Ejectment, docketed as Civil Case No. 04-28007; penned by Presiding Judge Roger B. Patricio; *id.* at 46-53.

(c) RTC Order dated 20 July 2004 issued by Presiding Judge Roger B. Patricio denying the Motion for Reconsideration filed by petitioners; *id.* at 54.

(d) Order of Investigation dated 14 July 2004 issued by the Office of the Regional Executive Director of the Department of Environment and Natural Resources; *id.* at 56.

Unlawful Detainer, Answer with Counterclaim, Parties' Position Paper, Memorandum on Appeal and Motion for Reconsideration dated May 12, 2004, as required under Section 2, Rule 42 and in violation of Section 3, Rule 42 of the 1997 Rules of Civil Procedure, as amended, this petition is DISMISSED outright due to deficiency in form and substance.[12]

Petitioners thereafter filed a "Motion for Reconsideration[13] and to Allow/Admit the Inclusion of Pleadings and Other Material Documents."[14] Petitioners explained that the failure to attach copies of documents in support of their petition was *due to oversight and inadvertence*, and asked the Court of Appeals to allow the inclusion of the pleadings attached to the Motion for Reconsideration, *"in the most prevailing interests of substantive justice, equity and substantive rights."*[15] The Court of Appeals, in a Resolution issued on 12 April 2006, denied the Motion for Reconsideration in this manner:

Before the Court is petitioners' motion for reconsideration of the Court's Resolution dated 27 August 2004 which dismissed the instant petition for failure to attach copies of the pleadings and other material portions of the record as required in Section 2, Rule 42 of the 1997 Rules of Civil Procedure.

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[12] *Rollo*, p. 70.

[13] Hereinafter referred to as Motion for Reconsideration; CA *rollo*, pp. 58-146. The following documents were annexed to petitioners' Motion for Reconsideration:

(a) Complaint for Ejectment in Civil Case No. 847; *id.* at 58-68.

(b) Transfer Certificate of Title; *id.* at 102.

(c) Answer to the Complaint; *id.* at 74-83.

(d) Four Affidavits; *id.* at 86-90.

(e) Position Paper filed by petitioners; *id.* at 91-104.

(f) Memorandum on Appeal; *id.* at 105-117.

(g) Appellee's Memorandum; *id.* at 118-136.

(h) Motion for Reconsideration; *id.* at 137-147.

[14] Except for a copy of the Complaint and annexes thereto and affidavits of witnesses, the other pleadings and documents submitted were machine copies.

[15] *Rollo*, p. 72.

Petitioners through counsel alleged that the omission was due to oversight and inadvertence and prays that their motion be granted and that the pleadings and other material documents attached to their motion be admitted.

It is to be stressed that the submission of the required documents was complied beyond the period allowed by the rules within which to file a Petition for Review. Thus, the Petition for Review remains to be deficient in form and substance.

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive right. Like all rules, they are required to be followed.

WHEREFORE, the Motion for Reconsideration is DENIED.[16]

Hence, this petition, wherein petitioners raise the following issues:

i. THE COURT OF APPEALS, NINETEENTH DIVISION, MANILA, ERRED WHEN IT DISMISSED OUTRIGHTLY THE PETITION FOR REVIEW DATED 3 AUGUST 2004 ON THE GROUND OF DEFICIENCY IN FORM AND SUBSTANCE TO THE GREATER SACRIFICE OF SUBSTANTIAL JUSTICE.

ii. THE COURT OF APPEALS, SPECIAL FORMER NINETEENTH DIVISION, CEBU CITY, LIKEWISE GRAVELY ERRED IN DENYING THE MOTION FOR RECONSIDERATION AND TO ALLOW/ADMIT THE INCLUSION OF PLEADINGS AND OTHER MATERIAL DOCUMENTS SINCE ITS DENIAL WOULD RESULT TO DENIAL OF RIGHT TO SUBSTANTIAL JUSTICE.

Petitioners urge this Court to set aside the resolutions of the Court of Appeals dated 27 August 2004 and 12 April 2006 praying that the case be remanded to the Court of Appeals Special Former Nineteenth Division and that said court be directed to reinstate and give due course to the Petition for Review in CA-G.R. SP No. 85755.

Petitioners contend that the Court of Appeals erred in denying the Motion for Reconsideration and in not allowing the inclusion

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[16] *Rollo*, pp. 165-166.

of the pleadings and other material documents submitted together with the Motion for Reconsideration because denial thereof would result in the denial of the right to substantial justice.

Respondent, on the other hand, claims that the Court of Appeals did not commit any error when it dismissed outright the Petition for Review dated 27 August 2004 due to deficiency in form and substance, and in denying the Motion for Reconsideration thereof.[17] He contends that petitioners' failure to comply with the formal and procedural requirements under Sections 2 and 3, Rule 42 of the 1997 Rules of Civil Procedure resulting in the outright dismissal thereof, was proper.

Anent the foregoing considerations, this Court finds merit in the instant petition.

Respondent vehemently insists petitioners failed to heed the requirements under the Rules pertaining to perfection of appeals, insisting that petitioners did not perfect the appeal. Respondent contends that the documents required to be submitted, *i.e.*, Complaint for Unlawful Detainer, Answer with Counterclaim, Position Papers, Memorandum on Appeal, and Motion for Reconsideration dated 12 May 2004, were submitted beyond the prescriptive period for filing their appeal as these were submitted only on Motion for Reconsideration. He avers that the filing of the Motion for Reconsideration is evidence that the earlier Petition for Review was clearly deficient in form and substance.

Section 2, Rule 42 of the 1997 Rules of Civil Procedure embodies the procedure for appeals from the Decision of the RTC in the exercise of its appellate jurisdiction. Said section reads:

SEC. 2. *Form and Contents*. – The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the

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[17] Respondent's Memorandum, *rollo*, pp. 251-252.

specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) *be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.* (Emphasis ours.)

Non-compliance with any of the foregoing requisites is a ground for the dismissal of a petition based on Section 3 of the same Rule, to wit:

Sec. 3. *Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

In *Padilla, Jr. v. Alipio,*[18] the Court of Appeals denied a Petition for Review on the ground that it was not accompanied by certified true copies of the pleadings and other material portions of the record as would support the allegations of the petition. On Petition for Review on *Certiorari,* this Court set aside the outright dismissal of the case, ruling that petitioners therein annexed copies of the supporting documents as well as a certified true copy of the MeTC Decision in the Motion for Reconsideration, which thus constitutes substantial compliance with the requirements of Rule 42.

In view of the circumstances of this case, this Court finds our ruling in *Padilla* applicable. Petitioners' subsequent submission of the following documents annexed to their Motion for Reconsideration - *viz*, Complaint for Ejectment, Transfer Certificate of Title, Answer to the Complaint, Four Affidavits, Position Paper filed by petitioners, Memorandum on Appeal,

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[18] G.R. No. 156800, 25 November 2004, 444 SCRA 322.

Appellee's Memorandum, and Motion for Reconsideration - constitutes substantial compliance with Section 2, Rule 42. Jurisprudence pertaining to the same has established that "submission of a document together with the motion for reconsideration constitutes substantial compliance with the requirement that relevant or pertinent documents be submitted along with the petition, and calls for the relaxation of procedural rules."[19] There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure.[20] This ruling is in consonance with the fact that the Rules do not specify the precise documents, pleadings or parts of the records which must be annexed to the petition, apart from the assailed judgment, final order, or resolution.[21]

Moreover, under Section 3(d), Rule 3 of the Revised Internal Rules of the Court of Appeals,[22] the Court of Appeals is with authority to require the parties to submit additional documents as may be necessary to promote the interests of substantial justice. When a petition does not have the complete annexes or the required number of copies, the Chief of the Judicial Records Division shall require the petitioner to complete the annexes or file the necessary number of copies of the petition before docketing the case.[23]

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[19] *Padilla, Jr. v. Alipio, id.* at 327, citing *Donato v. Court of Appeals*, 462 Phil. 676, 691 (2003), citing *Jaro v. Court of Appeals*, 427 Phil. 532, 547 (2002) and *Piglas Kamao (Sari-Sari Chapter) v. National Labor Relations Commission*, 409 Phil. 735, 737 (2001); and *Uy v. Bureau of Internal Revenue*, 397 Phil. 892, 902 (2000).

[20] *Sulpicio Lines, Inc. v. First Lepanto-Taisho Insurance Corporation*, G.R. No. 140349, 29 June 2005, 462 SCRA 125, 133; *Jaro v. Court of Appeals*, *id.*

[21] *Quintano v. National Labor Relations Commission*, G.R. No. 144517, 13 December 2004, 446 SCRA 193, 204.

[22] d. When a petition does not have the complete annexes or the required number of copies, the Chief of the Judicial Records Division shall require the petitioner to complete the annexes or file the necessary number of copies of the petition before docketing the case. Pleadings improperly filed in court shall be returned to the sender by the Chief of the Judicial Records Division.

[23] Section 3(d), Rule 3, Revised Internal Rules of the Court of Appeals.

Assuming *arguendo* that the required pleadings and other material documents are considered submitted within the 15-day reglementary period, or that the failure to attach the same was not attributable to petitioners, respondent counters that the aforementioned pleadings submitted by petitioners to the Court of Appeals in the Motion for Reconsideration were not duly certified by the RTC Clerk of Court, in violation of Section 2, Rule 42 of the 1997 Rules of Civil Procedure. Respondent contends that petitioners violated anew formal and procedural requirements for failure to comply with the provisions of Section 4(d), Rule 45 of the 1997 Rules of Civil Procedure, claiming that the Petition for Review, Motion for Reconsideration, other Material Documents, and Comment submitted to this Court were neither duplicate originals nor duly certified true copies.

Perusal of the documents and pleadings submitted by petitioners to the Court of Appeals in their Motion for Reconsideration reveals that the annexed pleadings thereto were not duly certified true copies. Section 2(d), Rule 42 of the 1997 Rules of Civil Procedure requires that petitions for review from the decision of the Regional Trial Courts must be accompanied by *clearly legible duplicate originals* OR *true copies of the judgments or orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court,* the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition. Evidently, only the judgments or orders of the lower courts must be duplicate originals or be duly certified true copies. Moreover, the phrases "duplicate originals" and "true copies" of the judgments or orders of both lower courts, being separated by the disjunctive word "OR" indicate that only the latter are required to be certified correct by the clerk of court.

In an *En Banc* Decision promulgated on 3 February 2000, this Court declared that Rule 42, governing petitions for review from the RTC to the Court of Appeals, requires that only the judgments or final orders of the lower courts need to be certified

true copies or duplicate originals.[24] This rule was reiterated in *Cusi-Hernandez v. Diaz*[25] emphasizing that supporting documents of the petition are not required to be certified true copies. *Cusi-Hernandez v. Diaz* stressed:

> In *Cadayona v. CA*, the Court interpreted the requirement under Section 6(c) of Rule 43, which was similar to Section 2(d) of Rule 42, and held that "we do not construe the above-quoted section as imposing the requirement that all supporting papers accompanying the petition should be certified true copies."

It is sufficient that the assailed judgment, order or resolution be a certified true copy. Jurisprudence[26] on this matter has consistently held that in petitions for review as governed under Rule 42 of the Revised Rules of Court, only judgments or final orders of the lower courts need to be certified true copies or duplicate originals.

Respondent claims that the attached 27 August 2004 Resolution, the Petition for Review, Motion for Reconsideration, and Comment are neither duplicate nor certified true copies, allegedly in violation of Section 4(d), Rule 45 of the 1997 Rules of Civil Procedure. While it is true that the attached *pleadings*[27] were not duly certified copies thereof, these, however, were not required to be duly certified.

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[24] *Cadayona v. Court of Appeals*, 381 Phil. 619, 626 (2000).

[25] 390 Phil. 1245, 1251 (2000).

[26] *Cadayona v. Court of Appeals*, *supra* note 24; *Cusi-Hernandez v. Diaz, id.*; *Padilla, Jr. v. Alipio, supra* note 18; *Garcia v. Philippine Airlines, Inc.*, G.R. 160798, 8 June 2005, 459 SCRA 769, 781.

[27] Petition for Review before the Court of Appeals:

Certified copies of the Decisions, Resolutions and Order

Petition for Review on *Certiorari*:

CA Resolution dated 27 August 2004, duplicate original

CA Resolution dated 12 April 2004, certified true copy

MTC Decision dated 16 January 2004, duplicate original

RTC Decision dated 16 April 2004, certified true copy

RTC Order denying the MR, certified true copy

Section 4(d), Rule 45 of the 1997 Rules of Civil Procedure, on appeals by Petition for Review on *Certiorari* to this Court, is worded as follows:

> 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 x x x; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; x x x.

Section 4(d), Rule 45, is clearly worded. A Petition for Review on *Certiorari* filed before this Court *via* Rule 45 must contain a certified true copy or duplicate original of the assailed decision, final order or judgment.[28] It is not mandated under the aforesaid rule that other pleadings attached thereto be duplicate originals or be duly certified copies thereof.

As to respondent's allegation that petitioners failed to comply with Section 13 of Rule 13 of the 1997 Rules of Procedure, when the Petition for Review filed before the Court of Appeals did not include the Affidavit of Service/Proof of Service, this Court finds there was substantial compliance by petitioners with the aforementioned rule. Section 13 provides:

> Section 13. *Proof of service*. Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

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[28] Section 4(d), Rule 45, 1997 Rules of Civil Procedure.

Counsel for petitioners attached an explanation to the Petition for Review indicating that the filing thereof was done by registered mail citing impracticability due to the distance between Iloilo City where counsel of petitioners holds office and the City of Manila where the Court of Appeals is located. The Petition for Review also shows service on respondent's counsel was made personally as evidenced by respondent counsel's signature[29] thereon dated 3 August 2004, which purports to be a written admission of the party served as required under Section 13, Rule 13. The RTC was also served as evidenced by a signature in representation of the RTC dated 3 August 2004.[30]

With respect to allegations that petitioners instituted the instant appeal in order to delay the execution of the judgment in the Ejectment case, there is nothing in the record that shows any deliberate intent on the part of petitioners to subvert or delay the final resolution of this case. In fact, petitioners immediately submitted the documents and pleadings with its Motion for Reconsideration upon finding out that the Court of Appeals dismissed their Petition for Review due to deficiency in form and substance and for failure to submit the pleadings enumerated in the Court of Appeals Resolution dated 27 August 2004.

As above stated, the Court of Appeals dismissed the Petition for Review citing as grounds deficiency in form and substance for failure to attach copies of pleadings and other material parts of the record. The Petition for Review merely included the MTC and RTC Decisions ruling on the Ejectment case as attachments whereas the other pleadings subsequently submitted pursuant to the 27 August 2004 Court of Appeals Resolution were annexed to the Motion for Reconsideration. This Court notes that the Court of Appeals, in using also as basis deficiency in "substance," had no basis therefor considering that the assailed Resolutions did not include a discussion on the merits of the case. The dismissal merely cited the alleged procedural lapses, *i.e.*, failure to submit the pleadings and material portions of the record.

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[29] CA *rollo*, p. 32.

[30] *Id*. at 32.

One final note. The law abhors technicalities that impede the cause of justice. The primary function of procedural rules is to pursue and not defeat the ends of justice. The circumstances of this case present compelling reasons to disregard petitioners' procedural lapses and to allow them to properly present their case in order to pursue the ends of justice. As revealed by preceding events, petitioners have, at the very least, substantially complied with the procedural requirements embodied in Rule 42 and Rule 45 of the 1997 Rules of Civil Procedure. The right to appeal is a statutory right and one who seeks to avail of it must comply with the statute or rules. At the same time, the provisions of the Rules of Court under Section 6, Rule 1 thereof states that the Rules "shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding." It has been held that courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. We therefore find that this ruling, as applied in the instant case, is more in consonance with the enshrined policy that the ends of justice be served. The policy of courts is to encourage the full adjudication of the merits of an appeal.[31] The Court is fully aware that procedural rules are not to be belittled or simply disregarded precisely because these prescribed procedures exist to insure an orderly and speedy administration of justice. However, it is equally true that "while the right to appeal is a statutory, not a natural right, nonetheless, it is an essential part of our judicial system; and courts should proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party-litigant has the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities."[32] Dismissal of cases purely on technical grounds is frowned upon and the rules of procedure ought not to be applied in a very rigid, technical

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[31] See *Piglas Kamao, (Sari-Sari Chapter) v. National Labor Relations Commission*, *supra* note 19, citing *Magsaysay Lines v. Court of Appeals*, 329 Phil. 310, 322-323 (1996); *Siguenza v. Court of Appeals*, G.R. No. L-44050, 16 July 1985, 137 SCRA 570, 576.

[32] *Padilla, Jr. v. Alipio, supra* note 18.

sense for they are adopted to help secure, not override, substantial justice, and not defeat their very ends. We stress that cases should be determined on the merits, after all parties have been given full opportunity to ventilate their causes and defenses, rather than on technicalities or procedural imperfections.

WHEREFORE, premises considered, the instant Petition for Review is hereby *GRANTED*. The challenged Resolutions dated 27 August 2004 and 12 April 2006 of the Court of Appeals providing for the outright dismissal on grounds of deficiency in form and substance of the Petition for Review filed by petitioners in CA-G.R. SP No. 85755, are herein *REVERSED* and *SET ASIDE*. The aforementioned case *"Spouses Henry & the Late Belen Lanaria, et al. v. Francisco M. Planta,"* docketed as CA-G.R. SP No. 85755, is *REMANDED* to the Court of Appeals for further proceedings. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176667. November 22, 2007]

ERICSSON TELECOMMUNICATIONS, INC., *petitioner, vs.* **CITY OF PASIG, represented by its City Mayor, Hon. Vicente P. Eusebio, *et al.*,**[*] *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION AND CERTIFICATION AGAINST NON-FORUM SHOPPING;

[*] Only Pasig City is named as respondent in the body of herein Petition for Review, pp. 1-2; *rollo*, pp. 17-18.

WHEN SUBSTANTIAL COMPLIANCE ALLOWED. — Time and again, the Court, under special circumstances and for compelling reasons, sanctioned substantial compliance with the rule on the submission of verification and certification against non-forum shopping. In *General Milling Corporation v. National Labor Relations Commission*, the Court deemed as substantial compliance the belated attempt of the petitioner to attach to the motion for reconsideration the board resolution/ secretary's certificate, stating that there was no attempt on the part of the petitioner to ignore the prescribed procedural requirements. In *Shipside Incorporated v. Court of Appeals*, the authority of the petitioner's resident manager to sign the certification against forum shopping was submitted to the CA only after the latter dismissed the petition. The Court considered the merits of the case and the fact that the petitioner subsequently submitted a secretary's certificate, as special circumstances or compelling reasons that justify tempering the requirements in regard to the certificate of non-forum shopping. There were also cases where there was complete non-compliance with the rule on certification against forum shopping and yet the Court proceeded to decide the case on the merits in order to serve the ends of substantial justice.

2. **ID.; ID.; APPEALS; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. —** There is a question of law when the doubt or difference is on what the law is on a certain state of facts. On the other hand, there is a question of fact when the doubt or difference is on the truth or falsity of the facts alleged. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

3. **ID.; ID.; ID.; DISMISSAL OF APPEAL; WHEN MAY BE DONE *MOTU PROPRIO*. —** Section 2(c), Rule 41 of the Rules of

Court provides that in all cases where questions of law are raised or involved, the appeal shall be to this Court by petition for review on *certiorari* under Rule 45. Thus, as correctly pointed out by petitioner, the appeal before the CA should have been dismissed, pursuant to Section 5(f), Rule 56 of the Rules of Court, which provides: Sec. 5. *Grounds for dismissal of appeal*.- The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds: x x x x (f) Error in the choice or mode of appeal. x x x x

4. TAXATION; GROSS RECEIPTS, EXPLAINED. — The law is clear. *Gross receipts* include money or its equivalent actually or constructively received in consideration of services rendered or articles sold, exchanged or leased, whether actual or constructive. In *Commissioner of Internal Revenue v. Bank of Commerce*, the Court interpreted *gross receipts* as including those which were actually or constructively received, *viz.*: **Actual receipt of interest income is not limited to physical receipt. Actual receipt may either be physical receipt or constructive receipt.** When the depository bank withholds the final tax to pay the tax liability of the lending bank, there is prior to the withholding a constructive receipt by the lending bank of the amount withheld. From the amount constructively received by the lending bank, the depository bank deducts the final withholding tax and remits it to the government for the account of the lending bank. *Thus, the interest income actually received by the lending bank, both physically and constructively, is the net interest plus the amount withheld as final tax.* The concept of a withholding tax on income *obviously and necessarily* implies that the amount of the tax withheld comes from the income earned by the taxpayer. Since the amount of the tax withheld constitutes income earned by the taxpayer, then that amount manifestly forms part of the taxpayer's gross receipts. Because the amount withheld belongs to the taxpayer, he can transfer its ownership to the government in payment of his tax liability. The amount withheld indubitably comes from income of the taxpayer, and thus forms part of his gross receipts. Further elaboration was made by the Court in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, in this wise: Receipt of income may be actual or constructive. We have held that the withholding process results in the taxpayer's constructive receipt of the income withheld,

to wit: By analogy, we apply to the receipt of income the rules on *actual* and *constructive* possession provided in Articles 531 and 532 of our Civil Code. Under Article 531: "Possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right." Article 532 states: "Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by any person without any power whatever; but in the last case, the possession shall not be considered as acquired until the person in whose name the act of possession was executed has ratified the same, without prejudice to the juridical consequences of *negotiorum gestio* in a proper case." The last means of acquiring possession under Article 531 refers to juridical acts—the acquisition of possession by sufficient title—to which the law gives the force of acts of possession. Respondent argues that only items of income *actually* received should be included in its gross receipts. It claims that since the amount had already been withheld at source, it did not have *actual* receipt thereof. We clarify. Article 531 of the Civil Code clearly provides that the acquisition of the right of possession is through the proper acts and legal formalities established therefor. The withholding process is one such act. There may not be *actual* receipt of the income withheld; however, as provided for in Article 532, possession by any person without any power whatsoever shall be considered as acquired when ratified by the person in whose name the act of possession is executed. In our withholding tax system, possession is acquired by the payor as the withholding agent of the government, because the taxpayer ratifies the very act of possession for the government. There is thus *constructive* receipt. The processes of bookkeeping and accounting for interest on deposits and yield on deposit substitutes that are subjected to FWT are indeed—for legal purposes—tantamount to delivery, receipt or remittance. Revenue Regulations No. 16-2005 dated September 1, 2005 defined and gave examples of "constructive receipt", to wit: SEC. 4. 108-4. *Definition of Gross Receipts*. — x x x ***"Constructive receipt"*** occurs when the money consideration or its equivalent is placed at the control of the person who rendered the service without restrictions by the payor. The following are examples of constructive receipts: (1) deposit in banks which are made

available to the seller of services without restrictions; (2) issuance by the debtor of a notice to offset any debt or obligation and acceptance thereof by the seller as payment for services rendered; and (3) transfer of the amounts retained by the payor to the account of the contractor. There is, therefore, constructive receipt, when the consideration for the articles sold, exchanged or leased, or the services rendered has already been placed under the control of the person who sold the goods or rendered the services without any restriction by the payor. In contrast, *gross revenue* covers money or its equivalent actually or constructively received, **including the value of services rendered or articles sold, exchanged or leased, the payment of which is yet to be received.** This is in consonance with the International Financial Reporting Standards, which defines *revenue* as the gross inflow of economic benefits (cash, **receivables,** and other assets) arising from the ordinary operating activities of an enterprise (such as sales of goods, sales of services, interest, royalties, and dividends), which is measured at the fair value of the consideration received or **receivable.**

5. **ID.; DOUBLE TAXATION; EXEMPLIFIED. —** The imposition of local business tax based on petitioner's gross revenue will inevitably result in the constitutionally proscribed double taxation – taxing of the same person twice by the same jurisdiction for the same thing – inasmuch as petitioner's revenue or income for a taxable year will definitely include its gross receipts already reported during the previous year and for which local business tax has already been paid. Thus, respondent committed a palpable error when it assessed petitioner's local business tax based on its gross revenue as reported in its audited financial statements, as Section 143 of the Local Government Code and Section 22(e) of the Pasig Revenue Code clearly provide that the tax should be computed based on *gross receipts*.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo and Ongsiako for petitioner.
Carlos C. Abesamis for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Ericsson Telecommunications, Inc. (petitioner), a corporation with principal office in Pasig City, is engaged in the design, engineering, and marketing of telecommunication facilities/system. In an Assessment Notice dated October 25, 2000 issued by the City Treasurer of Pasig City, petitioner was assessed a business tax deficiency for the years 1998 and 1999 amounting to ₱9,466,885.00 and ₱4,993,682.00, respectively, based on its gross revenues as reported in its audited financial statements for the years 1997 and 1998. Petitioner filed a Protest dated December 21, 2000, claiming that the computation of the local business tax should be based on *gross receipts* and not on gross revenue.

The City of Pasig (respondent) issued another Notice of Assessment to petitioner on November 19, 2001, this time based on business tax deficiencies for the years 2000 and 2001, amounting to ₱4,665,775.51 and ₱4,710,242.93, respectively, based on its gross revenues for the years 1999 and 2000. Again, petitioner filed a Protest on January 21, 2002, reiterating its position that the local business tax should be based on *gross receipts* and not gross revenue.

Respondent denied petitioner's protest and gave the latter 30 days within which to appeal the denial. This prompted petitioner to file a petition for review[1] with the Regional Trial Court (RTC) of Pasig, Branch 168, praying for the annulment and cancellation of petitioner's deficiency local business taxes totaling ₱17,262,205.66.

Respondent and its City Treasurer filed a motion to dismiss on the grounds that the court had no jurisdiction over the subject matter and that petitioner had no legal capacity to sue. The

[1] Entitled "*Ericsson Telecommunications, Inc., Plaintiff, v. Pasig City thru its Mayor, Hon. Soledad Eusebio and the City Treasurer, Hon. Crispino Salvador, Defendants*."

RTC denied the motion in an Order dated December 3, 2002 due to respondents' failure to include a notice of hearing. Thereafter, the RTC declared respondents in default and allowed petitioner to present evidence *ex-parte*.

In a Decision[2] dated March 8, 2004, the RTC canceled and set aside the assessments made by respondent and its City Treasurer. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and ordering defendants to CANCEL and SET ASIDE Assessment Notice dated October 25, 2000 and Notice of Assessment dated November 19, 2001.

SO ORDERED.[3]

On appeal, the Court of Appeals (CA) rendered its Decision[4] dated November 20, 2006, the dispositive portion of which reads:

WHEREFORE, the decision appealed from is hereby ordered SET ASIDE and a new one entered DISMISSING the plaintiff/appellee's complaint WITHOUT PREJUDICE.

SO ORDERED.[5]

The CA sustained respondent's claim that the petition filed with the RTC should have been dismissed due to petitioner's failure to show that Atty. Maria Theresa B. Ramos (Atty. Ramos), petitioner's Manager for Tax and Legal Affairs and the person who signed the Verification and Certification of Non-Forum Shopping, was duly authorized by the Board of Directors.

Its motion for reconsideration having been denied in a Resolution[6] dated February 9, 2007, petitioner now comes before

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[2] *Rollo*, pp. 60-67.

[3] *Rollo*, p. 67.

[4] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Rosalinda Asuncion-Vicente and Ramon M. Bato, Jr., concurring; *id*. at 6-13.

[5] *Id*. at 12-13.

[6] *Id*. at 14.

the Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, on the following grounds:

(1) THE COURT OF APPEALS ERRED IN DISMISSING THE CASE FOR LACK OF SHOWING THAT THE SIGNATORY OF THE VERIFICATION/ CERTIFICATION IS NOT SPECIFICALLY AUTHORIZED FOR AND IN BEHALF OF PETITIONER.

(2) THE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO RESPONDENT'S APPEAL, CONSIDERING THAT IT HAS NO JURISDICTION OVER THE SAME, THE MATTERS TO BE RESOLVED BEING PURE QUESTIONS OF LAW, JURISDICTION OVER WHICH IS VESTED ONLY WITH THIS HONORABLE COURT.

(3) ASSUMING THE COURT OF APPEALS HAS JURISDICTION OVER RESPONDENT'S APPEAL, SAID COURT ERRED IN NOT DECIDING ON THE MERITS OF THE CASE FOR THE SPEEDY DISPOSITION THEREOF, CONSIDERING THAT THE DEFICIENCY LOCAL BUSINESS TAX ASSESSMENTS ISSUED BY RESPONDENT ARE CLEARLY INVALID AND CONTRARY TO THE PROVISIONS OF THE PASIG REVENUE CODE AND THE LOCAL GOVERNMENT CODE.[7]

After receipt by the Court of respondent's complaint and petitioner's reply, the petition is given due course and considered ready for decision without the need of memoranda from the parties.

The Court grants the petition.

First, the complaint filed by petitioner with the RTC was erroneously dismissed by the CA for failure of petitioner to show that its Manager for Tax and Legal Affairs, Atty. Ramos, was authorized by the Board of Directors to sign the Verification and Certification of Non-Forum Shopping in behalf of the petitioner corporation.

Time and again, the Court, under special circumstances and for compelling reasons, sanctioned substantial compliance

[7] *Rollo*, pp. 24-25.

with the rule on the submission of verification and certification against non-forum shopping.[8]

In *General Milling Corporation v. National Labor Relations Commission*,[9] the Court deemed as substantial compliance the belated attempt of the petitioner to attach to the motion for reconsideration the board resolution/ secretary's certificate, stating that there was no attempt on the part of the petitioner to ignore the prescribed procedural requirements.

In *Shipside Incorporated v. Court of Appeals*,[10] the authority of the petitioner's resident manager to sign the certification against forum shopping was submitted to the CA only after the latter dismissed the petition. The Court considered the merits of the case and the fact that the petitioner subsequently submitted a secretary's certificate, as special circumstances or compelling reasons that justify tempering the requirements in regard to the certificate of non-forum shopping.[11]

There were also cases where there was complete non-compliance with the rule on certification against forum shopping and yet the Court proceeded to decide the case on the merits in order to serve the ends of substantial justice.[12]

In the present case, petitioner submitted a Secretary's Certificate signed on May 6, 2002, whereby Atty. Ramos was authorized to file a protest at the local government level and to "sign, execute and deliver any and all papers, documents and pleadings relative to the said protest and to do and perform

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[8] *Estribillo v. Department of Agrarian Reform*, G.R. No. 159674, June 30, 2006, 494 SCRA 218, 232; *General Milling Corporation v. National Labor Relations Commission*, 442 Phil. 425, 427 (2002); *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981, 995 (2001).

[9] *Supra* note 8.

[10] *Supra* note 8, at 995.

[11] *Id*. at 996.

[12] *De Guia v. De Guia*, 408 Phil. 399, 408 (2001); *Damasco v. National Labor Relations Commission,* 400 Phil. 568, 581 (2000).

all such acts and things as may be necessary to effect the foregoing."[13]

Applying the foregoing jurisprudence, the subsequent submission of the Secretary's Certificate and the substantial merits of the petition, which will be shown forthwith, justify a relaxation of the rule.

Second, the CA should have dismissed the appeal of respondent as it has no jurisdiction over the case since the appeal involves a pure question of law. The CA seriously erred in ruling that the appeal involves a mixed question of law and fact necessitating an examination and evaluation of the audited financial statements and other documents in order to determine petitioner's tax base.

There is a question of law when the doubt or difference is on what the law is on a certain state of facts. On the other hand, there is a question of fact when the doubt or difference is on the truth or falsity of the facts alleged.[14] For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[15]

There is no dispute as to the veracity of the facts involved in the present case. While there is an issue as to the correct amount of local business tax to be paid by petitioner, its

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[13] *Rollo*, p. 68.

[14] *Pajuyo v. Court of Appeals*, G.R. No. 146364, June 3, 2004, 430 SCRA 492, 506.

[15] *Velayo-Fong v. Velayo*, G.R. No. 155488, December 6, 2006, 510 SCRA 320, 329-330.

determination will not involve a look into petitioner's audited financial statements or documents, as these are not disputed; rather, petitioner's correct tax liability will be ascertained through an interpretation of the pertinent tax laws, *i.e.*, whether the local business tax, as imposed by the Pasig City Revenue Code (Ordinance No. 25-92) and the Local Government Code of 1991, should be based on *gross receipts*, and not on gross revenue which respondent relied on in computing petitioner's local business tax deficiency. This, clearly, is a question of law, and beyond the jurisdiction of the CA.

Section 2(c), Rule 41 of the Rules of Court provides that in all cases where questions of law are raised or involved, the appeal shall be to this Court by petition for review on *certiorari* under Rule 45.

Thus, as correctly pointed out by petitioner, the appeal before the CA should have been dismissed, pursuant to Section 5(f), Rule 56 of the Rules of Court, which provides:

Sec. 5. *Grounds for dismissal of appeal*.- The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

x x x x x x x x x

(f) Error in the choice or mode of appeal.

x x x x x x x x x

Third, the dismissal of the appeal, in effect, would have sustained the RTC Decision ordering respondent to cancel the Assessment Notices issued by respondent, and therefore, would have rendered moot and academic the issue of whether the local business tax on contractors should be based on *gross receipts* or gross revenues.

However, the higher interest of substantial justice dictates that this Court should resolve the same, to evade further repetition of erroneous interpretation of the law,[16] for the guidance of the bench and bar.

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[16] See *Velayo-Fong v. Velayo*, *supra* note 15; *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736, 757.

As earlier stated, the substantive issue in this case is whether the local business tax on contractors should be based on *gross receipts* or gross revenue.

Respondent assessed deficiency local business taxes on petitioner based on the latter's gross revenue as reported in its financial statements, arguing that *gross receipts* is synonymous with gross earnings/revenue, which, in turn, includes uncollected earnings. Petitioner, however, contends that only the portion of the revenues which were actually and constructively received should be considered in determining its tax base.

Respondent is authorized to levy business taxes under Section 143 in relation to Section 151 of the Local Government Code.

Insofar as petitioner is concerned, the applicable provision is subsection (e), Section 143 of the same Code covering contractors and other independent contractors, to wit:

SEC. 143. *Tax on Business*. - The municipality may impose taxes on the following businesses:

x x x x x x x x x

(e) On contractors and other independent contractors, in accordance with the following schedule:

With **gross receipts** for the preceding calendar year in the amount of:	Amount of Tax Per Annum

x x x x x x x x x

(Emphasis supplied)

The above provision specifically refers to *gross receipts* which is defined under Section 131 of the Local Government Code, as follows:

x x x x x x x x x

(n) *"Gross Sales or Receipts"* include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and the deposits or advance payments actually or

constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT);

x x x x x x x x x

The law is clear. *Gross receipts* include money or its equivalent actually or constructively received in consideration of services rendered or articles sold, exchanged or leased, whether actual or constructive.

In *Commissioner of Internal Revenue v. Bank of Commerce*,[17] the Court interpreted *gross receipts* as including those which were actually or constructively received, *viz.*:

Actual receipt of interest income is not limited to physical receipt. Actual receipt may either be physical receipt or constructive receipt. When the depository bank withholds the final tax to pay the tax liability of the lending bank, there is prior to the withholding a constructive receipt by the lending bank of the amount withheld. From the amount constructively received by the lending bank, the depository bank deducts the final withholding tax and remits it to the government for the account of the lending bank. *Thus, the interest income actually received by the lending bank, both physically and constructively, is the net interest plus the amount withheld as final tax.*

The concept of a withholding tax on income *obviously and necessarily* implies that the amount of the tax withheld comes from the income earned by the taxpayer. Since the amount of the tax withheld constitutes income earned by the taxpayer, then that amount manifestly forms part of the taxpayer's gross receipts. Because the amount withheld belongs to the taxpayer, he can transfer its ownership to the government in payment of his tax liability. The amount withheld indubitably comes from income of the taxpayer, and thus forms part of his gross receipts. (Emphasis supplied)

Further elaboration was made by the Court in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[18] in this wise:

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[17] G.R. No. 149636, June 8, 2005, 459 SCRA 638, 653.

[18] G.R. No. 147375, June 26, 2006, 492 SCRA 551.

Receipt of income may be actual or constructive. We have held that the withholding process results in the taxpayer's constructive receipt of the income withheld, to wit:

By analogy, we apply to the receipt of income the rules on *actual* and *constructive* possession provided in Articles 531 and 532 of our Civil Code.

Under Article 531:

> "Possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right."

Article 532 states:

> "Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by any person without any power whatever; but in the last case, the possession shall not be considered as acquired until the person in whose name the act of possession was executed has ratified the same, without prejudice to the juridical consequences of *negotiorum gestio* in a proper case."

> The last means of acquiring possession under Article 531 refers to juridical acts—the acquisition of possession by sufficient title—to which the law gives the force of acts of possession. Respondent argues that only items of income *actually* received should be included in its gross receipts. It claims that since the amount had already been withheld at source, it did not have *actual* receipt thereof.

> We clarify. Article 531 of the Civil Code clearly provides that the acquisition of the right of possession is through the proper acts and legal formalities established therefor. The withholding process is one such act. There may not be *actual* receipt of the income withheld; however, as provided for in Article 532, possession by any person without any power whatsoever shall be considered as acquired when ratified by the person in whose name the act of possession is executed.

> In our withholding tax system, possession is acquired by the payor as the withholding agent of the government, because the taxpayer ratifies the very act of possession for the government. There is thus *constructive* receipt. The processes

of bookkeeping and accounting for interest on deposits and yield on deposit substitutes that are subjected to FWT are indeed—for legal purposes—tantamount to delivery, receipt or remittance.[19]

Revenue Regulations No. 16-2005 dated September 1, 2005[20] defined and gave examples of "constructive receipt," to wit:

SEC. 4. 108-4. *Definition of Gross Receipts*. — x x x

"***Constructive receipt***" occurs when the money consideration or its equivalent is placed at the control of the person who rendered the service without restrictions by the payor. The following are examples of constructive receipts:

(1) deposit in banks which are made available to the seller of services without restrictions;

(2) issuance by the debtor of a notice to offset any debt or obligation and acceptance thereof by the seller as payment for services rendered; and

(3) transfer of the amounts retained by the payor to the account of the contractor.

There is, therefore, constructive receipt, when the consideration for the articles sold, exchanged or leased, or the services rendered has already been placed under the control of the person who sold the goods or rendered the services without any restriction by the payor.

In contrast, *gross revenue* covers money or its equivalent actually or constructively received, **including the value of services rendered or articles sold, exchanged or leased, the payment of which is yet to be received**. This is in consonance with the International Financial Reporting Standards,[21] which defines *revenue* as the gross inflow of

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[19] *Id*. at 569-570.

[20] Consolidated Value-Added Tax Regulations of 2005.

[21] In March 2005, the Accounting Standards Council approved the issuance of International Accounting Standards 18, *Revenue*, issued by the International Accounting Standards Board as a Philippine Financial Reporting

economic benefits (cash, **receivables**, and other assets) arising from the ordinary operating activities of an enterprise (such as sales of goods, sales of services, interest, royalties, and dividends),[22] which is measured at the fair value of the consideration received or **receivable**.[23]

As aptly stated by the RTC:

> **"<u>[R]evenue</u>** from services rendered is recognized when services have been performed and are billable." It is "recorded at the amount received or **<u>expected to be received</u>**." (Section E [17] of the Statements of Financial Accounting Standards No. 1).[24]

In petitioner's case, its audited financial statements reflect income or revenue which accrued to it during the taxable period although not yet actually or constructively received or paid. This is because petitioner uses the accrual method of accounting, where income is reportable when all the events have occurred that fix the taxpayer's right to receive the income, and the amount can be determined with reasonable accuracy; the right to receive income, and not the actual receipt, determines when to include the amount in gross income.[25]

The imposition of local business tax based on petitioner's gross revenue will inevitably result in the constitutionally proscribed double taxation – taxing of the same person twice by the same jurisdiction for the same thing[26] – inasmuch as petitioner's revenue or income for a taxable year will definitely

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Standard, consisting of the Philippine Financial Reporting Standards corresponding to the International Financial Reporting Standards, the Philippine Accounting Standards corresponding to International Accounting Standards, and Interpretations.

[22] International Accounting Standards 18.7.

[23] International Accounting Standards 18.9.

[24] *Rollo*, p. 66.

[25] *Filipinas Synthetic Fiber Corporation v. Court of Appeals*, 374 Phil. 835, 842 (1999).

[26] *Commissioner of Internal Revenue v. Solidbank Corporation*, 462 Phil. 96, 133 (2003).

include its gross receipts already reported during the previous year and for which local business tax has already been paid.

Thus, respondent committed a palpable error when it assessed petitioner's local business tax based on its gross revenue as reported in its audited financial statements, as Section 143 of the Local Government Code and Section 22(e) of the Pasig Revenue Code clearly provide that the tax should be computed based on *gross receipts*.

WHEREFORE, the petition is *GRANTED*. The Decision dated November 20, 2006 and Resolution dated February 9, 2007 issued by the Court of Appeals are *SET ASIDE*, and the Decision dated March 8, 2004 rendered by the Regional Trial Court of Pasig, Branch 168 is *REINSTATED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177150. November 22, 2007]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILLIAM CHING,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; FACTS REQUIRED, EXPLAINED. —** An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. To be considered as valid and sufficient, an information must state the name of the accused; the designation of the offense given by the statute; the acts or

omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. The purpose of the requirement for the information's validity and sufficiency is to enable the accused to suitably prepare for his defense since he is presumed to have no independent knowledge of the facts that constitute the offense.

2. **ID.; ID.; ID.; ID.; FAILURE TO SPECIFY THE EXACT DATES OR TIMES WHEN THE RAPES OCCURRED DOES NOT *IPSO FACTO* MAKE THE INFORMATION DEFECTIVE ON ITS FACE; RATIONALE. —** With respect to the date of the commission of the offense, Section 11, Rule 110 of the Revised Rules of Criminal Procedure specifically provides that it is not necessary to state in the information the precise date the offense was committed except when it is a material ingredient of the offense, and that the offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. In rape cases, failure to specify the exact dates or times when the rapes occurred does not *ipso facto* make the information defective on its face. The reason is obvious. The date or time of the commission of rape is not a material ingredient of the said crime because the *gravamen* of rape is carnal knowledge of a woman through force and intimidation. The precise time when the rape took place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.

3. **CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; MINORITY AND RELATIONSHIP MUST BE ALLEGED IN THE COMPLAINT OR INFORMATION.—** Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, was the law applicable in the year **1996,** the time the first rape was committed. On the other hand, Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, was the law pertinent to the two rapes committed in **May 1998.** Both laws state that the death penalty shall be imposed if the rape victim is a minor and the offender is a parent. The qualifying circumstances of minority of the victim and the latter's relationship with the offender must be alleged in the complaint

or information and proved during the trial to warrant the imposition of the death penalty.

4. **ID.; ID.; ID.; MINORITY; EVIDENCE ALLOWED. —** As a rule, the best evidence to prove the age of the offended party for the purpose of appreciating the qualifying circumstance of minority is an original or certified true copy of the certificate of live birth of such party. However, in the absence of a certificate of live birth, similar authentic documents, such as a baptismal certificate, which show the date of birth of the victim would suffice to prove age.

5. **ID.; ID.; CIVIL LIABILITY; AWARD OF DAMAGES, PROPER. —** The award of civil indemnity in the amount of ₱75,000.00 is the correct amount to be awarded if the crime is qualified by circumstances that warrant the imposition of the death penalty. With respect to moral damages, the amount of ₱75,000.00 is fitting even though it was not pleaded or its basis established by evidence, pursuant to prevailing jurisprudence. Further, the award of exemplary damages in the amount of ₱25,000.00 is authorized due to the presence of the qualifying circumstances of minority and relationship.

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 of the Court of Appeals in CA-G.R. CR-HC No. 01798 dated 3 August 2006,[1] affirming with modifications the Decision of the Quezon City Regional Trial Court (RTC), Branch 107, in Criminal Cases No. Q-99-870**53**, Q-99-870**54,** and Q-99-870**55** dated 4 August 2004,[2] convicting

[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin, concurring; *rollo,* pp. 3-56.

[2] Penned by Judge Rosalina L. Luna-Pison; CA *rollo*, pp. 27-57.

accused-appellant William Ching of three counts of rape committed against his minor daughter, AAA.[3]

The factual antecedents are as follows:

On 1 October 1999, three separate informations[4] were filed with the RTC against appellant for qualified rape allegedly committed as follows:

CRIMINAL CASE NO. Q-99-870**53**

That in or about the month of May, 1998, in XXX, Philippines, the said accused by means of force and intimidation, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

CRIMINAL CASE NO. Q-99-870**54**

That in or about the month of May, 1998, in XXX, Philippines, the said accused by means of force and intimidation, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

CRIMINAL CASE NO. Q-99-870**55**

That in or about the year of 1996, in XXX, Philippines, the said accused by means of force and intimidation, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

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[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. (*People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 421-426.)

[4] CA *rollo*, pp. 9-14.

Subsequently, these informations were consolidated for joint trial. When arraigned on 6 March 2000, appellant, with the assistance of counsel *de oficio*, pleaded "Not Guilty" to each of the charges in the informations.[5] Thereafter, trial on the merits ensued.

The prosecution presented as witnesses AAA, AAA's mother, BBB, PO3 Jesus Deduque (PO3 Deduque), PO3 Melba Baldeswis (PO3 Baldeswis), and Dr. Angel Cordero (Dr. Cordero). Their testimonies, taken together, present the following narrative:

AAA is the third child in a brood of eight children born to appellant and BBB. She was 12 years of age in the year 1996 when the alleged incidents of rape took place.

Sometime in the **year 1996**, at around 5:00 in the afternoon, she and her younger siblings, namely, CCC, DDD, EEE and FFF, were left at their house with appellant, while BBB was at the market buying food. Appellant told CCC, DDD and EEE to play outside the house. AAA was then cooking rice when appellant instructed her to go inside the bedroom.

When AAA was already inside the room, appellant ordered her to lie down on the cemented floor. When she did, appellant placed himself on top of her and removed her shorts and panty. She screamed *"Tulungan po ninyo ako!"* and resisted, but to no avail because appellant pressed his feet against hers. Appellant then removed his shorts and brief and thereafter inserted his penis into her vagina. AAA felt pain but she could not move because appellant held both her hands above her head. Appellant told her, *"Wag kang maingay, papatayin kita."*

After satisfying his lust, appellant stood up and left the bedroom. AAA proceeded to the house of BBB's *kumare,* Aling Leony, to forget and recover from the incident. She did not inform BBB of the incident because of her fear that appellant would make good his threats to kill her.

For the second time, one evening of **May 1998**, AAA and her younger siblings were sleeping on the cemented floor inside

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[5] Records, p. 28.

the bedroom when appellant entered and lay down beside her. Appellant pulled her left arm and made her lie in a straight body position. He removed his shorts and placed himself on top of her. He then pulled down her shorts and panty, and again inserted his penis into her vagina. Despite the pain, AAA did not shout because appellant threatened to kill her. Subsequently, appellant stood up and reiterated his threat to kill her if she would tell anyone what happened.

For the third time, in the evening of **May 1998**, while AAA and her younger siblings were sleeping inside the bedroom, appellant lay down beside her. Appellant pulled her left arm and made her face him. Appellant placed himself on top of her and removed her shorts and panty. Thereafter, he had carnal knowledge of her. She did not shout out of fear. Afterwards, appellant stood up and warned her not to tell anyone of the incident or he would kill her.

From **June 1998** to **February 1999**, appellant was arrested and detained for drug pushing. In the meantime, AAA was employed as a house helper. After his release from jail, appellant would go to see AAA at her employer's house demanding money and creating a scene when AAA refused to give him any. Fed up, AAA sneaked out of her employer's house and proceeded to the nearby *barangay* hall to report, not just the commotion caused by appellant in front of her employer's house when she did not give him money, but also that appellant previously raped her several times. Hence, appellant was arrested by **PO3 Deduque** and **PO3 Baldeswis,** and charged with rape.[6]

BBB was not able to accompany AAA in filing the instant case against appellant because she was also detained for drug pushing and was released only on 5 December 1999. Upon her release from jail, she immediately sought AAA and, when informed of the incident, she fully supported AAA in the instant case against appellant.[7]

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[6] TSN, 15 March 2001, pp. 2-35; TSN, 30 March 2001, pp. 2-18; TSN, 16 July 2001, pp. 3-5.

[7] TSN, 16 July 2001, pp. 7-18.

Dr. James Belgira (Dr. Belgira), a physician of the Philippine National Police (PNP) Crime Laboratory, personally examined AAA. His findings, as stated in the medico-legal report, are as follows:

<u>FINDINGS:</u>

<u>GENERAL AND EXTRAGENITAL:</u>

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with dark brown areola and nipple from which no secretions could be pressed out. Abdomen is flat and soft.

<u>GENITAL:</u>

There is scanty growth of pubic hair. Labia majora are full, convex and slightly gaping with an area of erythematous at the middle of the left labium and the dark brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with **shallow healed lacerations at 5 and 9 o'clock position.** External vaginal orifice offers moderate resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.

<u>CONCLUSION:</u> Subject is in non-virgin state physically.

There are no external signs of application of any form of physical trauma.[8]

However, in view of the unavailability of Dr. Belgira to personally appear before the trial court, it was **Dr. Cordero**, another physician at the PNP crime laboratory, who appeared in court for the purpose of producing and interpreting the medical records of AAA and confirming that the same was conducted in accordance with the protocol of the PNP.[9]

The prosecution also presented documentary evidence to bolster its version of the events, to wit: (1) *Sinumpaang Salaysay* of AAA;[10] (2) marriage contract of BBB and appellant;[11]

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[8] Records, p. 193.

[9] TSN, 5 December 2002, pp. 2-10.

[10] Records, pp. 185-186.

[11] *Id.* at 188.

(3) the baptismal certificate of AAA with her date of birth entered as **12 August 1983;**[12] (4) letter referral of Police Station 4, Novaliches, Quezon City, of the instant case to the Office of the City Prosecutor;[13] (5) joint sworn affidavit of the arresting officers;[14] (6) the medico-legal report with regard to AAA issued and signed by Dr. Belgira as the medico-legal officer of the PNP Crime Laboratory;[15] (7) the routing slip from the PNP Crime Laboratory;[16] (8) request for laboratory examination forwarded by Police Station 4 to the PNP Crime Laboratory;[17] (9) the initial laboratory report issued by the PNP Crime Laboratory;[18] (10) the sexual crime narrative report based on the narration of AAA;[19] and (11) manifestation of consent executed by AAA as accompanied by PO3 Baldeswis.[20]

Appellant singly testified in his own behalf and denied the foregoing accusations. He admitted that AAA is his daughter and third child with his wife, BBB. From 1992 to 1996, he worked as a driver, but he was detained for selling drugs in 1997. He was released on 29 March 1998, but he was again imprisoned for robbery and drug cases. While he was in jail, he learned that BBB asked AAA to find a job and that BBB was subsequently detained for drugs. Upon his release from jail in February 1999, appellant immediately went home and found his eldest son taking care of his other children. On several occasions, he would see AAA at her employers' house to ask for money. This purportedly irked AAA and the latter's employer.

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[12] *Id*. at 189.

[13] *Id*. at 190.

[14] *Id*. at 191.

[15] *Id*. at 193.

[16] *Id*. at 194.

[17] *Id*. at 195.

[18] *Id*. at 196.

[19] *Id*. at 197.

[20] *Id*. at 198.

It was AAA's employer and BBB who coached AAA to file rape charges against appellant.[21]

On 27 July 2004, the RTC rendered a Decision convicting appellant of three counts of rape. In Criminal Case No. Q-99-870**55,** the Court imposed on appellant the penalty of *reclusion perpetua*. In Criminal Cases No. Q-99-870**53** and Q-99-870**54,** appellant was sentenced to death. The dispositive portion of the decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, this Court finds that the prosecution established the guilt of the accused beyond reasonable doubt and is therefore found guilty of the offenses charged. The accused is hereby sentenced:

1. In Crim. Case No. Q-99-870**55**:

a. To suffer the penalty of *reclusion perpetua*;

b. To indemnify the private complainant AAA the amount of ₱50,000.00 by way of civil indemnity;

c. To pay the private complainant AAA the amount of ₱50,000.00 for exemplary damages;

d. To pay the private complainant AAA the amount of ₱50,000.00 for moral damages;

e. To pay the costs of the suit;

2. In Crim. Case No. Q-99-870**53**:

a. To suffer the penalty of DEATH;

b. To indemnify the private complainant AAA the amount of ₱75,000.00;

c. To pay the private complainant AAA the amount of ₱75,000.00 for exemplary damages;

d. To pay the private complainant AAA the amount of ₱75,000.00 for moral damages;

f. To pay the costs of the suit; and

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[21] TSN, 24 April 2003, pp. 2-15; TSN, 3 September 2003, pp. 2-6.

3. In Crim. Case No. Q-99-870**54**:

a. To suffer the penalty of DEATH;

b. To indemnify the private complainant AAA the amount of ₱75,000.00;

c. To pay the private complainant AAA the amount of ₱75,000.00 for exemplary damages;

d. To pay the private complainant AAA the amount of ₱75,000.00 for moral damages; and

e. To pay the costs of the suit.

In the event, however, that the accused shall be pardoned by the President, he is, however, forever barred from showing himself to the private complainant. He must not approach the private complainant; he shall never contact the private complainant directly or indirectly either by letters, telephone, cellphone or send text messages or with the use of any electrical devices.[22]

In view of the penalty imposed upon appellant, the RTC elevated the records of the case directly to the Court of Appeals for review pursuant to our ruling in *People v. Mateo*.[23]

On 3 August 2006, the Court of Appeals promulgated its Decision, affirming with modifications the Decision of the RTC, thus:

WHEREFORE, premises considered, the Decision dated 27 July 2004, promulgated on 04 August 2004, of the Regional Trial Court of Quezon City, Branch 107 convicting accused-appellant William Ching of three (3) counts of qualified rape in Crim. Cases Nos. Q-99-87053, Q-99-87054, Q-99-87055 is AFFIRMED with the MODIFICATION that the sentence imposed on appellant is reduced to *reclusion perpetua* for each count of qualified rape, in lieu of death penalty, by reason of Republic Act No. 9346, and that pursuant to said law, accused-appellant shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. Further, accused-appellant is ordered to pay the victim AAA the amounts of ₱75,000.00 for civil indemnity, another ₱75,000.00

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[22] *Rollo*, pp. 55-56.

[23] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

for moral damages and ₱25,000.00 for exemplary damages for each count of qualified rape.[24]

Before us, appellant assigns a single error, to wit:

THE TRIAL COURT ERRED IN NOT CONSIDERING THE INFORMATIONS CHARGING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION FOR FAILURE OF THE PROSECUTION TO STATE WITH PARTICULARITY THE APPROXIMATE DATE OF THE COMMISSION OF THE ALLEGED RAPES.[25]

Appellant maintains that the approximate time of the commission of the offense must be stated in the complaint or information; that the informations in the instant case do not state the approximate time of the alleged rapes; that the informations are fatally defective; that the date and time of the alleged rapes are so indefinite thereby depriving appellant of the opportunity to prepare for his defense; and that appellant's constitutional right to be informed of the nature and cause of accusation against him was violated.[26]

The contentions are devoid of merit.

An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.[27] To be considered as valid and sufficient, an information must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.[28] The purpose of the requirement for the information's validity and sufficiency is to enable the accused to suitably prepare for

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[24] *Rollo*, p. 221.

[25] CA *rollo*, p. 79.

[26] *Id.* at 87-90.

[27] Section 4, Rule 110 of the Revised Rules of Criminal Procedure.

[28] Section 6, Rule 110 of the Revised Rules of Criminal Procedure.

his defense since he is presumed to have no independent knowledge of the facts that constitute the offense.[29]

With respect to the date of the commission of the offense, Section 11, Rule 110 of the Revised Rules of Criminal Procedure specifically provides that it is not necessary to state in the information the precise date the offense was committed except when it is a material ingredient of the offense, and that the offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

In rape cases, failure to specify the exact dates or times when the rapes occurred does not *ipso facto* make the information defective on its face. The reason is obvious. The date or time of the commission of rape is not a material ingredient of the said crime because the *gravamen* of rape is carnal knowledge of a woman through force and intimidation. The precise time when the rape took place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.[30] In sustaining the view that the exact date of commission of the rape is immaterial, we held in *People v. Purazo*[31] that:

> We have ruled, time and again that the date is not an essential element of the crime of rape, for the *gravamen* of the offense is carnal knowledge of a woman. As such, the time or place of commission in rape cases need not be accurately stated. As early as 1908, we already held that where the time or place or any other fact alleged is not an essential element of the crime charged, conviction may be had on proof of the commission of the crime, even if it appears that the crime was not committed at the precise time or place alleged, or if the proof fails to sustain the existence of some immaterial fact set out in the complaint, provided it appears that the specific crime charged was

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[29] *Balitaan v. Court of First Instance of Batangas*, *Branch II,* 201 Phil. 311, 323 (1982).

[30] *People v. Magbanua*, 377 Phil. 750, 763 (1999).

[31] 450 Phil. 651, 671-672 (2003).

in fact committed prior to the date of the filing of the complaint or information within the period of the statute of limitations and at a place within the jurisdiction of the court.

This Court has upheld complaints and informations in prosecutions for rape which merely alleged the **month and year** of its commission.[32] In *People v. Magbanua*,[33] we sustained the validity of the information for rape which merely alleged the **year** of its commission, thus:

> Although the information did not state with particularity the dates when the sexual attacks took place, we believe that the allegations therein that the acts were committed **"on (sic) the year 1991 and the days thereafter"** substantially apprised appellant of the crime he was charged with since all the essential elements of the crime of rape were stated in the information. As such, appellant cannot complain that he was deprived of the right to be informed of the nature of the case filed against him. An information can withstand the test of judicial scrutiny as long as it distinctly states the statutory designation of the offense and the acts or omissions constitutive thereof.

There is no cogent reason to deviate from these precedents especially so that all the essential elements of rape were also stated in the informations. Hence, the allegations in the informations which stated that the three incidents of rape were committed in the **year 1996** and in **May 1998** are sufficient to affirm the conviction of appellant in the instant case.

Since the sole issue raised by appellant was resolved by this Court in favor of the validity of the informations filed against him, then the subsequent trial court proceedings and the resulting judgment of conviction against appellant should likewise be affirmed, there being no other questions raised by appellant as to them. We further uphold the penalty imposed on appellant by the Court of Appeals.

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[32] *People v. Macabata*, 460 Phil. 409, 421 (2003), citing *People v. Aspuria*, 440 Phil. 41 (2002); *People v. Morfi*, 435 Phil. 166 (2002); *People v. Abellano*, 440 Phil. 288 (2002).

[33] *Supra* note 30 at 764.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, was the law applicable in the year **1996,** the time the first rape was committed. On the other hand, Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, was the law pertinent to the two rapes committed in **May 1998**. Both laws state that the death penalty shall be imposed if the rape victim is a minor and the offender is a parent. The qualifying circumstances of minority of the victim and the latter's relationship with the offender must be alleged in the complaint or information and proved during the trial to warrant the imposition of the death penalty.[34]

The informations in Criminal Cases No. Q-99-870**53**, Q-99-870**54** and Q-99-870**55** specifically alleged that AAA was a minor at the time she was raped and that the offender, herein appellant, is her father. The prosecution also proved during the trial the presence of the qualifying circumstances of minority and relationship through documentary and testimonial evidence.

As a rule, the best evidence to prove the age of the offended party for the purpose of appreciating the qualifying circumstance of minority is an original or certified true copy of the certificate of live birth of such party. However, in the absence of a certificate of live birth, similar authentic documents, such as a baptismal certificate, which show the date of birth of the victim would suffice to prove age.[35]

In the case at bar, the prosecution was not able to present the birth certificate of AAA because, according to BBB, the birth of AAA was not registered with the appropriate government agencies. BBB testified during the trial that at the time she gave birth to AAA through the assistance of a *comadrona,* the latter told her that a neighbor known only as *comadre* volunteered and suggested to register the birth of AAA together

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[34] *People v. Layugan*, G.R. Nos. 130493-98, 28 April 2004, 428 SCRA 98, 116.

[35] *People v. Cayabyab*, G.R. No. 167147, 3 August 2005, 465 SCRA 681, 690, citing *People v. Pruna*, 439 Phil. 440 (2002).

with the registration of birth of *comadre's* child; that to the best of her knowledge, *comadre* registered the birth of AAA; that when AAA was about to enroll in school, she went to the Quezon City Hall to secure a birth certificate of AAA but she was told therein that there are no records of birth of AAA; that she talked with *comadre* because the latter took all the necessary papers relevant to the birth of AAA; and that *comadre* told her that such papers were lost.[36]

Nonetheless, BBB submitted AAA's baptismal certificate dated 23 August 2001 issued by Rev. Fr. Romeo M. Castro, SVD, Parish Priest of Sacred Heart Parish, Kamuning, Quezon City.[37] The baptismal certificate states that AAA was born on **12 August 1983**. This implies that AAA was about 13 years old at the time she was raped by appellant in 1996, and that she was barely 14 years and 9 months old when she was twice raped by appellant in May 1998. The baptismal certificate also states that appellant is the father of AAA.

Further, the prosecution adduced the marriage contract of appellant and BBB showing that they were married on 29 February 1980.[38] Appellant admitted that AAA is his daughter and BBB is his wife.[39]

Given the foregoing considerations, the penalty of death for each of the three counts of rape committed against AAA is proper.

However, in view of the effectivity of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty to be meted to appellant shall be *reclusion perpetua* in accordance with Section 2 thereof which reads:

> SECTION 2. In lieu of the death penalty, the following shall be imposed:

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[36] TSN, 16 July 2001, pp. 7-18.

[37] Records, p. 189.

[38] *Id*. at 188.

[39] TSN, 24 April 2003, p. 3.

a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of said law which provides:

SECTION 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

We also sustain the award of damages made by the Court of Appeals in favor of AAA for each of the three rapes. The award of civil indemnity in the amount of ₱75,000.00 is the correct amount to be awarded if the crime is qualified by circumstances that warrant the imposition of the death penalty. With respect to moral damages, the amount of ₱75,000.00 is fitting even though it was not pleaded or its basis established by evidence, pursuant to prevailing jurisprudence.[40] Further, the award of exemplary damages in the amount of ₱25,000.00 is authorized due to the presence of the qualifying circumstances of minority and relationship.[41]

WHEREFORE, after due deliberation, the Decision of the Court of Appeals in CA-G.R. C.R.-H.C. No. 01798 dated 3 August 2006 is hereby *AFFIRMED in toto*. No costs.

SO ORDERED.

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

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[40] *People v. Soriano*, 436 Phil. 719, 757 (2002); *People v. Sambrano*, 446 Phil. 145, 162 (2003).

[41] *People v. Audine*, G.R. No. 168649, 6 December 2006, 510 SCRA 531, 553.

SPECIAL THIRD DIVISION

[A.C. No. 5809. November 23, 2007]
(Formerly CBD-99-629)

SERVILLANO BATAC, JR. and ANTONIO BONOAN, *complainants, vs.* **ATTY. PONCIANO V. CRUZ, JR.,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; MISCONDUCT; IMPOSABLE PENALTY. — Upon a second look at the circumstances of the case *vis-à-vis* the commensurate penalty imposed in parallel cases, this Court holds that a one-month suspension would suffice, considering further that this is respondent's first offense. In *Maligaya v. Doronilla, Jr.*, the respondent faced two months of suspension from the practice of law for untruthfully stating to the court that complainant had agreed to withdraw his lawsuits. It was held that an effort to compromise does not justify the sacrifice of truthfulness in court. In *Bantolo v. Castillon, Jr.,* the respondent defied a court order and issued misleading statements as to the pendency of a related case. In meting out a one-month suspension, this Court made a pronouncement that is equally true with respect to proceedings before quasi-judicial agencies, as in this case. x x x [A]s an officer of the court and its indispensable partner in the sacred task of administering justice, graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes. Thus, any act on his part which tends visibly to obstruct, pervert or impede and degrade the administration of justice constitutes professional misconduct calling for the exercise of disciplinary action against him.

APPEARANCES OF COUNSEL

Antonio Bonoan in his behalf.
Santiago Cruz & Sarte Law Offices for respondent.

RESOLUTION

CARPIO MORALES, *J.*:

Respondent filed a Motion for Reconsideration of the Court's Decision of February 23, 2004,[1] the dispositive portion of which reads:

> WHEREFORE, respondent, Atty. Ponciano V. Cruz, Jr., is hereby SUSPENDED from the practice of law for SIX (6) MONTHS, with WARNING that a repetition of the same or similar offense will be dealt with more severely.
>
> Let a copy of this Decision, upon its finality, be furnished the Integrated Bar of the Philippines and all the courts in the Philippines, and entered in the personal records of Atty. Cruz in the Office of the Bar Confidant.
>
> SO ORDERED.[2]

At two scheduled hearings in a Securities and Exchange Commission (SEC) case[3] after causing the cancellation and resetting of eight hearings[4] precisely to adjust to his unavailability, respondent failed to appear before the SEC Hearing Panel and comply with the subpoenas *ad testificandum/duces tecum*.

For his non-appearance at the October 28, 1998 hearing, respondent stated that he had to be prepared and ready to leave at a moment's notice for he had every good faith and reason to believe that he would, in the final round, be part of the delegation to an international conference,[5] owing to the nature of his position.

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[1] Decided by the Court's Third Division, composed then of Vitug, Sandoval-Gutierrez, Corona, Carpio Morales, *JJ*.

[2] 423 SCRA 309, 322.

[3] Docketed as SEC Case No. 07-97-5706 where complainants were among the petitioners and respondent was among the respondents.

[4] Hearings on February 19, April 22 and 29, June 10 and 17, July 21 and 28, and October 29, 1998.

[5] Then the Commissioner of the National Telecommunications Commission, respondent expected that he would be sent to the International Telecommunications Union's plenipotentiary conference.

With regard to the March 4, 1999 hearing, he begged the understanding of the Court in his decision to prioritize his client's case[6] over the SEC case of which he was a party, while admitting that he may have committed an "error in semantics" in using the phrase "attending a hearing" instead of "filing a manifestation" at any time to urgently cause a stay in the execution of a judgment in Cebu City.

Respondent assured the Court that he had neither deliberate attempt nor malicious intent behind his failure to attend the hearings, as he could not have even remotely thought of deliberately avoiding attending the hearings or defying the orders of the hearing panel.

It must be emphasized that it was not so much for his non-attendance of the hearings that respondent was called upon to account in this disciplinary proceeding, but for his lack of respect for legal orders and his lack of candor in his explanations.

And so respondent was found to (1) have committed dishonesty concerning the excuses for his failure to attend the hearings, and (2) have exhibited a blatant disrespect for legal orders and processes by failing to submit the pertinent travel orders to substantiate his excuse or even an appropriate explanation for his inability to submit the same and, in either case, a manifestation[7] of available dates. The latter omission, coupled with his last-minute tactics, speaks well of his indifferent and uncooperative attitude.

In their Comment,[8] complainants averred that respondent failed to raise any new or substantial matter that may warrant a reversal or modification of the Court's Decision as his grounds had already been previously raised by him and passed upon by the Court.

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[6] LRC Case No. 633 entitled "*In re Application for Registration, Associacion Benevola de Cebu, Applicant.*"

[7] Vide *rollo*, pp. 35-36.

[8] *Id.* at 207-210.

Complainants are correct, except with respect to the issue on the severity of the penalty imposed, a ground that was not, and could not have been raised previously by respondent.

Upon a second look at the circumstances of the case *vis-à-vis* the commensurate penalty imposed in parallel cases, this Court holds that a one-month suspension would suffice, considering further that this is respondent's first offense.

In *Maligaya v. Doronilla, Jr.*,[9] the respondent faced two months of suspension from the practice of law for untruthfully stating to the court that complainant had agreed to withdraw his lawsuits. It was held that an effort to compromise does not justify the sacrifice of truthfulness in court.

In *Bantolo v. Castillon, Jr.,*[10] the respondent defied a court order and issued misleading statements as to the pendency of a related case. In meting out a one-month suspension, this Court made a pronouncement that is equally true with respect to proceedings before quasi-judicial agencies, as in this case.

> x x x [A]s an officer of the court and its indispensable partner in the sacred task of administering justice, graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes. Thus, any act on his part which tends visibly to obstruct, pervert or impede and degrade the administration of justice constitutes professional misconduct calling for the exercise of disciplinary action against him.[11]

WHEREFORE, the Decision dated February 23, 2004 is *MODIFIED*. Respondent, Atty. Ponciano V. Cruz, Jr., is *SUSPENDED* from the practice of law for ONE (1) MONTH, with *WARNING* that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Sandoval-Gutierrez (Chairperson) and *Corona, JJ.,* concur.

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[9] A.C. No. 6198, September 15, 2006, 502 SCRA 1.

[10] A.C. No. 6589, December 19, 2005, 478 SCRA 443.

[11] *Id.* at 449.

THIRD DIVISION

[A.C. No. 7504. November 23, 2007]

VIRGINIA VILLAFLORES, *complainant, vs.* **ATTY. SINAMAR E. LIMOS,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT; SUSTAINED. —** The relation of attorney and client begins from the time an attorney is retained. To establish the professional relation, it is sufficient that the advice and assistance of an attorney are sought and received in any manner pertinent to his profession. x x x In short, respondent's acceptance of the payment for her professional fees and miscellaneous expenses, together with the records of the case, effectively bars her from disclaiming the existence of an attorney-client relationship between her and complainant. No lawyer is obliged to advocate for every person who may wish to become his client, but once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must be mindful of the trust and confidence reposed in him. Among the fundamental rules of ethics is the principle that an attorney who undertakes an action impliedly stipulates to carry it to its termination, that is, until the case becomes final and executory. As ruled in *Rabanal v. Tugade*: Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded

from any attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.

2. **ID.; ID.; ID.; A LAWYER SHOULD SERVE HIS CLIENT IN A CONSCIENTIOUS, DILIGENT AND EFFICIENT MANNER; EXPLAINED.—** This Court has emphatically ruled that the trust and confidence necessarily reposed by clients requires in the attorney a high standard and appreciation of his duty to his clients, his profession, the courts and the public. Every case a lawyer accepts deserves his full attention, diligence, skill and competence, regardless of its importance and whether he accepts if for a fee or for free. Certainly, a member of the Bar who is worth his title cannot afford to practice the profession in a lackadaisical fashion. A lawyer's lethargy from the perspective of the Canons is both unprofessional and unethical. A lawyer should serve his client in a conscientious, diligent and efficient manner, and he should provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation. By agreeing to be his client's counsel, he represents that he will exercise ordinary diligence or that reasonable degree of care and skill having reference to the character of the business he undertakes to do, to protect the client's interests and take all steps or do all acts necessary therefor, and his client may reasonably expect him to discharge his obligations diligently.

3. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; FAILURE OF LAWYER TO FILE APPELLANT'S BRIEF FOR HIS CLIENT WITHIN THE REGLEMENTARY PERIOD CONSTITUTES GROSS NEGLIGENCE IN VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** This Court will not countenance respondent's failure to observe the reglementary period to file the appellant's brief. Counsels are sworn to protect the interests of their clients and in the process, should be knowlegeable about the rules of procedure to avoid prejudicing the interests of their clients or worse compromising the integrity of the courts. Ignorance of the procedural rules

on their part is tantamount to inexcusable negligence. However, the matter before us does not even call for counsel's knowledge of procedural rules, but merely her managerial skills in keeping track of deadlines for filing necessary pleadings, having difficulty with which, she could have always opted to timely withdraw from the case in order not to prejudice further her client's interest. The failure of respondent to file the appellant's brief for complainant within the reglementary period constitutes gross negligence in violation of the Code of Professional Responsibility. In *Perla Compania de Seguros, Inc. v. Saquilabon,* this Court held: An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. *A failure to file brief for his client certainly constitutes inexcusable negligence on his part.* The respondent has indeed committed a *serious lapse in the duty owed by him to his client as well as to the Court* not to delay litigation and to aid in the speedy administration of justice.

4. ID.; ID.; ID.; VIOLATION THEREOF; PENALTY, JUSTIFIED. — All told, we rule and so hold that on account of respondent's failure to protect the interest of complainant, respondent indeed violated Rule 18.03, Canon 18 of the Code of Professional Responsibility. Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally. This Court has been exacting in its expectations for the members of the Bar to always uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence of the public. In *People v. Cawili*, we held that the failure of counsel to submit the brief within the reglementary period is an offense that entails disciplinary action. *People v. Villar, Jr.* characterized a lawyer's failure to file a brief for his client as inexcusable neglect. In *Blaza v. Court of Appeals*, we held that the filing of a brief within the period set by law is a duty not only to the client, but also to the court. *Perla Compania de Seguros, Inc. vs. Saquilabon* reiterated *Ford v. Daitol* and *In re: Santiago F. Marcos* in holding that an attorney's failure to file a brief for his client constitutes inexcusable negligence. In cases involving a lawyer's failure to file a brief or other pleadings before an appellate court, we did not hesitate to suspend the erring member of the Bar from the practice of law for three months, six months, or even disbarment in severely aggravated cases.

APPEARANCES OF COUNSEL

Carmencita M. Chua for complainant.

R E S O L U T I O N

CHICO-NAZARIO, *J*.:

Before Us is a Complaint[1] for Disbarment filed by complainant Virginia Villaflores against respondent Atty. Sinamar Limos, charging the latter with Gross Negligence and Dereliction of Duty.

Complainant Virginia Villaflores is the defendant in Civil Case No. 1218-BG entitled, "*Spouses Sanchez represented by Judith Medina vs. Spouses Villaflores*," filed before the Regional Trial Court (RTC) of Bauang, La Union, Branch 33.

Receiving an unfavorable judgment, complainant sought the help of the Public Attorney's Office (PAO) to appeal her case to the Court of Appeals. The PAO filed for her a Notice of Appeal with the RTC.

On 1 September 2004, complainant received a copy of a Notice[2] from the Court of Appeals requiring her to file her appellant's brief within 45 days from receipt thereof.

Immediately thereafter, complainant approached respondent, who had previously handled her son's case, to file on her behalf the required appellant's brief. Since respondent agreed to handle the appeal, complainant handed to respondent on 8 September 2004 the amount of ₱10,000.00 as partial payment of the latter's acceptance fee of ₱20,000.00, together with the entire records of the case. The following day, on 9 September 2004, complainant paid the balance of respondent's acceptance fee in the amount of ₱10,000.00. These payments were duly receipted and acknowledged[3] by the respondent.

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[1] *Rollo*, pp. 1-4.

[2] *Id*. at 9.

[3] *Id*. at 5-6.

On 21 September 2004, an Employment Contract[4] was executed between complainant and respondent whereby the former formally engaged the latter's professional services. Upon the execution of said contract, complainant again paid the respondent the amount of ₱2,000.00 for miscellaneous expenses.[5]

On 14 January 2005, complainant received a copy of a Resolution[6] dated 6 January 2005 issued by the Court of Appeals dismissing her appeal for failure to file her appellant's brief within the reglementary period. Thus, on 17 January 2005, complainant went to respondent's office but failed to see respondent.

After several unsuccessful attempts to talk to the respondent, complainant went to Manila on 18 January 2005 to seek help from another lawyer who agreed to handle the case for her. On 19 January 2005, complainant went back to the respondent's office to retrieve the records of her case. Respondent allegedly refused to talk to her.

Aggrieved by respondent's actuations, complainant filed the instant administrative complaint against respondent.

In her Answer,[7] respondent admitted her issuance of the acknowledgment receipts for the aggregate amount of ₱22,000.00, the execution of the Employment Contract between her and complainant, and the issuance by the Court of Appeals of the Notice to File Appellant's Brief and Resolution dated 6 January 2005. She, however, denied all other allegations imputed against her. Respondent argued that the non-filing of the appellant's brief could be attributed to the fault of the complainant who failed to inform her of the exact date of receipt of the Notice to File Appellant's Brief from which she could reckon the 45-day period to file the same. Complainant allegedly agreed to return to respondent once she had ascertained the actual

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[4] *Id*. at 9.

[5] *Id*. at 8.

[6] *Id*. at 10.

[7] *Id*. at 21-30.

date of receipt of said Notice, but she never did. Complainant supposedly also agreed that in the event she could not give the exact date of receipt of the Notice, respondent would just wait for a new Order or Resolution from the Court of Appeals before she would file the appropriate pleading. Respondent further contended that she had, in fact, already made preliminary study and initial research of complainant's case.

Pursuant to the complaint, a hearing was conducted by the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) at the IBP Building, Ortigas Center, Pasig City, on 17 June 2005.

On 11 April 2006, Investigating Commissioner Acerey C. Pacheco submitted his Report and Recommendation,[8] finding respondent liable for gross negligence and recommending the imposition upon her of the penalty of one year suspension, to wit:

> WHEREFORE, it is respectfully recommended that herein respondent be declared guilty of gross negligence in failing to file the required appellants' brief for which act she should be suspended from the practice of law for a period of one (1) year. Also, it is recommended that the respondent be ordered to return the amount of ₱22,000.00 that she received from the complainant.

Thereafter, the IBP Board of Governors passed Resolution[9] No. XVII-2006-584 dated 15 December 2006, approving with modification the recommendation of the Investigating Commissioner, thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification,** the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's gross negligence in failing to file the required appellant's brief, Atty. Sinamar

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[8] *Id.* at 125-128.

[9] *Id.* at 123.

E. Limos is hereby SUSPENDED from the practice of law for three (3) months with Warning that a repetition of similar conduct will be dealt with more severely and ORDERED TO RETURN the amount of ₱22,000.00 she received from complainant.

The core issue in this administrative case is whether the respondent committed culpable negligence in handling complainant's case as would warrant disciplinary action.

After a careful review of the records and evidence, we find no cogent reason to deviate from the findings and the recommendation of the IBP Board of Governors and, thus, sustain the same. Respondent's conduct in failing to file the appellant's brief for complainant before the Court of Appeals falls below the standards exacted upon lawyers on dedication and commitment to their client's cause.

The relation of attorney and client begins from the time an attorney is retained.[10] To establish the professional relation, it is sufficient that the advice and assistance of an attorney are sought and received in any manner pertinent to his profession.[11]

It must be noted that as early as 8 September 2004, respondent already agreed to take on complainant's case, receiving from the latter partial payment of her acceptance fee and the entire records of complainant's case. The very next day, 9 September 2004, complainant paid the balance of respondent's acceptance fee. Respondent admitted her receipt of ₱20,000.00 as acceptance fee for the legal services she is to render to complainant and ₱2,000.00 for the miscellaneous expenses she is to incur in handling the case, and the subsequent execution of the employment contract between her and complainant. Hence, it can be said that as early as 8 September 2004, respondent's rendition of legal services to complainant had commenced, and from then on, she should start protecting the complainant's interests. The employment contract between respondent and complainant already existed as of 8 September 2004, although it was only reduced into writing on 21 September 2004. In short, respondent's

[10] *Solatan v. Inocentes*, A.C. No. 6504, 9 August 2005, 466 SCRA 1, 11.

[11] *Id*.

acceptance of the payment for her professional fees and miscellaneous expenses, together with the records of the case, effectively bars her from disclaiming the existence of an attorney-client relationship between her and complainant.

No lawyer is obliged to advocate for every person who may wish to become his client, but once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must be mindful of the trust and confidence reposed in him.[12] Among the fundamental rules of ethics is the principle that an attorney who undertakes an action impliedly stipulates to carry it to its termination, that is, until the case becomes final and executory.

As ruled in *Rabanal v. Tugade:*[13]

> Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.

Respondent's defense that complainant failed to inform her of the exact date when to reckon the 45 days within which to file the appellant's brief does not inspire belief or, at the very

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[12] *Tan v. Lapak*, 402 Phil. 920, 929-930 (2001).

[13] 432 Phil. 1064, 1070 (2002).

least, justify such failure. If anything, it only shows respondent's cavalier attitude towards her client's cause.

A case in point is *Canoy v. Ortiz,*[14] where the Court ruled that the lawyer's failure to file the position paper was *per se* a violation of Rule 18.03 of the Code. There, the Court ruled that the lawyer could not shift the blame to his client for failing to follow up his case because it was the lawyer's duty to inform his client of the status of cases.

Respondent cannot justify her failure to help complainant by stating that "after receipt of part of the acceptance fee, she did not hear anymore from complainant." The persistence displayed by the complainant in prosecuting this complaint belies her lack of enthusiasm in fighting for her rights, as alleged by respondent.

This Court has emphatically ruled that the trust and confidence necessarily reposed by clients requires in the attorney a high standard and appreciation of his duty to his clients, his profession, the courts and the public. Every case a lawyer accepts deserves his full attention, diligence, skill and competence, regardless of its importance and whether he accepts it for a fee or for free. Certainly, a member of the Bar who is worth his title cannot afford to practice the profession in a lackadaisical fashion. A lawyer's lethargy from the perspective of the Canons is both unprofessional and unethical.[15]

A lawyer should serve his client in a conscientious, diligent and efficient manner; and he should provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation. By agreeing to be his client's counsel, he represents that he will exercise ordinary diligence or that reasonable degree of care and skill having reference to the character of the business he undertakes to do, to protect the client's interests and take all steps or do all

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[14] A.C. No. 5485, 16 March 2005, 453 SCRA 410, 419, cited in *Heirs of Tiburcio Ballesteros, Sr. v. Apiag*, A.C. No. 5760, 30 September 2005, 411 SCRA 111, 124.

[15] *Jardin v. Villar, Jr.,* 457 Phil. 1, 9 (2003).

acts necessary therefor, and his client may reasonably expect him to discharge his obligations diligently.[16]

Respondent has obviously failed to measure up to the foregoing standards.

It may be true that the complainant shares the responsibility for the lack of communication between her and respondent, her counsel. Respondent, however, should not have depended entirely on the information her client gave or at the time the latter wished to give it. Respondent, being the counsel, more than her client, should appreciate the importance of complying with the reglementary period for the filing of pleadings and know the best means to acquire the information sought. Had she made the necessary inquiries, respondent would have known the reckoning date for the period to file appellant's brief with the Court of Appeals. As a lawyer representing the cause of her client, she should have taken more control over her client's case.

Respondent's dismal failure to comply with her undertaking is likewise evident from the fact that up until 19 January 2005, when complainant retrieved the entire records of her case, and more than four months from the time her services were engaged by complainant, respondent still had not prepared the appellant's brief.

Rule 18.03 of the Code of Professional Responsibility for Lawyers states:

> A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

In this case, by reason of respondent's negligence, the complainant suffered actual loss. Complainant faced the risk of losing entirely her right to appeal and had to engage the services of another lawyer to protect such a right.

This Court will not countenance respondent's failure to observe the reglementary period to file the appellant's brief. Counsels

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[16] *Adecer v. Akut*, A.C. No. 4809, 3 May 2006, 489 SCRA 1, 12-13.

are sworn to protect the interests of their clients and in the process, should be knowlegeable about the rules of procedure to avoid prejudicing the interests of their clients or worse, compromising the integrity of the courts. Ignorance of the procedural rules on their part is tantamount to inexcusable negligence.[17] However, the matter before us does not even call for counsel's knowledge of procedural rules, but merely her managerial skills in keeping track of deadlines for filing necessary pleadings, having difficulty with which, she could have always opted to timely withdraw from the case in order not to prejudice further her client's interest.

The failure of respondent to file the appellant's brief for complainant within the reglementary period constitutes gross negligence in violation of the Code of Professional Responsibility. In *Perla Compania de Seguros, Inc. v. Saquilabon,*[18] this Court held:

> An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. (*Del Rosario v. Court of Appeals,* 114 SCRA 159) *A failure to file brief for his client certainly constitutes inexcusable negligence on his part*. (*People v. Villar*, 46 SCRA 107) The respondent has indeed committed a *serious lapse in the duty owed by him to his client as well as to the Court* not to delay litigation and to aid in the speedy administration of justice. (*People v. Daban*, 43 SCRA 185; *People v. Estocada*, 43 SCRA 515).

All told, we rule and so hold that on account of respondent's failure to protect the interest of complainant, respondent indeed violated Rule 18.03, Canon 18 of the Code of Professional Responsibility. Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally. This Court has been exacting in its expectations for the members of the Bar to always uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence of the public.

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[17] *Ginete v. Court of Appeals*, 357 Phil. 36, 48 (1998).

[18] 337 Phil. 555, 558 (1997).

In *People v. Cawili,*[19] we held that the failure of counsel to submit the brief within the reglementary period is an offense that entails disciplinary action. *People v. Villar, Jr.*[20] characterized a lawyer's failure to file a brief for his client as inexcusable neglect. In *Blaza v. Court of Appeals,*[21] we held that the filing of a brief within the period set by law is a duty not only to the client, but also to the court. *Perla Compania de Seguros, Inc. v. Saquilabon*[22] reiterated *Ford v. Daitol*[23] and *In re: Santiago F. Marcos*[24] in holding that an attorney's failure to file a brief for his client constitutes inexcusable negligence.

In cases involving a lawyer's failure to file a brief or other pleadings before an appellate court, we did not hesitate to suspend the erring member of the Bar from the practice of law for three months,[25] six months,[26] or even disbarment in severely aggravated cases.[27]

WHEREFORE, the resolution of the IBP Board of Governors approving and adopting the report and recommendation of the Investigating Commissioner is hereby *AFFIRMED*. Accordingly, respondent ATTY. SINAMAR E. LIMOS is hereby *SUSPENDED* from the practice of law for a period of *THREE (3) MONTHS,* with a stern warning that a repetition of the same or similar wrongdoing will be dealt with more severely. Furthermore, respondent is hereby *ORDERED* to return the

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[19] 145 Phil. 605, 608 (1970).

[20] 150-B Phil. 97, 100 (1972).

[21] G.R. No. L-31630, 23 June 1988, 162 SCRA 461, 465.

[22] *Supra* note 18.

[23] 320 Phil. 53, 58 (1995).

[24] A.C. No. 922, 29 December 1987, 156 SCRA 844, 847.

[25] *Ford v. Daitol*, *supra* note 23; *In re: Santiago F. Marcos*, *id.*

[26] *Guiang v. Antonio*, A.C. No. 2473, 3 February 1993, 218 SCRA 381, 384.

[27] *Mariveles v. Mallari*, A.C. No. 3294, 17 February 1993, 219 SCRA 44, 46.

amount of Twenty-Two Thousand Pesos (₱22,000.00), which she received from complainant Virginia Villaflores.

Let a copy of this decision be attached to respondent's personal record with the Office of the Bar Confidant and copies be furnished to all chapters of the Integrated Bar of the Philippines and to all courts of the land.

SO ORDERED.

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

EN BANC

[A.M. No. 2006-15-SC. November 23, 2007]

RE: ANONYMOUS COMPLAINT AGAINST MR. PEDRO G. MAZO, ANTONIO C. PEDROSO and ALEXANDER A. DAYAP.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; WHEN FOUND GUILTY OF GAMBLING; IMPOSABLE PENALTY. — Respondents' disclaimer that money was not involved is inconsequential. In fact, their defense that they were simply having an innocuous card game *sans* monetary bets does not excuse their misconduct. In *Albano-Madrid v. Apolonio*, we held: What is more alarming, in our view, is respondents' nonchalance concerning the effect of their misconduct. They have the gall to split hairs and say that they were playing cards, but not gambling. If loafing during office hours could not be countenanced, the more reason playing cards could not be tolerated in the judge's chambers. Such act or conduct that violates the norm of public accountability or

diminish the people's faith in the judiciary could never be tolerated or condoned. However, we can not sustain the recommended penalties. Under Section 52(C)(5), Rule IV of Civil Service Commission Memorandum Circular No. 19, Series of 1999, *gambling prohibited by law* is classified as a *light offense*, punishable as follows: First Offense - Reprimand, Second Offense - Suspension for 1-30 days, Third Offense - Dismissal from the service. While respondent Mazo was previously suspended for three (3) days without pay, however, his offense was neglect of duty. This was his first offense for gambling prohibited by law. This was also the first time respondents Pedroso and Dayap committed the same offense.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

In the afternoon of October 6, 2006, Atty. Ma. Carina M. Cunanan, Assistant Chief of the Office of Administrative Services, this Court, received from an anonymous caller a text message that gambling activities were prevalent in the barracks of the Court's security guards. The text message in the vernacular states in part:

x x x Alam po ninyo ma'am masyado pong sugapa na sa sugal na <u>tong-its</u> itong mga kasama ko at mga officer pa naman.

Araw at gabi po ang sugalan dito at kahit oras ng duty ay sige pa rin lalo na kung Sabado, Linggo at holidays. Kanina po pag-out ng 2 p.m. ni Sir Mazo, Pedroso at Dayap, game na sila. Sa mga oras pong ito ay kasalukuyan po silang naglalaro dun sa kwarto ni Sir Mazo sa bandang dulong barracks katabi ng banyo nila. Ma'am ang isang sugarol ay kapatid ng magnanakaw at ayaw po naming mawala ang barracks na aming tirahan.

Specifically, those allegedly playing cards were: Pedro G. Mazo, Security Officer I; Antonio C. Pedroso, Security Guard I; and Alexander Felix A. Dayap, also a Security Guard I, herein respondents.

Ferdinand P. Barrera, Security Guard II, upon instruction of Atty. Cunanan, conducted an "ocular inspection" of the barracks

to determine the veracity of the report. There, he saw that indeed respondents were playing cards.

In three (3) separate memoranda all dated April 10, 2006, Atty. Cunanan directed respondents to explain why they should not be administratively charged with misconduct for gambling inside the security personnel's barracks.

In their respective comments, respondents denied having any knowledge of the alleged prevalent gambling activities in the security guards' barracks. While they admitted playing cards on April 6, 2006, however, they maintained there was no money involved. Dayap and Pedroso claimed that they were off-duty at that time and had nothing to do, hence, they decided to play cards to while away the time. Mazo explained that he was also off-duty and was just waiting for his wife's call so they could go home together.

The Complaints and Investigation Division of the Office of the Administrative Services (CID-OAS) conducted an investigation on the report.

On June 13, 2006, Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, submitted her report and recommendation, thus:

> Coming now to the testimonies of the three (3) respondents, all of them maintained the averments they raised in their respective comments. They negated involvement in the alleged gambling activities. According to them, the incident on April 6, 2006 when they were reported to Atty. Cunanan was isolated. They claimed that it was purely for fun and the only reason why they played was to idle away the time until around 5:00 p.m., the time when Mr. Mazo was supposed to fetch his wife. They insisted that they did not place money bets considering that they did not have loose change at that time. They averred it was not gambling because there was no payoff after the games ended stressing on the said unavailability of loose change. Absent the said payment, they claimed that there was no gambling to speak of.
>
> However, and this is crucial, Atty. Edwin B. Andrada, Court Attorney IV, Complaints and Investigation Division, this Office, and the Chief Investigating Officer, refreshed their recollection of the

admission they made before himself and Atty. Cunanan where they admitted playing card games but that the same **involved only minimal amount of bets**. Undeniably, the said declaration having been taken during the preliminary investigation was not sworn to by them, thus, the need to apprise the respondents, who have been firm in their claim that they did not bet monies in the games.

However, after meticulous questions hurled by Atty. Andrada to the respondents, and having reminded them that they were under oath this time, **Mr. Mazo amenably conformed to the playing of cards but qualified his statement that the games involved, quoting from his own words, "*barya-barya*"** *lang*. On the other hand, Mr. Pedroso and Mr. Dayap insisted that games were meant as a pastime, and even if they intended to bet monies at the start, there were no actual payments made to the winning player or players because they did not have loose coins to spare at that time.

Furthermore, noteworthy is the demeanor displayed by the respondents during the investigation. They tried to be evasive. They also appeared apprehensive and fidgety in giving their testimonies. Although the individual testimony of the respondents jibes with each other, the manner by which they testified placed doubts on their credibility and weakened their testimonies. This Office cannot but inferred that their testimonies during the formal investigation were the polished version of the defense they devised after the preliminary investigation.

Atty. Candelaria's observation:

It is of no moment that no alleged payoff ensued after the games assuming without admitting that there was really none. What matters is that the whole time they were playing there were money bets and understanding to that effect among them exists. For it is almost certain, at least to them, there were losers and/or winners, yet this Office can only surmise as to the alleged non-payments. The claim adverted to stands dubious. The assertion that there was not enough loose coins to effect the payments could be safely concluded as a mere afterthought made up by the respondents in order to escape liability. Moreover, the assertion does not take away the existence of the bets during the games. After all, it is to be noted that they did not raise the same position during the preliminary investigation. It can therefore be inferred that after the said preliminary investigation but before the formal investigation, the respondents conferred and

designed that position as a matter of their defense. Besides, the admission that the games involved ***"barya-barya"*** could not mean less than gambling.

x x x x x x x x x

This Office cannot but hold their later statements as mere fabrications and a sordid afterthought to mislead this Office. Furthermore, this Office finds no plausible reason why they opted to "play" in that small room at the nook of the barracks which appears uninviting when it comes to both convenience and ventilation had they nothing to hide.

In the same vein, it was also alarming that they were exactly doing an act which the Memorandum posted inside the said barracks itself has intended to forestall. Being completely aware of the existence of the Memorandum visibly posted inside the barracks makes it difficult condoning the act.

x x x x x x x x x

In the case at bar, although, it may be argued that they were not on duty when they committed the act of gambling the fact remains that they committed the same in violation of the Memorandum proscribing the commission of the said act, that it was inside the Court premises, and still during office hours as for the Court.

Atty. Candelaria's recommendation:

1. Mr. Pedroso and Mr. Dayap be held liable for Simple Misconduct, this being their first offense, and for humanitarian considerations, be SEVERELY REPRIMANDED, with a warning that a repetition of the same act in the future, shall be dealt with more severely; and

2. Mr. Pedro Mazo be held liable for Simple Misconduct, this being his second offense, with mitigating circumstances of length of service totaling thirty-two (32) years, his consistent very satisfactory ratings, and for humanitarian considerations, be suspended for a period of three (3) months, without pay.

On August 28, 2006, respondents filed a Joint Manifestation and Motion for a formal investigation "to enable them to cross-examine and meet the complainant face to face."

On August 29, 2006, the Court *En Banc* granted the motion and designated Atty. Felipa B. Anama, Assistant Clerk of Court, as Hearing Commissioner to conduct the investigation.

On February 14, 2007, Atty. Anama submitted her report and recommendation, thus:

> Jurisprudence teaches us that a courtroom is looked upon with respect as this is where Justice is dispensed. More so, the courtroom of the highest court in the land, or its Session Hall, and its surrounding premises, should be considered sacrosanct. For this reason, it has declared as misconduct the playing cards inside court premises, which, in this Court' premises, includes the barracks of its security personnel.
>
> The respondents have admitted that they played cards inside the Court's premises on April 6, 2006.
>
> Having admitted such misconduct, the three respondents should be meted the appropriate penalty.
>
> We recommend that the method ***Albano-Madrid*** laid for determining the appropriate penalty for such misconduct – likewise card-playing in the court therein – be followed, as follows:
>
>> x x x CSC Memorandum Circular No. 30, s. of 1989, sets out corresponding penalties for administrative cases pursuant to the Code of Ethical Standards (Republic Act No. 6713). It provides that for simple misconduct, classified as a less grave offense, the penalty should be suspension for one (1) month and one (1) day to six (6) months for the first violation. Inasmuch as this is the first offense committed by respondents, we find the minimum penalty of suspension for one (1) month and one (1) day, without pay, sufficient.
>
> The penalty for a second offense of Simple Misconduct under the Civil Service Law is "Dismissal (The 2002 Revised Manual for Clerks of Court, p. 703)."
>
> In view of the foregoing, the undersigned recommends the following penalties:
>
> 1. Messrs. Pedroso and Dayap be held liable for the Simple Misconduct of card-playing in the Security Personnel Barracks and, while they may be meted the minimum penalty of suspension for one (1) month and one (1) day,

without pay, this being their first offense, for humanitarian considerations, however, they be SEVERELY REPRIMANDED, with a warning that a repetition of the same act in the future, shall be dealt with more severely; and

2. Mr. Mazo be held liable for the Simple Misconduct of card-playing in the Security Personnel Barracks and, while the Civil Service Rules mete out the penalty of Dismissal for a second offense, for humanitarian considerations, however, considering further, as mitigating circumstances, his length of service totaling thirty-two (32) years and his consistent "very satisfactory" ratings, he be SUSPENDED for a period of three (3) months, without pay, with a warning that a repetition of the same act in the future, shall be dealt with more severely.

A close examination of the records shows that respondents are indeed guilty of gambling prohibited by law. During the investigation conducted by the CID-OAS, respondent Mazo testified:

Atty. Tan: You did admit, Mr. Mazo, a while ago that you were playing cards and you said "*barya-barya*" *lang naman*.

A: *Yun nga po, maglalaro po kami.*

Q: *Hindi,* I just want to make it clear.

A: *Opo.*

Q: That you admit that. You said *barya-barya lang*.

A: *Opo*.

Q: You admitted to Atty. Cunanan. *Naglalaro kayo pero barya-barya lang*.

A: *Hindi po. Naglalaro po kami barya...*[1]

Respondent Pedroso's testimony is as follows:

Q: Do you admit *na, 'yun na nga, may nag-report sa inyo* that you are playing cards on April 6, 2006, the following day, we talked, *tayo, si* Atty. Cunanan, *ikaw, si* Mr. Dayap and *si* Mr. Mazo. During that confrontation, you admitted to us

[1] TSN dated May 11, 2006.

that you are playing cards *at barya-barya lang naman ang pusta, parang pastime n'yo lang naman 'yun?*

A: Pastime *lang ho.*

Q: Do you admit that, *na 'yung ang sinabi n'yo sa amin?*

A: *Inadmit naming na nag-play kami ng cards pero hindi kami nagbayaran.*

Q: *Pero and sabi n'yo,* pastime *lang ma'am kasi barya-barya nga lang, papiso-piso lang, 'di ba?* That was your statement during that time.

A: Yes, *pero* and *kuwan naming, hindi na nga kami nagkabayaran dahil wala naman kaming baryang kuwan.*

Q: *'Yun na nga. Hindi nga kayo nagkabayaran pero 'yun ang* statement *n'yo noon sa amin.*

A: *Ang* statement *naming 'yan, iadmit naming na nag-play ng kuwan…*

Q: So, *ngayon uulitin kong tanungin,* since we are under oath. *Naglaro kayo noon pero para sa barya-barya lang?* Only to kill time, *sabi n'yo?*

A: To while-away the time *lang*. *Pero ang kuwan namin, hindi kami nagkabayaran.* No money involved *nung magkuwan kami.*

x x x x x x x x x

Respondents' disclaimer that money was not involved is inconsequential. In fact, their defense that they were simply having an innocuous card game *sans* monetary bets does not excuse their misconduct.[2] In *Albano-Madrid v. Apolonio*,[3] we held:

What is more alarming, in our view, is respondents' nonchalance concerning the effect of their misconduct. They have the gall to split hairs and say that they were playing cards, but not gambling. If loafing during office hours could not be countenanced, the more reason playing cards could not be tolerated in the judge's chambers.

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[2] *Albano-Madrid v. Apolonio,* A.M. No. P-01-1517, February 17, 2003, 397 SCRA 120.

[3] *Ibid.*

Such act or conduct that violates the norm of public accountability or diminish the people's faith in the judiciary could never be tolerated or condoned.

However, we can not sustain the recommended penalties. Under Section 52(C)(5), Rule IV of Civil Service Commission Memorandum Circular No. 19, Series of 1999,[4] **gambling prohibited by law** is classified as a **light offense**, punishable as follows:

First Offense	-	Reprimand
Second Offense	-	Suspension for 1-30 days
Third Offense	-	Dismissal from the service

While respondent Mazo was previously suspended for three (3) days without pay, however, his offense was neglect of duty. This was his first offense for gambling prohibited by law. This was also the first time respondents Pedroso and Dayap committed the same offense.

WHEREFORE, for engaging in gambling prohibited by law, respondents Pedro Mazo, Security Officer I, Antonio C. Pedroso, Security Guard I, and Alexander Felix A. Dayap, also a Security Guard I, are hereby *REPRIMANDED* and *WARNED* that a repetition of the same or similar infraction in the future will be dealt with more severely.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and *Reyes, JJ.,* concur.

Corona, J., on official leave.

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[4] Revised Uniform Rules on Administrative Cases in the Civil Service.

EN BANC

[A.M. No. P-04-1889. November 23, 2007]

SABINO L. ARANDA, JR., *complainant, vs.* **TEODORO S. ALVAREZ, Sheriff, Regional Trial Court, Branch 253, Las Piñas City, and RODERICK O. ABAIGAR, Sheriff, Metropolitan Trial Court, Branch 79, Las Piñas City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; PROOF REQUIRED IS SUBSTANTIAL EVIDENCE; CONSTRUED. — "In administrative proceedings, the complainant bears the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

2. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENT; PROCEDURE TO BE FOLLOWED; ENUMERATED. — Section 10, Rule 141 of the Rules of Court provides in plain and clear terms the procedure to be followed with regard to expenses in the execution of writs. Sheriffs cannot just unilaterally demand and receive money from the parties. Section 10 provides the procedure to be followed: (1) the sheriff must make an estimate of the expenses, (2) the court must approve the estimate, (3) the party must deposit the amount with the clerk of court and *ex-officio* sheriff, (4) the clerk of court and *ex-officio* sheriff must disburse the amount to the deputy sheriff assigned to effect the process, (5) the deputy sheriff must make a liquidation, (6) the court must approve the liquidation, (7) any unspent amount must be returned to the party, and (8) the deputy sheriff must submit a full report. In *Balanag, Jr. v. Osita,* the Court held that: x x x [A] sheriff is guilty of violating the Rules if he fails to observe the following: (1) preparing an estimate of expenses to be incurred in executing the writ for which he must seek the court's approval; (2) rendering an accounting; and (3) issuing an official receipt for the total amount he received from the judgment debtor.

3. **ID.; ID.; ID.; ID.; WHEN VIOLATED BY THE SHERIFF; GOOD FAITH IS NOT A DEFENSE; SUSTAINED. —** In *Bernabe v. Eguia,* the Court held that: **Good faith on the part of the sheriff, or lack of it, in proceeding to properly execute [his] mandate would be of no moment,** for he is chargeable with the knowledge that being the officer of the court tasked therefor, it behooves him to make due compliances. x x x [Sheriffs] are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. In fact, **even "reasonableness" of the amounts charged, collected and received by the sheriff is not a defense where the procedure laid down in Section [10], Rule 141 of the Rules of Court has been clearly ignored.** Only the payment of sheriff's fees can be lawfully received by a sheriff and **the acceptance of any other amount is improper, even if it were to be applied for lawful purposes.**

4. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; WHEN GUILTY OF DISHONESTY AND GRAVE MISCONDUCT; PENALTIES. —** Section 52(A)(1) and (3) of the Revised Uniform Rules on Administrative Cases the Civil Service classify dishonesty and grave misconduct, respectively, as *grave* offenses punishable by *dismissal* for the *first* offense. Section 52(A)(20) classifies conduct prejudicial to the best interest of the service as a grave offense punishable by (1) suspension of six months and one day to one year for the first offense; and (2) dismissal for the second offense. Section 58(a) states that the penalty of dismissal carries with it (1) cancellation of eligibility; (2) forfeiture of retirement benefits, and (3) perpetual disqualification from reemployment in the government service.

5. **ID.; ID.; COURT PERSONNEL; SHERIFFS; FAILURE TO LIVE UP TO THE REQUIRED HIGH STANDARDS; EXEMPLIFIED. —** Under Section 10(g), Rule 141 of the Rules of Court, sheriffs are allowed to receive only *₱300* for executing writs to place a party in possession of real property. In the instant case, Alvarez and Abaigar demanded and received *₱40,000.* Demanding and receiving money in excess of the fees allowed by the Rules

constitute dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service. Sheriffs are ranking officers of the court. They play an important part in the administration of justice – execution being the fruit and end of the suit, and the life of the law. In view of their exalted position as keepers of the public faith, their conduct should be geared towards maintaining the prestige and integrity of the court. Alvarez and Abaigar failed to live up to the high standards required of sheriffs.

D E C I S I O N

***PER CURIAM*:**

Sabino L. Aranda, Jr. (complainant) was one of the plaintiffs in an ejectment case[1] filed before the Metropolitan Trial Court, Branch 79, Las Piñas City (MTC). The MTC decided the case in favor of complainant. On appeal, the Regional Trial Court, Branch 253, Las Piñas City (RTC) also decided the case in favor of complainant.[2]

On 17 May 1999, Judge Pio M. Pasia of the MTC issued an *alias* writ of demolition,[3] commanding Sheriff Roderick O. Abaigar (Abaigar) of the MTC to demolish the improvements erected on the Aranda property. In his sheriff's report[4] dated 5 July 1999, Abaigar stated that he implemented the *alias* writ of demolition by issuing a notice to vacate on 3 June 1999 and ejecting the unlawful occupants from the Aranda property.

Complainant filed with the Office of the Court Administrator (OCA) a letter-complaint[5] dated 6 March 2000 charging Sheriff Teodoro S. Alvarez (Alvarez) of the RTC and Abaigar with falsification of official document and grave misconduct.

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[1] Docketed as Civil Case No. 2903, entitled *"Diogracias L. Aranda, et al. v. Salvador Pacayna, et al."*

[2] *Rollo*, p. 117.

[3] *Id*. at 12.

[4] *Id*. at 14.

[5] *Id*. at 3.

According to complainant, Alvarez and Abaigar (1) stated in the sheriff's report that they had implemented the alias writ of demolition when, in truth, they had not; and (2) demanded and received ₱40,000 for the execution of the writ.

In their Comment dated 8 February 2000, Alvarez and Abaigar stated that they implemented the alias writ of demolition fully and without delay and admitted that they received ₱40,000 from Deogracias L. Aranda, Jr.:

> Contrary to the allegation of Mr. Sabino L. Aranda, Mr. Roderick O. Abaigar x x x and [Mr. Teodoro S. Alvarez] x x x have in fact implemented the Writ of Demolition x x x. Attached hereto are the pictures, taken after the demolition on June 25, 1999 and July 5, 1999, to prove that the houses erected on the property of Mr. Deogracias L. Aranda, Jr., have already been demolished on the said dates. As a matter of fact, Mr. Abaigar and [Mr. Alvarez] before proceeding to the demolition proper, tied a string of [sic] the monument from one end of the property to the other end to ensure that only the houses that are subject of the writ would be demolished. The vacant lot in the pictures is the same spot where demolished houses used to be erected. On the other hand, the houses that are shown in the pictures are no longer subject of the above[-]captioned case. The houses, being built on a creek, clearly, are not the [sic] part of the Aranda property. With regard to the ₱40,000.00 received by [Mr. Alvarez] admits [sic] such fact. The truth of the matter is that Mr. Deogracias Aranda, Jr. agreed to give Mr. Abaigar and [Mr. Alvarez] the said amount to be used for the expenses in the demolition of the houses. Said amount was used for the following expenses:
>
> 1. food for the demolition team composing of 25 persons;
> 2. transportation for the said demolition team[;] &
> 3. fees for the people who assisted in the demolition.[6]

In a Resolution[7] dated 3 April 2002, the Court directed Judge Joselito dj. Vibandor (Judge Vibandor), Executive Judge, Regional Trial Court, Las Piñas City to (1) obtain the comments of Alvarez

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

[7] *Id*. at 97.

and Abaigar, (2) conduct an investigation, and (3) submit his report and recommendation.

In his Report dated 21 July 2004, Judge Vibandor found that Alvarez and Abaigar violated Section 10, Rule 141 of the Rules of Court[8] when they demanded and received ₱40,000:

Sheriff Teodoro Alvarez and Sheriff Roderick Abaigar admitted that they received the amount of FORTY THOUSAND PESOS (₱40,000.00) from complainant Sabino L. Aranda in installment. The first payment was received the day before the implementation of the Writ of Demolition because according to respondents some persons they hired were asking for an advance payment for their expenses.

It is the statement of the respondents that the aforesaid amount was agreed upon by the parties for the demolition. The amount of [₱]40,000.00 was arrived at by computing the fees to be paid for the demolition team. x x x

Respondents likewise admitted that the mentioned estimate was never reduced to writing. It was only written on scratch paper which

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[8] Section 10, Rule 141 of the Rules of Court provides:

SEC. 10. *Sheriffs, PROCESS SERVERS and other persons serving processes*. —

x x x x x x x x x

(g) For executing a writ or process to place a party in possession of real PROPERTY OR estates, THREE HUNDRED (₱300.00) PESOS per property;

x x x x x x x x x

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

are [sic] no longer in their possession. And considering that there was no written estimate of expenses, respondents found no need to seek court approval for such estimate. No liquidation was likewise made as to the expenses incurred by the sheriffs.

It is the position of respondent sheriffs that there was no need for the submission of an estimate for the court's approval because it was their usual practice that once an agreement has been arrived at with the parties, they just talk verbally on the matter.

They are also not aware of Section [10] of Rule 141 of the Rules of Court.

In view of the admissions made by respondent sheriffs as can be gleaned from the Transcript of Stenographic Notes dated May 12, 2004, the undersigned firmly believes that a violation of Section [10] of Rule 141 of the Rules of Court was committed.[9]

In his Report dated 2 June 2005, Judge Vibandor found that Alvarez and Abaigar were not liable for falsification of official document — they actually implemented the *alias* writ of demolition as stated in the sheriff's report:

The main issue which this investigation seeks to resolve is whether or not Respondents falsified the Sheriff's Report by stating therein that the Writ of Demolition was implemented when in truth and in fact it was not.

An extensive investigation of the case reveals that respondents, Sheriff Teodoro Alvarez and Sheriff Roderick Abaigar are not guilty of the crime of Falsification.

The testimony of Felisa Aranda proved to be the pivotal link that enabled the Court to unearth the truth with regard to the disputed Sheriff's Report after clarificatory questions were propounded upon her.

x x x x x x x x x

Based on the aforementioned testimony, it is clear that Sheriffs Alvarez and Abaigar were not guilty of the crime of Falsification being imputed against them.

It is worthy to stress that the Writ of Demolition was successfully implemented by both Sheriffs since 1999 until the present [sic] there

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[9] *Rollo*, pp. 118-119.

are no more squatters occupying the property owned by the family of the late Sabino Aranda. Thus, the Report prepared by both Sheriffs was not fraudulent for its contents depicts [sic] the truth and did not leave any room for doubt due to the candid admission by the wife of herein complainant.[10]

Judge Vibandor recommended that (1) Alvarez and Abaigar be suspended for one month for grave misconduct,[11] and (2) the charge of falsification of official document be dismissed.[12] In a Resolution[13] dated 20 September 2004, the Court resolved to docket the matter as a regular administrative case and referred the matter to the OCA for evaluation, report, and recommendation.

In his manifestation and motion,[14] Alvarez stated that he had reached his mandatory retirement on 2 September 2004. He prayed for the early resolution of the instant case so he could secure his clearances. In a Resolution[15] dated 8 November 2004, the Court noted Alvarez's manifestation and motion.

In its Report[16] dated 11 April 2006, the OCA found that Alvarez and Abaigar (1) erred when they "unilaterally demanded and received the amount of ₱40,000 from the complainant as party litigant to defray execution expenses without obtaining the approval of the trial court and without rendering an accounting for it within the mandated period"; and (2) did not commit falsification of official document. The OCA recommended that (1) Alvarez and Abaigar be found guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service; (2) an amount equivalent to Alvarez's salary for one year be deducted from his retirement benefits; and (3) Abaigar be suspended for one year.

[10] Report and Recommendation, pp. 1-2, 8.

[11] *Rollo*, p. 120.

[12] Report and Recommendation, p. 9.

[13] *Rollo*, p. 150.

[14] *Id*. at 153-154.

[15] *Id*. at 181.

[16] Memorandum for Hon. Artemio V. Panganiban.

On the charge of falsification of official document, the Court finds Alvarez and Abaigar not liable. "In administrative proceedings, the complainant bears the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[17]

In the instant case, complainant failed to substantiate the allegation that Alvarez and Abaigar are guilty of falsification of official document. Complainant merely stated in his complaint that Alvarez and Abaigar violated Republic Act No. 6713 "for failure to enforce the *Alias* Writ of Demolition." Aside from this bare allegation, complainant did not present any evidence to support the charge. Complainant did not show that the improvements to be demolished are still standing on the Aranda property.

In their comment, Alvarez and Abaigar stated that they duly implemented the *alias* writ of demolition: (1) they demolished the improvements on the Aranda property on 25 June 1999 and 5 July 1999; (2) they took pictures to prove that the improvements had already been demolished; (3) they tied a string from one end of the property to the other to ensure that only the improvements encroaching on the property would be demolished; and (4) the improvements on the creek were not demolished because they laid outside the Aranda property — they were not covered by the *alias* writ of demolition.

According to Alvarez and Abaigar, complainant refused to sign the sheriff's report because, aside from the improvements on the Aranda property, he wanted the improvements on the creek to be likewise demolished.[18] However, complainant did not show that the creek was part of the Aranda property and that the improvements built on the creek were covered by the *alias* writ of demolition.

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[17] *Pan v. Salamat*, A.M. No. P-03-1678, 26 June 2006, 492 SCRA 460, 466.

[18] Memorandum for Hon. Artemio V. Panganiban, p. 3.

At the time Judge Vibandor conducted the investigation, complainant was already dead and the other plaintiffs in the ejectment case were either dead or outside the country. Nevertheless, complainant's wife, Felisa Aranda, appeared during the investigation and provided vital information on the matter. She was definite and unrelenting in her testimony that Alvarez and Abaigar implemented the *alias* writ of demolition:

COURT

Q We want this clarified again Ms. Witness, when the two (2) Sheriffs left that day in the year of 1999, are you sure they were able to eject the squatters outside of the properties of the Arandas?

WITNESS

A Yes, Your Honor.[19]

After an extensive investigation, Judge Vibandor found that Alvarez and Abaigar were not liable for falsification of official document. He found that they actually implemented the *alias* writ of demolition as stated in the sheriff's report. The OCA agreed with this finding:

We find the efforts exerted by Judge Vibandor in investigating the falsification matter extensive enough x x x.

We also find no reason to disturb his findings and conclusion that respondents are not guilty of falsifying the Sheriff's Report dated July 5, 1999 as the records of the case duly support the same. Respondents' consistent assertion that they fully implemented the writ of demolition and their explanation that the houses that remain standing in the area were [sic] those erected near the creek and are no longer covered by the writ are corroborated by the testimony of no less than the wife of the complainant herein. Mrs. Aranda testified that the demolition of the improvements in the Aranda property was made in three phases and it was completed only in 1999 when the sheriffs who took over and implemented it were the respondents. In asserting that she is definite that the respondents sheriffs were the ones who implemented the writ, she states, thus: "*because on the afternoon of that day, my husband narrated to me what happened:*

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[19] TSN, 5 May 2005, p. 23.

that the squatters fought with them and even [sic] *the squatters fought with the two sheriffs*." She was also unrelenting in her statement that respondents were able to remove the squatters in the Aranda property subject of the civil case. x x x

In addition, the two pictures of the site, attached by respondents to their comments and counter-affidavits, and which they claim to have been taken after the demolition, support the fact that respondents fully implemented the writ of demolition.[20]

The Court has no reason to disturb the findings of Judge Vibandor and the OCA. Without substantial evidence to prove that Alvarez and Abaigar falsified the sheriff's report, the Court cannot hold them administratively liable.

On the charges of dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service, the Court finds Alvarez and Abaigar liable.

Complainant charged Alvarez and Abaigar of violating Republic Act No. 3019 for demanding and receiving ₱40,000 from him. In their comment, Alvarez and Abaigar admitted that they demanded and received ₱40,000. Accordingly, both Judge Vibandor and the OCA found that Alvarez and Abaigar violated the provisions of Section 10, Rule 141 of the Rules of Court. The Court agrees.

Section 10, Rule 141 of the Rules of Court provides in plain and clear terms the procedure to be followed with regard to expenses in the execution of writs. It provides that:

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, **the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The**

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[20] Memorandum for Hon. Artemio V. Panganiban, pp. 4-5.

liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor. (Emphasis ours)

Sheriffs cannot just unilaterally demand and receive money from the parties. Section 10 provides the procedure to be followed: (1) the sheriff must make an estimate of the expenses, (2) the court must approve the estimate, (3) the party must deposit the amount with the clerk of court and *ex-officio* sheriff, (4) the clerk of court and *ex-officio* sheriff must disburse the amount to the deputy sheriff assigned to effect the process, (5) the deputy sheriff must make a liquidation, (6) the court must approve the liquidation, (7) any unspent amount must be returned to the party, and (8) the deputy sheriff must submit a full report. In *Balanag, Jr. v. Osita*,[21] the Court held that:

x x x [A] sheriff is guilty of violating the Rules if he fails to observe the following: (1) preparing an estimate of expenses to be incurred in executing the writ, for which he must seek the court's approval; (2) rendering an accounting; and (3) issuing an official receipt for the total amount he received from the judgment debtor.

In the instant case, Alvarez and Abaigar completely failed to observe the procedure in Section 10. They did not (1) prepare an estimate, (2) have the estimate approved by the court, (3) ask the party to deposit the amount with the clerk of court and *ex-officio* sheriff, (4) make a liquidation, (5) have the liquidation approved by the court, and (6) return any unspent amount. The acquiescence of complainant to the expenses does not absolve Alvarez and Abaigar of their failure to make an estimate and to secure the court's prior approval of the estimate.[22] Sheriffs are not allowed to receive voluntary payments from parties.[23]

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[21] 437 Phil. 452, 458 (2002).

[22] *Tan v. Paredes*, A.M. No. P-04-1789, 22 July 2005, 464 SCRA 47, 55.

[23] *Lumanta v. Tupas*, 452 Phil. 950, 955-956 (2003).

In their comment, Alvarez and Abaigar tried to justify their actions by stating that they used the money to defray the costs of the execution of the *alias* writ of demolition. Even assuming this were true, they would still be liable. In *Bernabe v. Eguia*,[24] the Court held that:

> **Good faith on the part of the sheriff, or lack of it, in proceeding to properly execute [his] mandate would be of no moment**, for he is chargeable with the knowledge that being the officer of the court tasked therefor, it behooves him to make due compliances. x x x [Sheriffs] are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. In fact, **even "reasonableness" of the amounts charged, collected and received by the sheriff is not a defense where the procedure laid down in Section [10], Rule 141 of the Rules of Court has been clearly ignored**. Only the payment of sheriff's fees[25] can be lawfully received by a sheriff and **the acceptance of any other amount is improper, even if it were to be applied for lawful purposes**. (Emphasis ours)

Alvarez and Abaigar have unlawfully demanded and received money from parties before. According to Judge Vibandor, "It is the position of respondent sheriffs that there was no need for the submission of an estimate for the court's approval because *it was their usual practice that once an agreement has been arrived at with the parties, they just talk verbally on the matter*."[26] During the investigation, Alvarez and Abaigar stated that they were "*not aware*" of the provisions of Section 10 and that their "*usual*" practice was to directly demand and receive money from the parties:

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[24] 458 Phil. 96, 105 (2003).

[25] Section 10, Rule 141 of the Rules of Court allows sheriffs to collect ₱300 in the execution of a writ to place a party in possession of real property.

[26] *Rollo*, p. 118.

COURT

Q Tell us Mr. Alvarez, why did you not deem it necessary to make a written estimate of the expenses to be incurred, neither there was submission of the estimate for Court approval or liquidation of expenses?

MR. ALVAREZ

A Because Your Honor **it is our usual procedure that once we arrive with** [sic] **an agreement, we just verbally talk the matter** [sic].

COURT

Q Mr. Abaigar, what do you say?

MR. ABAIGAR

A The same.

COURT

Q You are not aware of the provision [sic] of Section [10], Rule 141 of the Rules of Court as Sheriff?

MR. ALVAREZ

A Not aware of that, Your Honor.[27] (Emphasis ours)

Under Section 10(g), Rule 141 of the Rules of Court, sheriffs are allowed to receive only *₱300* for executing writs to place a party in possession of real property. In the instant case, Alvarez and Abaigar demanded and received *₱40,000*. Demanding and receiving money in excess of the fees allowed by the Rules constitute dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service.[28]

Section 52(A)(1) and (3) of the Revised Uniform Rules on Administrative Cases in the Civil Service[29] classify dishonesty and grave misconduct, respectively, as *grave* offenses punishable

[27] TSN, 12 May 2004, p. 8.

[28] *De Guzman, Jr. v. Mendoza*, A.M. No. P-03-1693, 17 March 2005, 453 SCRA 565, 572; *Adoma v. Gatcheco*, A.M. No. P-05-1942, 17 January 2005, 448 SCRA 299, 304.

[29] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

by *dismissal* for the *first* offense. Section 52(A)(20) classifies conduct prejudicial to the best interest of the service as a grave offense punishable by (1) suspension of six months and one day to one year for the first offense, and (2) dismissal for the second offense. Section 58(a) states that the penalty of dismissal carries with it (1) cancellation of eligibility, (2) forfeiture of retirement benefits, and (3) perpetual disqualification from reemployment in the government service.

In *Geolingo v. Albayda*,[30] the Court dismissed a sheriff for receiving money in excess of the lawful fees. In that case, the Court agreed with the observations of the OCA that:

> **Charging ₱5,000.00 for every shanty to be demolished** x x x **without the approval of the court constitutes grave misconduct and conduct prejudicial to the best interest of the service**. Although the sheriff, in the performance of his duties, is not precluded from collecting additional sums from a requesting party, the same should be subject to approval from the court as provided for in Section [10] Rule 141 of the Rules of Court. Before an interested party pays the sheriff's expenses, the latter should first estimate the amount to be approved by the court. The approved estimated expenses shall be deposited by the interested party with the Clerk of Court and *ex-officio* sheriff who shall disburse the amount to the executing sheriff. The latter shall liquidate his expenses within the same period for rendering a return on the writ. (*Abalde vs. Roque, Jr.*, 400 SCRA 210 [2003]) **Any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty** (*Alvares, Jr. vs. Martin*, 411 SCRA 248 [2003]). Moreover, any unspent amount shall be refunded to the party who made the deposit.[31] (Emphasis ours)

In *Tan v. Paredes*,[32] the Court dismissed a sheriff for receiving money in excess of the lawful fees. In that case, the Court held that:

> Under Section [10], Rule 141 of the Rules of Court, the sheriff is required to secure the court's prior approval of the estimated expenses

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[30] A.M. No. P-02-1660, 31 January 2006, 481 SCRA 32.

[31] *Id*. at 37.

[32] *Supra* note 22, at 59.

and fees needed to implement the court process. The requesting party shall deposit such amount with the Clerk of Court. These expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.

In the implementation of a writ x x x, only the payment of sheriff's fees may be received by sheriffs. Sheriffs are not allowed to receive any *voluntary* payments from the parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Corollary, **a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps, otherwise, it would amount to dishonesty or extortion**.[33] (Emphasis ours)

In *Sandoval v. Ignacio, Jr.*,[34] the Court dismissed a sheriff for receiving money in excess of the lawful fees. In that case, the Court held that:

The rule requires the sheriff executing writs or processes to estimate the expenses to be incurred. Upon the approval of the estimated expenses, the interested party has to deposit the amount with the Clerk of Court and *Ex-officio* Sheriff. The expenses shall then be disbursed to the executing Sheriff subject to his liquidation within the same period for rendering a return on the process or writ. Any unspent amount shall be refunded to the party who made the deposit.

In this case, there is nothing on record to indicate that [the sheriff] made an estimate of the expenses to be incurred for execution and had the estimate approved by the court. What does appear on record is the fact that he asked for and received the amount of ₱1,200.00 from [the party] for which he issued a mere handwritten *Temporary Receipt*. Neither does it appear that he deposited the amount with the Clerk of Court and *Ex-officio* Sheriff and rendered an accounting thereof.

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[33] *Id*. at 54-55.

[34] A.M. No. P-04-1878, 31 August 2004, 437 SCRA 238, 246.

The sheriff's conduct of unilaterally demanding sums of money from a party-litigant purportedly to defray expenses of execution, without obtaining the approval of the trial court for such purported expense and without rendering an accounting therefor constitutes dishonesty and extortion and falls short of the required standards of public service. Such conduct threatens the very existence of the system of administration of justice.[35] (Emphasis ours)

Abaigar has a previous case decided against him. In *De Leon-Dela Cruz v. Recacho*,[36] the Court found Abaigar guilty of grave misconduct for demanding and receiving money for the execution of a writ of demolition. In that case, the Court warned him that a repetition of the same offense shall be dealt with more severely. Abaigar repeated the same offense.

In *Escobar Vda. De Lopez v. Luna*,[37] the Court held that:

For those who have fallen short of their accountabilities, we have not hesitated to impose the ultimate penalty. We will not tolerate or condone any conduct that violates the norms of public accountability and diminishes the faith of the people in the judicial system. For, we cannot countenance any act or omission on the part of all those involved in the administration of justice which would diminish or even just tend to diminish the faith of the people in the judiciary.

Sheriffs are ranking officers of the court. They play an important part in the administration of justice — execution being the fruit and end of the suit, and the life of the law. In view of their exalted position as keepers of the public faith, their conduct should be geared towards maintaining the prestige and integrity of the court.[38] Alvarez and Abaigar failed to live up to the high standards required of sheriffs.

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[35] *Id*. at 245-246.

[36] A.M. No. P-06-2122, 17 July 2007.

[37] A.M. No. P-04-1786, 13 February 2006, 482 SCRA 265, 277-278.

[38] *Id*. at 275-278.

WHEREFORE, the Court finds respondent retired Sheriff Teodoro S. Alvarez, Regional Trial Court, Branch 253, Las Piñas City, and respondent Sheriff Roderick O. Abaigar, Metropolitan Trial Court, Branch 79, Las Piñas City, *GUILTY* of *DISHONESTY, GRAVE MISCONDUCT*, and *CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE*. Accordingly, the Court (1) *FORFEITS* respondent Teodoro S. Alvarez's entire retirement benefits, except accrued leave credits, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations; and (2) *DISMISSES* respondent Sheriff Roderick O. Abaigar from the service, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

Corona, J., on official leave.

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

SECOND DIVISION

[A.M. No. P-06-2213. November 23, 2007]
(Formerly OCA IPI No. 06-2378-P)

SANTOS SY, *complainant, vs.* **IBRAHIM T. BINASING, Officer-in-Charge/Sheriff, Regional Trial Court, Office of the Clerk of Court, Cotabato City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; AFFIDAVIT OF DESISTANCE DOES NOT RENDER THE COMPLAINT MOOT; SUSTAINED. —** Complainant's execution of an Affidavit of Desistance does not render the complaint moot. . . . [A]n affidavit of desistance by a complainant in an administrative case against a member of the judiciary does not divest the Supreme Court of its jurisdiction to investigate the matters alleged in the complaint or otherwise to wield its disciplinary authority because the Court has an interest in the conduct and behavior of its officials and employees and in ensuring the prompt delivery of justice to the people. Its efforts in that direction cannot thus be frustrated by any private arrangement of the parties. Neither can the disciplinary power of this Court be made to depend on a complainant's whims. To rule otherwise would undermine the discipline of court officials and personnel.

2. **ID.; ID.; COURT PERSONNEL; SHERIFF; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY; PENALTY. —** Respondent's liability for neglect of duty – failure to implement the writ of execution for more than one year and six months – is clearly indubitable. On the penalty. Under the *Uniform Rules on Administrative Cases in the Civil Service,* simple neglect of duty of which, under the facts of the case, respondent is liable, is penalized by suspension of one (1) month and one (1) day to six (6) months. It appearing, however, that respondent has not been previously administratively faulted, so as not to hamper the performance of the duties of his office, instead of suspending him, he is fined an amount equivalent to his three months salary.

RESOLUTION

CARPIO MORALES, *J.*:

The Metropolitan Trial Court, Branch 75 of Marikina rendered a judgment in Civil Case No. 03-7464 in favor of the therein plaintiff-herein complainant Santos Sy, Managing Director of Starbenz Inc., against one Ang Ping, *doing business under the name and style of Ang Ping Enterprises.*

Its decision having become final and executory, the trial court issued a Writ of Execution on June 21, 2004.

The writ of execution was referred by complainant's counsel to respondent Officer-in-Charge/Sheriff Ibrahim T. Binasing of the Office of the Clerk of Court, Regional Trial Court, Cotabato City for implementation upon the defendant, "c/o Ang Mart Enterprises, 25 Sinsuat Ave., cor. Jose Lim St., Cotabato City."

By letter of September 22, 2004 addressed to respondent, complainant, through counsel, reiterated his request for the implementation of the writ. The request was followed by another letter dated December 6, 2004. Despite receipt of the letters and the required expenses for the implementation of the writ, respondent failed to implement it.

In a February 28, 2005 letter, complainant's counsel warned respondent that "failure to do your work may constrain us to bring this matter to the proper authority for appropriate sanctions x x x." The warning was reiterated in a letter of July 26, 2005 to respondent.

Replying, respondent, by letter of August 15, 2005, asked complainant's counsel for the bank account number of complainant. By a subsequent letter dated November 15, 2005, respondent informed complainant's counsel, however, that the money judgment was "not yet in [his] hands" and that the delay in the implementation of the writ was due to the numerous requests from different courts of Maguindanao

for implementation of writs of demolition and he was the only sheriff assigned for the purpose.

Hence, arose the present administrative case filed on February 3, 2006 with the Office of the Court Administrator (OCA) for neglect of duty.

In his Comment of March 9, 2006, respondent asserts that the complaint has become moot because he had already implemented the writ of execution, and that he deposited the money judgment to the bank account of complainant on December 29, 2005.

Respondent in fact attached to his Comment complainant's Affidavit of Desistance dated February 20, 2006. He thus prays for the dismissal of the complaint.

The OCA, on evaluation of the case, found respondent "grossly negligent" in failing to immediately implement the writ. It accordingly recommended that respondent be fined in the amount of ₱5,000 and sternly warned that any repetition of the same would be dealt with more severely.

By Resolution of July 24, 2006, the Court directed the parties to manifest in 10 days whether they are willing to submit the case for decision on the basis of the pleadings/records already submitted. In compliance with the said Resolution, respondent, by letter of September 15, 2006, reiterates his information that he had already implemented the writ and his prayer for the dismissal of the complaint in view of complainant's execution of an affidavit of desistance.

The OCA's evaluation of the case is well-taken, but not its recommended penalty.

Respondent's liability for neglect of duty – failure to implement the writ of execution for more than one year and six months – is clearly indubitable.

Complainant's execution of an Affidavit of Desistance does not render the complaint moot.

> . . . [A]n affidavit of desistance by a complainant in an administrative case against a member of the judiciary does not divest the Supreme Court of its jurisdiction to investigate the matters alleged in the complaint or otherwise to wield its disciplinary authority because the Court has an interest in the conduct and behavior of its officials and employees and in ensuring the prompt delivery of justice to the people. Its efforts in that direction cannot thus be frustrated by any private arrangement of the parties. Neither can the disciplinary power of this Court be made to depend on a complainant's whims. To rule otherwise would undermine the discipline of court officials and personnel. . .[1]

On the penalty. Under the *Uniform Rules on Administrative Cases in the Civil Service*, simple neglect of duty of which, under the facts of the case, respondent is liable, is penalized by suspension of one (1) month and one (1) day to six (6) months. It appearing, however, that respondent has not been previously administratively faulted, so as not to hamper the performance of the duties of his office,[2] instead of suspending him, he is fined an amount equivalent to his three months salary.

WHEREFORE, respondent IBRAHIM T. BINASING, Officer-in-Charge/Sheriff, Regional Trial Court, Office of the Clerk of Court, Cotabato City, is found guilty of simple neglect of duty and is *FINED* an amount equivalent to his THREE MONTHS SALARY, with *WARNING* that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

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[1] *Pineda v. Pinto,* A.M. No. RTJ-04-1851, October 13, 2004, 440 SCRA 225, 232-233.

[2] Vide: *Jacinto v. Castro*, A.M. No. P-04-1907, July 3, 2007; *Morta v. Bagagñan*, A.M. No. MTJ-03-1513, November 12, 2003, 415 SCRA 624; *Aquino v. Lavadia,* A.M. No. P-01-1483, September 20, 2001, 365 SCRA 441.

THIRD DIVISION

[G.R. No. 123498. November 23, 2007]

BPI FAMILY BANK, *petitioner, vs.* **AMADO FRANCO and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. **CIVIL LAW; PROPERTY; MOVABLE PROPERTY; DETERMINATE OR SPECIFIC PROPERTY; DISTINGUISHED FROM GENERIC AND FUNGIBLE PROPERTY.—** The movable property mentioned in Article 559 of the Civil Code pertains to a specific or determinate thing. A determinate or specific thing is one that is individualized and can be identified or distinguished from others of the same kind. In this case, the deposit in Franco's accounts consists of money which, albeit characterized as a movable, is generic and fungible. The quality of being fungible depends upon the possibility of the property, because of its nature or the will of the parties, being substituted by others of the same kind, not having a distinct individuality. It bears emphasizing that money bears no earmarks of peculiar ownership, and this characteristic is all the more manifest in the instant case which involves money in a banking transaction gone awry. Its primary function is to pass from hand to hand as a medium of exchange, without other evidence of its title. Money, which had passed through various transactions in the general course of banking business, even if of traceable origin, is no exception. Thus, inasmuch as what is involved is not a specific or determinate personal property, BPI-FB's illustrative example, ostensibly based on Article 559, is inapplicable to the instant case.

2. **ID.; CONTRACTS; LOAN; DEBTOR-CREDITOR RELATIONSHIP BETWEEN BANK AND DEPOSITOR, SUSTAINED. —** There is no doubt that BPI-FB owns the deposited monies in the accounts of Franco, but not as a legal consequence of its unauthorized transfer of FMIC's deposits to Tevesteco's account. BPI-FB conveniently forgets that the deposit of money in banks is governed by the Civil Code provisions on simple loan or mutuum. As there is a debtor-creditor relationship between a bank and its depositor, BPI-FB

ultimately acquired ownership of Franco's deposits, but such ownership is coupled with a corresponding obligation to pay him an equal amount on demand. Although BPI-FB owns the deposits in Franco's accounts, it cannot prevent him from demanding payment of BPI-FB's obligation by drawing checks against his current account, or asking for the release of the funds in his savings account. Thus, when Franco issued checks drawn against his current account, he had every right as creditor to expect that those checks would be honored by BPI-FB as debtor.

3. **ID.; ID.; ID.; ID.; THE DEPOSITOR EXPECTS THE BANK TO TREAT HIS ACCOUNT WITH THE UTMOST FIDELITY; RATIONALE. —** BPI-FB does not have a unilateral right to freeze the accounts of Franco based on its mere suspicion that the funds therein were proceeds of the multi-million peso scam Franco was allegedly involved in. To grant BPI-FB, or any bank for that matter, the right to take whatever action it pleases on deposits which it supposes are derived from shady transactions, would open the floodgates of public distrust in the banking industry. Our pronouncement in *Simex International (Manila), Inc. v. Court of Appeals* continues to resonate, thus: The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. Thus, even the humble wage-earner has not hesitated to entrust his life's savings to the bank of his choice, knowing that they will be safe in its custody and will even earn some interest for him. The ordinary person, with equal faith, usually maintains a modest checking account for security and convenience in the settling of his monthly bills and the payment of ordinary expenses. x x x. In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident

that the bank will deliver it as and to whomever directs. A blunder on the part of the bank, such as the dishonor of the check without good reason, can cause the depositor not a little embarrassment if not also financial loss and perhaps even civil and criminal litigation. The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. x x x.

4. **REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; ENFORCEMENT OF WRIT OF ATTACHMENT CANNOT BE MADE WITHOUT INCLUDING IN THE MAIN SUIT THE OWNER OF THE PROPERTY ATTACHED BY VIRTUE THEREOF; APPLICATION IN CASE AT BAR. —** In this argument, we perceive BPI-FB's clever but transparent ploy to circumvent Section 4, Rule 13 of the Rules of Court. It should be noted that the strict requirement on service of court papers upon the parties affected is designed to comply with the elementary requisites of due process. Franco was entitled, as a matter of right, to notice, if the requirements of due process are to be observed. Yet, he received a copy of the Notice of Garnishment only on September 27, 1989, several days after the two checks he issued were dishonored by BPI-FB on September 20 and 21, 1989. Verily, it was premature for BPI-FB to freeze Franco's accounts without even awaiting service of the Makati RTC's Notice of Garnishment on Franco. Additionally, it should be remembered that the enforcement of a writ of attachment cannot be made without including in the main suit the owner of the property attached by virtue thereof. Section 5, Rule 13 of the Rules of Court specifically provides that "no levy or attachment pursuant to the writ issued x x x shall be enforced unless it is preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint, the application for attachment, on the defendant within the Philippines."

5. **CIVIL LAW; DAMAGES; MORAL DAMAGES; REQUISITES.—** An award of moral damages contemplates the existence of the following requisites: (1) there must be an injury clearly sustained by the claimant, whether physical, mental or psychological; (2) there must be a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate

cause of the injury sustained by the claimant; and (4) the award for damages is predicated on any of the cases stated in Article 2219 of the Civil Code.

6. ID.; ID.; ID.; IN ABSENCE OF BAD FAITH A PARTY CANNOT BE HELD LIABLE FOR MORAL DAMAGES; EXPLAINED.— Thus, not having acted in bad faith, BPI-FB cannot be held liable for moral damages under Article 2220 of the Civil Code for breach of contract. We also deny the claim for exemplary damages. Franco should show that he is entitled to moral, temperate, or compensatory damages before the court may even consider the question of whether exemplary damages should be awarded to him. As there is no basis for the award of moral damages, neither can exemplary damages be granted.

7. ID.; ID.; ATTORNEY'S FEES; WHEN PROPER.— Attorney's fees may be awarded when a party is compelled to litigate or incur expenses to protect his interest, or when the court deems it just and equitable. In the case at bench, BPI-FB refused to unfreeze the deposits of Franco despite the Makati RTC's Order Lifting the Order of Attachment and Quiaoit's unwavering assertion that the ₱400,000.00 was part of Franco's savings account. This refusal constrained Franco to incur expenses and litigate for almost two (2) decades in order to protect his interests and recover his deposits. Therefore, this Court deems it just and equitable to grant Franco ₱75,000.00 as attorney's fees. The award is reasonable in view of the complexity of the issues and the time it has taken for this case to be resolved.

APPEARANCES OF COUNSEL

Ramirez Bargas Benedicto & Associates for petitioner.
Lawrence P. Villanueva for private respondent.

D E C I S I O N

NACHURA, *J.*:

Banks are exhorted to treat the accounts of their depositors with meticulous care and utmost fidelity. We reiterate this exhortation in the case at bench.

Before us is a Petition for Review on *Certiorari* seeking the reversal of the Court of Appeals (CA) Decision[1] in CA-G.R. CV No. 43424 which affirmed with modification the judgment[2] of the Regional Trial Court, Branch 55, Manila (Manila RTC), in Civil Case No. 90-53295.

This case has its genesis in an ostensible fraud perpetrated on the petitioner BPI Family Bank (BPI-FB) allegedly by respondent Amado Franco (Franco) in conspiracy with other individuals,[3] some of whom opened and maintained separate accounts with BPI-FB, San Francisco del Monte (SFDM) branch, in a series of transactions.

On August 15, 1989, Tevesteco Arrastre-Stevedoring Co., Inc. (Tevesteco) opened a savings and current account with BPI-FB. Soon thereafter, or on August 25, 1989, First Metro Investment Corporation (FMIC) also opened a time deposit account with the same branch of BPI-FB with a deposit of ₱100,000,000.00, to mature one year thence.

Subsequently, on August 31, 1989, Franco opened three accounts, namely, a current,[4] savings,[5] and time deposit,[6] with BPI-FB. The current and savings accounts were respectively funded with an initial deposit of ₱500,000.00 each, while the time deposit account had ₱1,000,000.00 with a maturity date of August 31, 1990. The total amount of ₱2,000,000.00 used to open these accounts is traceable to a check issued by Tevesteco allegedly in consideration of Franco's introduction

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[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Cancio C. Garcia (retired Associate Justice of the Supreme Court) and Portia Alino Hormachuelos, concurring; *rollo*, pp. 40-55.

[2] CA *rollo*, pp. 70-79.

[3] Antonio T. Ong, Manuel Bienvenida, Jr., Milagros Nayve, Jaime Sebastian, Ador de Asis, and Eladio Teves. *Rollo*, pp. 160-207. RTC, Quezon City, Branch 85, Decision in Crim. Case No. Q91-22386.

[4] Account No. 840-107483-7.

[5] Account No. 1668238-1.

[6] Account No. 08523412.

of Eladio Teves,[7] who was looking for a conduit bank to facilitate Tevesteco's business transactions, to Jaime Sebastian, who was then BPI-FB SFDM's Branch Manager. In turn, the funding for the ₱2,000,000.00 check was part of the ₱80,000,000.00 debited by BPI-FB from FMIC's time deposit account and credited to Tevesteco's current account pursuant to an Authority to Debit purportedly signed by FMIC's officers.

It appears, however, that the signatures of FMIC's officers on the Authority to Debit were forged.[8] On September 4, 1989, Antonio Ong,[9] upon being shown the Authority to Debit, personally declared his signature therein to be a forgery. Unfortunately, Tevesteco had already effected several withdrawals from its current account (to which had been credited the ₱80,000,000.00 covered by the forged Authority to Debit) amounting to ₱37,455,410.54, including the ₱2,000,000.00 paid to Franco.

On September 8, 1989, impelled by the need to protect its interests in light of FMIC's forgery claim, BPI-FB, thru its Senior Vice-President, Severino Coronacion, instructed Jesus Arangorin[10] to debit Franco's savings and current accounts for the amounts remaining therein.[11] However, Franco's time deposit account could not be debited due to the capacity limitations of BPI-FB's computer.[12]

In the meantime, two checks[13] drawn by Franco against his BPI-FB current account were dishonored upon presentment for payment, and stamped with a notation "account under

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[7] President of Tevesteco.

[8] BPI-FB's Memorandum, *rollo,* pp. 104-105.

[9] Executive Vice-President of FMIC.

[10] The new BPI-FB SFDM branch manager who replaced Jaime Sebastian.

[11] BPI-FB's Memorandum, *rollo,* p. 105.

[12] *Id.*

[13] Respectively dated September 11 and 18, 1989. The first check dated August 31, 1989 Franco issued in the amount of ₱50,000.00 was honored by BPI-FB.

garnishment." Apparently, Franco's current account was garnished by virtue of an Order of Attachment issued by the Regional Trial Court of Makati (Makati RTC) in Civil Case No. 89-4996 (Makati Case), which had been filed by BPI-FB against Franco *et al.*,[14] to recover the ₱37,455,410.54 representing Tevesteco's total withdrawals from its account.

Notably, the dishonored checks were issued by Franco and presented for payment at BPI-FB prior to Franco's receipt of notice that his accounts were under garnishment.[15] In fact, at the time the Notice of Garnishment dated September 27, 1989 was served on BPI-FB, Franco had yet to be impleaded in the Makati case where the writ of attachment was issued.

It was only on May 15, 1990, through the service of a copy of the Second Amended Complaint in Civil Case No. 89-4996, that Franco was impleaded in the Makati case.[16] Immediately, upon receipt of such copy, Franco filed a Motion to Discharge Attachment which the Makati RTC granted on May 16, 1990. The Order Lifting the Order of Attachment was served on BPI-FB on even date, with Franco demanding the release to him of the funds in his savings and current accounts. Jesus Arangorin, BPI-FB's new manager, could not forthwith comply with the demand as the funds, as previously stated, had already been debited because of FMIC's forgery claim. As such, BPI-FB's computer at the SFDM Branch indicated that the current account record was "not on file."

With respect to Franco's savings account, it appears that Franco agreed to an arrangement, as a favor to Sebastian, whereby ₱400,000.00 from his savings account was temporarily transferred to Domingo Quiaoit's savings account, subject to its immediate return upon issuance of a certificate of deposit

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[14] *Supra* note 3. The names of other defendants in Crim. Case No. Q91-22386.

[15] Franco received the Notice of Garnishment on September 27, 1989, but the 2 checks he had issued were presented for payment at BPI-FB on September 20 & 21, 1989, respectively.

[16] Franco's Memorandum, *rollo,* p. 137.

which Quiaoit needed in connection with his visa application at the Taiwan Embassy. As part of the arrangement, Sebastian retained custody of Quiaoit's savings account passbook to ensure that no withdrawal would be effected therefrom, and to preserve Franco's deposits.

On May 17, 1990, Franco pre-terminated his time deposit account. BPI-FB deducted the amount of ₱63,189.00 from the remaining balance of the time deposit account representing advance interest paid to him.

These transactions spawned a number of cases, some of which we had already resolved.

FMIC filed a complaint against BPI-FB for the recovery of the amount of ₱80,000,000.00 debited from its account.[17] The case eventually reached this Court, and in *BPI Family Savings Bank, Inc. v. First Metro Investment Corporation,*[18] we upheld the finding of the courts below that BPI-FB failed to exercise the degree of diligence required by the nature of its obligation to treat the accounts of its depositors with meticulous care. Thus, BPI-FB was found liable to FMIC for the debited amount in its time deposit. It was ordered to pay ₱65,332,321.99 plus interest at 17% per annum from August 29, 1989 until fully restored. In turn, the 17% shall itself earn interest at 12% from October 4, 1989 until fully paid.

In a related case, Edgardo Buenaventura, Myrna Lizardo and Yolanda Tica (Buenaventura, *et al.*),[19] recipients of a ₱500,000.00 check proceeding from the ₱80,000,000.00 mistakenly credited to Tevesteco, likewise filed suit. Buenaventura *et al.*, as in the case of Franco, were also prevented from effecting withdrawals[20] from their current account with BPI-

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[17] Docketed as Civil Case No. 89-5280 and entitled "*First Metro Investment Corporation v. BPI Family Bank.*"

[18] G.R. No. 132390, May 21, 2004, 429 SCRA 30.

[19] Officers of the International Baptist Church and International Baptist Academy in Malabon, Metro Manila.

[20] The checks issued by Buenaventura *et al.* were dishonored upon presentment for payment.

FB, Bonifacio Market, Edsa, Caloocan City Branch. Likewise, when the case was elevated to this Court docketed as *BPI Family Bank v. Buenaventura,*[21] we ruled that BPI-FB had no right to freeze Buenaventura, *et al*.'s accounts and adjudged BPI-FB liable therefor, in addition to damages.

Meanwhile, BPI-FB filed separate civil and criminal cases against those believed to be the perpetrators of the multi-million peso scam.[22] In the criminal case, Franco, along with the other accused, except for Manuel Bienvenida who was still at large, were acquitted of the crime of Estafa as defined and penalized under Article 351, par. 2(a) of the Revised Penal Code.[23] However, the civil case[24] remains under litigation and the respective rights and liabilities of the parties have yet to be adjudicated.

Consequently, in light of BPI-FB's refusal to heed Franco's demands to unfreeze his accounts and release his deposits therein, the latter filed on June 4, 1990 with the Manila RTC the subject suit. In his complaint, Franco prayed for the following reliefs: (1) the interest on the remaining balance[25] of his current account which was eventually released to him on October 31, 1991; (2) the balance[26] on his savings account, plus interest thereon; (3) the advance interest[27] paid to him which had been deducted when he pre-terminated his time deposit account; and (4) the payment of actual, moral and exemplary damages, as well as attorney's fees.

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[21] G.R. No. 148196, September 30, 2005, 471 SCRA 431.

[22] *Supra* note 3.

[23] *Rollo,* pp. 160-208.

[24] The Makati Case for recovery of the ₱37,455,410.54 representing Tevesteco's total withdrawals wherein Franco was belatedly impleaded, and a Writ of Garnishment was issued on Franco's accounts.

[25] ₱450,000.00.

[26] The reflected amount of ₱98,973.23 plus ₱400,000.00 representing what was transferred to Quiaoit's account under their arrangement.

[27] ₱63,189.00.

BPI-FB traversed this complaint, insisting that it was correct in freezing the accounts of Franco and refusing to release his deposits, claiming that it had a better right to the amounts which consisted of part of the money allegedly fraudulently withdrawn from it by Tevesteco and ending up in Franco's accounts. BPI-FB asseverated that the claimed consideration of ₱2,000,000.00 for the introduction facilitated by Franco between George Daantos and Eladio Teves, on the one hand, and Jaime Sebastian, on the other, spoke volumes of Franco's participation in the fraudulent transaction.

On August 4, 1993, the Manila RTC rendered judgment, the dispositive portion of which reads as follows:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of [Franco] and against [BPI-FB], ordering the latter to pay to the former the following sums:
>
> 1. ₱76,500.00 representing the legal rate of interest on the amount of ₱450,000.00 from May 18, 1990 to October 31, 1991;
>
> 2. ₱498,973.23 representing the balance on [Franco's] savings account as of May 18, 1990, together with the interest thereon in accordance with the bank's guidelines on the payment therefor;
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> 3. ₱30,000.00 by way of attorney's fees; and
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> 4. ₱10,000.00 as nominal damages.
>
> The counterclaim of the defendant is DISMISSED for lack of factual and legal anchor.
>
> Costs against [BPI-FB].
>
> SO ORDERED.[28]

Unsatisfied with the decision, both parties filed their respective appeals before the CA. Franco confined his appeal to the Manila RTC's denial of his claim for moral and exemplary damages, and the diminutive award of attorney's fees. In affirming with modification the lower court's decision, the appellate court decreed, to wit:

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[28] CA *rollo*, p. 79.

WHEREFORE, foregoing considered, the appealed decision is hereby AFFIRMED with modification ordering [BPI-FB] to pay [Franco] ₱63,189.00 representing the interest deducted from the time deposit of plaintiff-appellant. ₱200,000.00 as moral damages and ₱100,000.00 as exemplary damages, deleting the award of nominal damages (in view of the award of moral and exemplary damages) and increasing the award of attorney's fees from ₱30,000.00 to ₱75,000.00.

Cost against [BPI-FB].

SO ORDERED.[29]

In this recourse, BPI-FB ascribes error to the CA when it ruled that: (1) Franco had a better right to the deposits in the subject accounts which are part of the proceeds of a forged Authority to Debit; (2) Franco is entitled to interest on his current account; (3) Franco can recover the ₱400,000.00 deposit in Quiaoit's savings account; (4) the dishonor of Franco's checks was not legally in order; (5) BPI-FB is liable for interest on Franco's time deposit, and for moral and exemplary damages; and (6) BPI-FB's counter-claim has no factual and legal anchor.

The petition is partly meritorious.

We are in full accord with the common ruling of the lower courts that BPI-FB cannot unilaterally freeze Franco's accounts and preclude him from withdrawing his deposits. However, contrary to the appellate court's ruling, we hold that Franco is not entitled to unearned interest on the time deposit as well as to moral and exemplary damages.

First. On the issue of who has a better right to the deposits in Franco's accounts, BPI-FB urges us that the legal consequence of FMIC's forgery claim is that the money transferred by BPI-FB to Tevesteco is its own, and considering that it was able to recover possession of the same when the money was redeposited by Franco, it had the right to set up its ownership thereon and freeze Franco's accounts.

BPI-FB contends that its position is not unlike that of an owner of personal property who regains possession after it is

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[29] *Rollo,* p. 54.

stolen, and to illustrate this point, BPI-FB gives the following example: where X's television set is stolen by Y who thereafter sells it to Z, and where Z unwittingly entrusts possession of the TV set to X, the latter would have the right to keep possession of the property and preclude Z from recovering possession thereof. To bolster its position, BPI-FB cites Article 559 of the Civil Code, which provides:

> Article 559. The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same.
>
> If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefor.

BPI-FB's argument is unsound. To begin with, the movable property mentioned in Article 559 of the Civil Code pertains to a specific or determinate thing.[30] A determinate or specific thing is one that is individualized and can be identified or distinguished from others of the same kind.[31]

In this case, the deposit in Franco's accounts consists of money which, albeit characterized as a movable, is generic and fungible.[32] The quality of being fungible depends upon the possibility of the property, because of its nature or the will of the parties, being substituted by others of the same kind, not having a distinct individuality.[33]

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[30] *See* Article 1460, paragraph 1 of the Civil Code. A thing is determinate when it is particularly designated or physically segregated from all others of the same class.

[31] Tolentino, *Civil Code of the Philippines Commentaries and Jurisprudence,* Vol. IV, 1985, p. 90.

[32] *See* Article 418 of the Civil Code, taken from Article 337 of the Old Civil Code which used the words "fungible or non-fungible."

[33] Tolentino, *Civil Code of the Philippines Commentaries and Jurisprudence,* Vol. II, 1983, p. 26.

Significantly, while Article 559 permits an owner who has lost or has been unlawfully deprived of a movable to recover the exact same thing from the current possessor, BPI-FB simply claims ownership of the equivalent amount of money, *i.e.,* the value thereof, which it had mistakenly debited from FMIC's account and credited to Tevesteco's, and subsequently traced to Franco's account. In fact, this is what BPI-FB did in filing the Makati Case against Franco, *et al.* It staked its claim on the money itself which passed from one account to another, commencing with the forged Authority to Debit.

It bears emphasizing that money bears no earmarks of peculiar ownership,[34] and this characteristic is all the more manifest in the instant case which involves money in a banking transaction gone awry. Its primary function is to pass from hand to hand as a medium of exchange, without other evidence of its title.[35] Money, which had passed through various transactions in the general course of banking business, even if of traceable origin, is no exception.

Thus, inasmuch as what is involved is not a specific or determinate personal property, BPI-FB's illustrative example, ostensibly based on Article 559, is inapplicable to the instant case.

There is no doubt that BPI-FB owns the deposited monies in the accounts of Franco, but not as a legal consequence of its unauthorized transfer of FMIC's deposits to Tevesteco's account. BPI-FB conveniently forgets that the deposit of money in banks is governed by the Civil Code provisions on simple loan or mutuum.[36] As there is a debtor-creditor relationship between a bank and its depositor, BPI-FB ultimately acquired ownership of Franco's deposits, but such ownership is coupled with a corresponding obligation to pay him an equal amount on

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[34] *United States v. Sotelo,* 28 Phil. 147, 158 (1914).

[35] *Id.*

[36] Article 1980 of the Civil Code: Fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning loan. *See* Article 1933 of the Civil Code.

demand.[37] Although BPI-FB owns the deposits in Franco's accounts, it cannot prevent him from demanding payment of BPI-FB's obligation by drawing checks against his current account, or asking for the release of the funds in his savings account. Thus, when Franco issued checks drawn against his current account, he had every right as creditor to expect that those checks would be honored by BPI-FB as debtor.

More importantly, BPI-FB does not have a unilateral right to freeze the accounts of Franco based on its mere suspicion that the funds therein were proceeds of the multi-million peso scam Franco was allegedly involved in. To grant BPI-FB, or any bank for that matter, the right to take whatever action it pleases on deposits which it supposes are derived from shady transactions, would open the floodgates of public distrust in the banking industry.

Our pronouncement in *Simex International (Manila), Inc. v. Court of Appeals*[38] continues to resonate, thus:

> The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. Thus, even the humble wage-earner has not hesitated to entrust his life's savings to the bank of his choice, knowing that they will be safe in its custody and will even earn some interest for him. The ordinary person, with equal faith, usually maintains a modest checking account for security and convenience in the settling of his monthly bills and the payment of ordinary expenses. x x x.
>
> In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single

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[37] Article 1953 of the Civil Code: A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay the creditor an equal amount of the same kind and quality.

[38] G.R. No. 88013, March 19, 1990, 183 SCRA 360, 366-367.

transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever directs. A blunder on the part of the bank, such as the dishonor of the check without good reason, can cause the depositor not a little embarrassment if not also financial loss and perhaps even civil and criminal litigation.

The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. x x x.

Ineluctably, BPI-FB, as the trustee in the fiduciary relationship, is duty bound to know the signatures of its customers. Having failed to detect the forgery in the Authority to Debit and in the process inadvertently facilitate the FMIC-Tevesteco transfer, BPI-FB cannot now shift liability thereon to Franco and the other payees of checks issued by Tevesteco, or prevent withdrawals from their respective accounts without the appropriate court writ or a favorable final judgment.

Further, it boggles the mind why BPI-FB, even without delving into the authenticity of the signature in the Authority to Debit, effected the transfer of ₱80,000,000.00 from FMIC's to Tevesteco's account, when FMIC's account was a time deposit and it had already paid advance interest to FMIC. Considering that there is as yet no indubitable evidence establishing Franco's participation in the forgery, he remains an innocent party. As between him and BPI-FB, the latter, which made possible the present predicament, must bear the resulting loss or inconvenience.

Second. With respect to its liability for interest on Franco's current account, BPI-FB argues that its non-compliance with the Makati RTC's Order Lifting the Order of Attachment and the legal consequences thereof, is a matter that ought to be taken up in that court.

The argument is tenuous. We agree with the succinct holding of the appellate court in this respect. The Manila RTC's order

to pay interests on Franco's current account arose from BPI-FB's unjustified refusal to comply with its obligation to pay Franco pursuant to their contract of mutuum. In other words, from the time BPI-FB refused Franco's demand for the release of the deposits in his current account, specifically, from May 17, 1990, interest at the rate of 12% began to accrue thereon.[39]

Undeniably, the Makati RTC is vested with the authority to determine the legal consequences of BPI-FB's non-compliance with the Order Lifting the Order of Attachment. However, such authority does not preclude the Manila RTC from ruling on BPI-FB's liability to Franco for payment of interest based on its continued and unjustified refusal to perform a contractual obligation upon demand. After all, this was the core issue raised by Franco in his complaint before the Manila RTC.

Third. As to the award to Franco of the deposits in Quiaoit's account, we find no reason to depart from the factual findings of both the Manila RTC and the CA.

Noteworthy is the fact that Quiaoit himself testified that the deposits in his account are actually owned by Franco who simply accommodated Jaime Sebastian's request to temporarily transfer ₱400,000.00 from Franco's savings account to Quiaoit's account.[40] His testimony cannot be characterized as hearsay as the records reveal that he had personal knowledge of the arrangement made between Franco, Sebastian and himself.[41]

BPI-FB makes capital of Franco's belated allegation relative to this particular arrangement. It insists that the transaction with Quiaoit was not specifically alleged in Franco's complaint before the Manila RTC. However, it appears that BPI-FB had impliedly consented to the trial of this issue given its extensive cross-examination of Quiaoit.

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[39] See *Eastern Shipping Lines, Inc. v. Court of Appeals,* G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

[40] TSN, July 30, 1991, p. 5.

[41] *Id.* at 5-11.

Section 5, Rule 10 of the Rules of Court provides:

Section 5. *Amendment to conform to or authorize presentation of evidence.*— **When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues.** If evidence is objected to at the trial on the ground that it is now within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made. (Emphasis supplied)

In all, BPI-FB's argument that this case is not the right forum for Franco to recover the ₱400,000.00 begs the issue. To reiterate, Quiaoit, testifying during the trial, unequivocally disclaimed ownership of the funds in his account, and pointed to Franco as the actual owner thereof. Clearly, Franco's action for the recovery of his deposits appropriately covers the deposits in Quiaoit's account.

Fourth. Notwithstanding all the foregoing, BPI-FB continues to insist that the dishonor of Franco's checks respectively dated September 11 and 18, 1989 was legally in order in view of the Makati RTC's supplemental writ of attachment issued on September 14, 1989. It posits that as the party that applied for the writ of attachment before the Makati RTC, it need not be served with the Notice of Garnishment before it could place Franco's accounts under garnishment.

The argument is specious. In this argument, we perceive BPI-FB's clever but transparent ploy to circumvent Section 4,[42] Rule 13 of the Rules of Court. It should be noted that the strict

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[42] **SEC. 4.** *Papers required to be filed and served.*— Every judgment, resolution, order, pleading subsequent to the complaint, written motion, notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected.

requirement on service of court papers upon the parties affected is designed to comply with the elementary requisites of due process. Franco was entitled, as a matter of right, to notice, if the requirements of due process are to be observed. Yet, he received a copy of the Notice of Garnishment only on September 27, 1989, several days after the two checks he issued were dishonored by BPI-FB on September 20 and 21, 1989. Verily, it was premature for BPI-FB to freeze Franco's accounts without even awaiting service of the Makati RTC's Notice of Garnishment on Franco.

Additionally, it should be remembered that the enforcement of a writ of attachment cannot be made without including in the main suit the owner of the property attached by virtue thereof. Section 5, Rule 13 of the Rules of Court specifically provides that "no levy or attachment pursuant to the writ issued x x x shall be enforced unless it is preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint, the application for attachment, on the defendant within the Philippines."

Franco was impleaded as party-defendant only on May 15, 1990. The Makati RTC had yet to acquire jurisdiction over the person of Franco when BPI-FB garnished his accounts.[43] Effectively, therefore, the Makati RTC had no authority yet to bind the deposits of Franco through the writ of attachment, and consequently, there was no legal basis for BPI-FB to dishonor the checks issued by Franco.

Fifth. Anent the CA's finding that BPI-FB was in bad faith and as such liable for the advance interest it deducted from Franco's time deposit account, and for moral as well as exemplary damages, we find it proper to reinstate the ruling of the trial court, and allow only the recovery of nominal damages in the amount of ₱10,000.00. However, we retain the CA's award of ₱75,000.00 as attorney's fees.

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[43] See *Sievert v. Court of Appeals*, G.R. No. 84034, December 22, 1988, 168 SCRA 692, 696.

In granting Franco's prayer for interest on his time deposit account and for moral and exemplary damages, the CA attributed bad faith to BPI-FB because it (1) completely disregarded its obligation to Franco; (2) misleadingly claimed that Franco's deposits were under garnishment; (3) misrepresented that Franco's current account was not on file; and (4) refused to return the ₱400,000.00 despite the fact that the ostensible owner, Quiaoit, wanted the amount returned to Franco.

In this regard, we are guided by Article 2201 of the Civil Code which provides:

> Article 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonable foreseen at the time the obligation was constituted.
>
> **In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.** (Emphasis supplied.)

We find, as the trial court did, that BPI-FB acted out of the impetus of self-protection and not out of malevolence or ill will. BPI-FB was not in the corrupt state of mind contemplated in Article 2201 and should not be held liable for all damages now being imputed to it for its breach of obligation. For the same reason, it is not liable for the unearned interest on the time deposit.

Bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it partakes of the nature of fraud.[44] We have held that it is a breach of a known duty through some motive of interest or ill will.[45] In the instant case, we cannot attribute to BPI-FB fraud or even a motive of self-enrichment.

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[44] *Board of Liquidators v. Heirs of Maximo Kalaw, et al.,* 127 Phil. 399, 421 (1967).

[45] *Lopez, et al. v. Pan American World Airways*, 123 Phil. 256, 264-265 (1966).

As the trial court found, there was no denial whatsoever by BPI-FB of the existence of the accounts. The computer-generated document which indicated that the current account was "not on file" resulted from the prior debit by BPI-FB of the deposits. The remedy of freezing the account, or the garnishment, or even the outright refusal to honor any transaction thereon was resorted to solely for the purpose of holding on to the funds as a security for its intended court action,[46] and with no other goal but to ensure the integrity of the accounts.

We have had occasion to hold that in the absence of fraud or bad faith,[47] moral damages cannot be awarded; and that the adverse result of an action does not per se make the action wrongful, or the party liable for it. One may err, but error alone is not a ground for granting such damages.[48]

An award of moral damages contemplates the existence of the following requisites: (1) there must be an injury clearly sustained by the claimant, whether physical, mental or psychological; (2) there must be a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award for damages is predicated on any of the cases stated in Article 2219 of the Civil Code.[49]

Franco could not point to, or identify any particular circumstance in Article 2219 of the Civil Code,[50] upon which to base his claim for moral damages.

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[46] CA *rollo,* p. 74.

[47] *Suario v. Bank of the Philippine Islands,* G.R. No. 50459, August 25, 1989, 176 SCRA 688, 696; citing *Guita v. Court of Appeals*, 139 SCRA 576, 580 (1985).

[48] *Bank of the Philippine Islands v. Casa Montessori Internationale*, G.R. No. 149454, May 28, 2004, 430 SCRA 261, 293-294.

[49] *United Coconut Planters Bank v. Ramos*, 461 Phil. 277, 298 (2003); citing *Cathay Pacific Airways, Ltd. v. Spouses Vazquez*, 447 Phil. 306 (2003).

[50] Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

Thus, not having acted in bad faith, BPI-FB cannot be held liable for moral damages under Article 2220 of the Civil Code for breach of contract.[51]

We also deny the claim for exemplary damages. Franco should show that he is entitled to moral, temperate, or compensatory damages before the court may even consider the question of whether exemplary damages should be awarded to him.[52] As there is no basis for the award of moral damages, neither can exemplary damages be granted.

While it is a sound policy not to set a premium on the right to litigate,[53] we, however, find that Franco is entitled to reasonable

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(3) Seduction, abduction, rape, or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;
(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brother and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[51] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[52] Article 2234 of the Civil Code.

Art. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

[53] *Bank of the Philippine Islands v. Casa Montessori Internationale*, *supra* note 48, at 296.

attorney's fees for having been compelled to go to court in order to assert his right. Thus, we affirm the CA's grant of ₱75,000.00 as attorney's fees.

Attorney's fees may be awarded when a party is compelled to litigate or incur expenses to protect his interest,[54] or when the court deems it just and equitable.[55] In the case at bench, BPI-FB refused to unfreeze the deposits of Franco despite the Makati RTC's Order Lifting the Order of Attachment and Quiaoit's unwavering assertion that the ₱400,000.00 was part of Franco's savings account. This refusal constrained Franco to incur expenses and litigate for almost two (2) decades in order to protect his interests and recover his deposits. Therefore, this Court deems it just and equitable to grant Franco ₱75,000.00 as attorney's fees. The award is reasonable in view of the complexity of the issues and the time it has taken for this case to be resolved.[56]

Sixth. As for the dismissal of BPI-FB's counter-claim, we uphold the Manila RTC's ruling, as affirmed by the CA, that BPI-FB is not entitled to recover ₱3,800,000.00 as actual damages. BPI-FB's alleged loss of profit as a result of Franco's suit is, as already pointed out, of its own making. Accordingly, the denial of its counter-claim is in order.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The Court of Appeals Decision dated November 29, 1995 is *AFFIRMED* with the *MODIFICATION* that the award of unearned interest on the time deposit and of moral and exemplary damages is *DELETED*.

No pronouncement as to costs.

SO ORDERED.

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

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[54] CIVIL CODE, Art. 2208, par. (2).

[55] CIVIL CODE, Art. 2208, par. (11).

[56] *Ching Sen Ben v. Court of Appeals*, 373 Phil. 544, 555 (1999).

THIRD DIVISION

[G.R. No. 139296. November 23, 2007]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), THE PRESIDENTIAL *AD-HOC* FACT-FINDING COMMITTEE ON BEHEST LOANS, represented by ORLANDO L. SALVADOR, *petitioners, vs.* **HON. ANIANO DESIERTO, TOMAS B. AGUIRRE (Deceased), PACIFICO MARCOS (Deceased), RECIO M. GARCIA (Deceased), LEONIDES VIRATA (Deceased), OFELIA CASTELL, PLACIDO MAPA, JR., VICE-CHAIRMAN J.V. DE OCAMPO (Deceased), JOSE TENGCO, JR., and RAFAEL SISON c/o DEVELOPMENT BANK OF THE PHILIPPINES, MAKATI CITY,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; PRESCRIPTION; COMPUTATION OF PRESCRIPTION PERIOD FOR OFFENSES INVOLVING BEHEST LOANS; CLARIFIED. —** The computation of the prescriptive period for offenses involving the acquisition of behest loans had already been laid to rest in *Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Desierto*, thus: [I]t was well-nigh impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the loans." Thus, we agree with the COMMITTEE that the prescriptive period for the offenses with which the respondents in OMB-0-96-0968 were charged should be computed from the discovery of the commission thereof and not from the day of such commission.

2. **POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OMBUDSMAN; FUNCTION TO DETERMINE PROBABLE CAUSE DURING PRELIMINARY INVESTIGATION AGAINST THOSE IN PUBLIC OFFICE, EXPLAINED. —** Case law has it

that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Office of the Ombudsman. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance, or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance. We have consistently refrained from interfering with the constitutionally mandated investigatory and prosecutorial powers of the Ombudsman. Thus, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion.

3. **ID.; ID.; ID.; POWER; GRAVE ABUSE OF DISCRETION; WHEN PRESENT. —** Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

4. **CRIMINAL LAW; VIOLATION OF R.A. NO. 3019; WHEN COMMITTED. —** For one to be validly charged under Section 3(e) of R.A. No. 3019, he must have acted with manifest partiality, evident bad faith, or inexcusable negligence. On the other hand, to be liable under Section 3(g), there must be a showing that respondents entered into a grossly disadvantageous contract on behalf of the government.

APPEARANCES OF COUNSEL

Office of the Legal Counsel (DBP) for DBP.
Cruz Durian Alday and Cruz Matters for J. Tengco, Jr.
Trio & Regalado Law Offices for P. Mapa, Jr.

D E C I S I O N

NACHURA, *J.*:

We are urged in this petition for *certiorari* to set aside the Memorandum[1] dated February 22, 1999 of then Ombudsman Aniano Desierto in OMB-0-98-0402, dismissing the complaint filed by petitioners against private respondents, and the Order,[2] denying their motion for reconsideration.

On October 8, 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential *Ad Hoc* Committee on Behest Loans (Committee). The Committee was tasked to inventory all alleged behest loans, identify the parties involved, and recommend appropriate actions to be pursued by the government to recover these loans. By Memorandum Order No. 61[3] dated November 9, 1992, the functions of the Committee were subsequently expanded, *viz.*:

> Sec. 1. The *Ad Hoc* Fact-Finding Committee on Behest Loans shall include in its investigation, inventory, and study, all non-performing loans which shall embrace both behest and non-behest loans:
>
> The following criteria may be utilized as a frame of reference in determining a behest loan:
>
> 1. It is under-collateralized;
> 2. The borrower corporation is undercapitalized;
> 3. Direct or indirect endorsement by high government officials like presence of marginal notes;
> 4. Stockholders, officers or agents of the borrower corporation are identified as cronies;
> 5. Deviation of use of loan proceeds from the purpose intended;
> 6. Use of corporate layering;

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[1] *Rollo*, pp. 25-29.

[2] *Id*. at 39-41.

[3] Ombudsman records, pp. 6-7.

7. Non-feasibility of the project for which financing is being sought; and

8. Extraordinary speed in which the loan release was made.

Moreover, a behest loan may be distinguished from a non-behest loan in that while both may involve civil liability for non-payment or non-recovery, the former may likewise entail criminal liability.

Among the accounts referred to the Committee's Technical Working Group (TWG) for investigation were the loan transactions between Bagumbayan Corporation (Bagumbayan) and the Development Bank of the Philippines (DBP). After examining and studying the loan transactions, the Committee determined that they bore the characteristics of a behest loan, as they were under-collateralized and Bagumbayan was undercapitalized at the time the loans were granted. The Committee added that there was undue haste in the approval of these loans. It also alleged that the Chairman of Bagumbayan, Dr. Pacifico Marcos, was the brother of then President Ferdinand Marcos.

Consequently, Atty. Orlando L. Salvador, Consultant of the Fact- Finding Committee, and representing the Presidential Commission on Good Government (PCGG), filed with the Office of the Ombudsman a sworn complaint for violation of Sections 3(e) and (g) of Republic Act (R.A.) No. 3019 or the *Anti-Graft and Corrupt Practices Act* against Tomas Aguirre, Dr. Pacifico Marcos, and the officials of the DBP, namely: Recio M. Garcia, Leonides S. Virata, Ofelia Castell, Placido Mapa, Jr., Vice-Chairman J.V. de Ocampo, Jose Tengco, Jr., and Rafael A. Sison (private respondents).[4] Pending resolution of the case, respondents Aguirre, Marcos and Virata died.

After evaluating the evidence submitted by the Committee, the Ombudsman handed down the assailed Memorandum[5] ruling that:

[T]he undersigned agrees with the observation of GIO Oscar R. Ramos as contained in the Resolution under review that the allegations

[4] *Id*. at 1-5.

[5] *Rollo*, pp. 25-29.

in the complaint of the PCGG that the loans were behest loans are not properly supported by evidence. The borrower corporation is neither [under-collateralized] nor [undercapitalized]. It has sufficient paid up capital and the loan value of the offered collaterals amply secure the total amount of the loans. The loans were properly secured by existing assets, consisting of lands, the current values of which were very much higher than before; the building and improvements, machineries, equipment, furnishings which were not included in the original valuation. The loans were [properly secured] by as follows: a first mortgage on the lots and improvements therein; by a chattel mortgage on the machinery and equipment to be acquired out of the [proceeds] of the loan; and by a pledge of no less than 67% of the subscribed and [outstanding] shares entitled to vote.

There was no extraordinary speed in the approval of the loan. The period between the filing of the application for loan which is June 10, 1974 and the DBP Board approval of the loan application on October 30, 1974 is about five (5) months. This [is] the usual length of time an application is approved.

In this particular instance, the only evident feature/criteria present to consider it as a behest loan is the fact that the stockholders, officers or agents of the borrower corporation are identified as cronies. This is due to the fact that Dr. Pacifico E. Marcos, Chairman of the Board of Bagumbayan Corporation is the brother of the late President Marcos. All the other features/criteria utilized as a frame of reference in determining behest loans are not applicable.

Based on the above, it is therefore crystal clear that the allegations in this complaint that the loans were behest are not supported by the evidence. Therefore, there is no ground to hold respondents liable for violations of Sec. 3(e) and (g) of RA 3019.

Moreover, there is no question that the complaint under consideration has already prescribed. This complaint was filed only last February 28, 1998 for an alleged principal behest loan obtained on June 10, 1974 or 24 years ago and the last alleged behest loan was obtained on December 22, 1981 or 17 years ago. All offenses punishable under the Anti-Graft and Corrupt Practices [Act] shall prescribe in fifteen (15) years. All the offenses were evidenced by public documents, and hence it is presumed that the date of the commission thereof was also the [date] of the discovery of the offense. Prescription period commences to run from the day following the commission of the offense or discovery by the offended party. The

Supreme Court stressed that the reckoning of the prescriptive period commences from its recording when the cause of action is a public document. By prescription of the crime, it means the forfeiture or loss of the right of the state to prosecute the offender after the lapse of a certain period.

Three (3) of the respondents in this complaint are already dead namely: Tomas B. Aguirre, Pacifico E. Marcos and Leonides S. Virata. Death extinguishes [criminal] liability of the respondents. Therefore, in so far as the three respondents are concerned, their death set aside their criminal liabilities.[6]

Thus, the Ombudsman disposed:

Foregoing premises considered, it is respectfully recommended that the instant complaint against the respondents be DISMISSED for insufficiency of evidence and for prescription for all the respondents and an additional ground of death for respondents Aguirre, Marcos and Virata.

SO RESOLVED.[7]

Petitioners filed a Motion for Reconsideration, but the Ombudsman denied it on May 21, 1999.

Hence, this petition positing the following issues:

1. Whether or not Public Respondent committed jurisdictional error or grave abuse of discretion when he dismissed the charge against the private respondents on the ground of insufficiency of evidence.

2. Whether or not the case is barred by prescription.[8]

Before addressing the issues raised in the present petition, we note that what was filed before this Court is a petition captioned as a *Petition for Review on Certiorari*. We must point out that a petition for review on *certiorari* is not the proper mode by which resolutions of the Ombudsman in

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[6] *Id*. at 27-29.

[7] *Id*. at 29.

[8] *Id*. at 167.

preliminary investigations of criminal cases are reviewed by this Court. The remedy from the adverse resolution of the Ombudsman is a petition for *certiorari* under Rule 65,[9] not a petition for review on *certiorari* under Rule 45.

However, we have decided to treat this petition as one filed under Rule 65 since a reading of its contents reveals that petitioners impute grave abuse of discretion and reversible legal error to the Ombudsman for dismissing the complaint. After all, the averments in the complaint, not the nomenclature given by the parties, determine the nature of the action.[10] In previous rulings, we have treated differently labeled actions as special civil actions for *certiorari* under Rule 65 for acceptable reasons such as justice, equity, and fair play.[11]

On the substantive issues raised, the Committee ascribes legal error and grave abuse of discretion to the Ombudsman for dismissing the complaint for insufficiency of evidence and on the ground of prescription.

The Court shall first deal with the issue of prescription.

It is true that all offenses penalized by the *Anti-Graft and Corrupt Practices Act* prescribe in fifteen (15) years. Since the subject loans were obtained in 1974 to 1981, the Ombudsman concluded that the offense allegedly committed by the respondents had already prescribed when the complaint was filed on February 28, 1998. This position of the Ombudsman is erroneous.

The computation of the prescriptive period for offenses involving the acquisition of behest loans had already been laid to rest in *Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[12] thus:

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[9] *Cabrera v. Lapid*, G.R. No. 129098, December 6, 2006, 510 SCRA 55, 64.

[10] *Partido ng Manggagawa v. Commission of Elections*, G.R. No. 164702, March 15, 2006, 484 SCRA 671, 684-685.

[11] *Id*. at 685.

[12] 375 Phil. 697 (1999).

[I]t was well-nigh impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the loans." Thus, we agree with the COMMITTEE that the prescriptive period for the offenses with which the respondents in OMB-0-96-0968 were charged should be computed from the discovery of the commission thereof and not from the day of such commission.[13]

The ruling was reiterated in *Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto*,[14] wherein the Court explained:

In cases involving violations of R.A. No. 3019 committed prior to the February 1986 EDSA Revolution that ousted President Ferdinand E. Marcos, we ruled that the government as the aggrieved party could not have known of the violations at the time the questioned transactions were made. Moreover, no person would have dared to question the legality of those transactions. Thus, the counting of the prescriptive period commenced from the date of discovery of the offense in 1992 after an exhaustive investigation by the Presidential *Ad Hoc* Committee on Behest Loans.[15]

This is now a well-settled doctrine which the Court has applied in subsequent cases involving petitioners and public respondent.[16]

It is true that the Sworn Statement filed by Atty. Salvador did not specify the exact dates when the alleged offense was discovered. However, the records show that it was the Committee

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[13] *Id.* at 724.

[14] 415 Phil. 723 (2001).

[15] *Id.* at 729-730.

[16] *Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Ombudsman*, G.R. No. 138142, September 19, 2007; *Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto, et al.,* G.R. No. 135687, July 24, 2007; *Presidential Commission on Good Government v. Desierto,* G.R. No. 139675, July 21, 2006, 496 SCRA 112; *Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Ombudsman*, G.R. No. 135350, March 3, 2006, 484 SCRA 16; *Atty. Salvador v. Hon. Desierto*, 464 Phil. 988 (2004); *PAFFC on Behest Loans v. Ombudsman Desierto*, 418 Phil. 715 (2001).

that discovered the same. As such, the discovery could not have been made earlier than October 8, 1992, the date when the Committee was created. The complaint was filed on February 28, 1998, less than six years from the presumptive date of discovery. Thus, the criminal offense allegedly committed by the private respondents had not yet prescribed when the complaint was filed.

Even the Ombudsman in his Comment[17] conceded that the prescriptive period commenced from the date the Committee discovered the crime, and not from the date the loan documents were registered with the Register of Deeds.

Having resolved the issue of prescription, we proceed to the merits of the case.

The Committee insists that the loan transactions between DBP and Bagumbayan bore the characteristics of a behest loan. It claims that the loans were under-collateralized and Bagumbayan was undercapitalized when the questioned loans were hastily granted. The Committee believed that there exists probable cause to indict the private respondents for violation of Sections 3(e) and (g) of R.A. No. 3019. Thus, it contends that the Ombudsman committed grave abuse of discretion amounting to excess of jurisdiction in ruling otherwise.

Case law has it that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Office of the Ombudsman.[18] The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance, or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance.[19]

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[17] *Rollo,* pp. 78-89.

[18] *Ramiscal, Jr. v. Sandiganbayan*, G.R. No. 169727-28, August 18, 2006, 499 SCRA 375, 394.

[19] *Atty. Salvador v. Hon. Desierto*, *supra* note 16, at 996.

We have consistently refrained from interfering with the constitutionally mandated investigatory and prosecutorial powers of the Ombudsman.[20] Thus, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion.[21]

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[22] In this instance, petitioners utterly failed to show that the Ombudsman's action fits such a description.

Private respondents were charged with violation of Section 3(e) and (g) of R.A. No. 3019. The pertinent provisions read:

> Sec. 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of officers or government corporations charged with the grant of licenses or permits or other concessions.

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[20] *Cabrera v. Marcelo*, G.R. No. 157835, July 27, 2006, 496 SCRA 771, 785.

[21] *Presidential Commission on Good Government (PCGG) v. Desierto*, *supra* note 16, at 126.

[22] *Baviera v. Zoleta*, G.R. No. 169098, October 12, 2006, 504 SCRA 281, 303.

x x x x x x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

For one to be validly charged under Section 3(e) of R.A. No. 3019, he must have acted with manifest partiality, evident bad faith, or inexcusable negligence.[23] On the other hand, to be liable under Section 3(g), there must be a showing that respondents entered into a grossly disadvantageous contract on behalf of the government.

The petitioners failed to satisfy either criterion.

It is clear from the records that private respondents studied and evaluated the loan applications of Bagumbayan before approving them. There is no showing that the DBP Board of Governors did not exercise sound business judgment in approving the loans, or that the approval was contrary to acceptable banking practices at that time. No manifest partiality, evident bad faith, or gross inexcusable negligence can, therefore, be attributed to private respondents in approving the loans.

Neither was there any proof offered to demonstrate that the loans were contracts grossly disadvantageous to the Government, or that they were entered into in order to give Bagumbayan unwarranted benefits and advantages. Absent such proof, we have to agree with the Ombudsman that the contracts between Bagumbayan and DBP were not behest loans.

To characterize the loan as a behest loan, it is necessary that at least two of the criteria enumerated in Memorandum Order No. 61 be present. The Committee failed to establish that at least two (2) of the said criteria attended the transactions. We make this finding based on the following circumstances:

First, the approval of the loans can hardly be depicted as one done with undue haste. For the original loan of ₱20,000,000.00, Bagumbayan filed its application on June 10,

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[23] *Collantes v. Hon. Marcelo*, G.R. Nos. 167006-07, August 14, 2007.

1974 and the loan was approved only on October 30, 1974.[24] We agree with the Ombudsman that the processing period of more than four months is inconsistent with the claim that the loan was hastily processed and approved. As to the subsequent loans, the records are bereft of any allegation, much less proof, that these were approved with undue haste.

Second, the contention that Bagumbayan was undercapitalized also fails to persuade because, except for the Committee's bare-faced allegation, no convincing evidence was presented to prove this assertion.

Third, contrary to what the Committee wants to portray, the original and subsequent loans were not under-collateralized. The original loan was granted on the condition that the assets intended for acquisition by Bagumbayan would serve as collateral for the same. The value of the assets to be acquired upon which a mortgage would be constituted was even higher than the value of the proposed loan amount.[25] As additional security, the officers and majority of the stockholders of Bagumbayan were made jointly and severally liable for the company's obligation. DBP was also given the right to designate its comptroller in Bagumbayan. Moreover, the contract provided that while the loan is outstanding, Bagumbayan may not declare dividends, incur long-term loans or obligations, or enter into merger or consolidation, without the knowledge and approval of DBP.[26] There is no showing that Bagumbayan did not comply with these loan conditions.

The additional loan of ₱40,000,000.00 approved on February 19, 1975 likewise had sufficient collateral. It was secured by a first mortgage on the existing assets, as well as on the assets yet to be acquired, with a value of ₱78,855,500.00, coupled with a pledge of at least 67% of the subscribed and outstanding voting shares. In addition, Bagumbayan could not declare

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[24] Ombudsman records, p. 52.

[25] Minutes No. 35, October 30, 1974, *rollo*, pp. 605-610.

[26] *Id*. at 606.

dividends, incur long-term loans or obligations, grant bonuses except those provided for in the by-laws, or enter into management contract, merger or consolidation, without the knowledge and approval of DBP while the loan is outstanding.[27]

Neither did the succeeding loans[28] granted, pursuant to the restructuring policy of DBP, appear to be under-collateralized.[29] In this regard, no proof was adduced to support the petitioners' contention.

As pointed out by the Ombudsman, the only factor which would satisfy one of the criteria of a behest loan under Memorandum Order No. 61 was that Pacifico E. Marcos was the brother of the late President Marcos, thus, ostensibly an identified crony. But as already adverted to, the presence of only one criterion out of the eight enumerated in Memorandum Order No. 61 is insufficient to characterize the loan as a behest loan.

In any event, the documents submitted reveal that Dr. Marcos assumed chairmanship of Bagumbayan only on May 31, 1978, long after the approval of the questioned original and first additional loans. The subsequent loans, on other hand, were granted pursuant to the restructuring policy adopted in 1977 prior to the chairmanship of Dr. Marcos. Apparently, Dr. Marcos did not play a key role in the approval of the questioned transactions. There appears absolutely no basis to conclude that these loans were extended simply because the officers were the cronies of the late President Marcos. The Ombudsman, therefore, acted well within his discretion in rejecting petitioners' claim.

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[27] Minutes No. 7, February 19, 1975, *rollo,* pp. 630-634.

[28] ₱12,000,000.00 loan approved on July 19, 1978; ₱4,655,000.00 loan approved on August 8, 1979; ₱3,300,000.00 loan approved on March 19, 1980; ₱3,100,000.00 loan approved on December 17, 1980; ₱3,086,000.00 loan approved on July 8, 1981.

[29] Annexes "E" to "J", Memorandum of Ofelia I. Castell, *rollo*, pp. 650-743.

Finally, we note that petitioners did not specify the precise role played by, or the participation of, each of the private respondents in the alleged violation of R.A. No. 3019. There were no circumstances indicating a common criminal design of either the officers of DBP or Bagumbayan, or that they colluded to cause undue injury to the government by giving unwarranted benefits to Bagumbayan. The Ombudsman can hardly be faulted for not wanting to proceed with the prosecution of the offense, convinced that he does not possess the necessary evidence to secure a conviction.

WHEREFORE, the petition is *DISMISSED.* The assailed Memorandum and Order of the Ombudsman in OMB-0-98-0402, are *AFFIRMED.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 143591. November 23, 2007]

TEODORO C. BORLONGAN, JR., CORAZON M. BEJASA, ARTURO E. MANUEL, JR., ERIC L. LEE, P. SIERVO H. DIZON, BENJAMIN DE LEON, DELFIN C. GONZALEZ, JR., and BEN YU LIM, JR., *petitioners, vs.* **MAGDALENO M. PEÑA and HON. MANUEL Q. LIMSIACO, JR., as Judge Designate of the Municipal Trial Court in Cities, Bago City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WRIT OF PROHIBITION OR INJUNCTION TO ENJOIN AND

RESTRAIN CRIMINAL PROSECUTION, NOT PROPER; EXCEPTIONS. — As a general rule, the Court will not issue writs of prohibition or injunction, preliminary or final, to enjoin or restrain criminal prosecution. However, the following exceptions to the rule have been recognized: 1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused; 2) when it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; 3) when there is a prejudicial question which is *sub judice*; 4) when the acts of the officer are without or in excess of authority; 5) where the prosecution is under an invalid law, ordinance or regulation; 6) when double jeopardy is clearly apparent; 7) where the Court has no jurisdiction over the offense; 8) where it is a case of persecution rather than prosecution; 9) where the charges are manifestly false and motivated by the lust for vengeance; and 10) when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.

2. **ID.; ID.; DUE PROCESS IS NOT VIOLATED WHEN THE PRELIMINARY INVESTIGATION AND THE SUBMISSION OF COUNTER-AFFIDAVITS ARE NOT REQUIRED; CASE AT BAR. —** Petitioners were charged with the offense defined and penalized by the second paragraph of Article 172 of the Revised Penal Code. The penalty imposable is *arresto mayor* in its maximum period to *prision correccional* in its minimum period, or four (4) months and one (1) day to two (2) years and four (4) months. Clearly, the case is cognizable by the Municipal Trial Court and preliminary investigation is not mandatory. Records show that the prosecutor relied merely on the complaint-affidavit of the respondent and did not require the petitioners to submit their counter-affidavits. The prosecutor should not be faulted for taking this course of action, because it is sanctioned by the Rules. To reiterate, upon the filing of the complaint and affidavit with respect to cases cognizable by the MTCC, *the prosecutor shall take the appropriate action based on the affidavits and other supporting documents submitted by the complainant*. It means that the prosecutor may either dismiss the complaint if he does not see sufficient reason to proceed with the case, or file the information if he finds probable cause. The prosecutor is not mandated to require the submission of counter-affidavits. Probable cause may then be determined

on the basis alone of the affidavits and supporting documents of the complainant, without infringing on the constitutional rights of the petitioners.

3. **ID.; ID.; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; DETERMINATION THEREOF, REQUIRED.—** What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. But the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall (1) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause, and on the basis thereof, he may already make a personal determination of the existence of probable cause; and (2) if he is not satisfied that probable cause exists, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause. In determining probable cause for the issuance of the warrant of arrest in the case at bench, we find nothing wrong with the procedure adopted by the trial judge — he relied on the resolution of the prosecutor, as well as the supporting documents submitted by the respondent. There is no provision of law or procedural rule which makes the submission of counter-affidavits mandatory before the judge can determine whether or not there exists probable cause to issue the warrant.

4. **ID.; ID.; ID.; ID.; DEFINED. —** Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof. It is the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he is to be prosecuted. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. On the other hand, we have defined probable cause for the issuance of a warrant of arrest as the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe

that an offense has been committed by the person sought to be arrested.

5. **ID.; ID.; ID.; ID.; GENERALLY, THE SUPREME COURT DOES NOT INTERFERE WITH THE PROSECUTOR'S DETERMINATION OF PROBABLE CAUSE; RATIONALE. —** To accord respect to the discretion granted to the prosecutor and for reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause. Otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations. In the same way, the general rule is that this Court does not review the factual findings of the trial court, which include the determination of probable cause for the issuance of a warrant of arrest. It is only in exceptional cases when this Court may set aside the conclusions of the prosecutor and the trial judge on the existence of probable cause, that is, when it is necessary to prevent the misuse of the strong arm of the law or to protect the orderly administration of justice.

6. **CRIMINAL LAW; INTRODUCTION OF FALSIFIED DOCUMENT IN A JUDICIAL PROCEEDING; ELEMENTS. —** Petitioners were charged with violation of par. 2, Article 172 of the RPC or Introduction of Falsified Document in a Judicial Proceeding. The elements of the offense are as follows: 1. That the offender knew that a document was falsified by another person. 2. That the false document is embraced in Article 171 or in any subdivisions No. 1 or 2 of Article 172. 3. That he introduced said document in evidence in any judicial proceeding. The falsity of the document and the defendant's knowledge of its falsity are essential elements of the offense.

7. **ID.; ID.; NOT PRESENT IN CASE AT BAR. —** True, a finding of probable cause need not be based on clear and convincing evidence, or on evidence beyond reasonable doubt. It does not require that the evidence would justify conviction. Nonetheless, although the determination of probable cause requires less than evidence which would justify conviction, it should at least be more than mere suspicion. While probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect

the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges. It is, therefore, imperative for the prosecutor to relieve the accused from the pain and inconvenience of going through a trial once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the accused. Considering that the respondent failed to adduce sufficient evidence to support his claim that the documents were falsified, it follows that the introduction of the questioned documents in Civil Case No. 754 is not an offense punished by any provision of the Revised Penal Code or any other law. The petitioners should not be burdened with court proceedings, more particularly a criminal proceeding, if in the first place, there is no evidence sufficient to engender a well-founded belief that an offense was committed.

APPEARANCES OF COUNSEL

Abello Concepcion Regala & Cruz for B.Y. De Leon and D. Gonzales, Jr.

Poblador Bautista Reyes for BY Lim, Jr., P.S. Dizon and E. Lee.

Fortun Narvasa and Salazar for T. Borlongan, Jr., C. Bejasa and A. Manuel.

D E C I S I O N

NACHURA, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) dated June 20, 2000 in CA-G.R. SP No. 49666 dismissing the petition for *certiorari* filed by petitioners Teodoro C. Borlongan, Jr., Corazon M. Bejasa, Arturo Manuel, Jr., Benjamin de Leon, P. Siervo Dizon, Delfin C. Gonzalez, Jr., Eric Lee and Ben T. Lim, Jr.

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[1] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Quirino D. Abad Santos, Jr. and Andres B. Reyes, Jr., concurring; *rollo*, pp. 50-60.

The factual and procedural antecedents of the case are as follows:

Respondent Magdaleno Peña instituted a civil case for recovery of agent's compensation and expenses, damages, and attorney's fees,[2] against Urban Bank and the petitioners, before the Regional Trial Court (RTC) of Negros Occidental, Bago City. The case was raffled to Branch 62 and was docketed as Civil Case No. 754. Respondent anchored his claim for compensation on the contract of agency[3] allegedly entered into with the petitioners wherein the former undertook to perform such acts necessary to prevent any intruder and squatter from unlawfully occupying Urban Bank's property located along Roxas Boulevard, Pasay City. Petitioners filed a Motion to Dismiss[4] arguing that they never appointed the respondent as agent or counsel. Attached to the motion were the following documents: 1) a letter[5] dated December 19, 1994 signed by Herman Ponce and Julie Abad on behalf of Isabela Sugar Company, Inc. (ISCI), the original owner of the subject property; 2) an unsigned letter[6] dated December 7, 1994 addressed to Corazon Bejasa from Marilyn G. Ong; 3) a letter[7] dated December 9, 1994 addressed

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[2] *Rollo*, pp. 61-66.

[3] The contract was allegedly confirmed in a letter addressed to the respondent, the pertinent portion of which reads:

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This is to confirm the engagement of your services as the authorized representative of Urban Bank, specifically to hold and maintain possession of our above[-]captioned property and to protect the same from former tenants, occupants or any other person who are threatening to return to the said property and/or interfere with your possession of the said property for and in our behalf.

You are likewise authorized to represent Urban Bank in any court action that you may institute to carry out your aforementioned duties, and to prevent any intruder, squatter or any other person not otherwise authorized in writing by Urban Bank from entering or staying in the premises. (*Id*. at 69).

[4] *Rollo*, pp. 72-87.

[5] *Id*. at 96.

[6] *Id*. at 97.

[7] *Id*. at 98.

to Teodoro Borlongan and signed by Marilyn G. Ong; and 4) a Memorandum[8] dated November 20, 1994 from Enrique Montilla III. Said documents were presented in an attempt to show that the respondent was appointed as agent by ISCI and not by Urban Bank or by the petitioners.

In view of the introduction of the above-mentioned documents, respondent Peña filed his Complaint-Affidavit[9] with the Office of the City Prosecutor, Bago City.[10] He claimed that said documents were falsified because the alleged signatories did not actually affix their signatures, and the signatories were neither stockholders nor officers and employees of ISCI.[11] Worse, petitioners introduced said documents as evidence before the RTC knowing that they were falsified.

In a Resolution[12] dated September 23, 1998, the City Prosecutor concluded that the petitioners were probably guilty of four (4) counts of the crime of Introducing Falsified Documents penalized by the second paragraph of Article 172 of the Revised Penal Code (RPC). The City Prosecutor concluded that the documents were falsified because the alleged signatories untruthfully stated that ISCI was the principal of the respondent; that petitioners knew that the documents were falsified considering that the signatories were mere dummies; and that

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[8] *Id*. at 99.

[9] *Id*. at 106-109.

[10] The case was docketed as I.S. Case No. 9248.

[11] *Rollo*, p. 108.

[12] The dispositive portion of which reads:

Wherefore, In view of all the foregoing, undersigned finds probable cause that the crime of Introducing Falsified Documents in evidence under par. 2, Article 172, RPC (4 counts) had been committed and that respondents Teodoro Borlongan, Delfin Gonzalez, Jr., Benjamin de Leon, P. Siervo Dizon, Eric Lee, Ben Lim, Jr., Corazon Bejasa, and Arturo Manuel are probably guilty.

Let Informations be filed with the Municipal Trial Court in Cities, City of Bago, Philippines.

SO RESOLVED. (*Id*. at 110-114).

the documents formed part of the record of Civil Case No. 754 where they were used by petitioners as evidence in support of their motion to dismiss, adopted in their answer and later, in their Pre-Trial Brief.[13] Subsequently, the corresponding Informations[14] were filed with the Municipal Trial Court in Cities (MTCC), Bago City. The cases were docketed as Criminal Cases Nos. 6683, 6684, 6685, and 6686. Thereafter, Judge Primitivo Blanca issued the warrants[15] for the arrest of the petitioners.

On October 1, 1998, petitioners filed an Omnibus Motion to Quash, Recall Warrants of Arrest and/or For Reinvestigation.[16] Petitioners insisted that they were denied due process because of the non-observance of the proper procedure on preliminary investigation prescribed in the Rules of Court. Specifically, they claimed that they were not afforded the right to submit their counter-affidavit. They then argued that since no such counter-affidavit and supporting documents were submitted by the petitioners, the trial judge merely relied on the complaint-affidavit and attachments of the respondent in issuing the warrants of arrest, also in contravention of the *Rules*. Petitioners further prayed that the information be quashed for lack of probable cause. Lastly, petitioners posited that the criminal case should have been suspended on the ground that the issue being threshed out in the civil case is a prejudicial question.

In an Order[17] dated November 13, 1998, the court denied the omnibus motion primarily on the ground that preliminary

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[13] *Rollo*, pp. 113-114.

[14] *Id*. at 115-122.

[15] *Id*. at 123-126.

[16] *Id*. at 127-142.

[17] The dispositive portion reads:

WHEREFORE, premises considered, the Omnibus Motion to Quash, Recall Warrants of Arrest and/or For reinvestigation is hereby denied.

Set arraignment of the accused on December 1, 1998 at 8:30 o'clock in the morning.

SO ORDERED. (*Id*. at 143-150).

investigation was not available in the instant case — which fell within the jurisdiction of the MTCC. The court, likewise, upheld the validity of the warrant of arrest, saying that it was issued in accordance with the Rules. Besides, the court added, petitioners could no longer question the validity of the warrant since they already posted bail. The court also believed that the issue involved in the civil case was not a prejudicial question, and thus, denied the prayer for suspension of the criminal proceedings. Lastly, the court was convinced that the Informations contained all the facts necessary to constitute an offense.

Petitioners subsequently instituted a special civil action for *Certiorari* and Prohibition with Prayer for Writ of Preliminary Injunction and TRO, before the CA ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the MTCC in issuing and not recalling the warrants of arrest, reiterating the arguments in their omnibus motion.[18] They, likewise, questioned the court's conclusion that by posting bail, petitioners already waived their right to assail the validity of the warrant of arrest.

On June 20, 2000, the CA dismissed the petition.[19] Hence, the instant petition for review on *certiorari* under Rule 45 of the Rules of Court. Petitioners now raise before us the following issues:

A.

Where the offense charged in a criminal complaint is not cognizable by the Regional Trial Court and not covered by the Rule on Summary Procedure, is the finding of probable cause required for the filing of an Information in court?

If the allegations in the complaint-affidavit do not establish probable cause, should not the investigating prosecutor dismiss the complaint, or at the very least, require the respondent to submit his counter-affidavit?

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[18] *Rollo*, pp. 151-186.

[19] *Supra* note 1.

B.

Can a complaint-affidavit containing matters which are not within the personal knowledge of the complainant be sufficient basis for the finding of probable cause?

C.

Where the offense charged in a criminal complaint is not cognizable by the Regional Trial Court and not covered by the Rule on Summary Procedure, and the record of the preliminary investigation does not show the existence of probable cause, should not the judge refuse to issue a warrant of arrest and dismiss the criminal case, or at the very least, require the accused to submit his counter-affidavit in order to aid the judge in determining the existence of probable cause?

D.

Can a criminal prosecution be restrained?

E.

Can this Honorable Court itself determine the existence of probable cause?[20]

On August 2, 2000, this Court issued a Temporary Restraining Order (TRO)[21] enjoining the judge of the MTCC from proceeding in any manner with Criminal Cases Nos. 6683 to 6686, effective during the entire period that the case is pending before, or until further orders of, this Court.

With the MTCC proceedings suspended, we now proceed to resolve the issues raised.

Respondents contend that the foregoing issues had become moot and academic when the petitioners posted bail and were arraigned.

We do not agree.

It appears that upon the issuance of the warrant of arrest, petitioners immediately posted bail as they wanted to avoid embarrassment being then the officers of Urban Bank. On the

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[20] *Rollo*, pp. 13-14.

[21] *Id*. at 518-522.

scheduled date for the arraignment, despite the petitioners' refusal to enter a plea, the court entered a plea of "Not Guilty."

The earlier ruling of this Court that posting of bail constitutes a waiver of the right to question the validity of the arrest has already been superseded by Section 26,[22] Rule 114 of the Revised Rules of Criminal Procedure. Furthermore, the principle that the accused is precluded from questioning the legality of his arrest after arraignment is true only if he voluntarily enters his plea and participates during trial, without previously invoking his objections thereto.[23]

Records reveal that petitioners filed the omnibus motion to quash the information and warrant of arrest, and for reinvestigation, on the same day that they posted bail. Their bail bonds likewise expressly contained a stipulation that they were not waiving their right to question the validity of their arrest.[24] On the date of the arraignment, the petitioners refused to enter their plea, obviously because the issue of the legality of the information and their arrest was yet to be settled by the Court. This notwithstanding, the court entered a plea of "Not Guilty." From these circumstances, we cannot reasonably infer a valid waiver on the part of the petitioners, as to preclude them from raising the issue of the validity of the arrest before the CA and eventually before this Court.

In their petition filed before this Court, petitioners prayed for a TRO to restrain the MTCC from proceeding with the

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[22] Sec. 26. *Bail not a bar to objections on illegal arrest, lack of or irregular preliminary investigation.* – An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case.

[23] *People v. Vallejo,* 461 Phil. 672, 686 (2003); *People v. Palijon*, 397 Phil. 545, 556 (2000); *Go v. Court of Appeals*, G.R. No. 101837, February 11, 1992, 206 SCRA 138, 154.

[24] CA *rollo*, pp. 902-903.

criminal cases (which the Court eventually issued on August 2, 2000). Thus, we confront the question of whether a criminal prosecution can be restrained, to which we answer in the affirmative.

As a general rule, the Court will not issue writs of prohibition or injunction, preliminary or final, to enjoin or restrain criminal prosecution. However, the following exceptions to the rule have been recognized: 1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused; 2) when it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; 3) when there is a prejudicial question which is *sub judice*; 4) when the acts of the officer are without or in excess of authority; 5) where the prosecution is under an invalid law, ordinance or regulation; 6) when double jeopardy is clearly apparent; 7) where the Court has no jurisdiction over the offense; 8) where it is a case of persecution rather than prosecution; 9) where the charges are manifestly false and motivated by the lust for vengeance; and 10) when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.[25]

Considering that the issues for resolution involve the validity of the information and warrant of arrest, and considering further that no waiver of rights may be attributed to the petitioners as earlier discussed, we issued a TRO on August 2, 2000 to give the Court the opportunity to resolve the case before the criminal prosecution is allowed to continue. The nature of the crime and the penalty involved (which is less than 4 years of imprisonment), likewise, necessitate the suspension of the case below in order to prevent the controversy from being mooted.

We now proceed with the main issues, *viz.*: 1) whether petitioners were deprived of their right to due process of law because of the denial of their right to preliminary investigation and to submit their counter-affidavit; 2) whether the Informations charging the petitioners were validly filed and the warrants for

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[25] *Andres v. Cuevas,* G.R. No. 150869, June 9, 2005, 460 SCRA 38, 51-52; *Samson v. Secretary Guingona, Jr.*, 401 Phil. 167, 172 (2000).

their arrest were properly issued; and 3) whether this Court can, itself, determine probable cause.

As will be discussed below, the petitioners could not validly claim the right to preliminary investigation. Still, petitioners insist that they were denied due process because they were not afforded the right to submit counter-affidavits which would have aided the court in determining the existence of probable cause.[26] Petitioners also claim that the respondent's complaint-affidavit was not based on the latter's personal knowledge; hence, it should not have been used by the court as basis in its finding of probable cause.[27] Moreover, petitioners aver that there was no sufficient evidence to prove the elements of the crime. Specifically, it was not established that the documents in question were falsified; that petitioners were the ones who presented the documents as evidence; and that petitioners knew that the documents were indeed falsified.[28] Petitioners likewise assert that at the time of the filing of the complaint-affidavit, they had not yet formally offered the documents as evidence; hence, they could not have "introduced" the same in court.[29] Considering the foregoing, petitioners pray that this Court, itself, determine whether or not probable cause exists.[30]

The pertinent provisions of the 1985 Rules of Criminal Procedure,[31] namely, Sections 1, 3 (a) and 9(a) of Rule 112, are relevant to the resolution of the aforesaid issues:

SECTION 1. *Definition.* – Preliminary investigation is an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime cognizable

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[26] *Rollo*, p. 651.

[27] *Id.* at 696.

[28] *Id.* at 700-702.

[29] *Id.* at 714.

[30] *Id.* at 725.

[31] As amended, per Supreme Court Resolutions dated June 17, 1988 and July 7, 1988. The Rules were further revised and approved on October 3, 2000, which took effect on December 1, 2000.

by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial.[32]

SEC. 3. *Procedure.* – Except as provided for in Section 7 hereof, no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner:

(a) The complaint shall state the known address of the respondent and be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents, in such number of copies as there are respondents, plus two (2) copies of the official file. The said affidavits shall be sworn to before any fiscal, state prosecutor or government official authorized to administer oath, or, in their absence or unavailability, a notary public, who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.[33]

SEC. 9. *Cases not falling under the original jurisdiction of the Regional Trial Courts not covered by the Rule on Summary Procedure.–*

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[32] RULES OF CRIMINAL PROCEDURE, Rule 112, Sec. 1 reads:

SECTION 1. *Preliminary investigation defined; when required.* – Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Except as provided in Section 7 of this Rule, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine.

[33] Section 3(a) of the New Rules states:

SECTION 3. *Procedure*. The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(a) Where filed with the fiscal. – If the complaint is filed directly with the fiscal or state prosecutor, the procedure outlined in Section 3 (a) of this Rule shall be observed. The Fiscal shall take appropriate action based on the affidavits and other supporting documents submitted by the complainant.[34]

Petitioners were charged with the offense defined and penalized by the second paragraph of Article 172[35] of the Revised Penal Code. The penalty imposable is *arresto mayor* in its maximum period to *prision correccional* in its minimum period, or four (4) months and one (1) day to two (2) years and four (4) months. Clearly, the case is cognizable by the Municipal Trial Court and preliminary investigation is not mandatory.[36]

Records show that the prosecutor relied merely on the complaint-affidavit of the respondent and did not require the petitioners to submit their counter-affidavits. The prosecutor should not be faulted for taking this course of action, because it is sanctioned by the Rules. To reiterate, upon the filing of the complaint and affidavit with respect to cases cognizable by

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[34] Rule 112, Sec. 9 is presently worded as follows:

Cases not requiring a preliminary investigation nor covered by the Rule on Summary Procedure. –

(a) *If filed with the prosecutor*. – If the complaint is filed directly with the prosecutor involving an offense punishable by imprisonment of less than four (4) years, two (2) months and one (1) day, the procedure outlined in Section 3(a) of this Rule shall be observed. The prosecutor shall act on the complaint based on the affidavits and other supporting documents submitted by the complainant within ten (10) days from its filing.

[35] Article 172.

x x x x x x x x x

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

[36] *Villanueva v. Judge Almazan*, 384 Phil. 776, 784 (2000); *Del Rosario, Jr. v. Judge Bartolome,* 337 Phil. 330, 333 (1997).

the MTCC, *the prosecutor shall take the appropriate action based on the affidavits and other supporting documents submitted by the complainant*. It means that the prosecutor may either dismiss the complaint if he does not see sufficient reason to proceed with the case, or file the information if he finds probable cause. The prosecutor is not mandated to require the submission of counter-affidavits. Probable cause may then be determined on the basis alone of the affidavits and supporting documents of the complainant, without infringing on the constitutional rights of the petitioners.

On the other hand, for the issuance of a warrant of arrest, the judge must personally determine the existence of probable cause. Again, the petitioners insist that the trial judge erred in issuing the warrant of arrest without affording them their right to submit their counter-affidavits.

Section 2, Article III of the Constitution provides:

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.

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. But the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall (1) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause, and on the basis thereof, he may already make a personal determination of the existence of probable cause; and (2) if he is not satisfied that probable cause exists, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him

in arriving at a conclusion as to the existence of probable cause.[37]

In determining probable cause for the issuance of the warrant of arrest in the case at bench, we find nothing wrong with the procedure adopted by the trial judge — he relied on the resolution of the prosecutor, as well as the supporting documents submitted by the respondent. There is no provision of law or procedural rule which makes the submission of counter-affidavits mandatory before the judge can determine whether or not there exists probable cause to issue the warrant.

In light of the foregoing, it appears that the proper procedure was followed by the prosecutor in determining probable cause for the filing of the informations, and by the trial court judge in determining probable cause for the issuance of the warrants of arrest. To reiterate, preliminary investigation was not mandatory, and the submission of counter-affidavit was not necessary.

However, notwithstanding the proper observance of the procedure laid down by the Rules, a closer scrutiny of the records reveals that the Informations should not have been filed and the warrants of arrest should not have been issued, because of lack of probable cause.

Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof.[38] It is the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he is to be prosecuted.[39] A finding of probable cause

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[37] *AAA v. Carbonell,* G.R. No. 171465, June 8, 2007; *Ho v. People*, 345 Phil. 597, 605-606 (1997); *Soliven v. Makasiar*, No. 82585, November 14, 1988, 167 SCRA 393, 398.

[38] *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533, 550.

[39] *Ladlad v. Velasco,* G.R. Nos. 172070-72, June 1, 2007.

needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused.[40]

On the other hand, we have defined probable cause for the issuance of a warrant of arrest as the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested.[41]

To accord respect to the discretion granted to the prosecutor and for reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause. Otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations.[42] In the same way, the general rule is that this Court does not review the factual findings of the trial court, which include the determination of probable cause for the issuance of a warrant of arrest.[43] It is only in exceptional cases when this Court may set aside the conclusions of the prosecutor and the trial judge on the existence of probable cause, that is, when it is necessary to prevent the misuse of the strong arm of the law or to protect the orderly administration of justice.[44] The facts obtaining in the present case warrant the application of the exception.

Petitioners were charged with violation of par. 2, Article 172 of the RPC or Introduction of Falsified Document in a Judicial Proceeding. The elements of the offense are as follows:

1. That the offender knew that a document was falsified by another person.

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[40] *Sarigumba v. Sandiganbayan*, *supra* note 38.

[41] *Id*; *Cuevas v. Muñoz*, 401 Phil. 752, 773 (2000); *Ho v. People*, *supra* note 37, at 608.

[42] *Ladlad v. Velasco, supra* note 39.

[43] *De Joya v. Marquez*, G.R. No. 162416, January 31, 2006, 481 SCRA 376, 381.

[44] *Id.*; *Ladlad v. Velasco, supra* note 39.

2. That the false document is embraced in Article 171 or in any subdivisions No. 1 or 2 of Article 172.

3. That he introduced said document in evidence in any judicial proceeding.[45]

The falsity of the document and the defendant's knowledge of its falsity are essential elements of the offense.[46]

The Office of the City Prosecutor filed the Informations against the petitioners on the basis of the complaint-affidavit of the respondent, together with the following attached documents: the motion to dismiss and answer filed by the petitioners in Civil Case No. 754; petitioners' pre-trial brief in said case; the alleged falsified documents; a copy of the minutes of the regular meeting of ISC during the election of the board; and the list of stockholders of ISC.[47] On the basis of these documents and on the strength of the affidavit executed by the respondent, the prosecutor concluded that probable cause exists. These same affidavit and documents were used by the trial court in issuing the warrant of arrest.

Contrary to the findings of the MTCC, as affirmed by the Court of Appeals, we find the complaint-affidavit and attachments insufficient to support the existence of probable cause. Specifically, the respondent failed to sufficiently establish *prima facie* that the alleged documents were falsified. In support of his claim of falsity of the documents, the private respondent stated in his complaint-affidavit that Herman Ponce, Julie Abad and Marilyn Ong, the alleged signatories of the questioned letters, did not actually affix their signatures; and that they were not actually officers or stockholders of ISCI.[48] He further claimed that Enrique Montilla's signature appearing in another memorandum addressed to respondent was forged.[49] These

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[45] Reyes, *The Revised Penal Code*, Book Two, 1998 ed., p. 246.

[46] Aquino*, The Revised Penal Code*, Vol. II, 1987 ed., p. 270.

[47] *Rollo,* pp. 110-114.

[48] *Id*. at 108-109.

[49] *Id*. at 109.

are mere assertions, insufficient to warrant the filing of the complaint or the issuance of the warrant of arrest.

It must be emphasized that the affidavit of the complainant, or any of his witnesses, shall allege facts within their (affiants) personal knowledge. The allegation of the respondent that the signatures of Ponce, Abad, Ong and Montilla were falsified does not qualify as personal knowledge. *Nowhere in said affidavit did respondent state that he was present at the time of the execution of the documents. Neither did he claim that he was familiar with the signatures of the signatories.* He simply made a bare assertion that the signatories were mere dummies of ISCI and they were not in fact officers, stockholders or representatives of the corporation. At the very least, the affidavit was based on respondent's "personal belief" and not "personal knowledge."[50] Considering the lack of personal knowledge on the part of the respondent, he could have submitted the affidavit of other persons who are qualified to attest to the falsity of the signatures appearing in the questioned documents. One cannot just claim that a certain document is falsified without further stating the basis for such claim, *i.e.,* that he was present at the time of the execution of the document or he is familiar with the signatures in question. Otherwise, this could lead to abuse and malicious prosecution. This is actually the reason for the requirement that affidavits must be based on the personal knowledge of the affiant. The requirement assumes added importance in the instant case where the accused were not made to rebut the complainant's allegation through counter-affidavits.

Neither can the respondent find support in the documents attached to his complaint-affidavit. The minutes of the regular meeting, as well as the list of stockholders, could have possibly

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[50] See *Nala v. Judge Barroso, Jr.*, 455 Phil. 999, 1011 (2003) in which the Court held that the affidavit and testimony of the witnesses that the petitioner had no license to possess a firearm do not qualify as *"personal knowledge*" but only *"personal belief"* because they did not verify nor secure a certification from an appropriate government agency that petitioner was not licensed to possess a firearm.

shown that the signatories were not officers or stockholders of the corporation. However, they did not at all show that the questioned documents were falsified. In the letter allegedly signed by Ponce and Abad, there was no representation that they were the president and corporate secretary of ISCI. Besides, the mere fact that they were not officers or stockholders of ISCI does not necessarily mean that their signatures were falsified. They still could have affixed their signatures as authorized representatives of the corporation.

True, a finding of probable cause need not be based on clear and convincing evidence, or on evidence beyond reasonable doubt. It does not require that the evidence would justify conviction. Nonetheless, although the determination of probable cause requires less than evidence which would justify conviction, it should at least be more than mere suspicion.[51] While probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges.[52] It is, therefore, imperative for the prosecutor to relieve the accused from the pain and inconvenience of going through a trial once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the accused.[53]

Considering that the respondent failed to adduce sufficient evidence to support his claim that the documents were falsified,

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[51] See *AAA v. Carbonell*, G.R. No. 171465, June 8, 2007; and *Hon. Drilon v. CA*, 327 Phil. 916, 922 (1996), where the Court found that there was no grave abuse of discretion on the part of the prosecutor in finding probable as the evidence, taken altogether constitute probable cause.

[52] *Ching v. Secretary of Justice*, G.R. No. 164317, February 6, 2006, 481 SCRA 609, 629-630; *Preferred Home Specialties, Inc. v. Court of Appeals*, G.R. No. 163593, December 16, 2005, 478 SCRA 387, 410.

[53] *R.R. Paredes v. Calilung*, G.R. No. 156055, March 5, 2007, 517 SCRA 369, 395.

it follows that the introduction of the questioned documents in Civil Case No. 754 is not an offense punished by any provision of the Revised Penal Code or any other law. The petitioners should not be burdened with court proceedings, more particularly a criminal proceeding, if in the first place, there is no evidence sufficient to engender a well-founded belief that an offense was committed.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals, dated June 20, 2000, in CA-G.R. SP No. 49666 is *REVERSED and SET ASIDE*. The Temporary Restraining Order dated August 2, 2000 is hereby made permanent. Accordingly, the Municipal Trial Court in Cities, City of Bago, is *ORDERED* to *DISMISS* Criminal Case Nos. 6683-86.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 148788. November 23, 2007]

SOLEDAD CAÑEZO, substituted by WILLIAM CAÑEZO and VICTORIANO CAÑEZO, *petitioners, vs.* **CONCEPCION ROJAS,** *respondent.*

SYLLABUS

1. **CIVIL LAW; TRUST; EXPRESS OR IMPLIED; DEFINED. —** A trust is the legal relationship between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and

the exercise of certain powers by the latter. Trusts are either express or implied. Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words evincing an intention to create a trust. Implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or, independently, of the particular intention of the parties, as being superinduced on the transaction by operation of law basically by reason of equity. An implied trust may either be a resulting trust or a constructive trust.

2. **ID.; ID.; EXPRESS TRUST; A TRUSTEE CANNOT ACQUIRE BY PRESCRIPTION A PROPERTY ENTRUSTED TO HIM UNLESS HE REPUDIATES THE TRUST; RATIONALE. —** It is true that in express trusts and resulting trusts, a trustee cannot acquire by prescription a property entrusted to him unless he repudiates the trust. The following discussion is instructive: There is a rule that a trustee cannot acquire by prescription the ownership of property entrusted to him, or that an action to compel a trustee to convey property registered in his name in trust for the benefit of the *cestui que trust* does not prescribe, or that the defense of prescription cannot be set up in an action to recover property held by a person in trust for the benefit of another, or that property held in trust can be recovered by the beneficiary regardless of the lapse of time. That rule applies squarely to express trusts. The basis of the rule is that the possession of a trustee is not adverse. Not being adverse, he does not acquire by prescription the property held in trust. Thus, Section 38 of Act 190 provides that the law of prescription does not apply "in the case of a continuing and subsisting trust." The rule of imprescriptibility of the action to recover property held in trust may possibly apply to resulting trusts as long as the trustee has not repudiated the trust. x x x x Acquisitive prescription may bar the action of the beneficiary against the trustee in an express trust for the recovery of the property held in trust where (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust*; (b) such positive acts of repudiation have been made known to the *cestui que trust*, and (c) the evidence thereon is clear and conclusive.

3. **ID.; ID.; ID.; ELEMENTS WHICH MUST BE PROVED TO SHOW EXISTENCE OF TRUST. —** As a rule, however, the burden

of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and satisfactorily show the existence of the trust and its elements. The presence of the following elements must be proved: (1) a trustor or settlor who executes the instrument creating the trust; (2) a trustee, who is the person expressly designated to carry out the trust; (3) the *trust res*, consisting of duly identified and definite real properties; and (4) the *cestui que trust,* or beneficiaries whose identity must be clear. Accordingly, it was incumbent upon petitioner to prove the existence of the trust relationship.

4. ID.; ID.; ID.; EXISTENCE THEREOF CONCERNING REAL PROPERTY MAY NOT BE ESTABLISHED BY PAROL EVIDENCE; EXCEPTION. — The existence of express trusts concerning real property may not be established by parol evidence. It must be proven by some writing or deed. In this case, the only evidence to support the claim that an express trust existed between the petitioner and her father was the self-serving testimony of the petitioner. Bare allegations do not constitute evidence adequate to support a conclusion. They are not equivalent to proof under the Rules of Court. In one case, the Court allowed oral testimony to prove the existence of a trust, which had been partially performed. It was stressed therein that what is important is that there should be an intention to create a trust, thus: What is crucial is the intention to create a trust. While oftentimes the intention is manifested by the trustor in express or explicit language, such intention may be manifested by inference from what the trustor has said or done, from the nature of the transaction, or from the circumstances surrounding the creation of the purported trust. However, an inference of the intention to create a trust, made from language, conduct or circumstances, must be made with reasonable certainty. It cannot rest on vague, uncertain or indefinite declarations. An inference of intention to create a trust, predicated only on circumstances, can be made only where they admit of no other interpretation. Although no particular words are required for the creation of an express trust, a clear intention to create a trust must be shown; and the proof of fiduciary relationship must be clear and convincing. The creation of an express trust must be manifested with reasonable certainty and cannot be inferred from loose and vague declarations or from ambiguous circumstances susceptible of other interpretations.

5. **ID.; ID.; ID.; LEGAL TITLE IS VESTED IN THE FIDUCIARY; NOT PRESENT IN CASE AT BAR. —** What distinguishes a trust from other relations is the separation of the legal title and equitable ownership of the property. In a trust relation, legal title is vested in the fiduciary while equitable ownership is vested in a *cestui que trust.* Such is not true in this case. The petitioner alleged in her complaint that the tax declaration of the land was transferred to the name of Crispulo without her consent. Had it been her intention to create a trust and make Crispulo her trustee, she would not have made an issue out of this because in a trust agreement, legal title is vested in the trustee. The trustee would necessarily have the right to transfer the tax declaration in his name and to pay the taxes on the property. These acts would be treated as beneficial to the *cestui que trust* and would not amount to an adverse possession.

6. **ID.; ID.; RESULTING TRUST; DEFINED. —** A resulting trust is a species of implied trust that is presumed always to have been contemplated by the parties, the intention as to which can be found in the nature of their transaction although not expressed in a deed or instrument of conveyance. A resulting trust is based on the equitable doctrine that it is the more valuable consideration than the legal title that determines the equitable interest in property.

7. **ID.; ID.; IMPLIED TRUST; WHEN MAYBE ESTABLISHED BY PAROL EVIDENCE. —** While implied trusts may be proved by oral evidence, the evidence must be trustworthy and received by the courts with extreme caution, and should not be made to rest on loose, equivocal or indefinite declarations. Trustworthy evidence is required because oral evidence can easily be fabricated. In order to establish an implied trust in real property by parol evidence, the proof should be as fully convincing as if the acts giving rise to the trust obligation are proven by an authentic document. An implied trust, in fine, cannot be established upon vague and inconclusive proof. In the present case, there was no evidence of any transaction between the petitioner and her father from which it can be inferred that a resulting trust was intended.

8. **ID.; ID.; ID.; CONSTRUCTIVE TRUST; WHEN CREATED. —** A constructive trust is one created not by any word or phrase, either expressly or impliedly, evincing a direct intention to create

a trust, but one which arises in order to satisfy the demands of justice. It does not come about by agreement or intention but in the main by operation of law, construed against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.

9. **ID.; ID.; ID.; ID.; PRESCRIPTION MAY SUPERVENE EVEN IF THE TRUSTEE DOES NOT REPUDIATE THE RELATIONSHIP; RATIONALE. —** As previously stated, the rule that a trustee cannot, by prescription, acquire ownership over property entrusted to him until and unless he repudiates the trust, applies to express trusts and resulting implied trusts. However, in constructive implied trusts, prescription may supervene even if the trustee does not repudiate the relationship. Necessarily, repudiation of the said trust is not a condition precedent to the running of the prescriptive period. A constructive trust, unlike an express trust, does not emanate from, or generate a fiduciary relation. While in an express trust, a beneficiary and a trustee are linked by confidential or fiduciary relations, in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary. The relation of trustee and *cestui que trust* does not in fact exist, and the holding of a constructive trust is for the trustee himself, and therefore, at all times adverse.

10. **ID.; ESTOPPEL; PRINCIPLE OF ESTOPPEL *IN PAIS*; EXPLAINED. —** The principle of estoppel *in pais* applies when — by one's acts, representations, admissions, or silence when there is a need to speak out — one, intentionally or through culpable negligence, induces another to believe certain facts to exist; and the latter rightfully relies and acts on such belief, so as to be prejudiced if the former is permitted to deny the existence of those facts.

11. **ID.; LACHES; DEFINED. —** Laches is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to it has either abandoned or declined to assert it.

12. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; EFFECT OF ABSENCE OF INDISPENSABLE PARTY IN THE SUIT, CLARIFIED. —** It is axiomatic that

owners of property over which reconveyance is asserted are indispensable parties. Without them being impleaded, no relief is available, for the court cannot render valid judgment. Being indispensable parties, their absence in the suit renders all subsequent actions of the trial court null and void for want of authority to act, not only as to the absent parties but even as to those present. Thus, when indispensable parties are not before the court, the action should be dismissed.

APPEARANCES OF COUNSEL

Tarcelo A. Sabarre for petitioners.
Montejo Nuez & Villarino Law Offices for respondent.

D E C I S I O N

NACHURA, *J*.:

This is a petition for review on *certiorari* from the Decision[1] of the Court of Appeals, dated September 7, 2000, in CA-G.R. SP No. 53236, and Resolution dated May 9, 2001.

On January 29, 1997, petitioner Soledad Cañezo filed a Complaint[2] for the recovery of real property plus damages with the Municipal Trial Court (MTC) of Naval, Biliran, against her father's second wife, respondent Concepcion Rojas. The subject property is an unregistered land with an area of 4,169 square meters, situated at Higatangan, Naval, Biliran. Cañezo attached to the complaint a Joint Affidavit[3] executed on May 10, 1979 by Isidro Catandijan and Maximina Cañezo attesting to her acquisition of the property.

In her complaint, the petitioner alleged that she bought the parcel of land in 1939 from Crisogono Limpiado, although the

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[1] Penned by Associate Justice Ramon A. Barcelona, with Associate Justices Renato C. Dacudao and Edgardo P. Cruz, concurring; *rollo*, pp. 21-33.

[2] *Rollo,* p. 158.

[3] *Id*. at 40.

transaction was not reduced into writing. Thereafter, she immediately took possession of the property. When she and her husband left for Mindanao in 1948, she entrusted the said land to her father, Crispulo[4] Rojas, who took possession of, and cultivated, the property. In 1980, she found out that the respondent, her stepmother, was in possession of the property and was cultivating the same. She also discovered that the tax declaration over the property was already in the name of Crispulo Rojas.[5]

In her Answer, the respondent asserted that, contrary to the petitioner's claim, it was her husband, Crispulo Rojas, who bought the property from Crisogono Limpiado in 1948, which accounts for the tax declaration being in Crispulo's name. From then on, until his death in 1978, Crispulo possessed and cultivated the property. Upon his death, the property was included in his estate, which was administered by a special administrator, Bienvenido Ricafort. The petitioner, as heir, even received her share in the produce of the estate. The respondent further contended that the petitioner ought to have impleaded all of the heirs as defendants. She also argued that the fact that petitioner filed the complaint only in 1997 means that she had already abandoned her right over the property.[6]

On July 3, 1998, after hearing, the MTC rendered a Decision in favor of the petitioner, thus:

> WHEREFORE, premises considered, the Court finds a preponderance of evidence in favor of plaintiff Soledad Cañezo and against defendant Concepcion Rojas by declaring plaintiff the true and lawful owner of the land more particularly described under paragraph 5 of the complaint and hereby orders defendant Concepcion Rojas:
>
> a) To vacate and surrender possession of the land to plaintiff;
>
> b) To pay plaintiff the sum of ₱34,000.00 actual damages, ₱10,000.00 for attorney's fees and litigation expenses; and

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[4] Also spelled "Crispolo" in the pleadings.

[5] *Id*. at 159.

[6] *Id*. at 162-165.

c) To pay the costs.

SO ORDERED.[7]

Despite the respondent's objection that the verbal sale cannot be proven without infringing the Statute of Frauds, the MTC gave credence to the testimony of the petitioners' two witnesses attesting to the fact that Crisogono Limpiado sold the property to the petitioner in 1939. The MTC also found no evidence to show that Crispulo Rojas bought the property from Crisogono Limpiado in 1948. It held that the 1948 tax declaration in Crispulo's name had little significance on respondent's claim, considering that in 1948, the "country was then rehabilitating itself from the ravages of the Second World War" and "the government was more interested in the increase in tax collection than the observance of the niceties of law."[8]

The respondent appealed the case to the Regional Trial Court (RTC) of Naval, Biliran. On October 12, 1998, the RTC reversed the MTC decision on the ground that the action had already prescribed and acquisitive prescription had set in. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the decision of the Municipal Trial Court of Naval, Biliran awarding ownership of the disputed land to the plaintiff and further allowing recovery of damages is hereby REVERSED *in toto*. There is no award of damages.

The said property remains as the legitime of the defendant Concepcion Rojas and her children.

SO ORDERED.[9]

However, acting on petitioner's motion for reconsideration, the RTC amended its original decision on December 14, 1998.[10] This time, it held that the action had not yet prescribed considering

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[7] *Id*. at 170-171.

[8] *Id*. at 170.

[9] *Id*. at 177-178.

[10] *Id*. at 41-50.

that the petitioner merely entrusted the property to her father. The ten-year prescriptive period for the recovery of a property held in trust would commence to run only from the time the trustee repudiates the trust. The RTC found no evidence on record showing that Crispulo Rojas ever ousted the petitioner from the property. The dispositive portion of the amended decision reads as follows:

WHEREFORE, in view of the foregoing considerations, the decision of this Court dated October 12, 1998 is hereby set aside and another is hereby entered modifying the decision of the Court *a quo* and declaring Soledad Rojas *Vda. De* Cañezo as the true and lawful owner of a parcel of land, more particularly described and bounded as follows:

> A parcel of land situated at Higatangan, Naval, Biliran, bounded on the North by Policarpio Limpiado; on the South by Fidel Limpiado; on the East by Seashore; and on the West by Crispolo (sic) Limpiado with an approximate area of 4,169 square meters per Tax Declaration No. 2258, later under Tax Declaration No. 4073 in the name of Crispolo Rojas and later in the name of the Heirs of Crispolo Rojas.

Further, ordering defendant-appellant Concepcion Rojas and all persons claiming rights or interest under her to vacate and surrender possession of the land aforecited to the plaintiff or any of her authorized representatives, Ordering the Provincial and/or Municipal Assessor's Office to cancel the present existing Tax Declaration in the name of Heirs of Crispolo Rojas referring to the above-described property in favor of the name of Soledad Rojas *Vda. De* Cañezo, Ordering the defendant-appellant Concepcion Rojas to pay the plaintiff-appellee the sum of ₱34,000.00 in actual damages, and to pay for the loss of her share in money value of the products of the coconuts of said land from 1979 to 1997 and to pay further until the case is terminated at the rate of ₱200.00 per quarter based on the regular remittances of the late Crispolo Rojas to the plaintiff-appellee, and to pay the costs.

SO ORDERED.[11]

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[11] *Id*. at 48-49.

The respondent filed a motion to reconsider the Amended Decision but the RTC denied the same in an Order dated April 25, 1999.

She then filed a petition for review with the Court of Appeals (CA), which reversed the Amended Decision of the RTC on September 7, 2000, thus:

> WHEREFORE, the *amended decision* dated December 14, 1998 rendered in Civil Case No. B-1041 is hereby REVERSED and SET ASIDE. The *complaint filed by Soledad Cañezo* before the Municipal Trial Court of Naval, Biliran is hereby DISMISSED on grounds of laches and prescription and for lack of merit.
>
> SO ORDERED.[12]

The CA held that the petitioner's inaction for several years casts a serious doubt on her claim of ownership over the parcel of land. It noted that 17 years lapsed since she discovered that respondent was in adverse possession of the property before she instituted an action to recover the same. And during the probate proceedings, the petitioner did not even contest the inclusion of the property in the estate of Crispulo Rojas.[13]

The CA was convinced that Crispulo Rojas owned the property, having bought the same from Crisogono Limpiado in 1948. Supporting this conclusion, the appellate court cited the following circumstances: (1) the property was declared for taxation purposes in Crispulo's name and he had been paying the taxes thereon from 1948 until his death in 1978; (2) Crispulo adversely possessed the same property from 1948 until his death in 1978; and (3) upon his death in 1978, the property was included in his estate, the proceeds of which were distributed among his heirs.[14]

The CA further held that, assuming that there was an implied trust between the petitioner and her father over the property,

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[12] *Id* at 32.

[13] *Id*. at 31.

[14] *Id*.

her right of action to recover the same would still be barred by prescription since 49 years had already lapsed since Crispulo adversely possessed the contested property in 1948.[15]

On May 9, 2001, the CA denied the petitioner's motion for reconsideration for lack of merit.[16]

In this petition for review, the petitioner, substituted by her heirs, assigns the following errors:

> That the Court of Appeals committed grave abuse of discretion in setting aside petitioner's contention that the Petition for Review filed by respondent CONCEPCION ROJAS before the Court of Appeals was FILED OUT OF TIME;
>
> That the Court of Appeals erred and committed grave abuse of discretion amounting to lack or excess of jurisdiction when it decided that the filing of the case by SOLEDAD CAÑEZO for Recovery of Real Property was already barred by PRESCRIPTION AND LACHES.[17]

The petitioner insists that the respondent's petition for review before the CA was filed out of time. The petitioner posits that the CA may not grant an additional extension of time to file the petition except for the most compelling reason. She contends that the fact that respondent's counsel needed additional time to secure the certified copy of his annexes cannot be considered as a compelling reason that would justify an additional period of extension. She admits, though, that this issue was raised for the first time in their motion for reconsideration, but insists that it can be raised at any time since it concerns the jurisdiction of the CA over the petition.

The petitioner further posits that prescription and laches are unavailing because there was an express trust relationship between the petitioner and Crispulo Rojas and his heirs, and express trusts do not prescribe. Even assuming that it was not an express trust, there was a resulting trust which generally does not prescribe unless there is repudiation by the trustee.

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[15] *Id.* at 31-32.

[16] *Id.* at 34.

[17] *Id.* at 12-13.

For her part, the respondent argues that the petitioners are now estopped from questioning the CA Resolution granting her second motion for extension to file the petition for review. She notes that the petitioner did not raise this issue in the comment that she filed in the CA. In any case, the grant of the second extension of time was warranted considering that the certified true copy of the assailed RTC orders did not arrive at the office of respondent's counsel in Cebu City in time for the filing of the petition.

On the merits, the respondent asserts that the complaint is barred by prescription, laches and estoppel. From 1948 until his death in 1978, Crispulo cultivated the property and was in adverse, peaceful and continuous possession thereof in the concept of owner. It took the petitioner 49 years from 1948 before she filed the complaint for recovery of the property in 1997. Granting that it was only in 1980 that she found out that the respondent adversely possessed the property, still petitioner allowed 17 years to elapse before she asserted her alleged right over the property.

Finally, the respondent maintains that the other co-owners are indispensable parties to the case; and because they were not impleaded, the case should be dismissed.

The petition has no merit.

On the procedural issue raised by the petitioner, we find no reversible error in the grant by the CA of the second motion for extension of time to file the respondent's petition. The grant or denial of a motion for extension of time is addressed to the sound discretion of the court.[18] The CA obviously considered the difficulty in securing a certified true copy of the assailed decision because of the distance between the office of respondent's counsel and the trial court as a compelling reason for the request. In the absence of any showing that the CA granted the motion for extension capriciously, such exercise of discretion will not be disturbed by this Court.

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[18] *Cosmo Entertainment Management, Inc. v. La Ville Commercial Corporation*, G.R. No. 152801, August 20, 2004, 437 SCRA 145, 150.

On the second issue, the petitioner insists that her right of action to recover the property cannot be barred by prescription or laches even with the respondent's uninterrupted possession of the property for 49 years because there existed between her and her father an express trust or a resulting trust. Indeed, if no trust relations existed, the possession of the property by the respondent, through her predecessor, which dates back to 1948, would already have given rise to acquisitive prescription in accordance with Act No. 190 (Code of Civil Procedure).[19] Under Section 40 of Act No. 190, an action for recovery of real property, or of an interest therein, can be brought only within ten years after the cause of action accrues. This period coincides with the ten-year period for acquisitive prescription provided under Section 41[20] of the same Act.

Thus, the resolution of the second issue hinges on our determination of the existence of a trust over the property — express or implied — between the petitioner and her father.

A trust is the legal relationship between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and

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[19] Article 1116 of the Civil Code of the Philippines states:

ART. 1116. Prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since the time this Code took effect the entire period herein required for prescription should elapse, the present Code shall be applicable, even though by the former laws, a longer period might be required.

[20] *Title to land by prescription*. – Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the person under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must be actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all claimants x x x.

the exercise of certain powers by the latter.[21] Trusts are either express or implied.[22] Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words evincing an intention to create a trust.[23] Implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or, independently, of the particular intention of the parties, as being superinduced on the transaction by operation of law basically by reason of equity.[24] An implied trust may either be a resulting trust or a constructive trust.

It is true that in express trusts and resulting trusts, a trustee cannot acquire by prescription a property entrusted to him unless he repudiates the trust.[25] The following discussion is instructive:

> There is a rule that a trustee cannot acquire by prescription the ownership of property entrusted to him, or that an action to compel a trustee to convey property registered in his name in trust for the benefit of the *cestui que trust* does not prescribe, or that the defense of prescription cannot be set up in an action to recover property held by a person in trust for the benefit of another, or that property held in trust can be recovered by the beneficiary regardless of the lapse of time.
>
> That rule applies squarely to express trusts. The basis of the rule is that the possession of a trustee is not adverse. Not being adverse, he does not acquire by prescription the property held in trust. Thus, Section 38 of Act 190 provides that the law of prescription does not apply "in the case of a continuing and subsisting trust."

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[21] *Tigno v. Court of Appeals*, 345 Phil. 486, 497 (1997), citing *Morales v. Court of Appeals*, 274 SCRA 282 (1997).

[22] Article 1441, Civil Code of the Philippines states:

ART. 1441. Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law.

[23] *Buan Vda. de Esconde v. Court of Appeals*, 323 Phil. 81, 89 (1996).

[24] *Id*.

[25] *Id*. at 92.

The rule of imprescriptibility of the action to recover property held in trust may possibly apply to resulting trusts as long as the trustee has not repudiated the trust.

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Acquisitive prescription may bar the action of the beneficiary against the trustee in an express trust for the recovery of the property held in trust where (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust*; (b) such positive acts of repudiation have been made known to the *cestui que trust*, and (c) the evidence thereon is clear and conclusive.[26]

As a rule, however, the burden of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and satisfactorily show the existence of the trust and its elements.[27] The presence of the following elements must be proved: (1) a trustor or settlor who executes the instrument creating the trust; (2) a trustee, who is the person expressly designated to carry out the trust; (3) the *trust res*, consisting of duly identified and definite real properties; and (4) the *cestui que trust,* or beneficiaries whose identity must be clear.[28] Accordingly, it was incumbent upon petitioner to prove the existence of the trust relationship. And petitioner sadly failed to discharge that burden.

The existence of express trusts concerning real property may not be established by parol evidence.[29] It must be proven by some writing or deed. In this case, the only evidence to support the claim that an express trust existed between the petitioner and her father was the self-serving testimony of the petitioner. Bare allegations do not constitute evidence adequate to support a conclusion. They are not equivalent to proof under the Rules of Court.[30]

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[26] *Pilapil v. Heirs of Maximino R. Briones*, G.R. No. 150175, February 5, 2007, 514 SCRA 197, 214-215. (Citations omitted.)

[27] *Morales v. Court of Appeals*, *supra* note 14, at 300.

[28] *Ringor v. Ringor,* G.R. No. 147863, August 13, 2004, 436 SCRA 484, 496.

[29] Civil Code, Art. 1443.

[30] *Filipinas Port Services, Inc. v. Go,* G.R. No. 161886, March 16, 2007.

In one case, the Court allowed oral testimony to prove the existence of a trust, which had been partially performed. It was stressed therein that what is important is that there should be an intention to create a trust, thus:

> What is crucial is the intention to create a trust. While oftentimes the intention is manifested by the trustor in express or explicit language, such intention may be manifested by inference from what the trustor has said or done, from the nature of the transaction, or from the circumstances surrounding the creation of the purported trust.
>
> However, an inference of the intention to create a trust, made from language, conduct or circumstances, must be made with reasonable certainty. It cannot rest on vague, uncertain or indefinite declarations. An inference of intention to create a trust, predicated only on circumstances, can be made only where they admit of no other interpretation.[31]

Although no particular words are required for the creation of an express trust, a clear intention to create a trust must be shown; and the proof of fiduciary relationship must be clear and convincing. The creation of an express trust must be manifested with reasonable certainty and cannot be inferred from loose and vague declarations or from ambiguous circumstances susceptible of other interpretations.[32]

In the case at bench, an intention to create a trust cannot be inferred from the petitioner's testimony and the attendant facts and circumstances. The petitioner testified only to the effect that her agreement with her father was that she will be given a share in the produce of the property, thus:

> Q: What was your agreement with your father Crispulo Rojas when you left this property to him?
> A: Every time that they will make copra, they will give a share.
>
> Q: In what particular part in Mindanao [did] you stay with your husband?
> A: Bansalan, Davao del Sur.

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[31] *Ringor v. Ringor, supra* note 28, at 497-498.

[32] *Medina v. Court of Appeals,* 196 Phil. 205, 213-214 (1981).

Q: And while you were in Bansalan, Davao del Sur, did Crispolo Rojas comply with his obligation of giving your share the proceeds of the land?

A: When he was still alive, he gave us every three months sometimes ₱200.00 and sometimes ₱300.00.[33]

This allegation, standing alone as it does, is inadequate to establish the existence of a trust because profit-sharing *per se*, does not necessarily translate to a trust relation. It could also be present in other relations, such as in deposit.

What distinguishes a trust from other relations is the separation of the legal title and equitable ownership of the property. In a trust relation, legal title is vested in the fiduciary while equitable ownership is vested in a *cestui que trust.* Such is not true in this case. The petitioner alleged in her complaint that the tax declaration of the land was transferred to the name of Crispulo without her consent. Had it been her intention to create a trust and make Crispulo her trustee, she would not have made an issue out of this because in a trust agreement, legal title is vested in the trustee. The trustee would necessarily have the right to transfer the tax declaration in his name and to pay the taxes on the property. These acts would be treated as beneficial to the *cestui que trust* and would not amount to an adverse possession.[34]

Neither can it be deduced from the circumstances of the case that a resulting trust was created. A resulting trust is a species of implied trust that is presumed always to have been contemplated by the parties, the intention as to which can be

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[33] TSN, September 11, 1997, pp. 7-8; *rollo*, pp. 148-149.

[34] See *Salvador v. Court of Appeals*, 313 Phil. 36, 56-57 (1995), where the Court likened a co-owner's possession to that of a trustee. It was then held that a mere silent possession, receipt of rents, fruits or profits from the property, the erection of buildings and fences and the planting of trees thereon, and the payment of land taxes, cannot serve as proof of exclusive ownership, if it is not borne out by clear and convincing evidence that a co-owner (trustee) exercised acts of possession which unequivocally constituted an ouster or deprivation of the rights of the other co-owners (*cestui que trust*).

found in the nature of their transaction although not expressed in a deed or instrument of conveyance. A resulting trust is based on the equitable doctrine that it is the more valuable consideration than the legal title that determines the equitable interest in property.[35]

While implied trusts may be proved by oral evidence, the evidence must be trustworthy and received by the courts with extreme caution, and should not be made to rest on loose, equivocal or indefinite declarations. Trustworthy evidence is required because oral evidence can easily be fabricated.[36] In order to establish an implied trust in real property by parol evidence, the proof should be as fully convincing as if the acts giving rise to the trust obligation are proven by an authentic document. An implied trust, in fine, cannot be established upon vague and inconclusive proof.[37] In the present case, there was no evidence of any transaction between the petitioner and her father from which it can be inferred that a resulting trust was intended.

In light of the disquisitions, we hold that there was no express trust or resulting trust established between the petitioner and her father. Thus, in the absence of a trust relation, we can only conclude that Crispulo's uninterrupted possession of the subject property for 49 years, coupled with the performance of acts of ownership, such as payment of real estate taxes, ripened into ownership. The statutory period of prescription commences when a person who has neither title nor good faith, secures a tax declaration in his name and may, therefore, be said to have adversely claimed ownership of the lot.[38] While tax declarations and receipts are not conclusive evidence of ownership and do not prove title to the land, nevertheless, when coupled with actual possession, they constitute evidence of great weight and can be the basis of a claim of ownership through

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[35] *Heirs of Yap v. Court of Appeals,* 371 Phil. 523, 531 (1999).

[36] *Morales v. Court of Appeals*, *supra* note 18.

[37] *Heirs of Yap v. Court of Appeals, supra.*

[38] *Heirs of Flores Restar v. Heirs of Dolores R. Cichon,* G.R. No. 161720, November 22, 2005, 475 SCRA 731, 740.

prescription.[39] Moreover, Section 41 of Act No. 190 allows adverse possession in *any* character to ripen into ownership after the lapse of ten years. There could be prescription under the said section even in the absence of good faith and just title.[40]

All the foregoing notwithstanding, even if we sustain petitioner's claim that she was the owner of the property and that she constituted a trust over the property with her father as the trustee, such a finding still would not advance her case.

Assuming that such a relation existed, it terminated upon Crispulo's death in 1978. A trust terminates upon the death of the trustee where the trust is personal to the trustee in the sense that the trustor intended no other person to administer it.[41] If Crispulo was indeed appointed as trustee of the property, it cannot be said that such appointment was intended to be conveyed to the respondent or any of Crispulo's other heirs. Hence, after Crispulo's death, the respondent had no right to retain possession of the property. At such point, a constructive trust would be created over the property by operation of law. Where one mistakenly retains property which rightfully belongs to another, a constructive trust is the proper remedial device to correct the situation.[42]

A constructive trust is one created not by any word or phrase, either expressly or impliedly, evincing a direct intention to create a trust, but one which arises in order to satisfy the demands of justice. It does not come about by agreement or intention but in the main by operation of law, construed against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.[43]

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[39] *Id*. at 741.

[40] *Vda. de Rigonan v. Derecho*, G.R. No. 159571, July 15, 2005, 463 SCRA 627, 644.

[41] *Booth v. Krug*, 368 Ill. 487, 14 N.E. 2d 645 (1938).

[42] *Yamaha Motor Corp., U.S.A. v. Tri-City Motors and Sports, Inc.,* 171 Mich. App. 260, 429 N.W. 2d 871, 7 UCC Rep. Serv. 2d 1190 (1988).

[43] *Heirs of Yap v. Court of Appeals*, *supra* note 35, at 531.

As previously stated, the rule that a trustee cannot, by prescription, acquire ownership over property entrusted to him until and unless he repudiates the trust, applies to express trusts and resulting implied trusts. However, in constructive implied trusts, prescription may supervene even if the trustee does not repudiate the relationship. Necessarily, repudiation of the said trust is not a condition precedent to the running of the prescriptive period.[44] A constructive trust, unlike an express trust, does not emanate from, or generate a fiduciary relation. While in an express trust, a beneficiary and a trustee are linked by confidential or fiduciary relations, in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary.[45] The relation of trustee and *cestui que trust* does not in fact exist, and the holding of a constructive trust is for the trustee himself, and therefore, at all times adverse.

In addition, a number of other factors militate against the petitioner's case. First, the petitioner is estopped from asserting ownership over the subject property by her failure to protest its inclusion in the estate of Crispulo. The CA, thus, correctly observed that:

> Even in the probate proceedings instituted by the heirs of Crispulo Rojas, which included her as a daughter of the first marriage, Cañezo never contested the inclusion of the contested property in the estate of her father. She even participated in the project of partition of her father's estate which was approved by the probate court in 1984. After personally receiving her share in the proceeds of the estate for 12 years, she suddenly claims ownership of part of her father's estate in 1997.

The principle of estoppel *in pais* applies when — by one's acts, representations, admissions, or silence when there is a need to speak out — one, intentionally or through culpable negligence, induces another to believe certain facts to exist;

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[44] *Buan Vda. de Esconde v. Court of Appeals, supra* note 23, at 92.

[45] *Aznar Brothers Realty Company v. Aying*, G.R. No. 144773, May 16, 2005, 458 SCRA 496, 508.

and the latter rightfully relies and acts on such belief, so as to be prejudiced if the former is permitted to deny the existence of those facts.[46] Such a situation obtains in the instant case.

Second, the action is barred by laches. The petitioner allegedly discovered that the property was being possessed by the respondent in 1980.[47] However, it was only in 1997 that she filed the action to recover the property. Laches is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to it has either abandoned or declined to assert it.[48]

Finally, the respondent asserts that the court *a quo* ought to have dismissed the complaint for failure to implead the other heirs who are indispensable parties. We agree. We note that the complaint filed by the petitioner sought to recover ownership, not just possession of the property; thus, the suit is in the nature of an action for reconveyance. It is axiomatic that owners of property over which reconveyance is asserted are indispensable parties. Without them being impleaded, no relief is available, for the court cannot render valid judgment. Being indispensable parties, their absence in the suit renders all subsequent actions of the trial court null and void for want of authority to act, not only as to the absent parties but even as to those present. Thus, when indispensable parties are not before the court, the action should be dismissed.[49] At any rate, a resolution of this issue is now purely academic in light of our finding that the complaint is already barred by prescription, estoppel and laches.

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[46] *Cuenco v. Cuenco Vda. de Manguerra*, G.R. No. 149844, October 13, 2004, 440 SCRA 252, 266.

[47] The petitioner testified that she discovered that the property was in the respondent's possession in 1978, when her father died. TSN, September 11, 1997, p. 10; *rollo*, p. 151.

[48] *Pahamotang v. Philippine National Bank,* G.R. No. 156403, March 31, 2005, 454 SCRA 681, 699-700.

[49] *MWSS v. Court of Appeals*, 357 Phil. 966, 986-987 (1998).

WHEREFORE, premises considered, the petition is *DENIED*. The Decision of the Court of Appeals, dated September 7, 2000, and Resolution dated May 9, 2001, are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 149177. November 23, 2007]

KAZUHIRO HASEGAWA and NIPPON ENGINEERING CONSULTANTS CO., LTD., *petitioners, vs.* **MINORU KITAMURA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; THE TERMINATION OF A CASE NOT ON THE MERITS DOES NOT BAR ANOTHER ACTION WITHOUT INVOLVING THE SAME PARTIES, ON THE SAME SUBJECT MATTER AND THEORY; APPLICATION IN CASE AT BAR. —** The dismissal being without prejudice, petitioners can re-file the petition, or file a second petition attaching thereto the appropriate verification and certification—as they, in fact did—and stating therein the material dates, within the prescribed period in Section 4, Rule 65 of the said Rules. The dismissal of a case without prejudice signifies the absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action as though the dismissed action had not been commenced. In other words, the termination of a case not on the merits does not bar another action involving the same parties, on the same subject matter and theory. Necessarily,

because the said dismissal is without prejudice and has no *res judicata* effect, and even if petitioners still indicated in the verification and certification of the second *certiorari* petition that the first had already been dismissed on procedural grounds, petitioners are no longer required by the Rules to indicate in their certification of non-forum shopping *in the instant petition for review of the second certiorari petition*, the status of the aforesaid first petition before the CA. In any case, an omission in the certificate of non-forum shopping about any event that will not constitute *res judicata* and *litis pendentia*, as in the present case, is not a fatal defect. It will not warrant the dismissal and nullification of the entire proceedings, considering that the evils sought to be prevented by the said certificate are no longer present.

2. **ID.; ID.; SUBSTANTIAL COMPLIANCE WILL NOT SUFFICE IN A MATTER THAT DEMANDS STRICT OBSERVANCE OF THE RULES; CLARIFIED. —** Substantial compliance will not suffice in a matter that demands strict observance of the Rules. While technical rules of procedure are designed not to frustrate the ends of justice, nonetheless, they are intended to effect the proper and orderly disposition of cases and effectively prevent the clogging of court dockets.

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI* OR *MANDAMUS*; NOT PROPER REMEDIES FOR AN ORDER DENYING A MOTION TO DISMISS; RATIONALE. —** It is a well-established rule that an order denying a motion to dismiss is interlocutory, and cannot be the subject of the extraordinary petition for *certiorari* or *mandamus*. The appropriate recourse is to file an answer and to interpose as defenses the objections raised in the motion, to proceed to trial, and, in case of an adverse decision, to elevate the entire case by appeal in due course. While there are recognized exceptions to this rule, petitioners' case does not fall among them.

4. **ID.; RULES OF COURT; JURISDICTION; JURISDICTION AND CHOICE OF LAW; DISTINGUISHED. —** [J]urisdiction and choice of law are two distinct concepts. Jurisdiction considers whether it is fair to cause a defendant to travel to this state; choice of law asks the further question whether the application of a substantive law which will determine the merits of the case is fair to both parties. The power to exercise jurisdiction does

not automatically give a state constitutional authority to apply forum law. While jurisdiction and the choice of the *lex fori* will often coincide, the "minimum contacts" for one do not always provide the necessary "significant contacts" for the other. The question of whether the law of a state can be applied to a transaction is different from the question of whether the courts of that state have jurisdiction to enter a judgment. In this case, only the first phase is at issue—jurisdiction. Jurisdiction, however, has various aspects. For a court to validly exercise its power to adjudicate a controversy, it must have jurisdiction over the plaintiff or the petitioner, over the defendant or the respondent, over the subject matter, over the issues of the case and, in cases involving property, over the *res* or the thing which is the subject of the litigation. Litigation *over the subject matter* in a judicial proceeding is conferred by the sovereign authority which establishes and organizes the court. It is given by law and in the manner prescribed by law. It is further determined by the allegations of the complaint irrespective of whether the plaintiff is ehtitled to all or some of the claims asserted therein. To succeed in its motion for the dismissal of an action for lack of jurisdiction over the subject matter of the claim, the movant must show that the court or tribunal cannot act on the matter submitted to it because no law grants it the power to adjudicate the claims.

5. **ID.; ID.; THREE PRINCIPLES IN CONFLICT OF LAWS; DEFINED; NOT APPLICABLE IN CASE AT BAR. —** *Lex loci celebrationis* relates to the "law of the place of the ceremony" or the law of the place where a contract is made. The doctrine of *lex contractus* or *lex loci contractus* means the "law of the place where a contract is executed or to be performed." It controls the nature, construction, and validity of the contract and it may pertain to the law voluntarily agreed upon by the parties or the law intended by them either expressly or implicitly. Under the "state of the most significant relationship rule," to ascertain what state law to apply to a dispute, the court should determine which state has the most substantial connection to the occurrence and the parties. In a case involving a contract, the court should consider where the contract was made, was negotiated, was to be performed, and the domicile, place of business, or place of incorporation of the parties. This rule takes into account several contacts and evaluates them according

to their relative importance with respect to the particular issue to be resolved. Since these three principles in conflict of laws make reference to the law applicable to a dispute, they are rules proper for the second phase, the choice of law. They determine which state's law is to be applied in resolving the substantive issues of a conflicts problem. Necessarily, as the only issue in this case is that of jurisdiction, choice-of-law rules are not only inapplicable but also not yet called for.

6. **ID.; ID.; ID.; ALTERNATIVE COURT ACTION IN DECIDING CASES; ENUMERATION. —** It should be noted that when a conflicts case, one involving a foreign element, is brought before a court or administrative agency, there are three alternatives open to the latter in disposing of it: (1) dismiss the case, either because of lack of jurisdiction or refusal to assume jurisdiction over the case; (2) assume jurisdiction over the case and apply the internal law of the forum; or (3) assume jurisdiction over the case and take into account or apply the law of some other State or States. The court's power to hear cases and controversies is derived from the Constitution and the laws. While it may choose to recognize laws of foreign nations, the court is not limited by foreign sovereign law short of treaties or other formal agreements, even in matters regarding rights provided by foreign sovereigns.

APPEARANCES OF COUNSEL

Antonio H. Abad & Associates for petitioners.
Efren L. Cordero for respondent.

D E C I S I O N

NACHURA, *J*.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the April 18, 2001 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 60827, and

[1] Penned by Associate Justice Bienvenido L. Reyes, with the late Associate Justice Eubulo G. Verzola and Associate Justice Marina L. Buzon, concurring; *rollo*, pp. 37-44.

the July 25, 2001 Resolution[2] denying the motion for reconsideration thereof.

On March 30, 1999, petitioner Nippon Engineering Consultants Co., Ltd. (Nippon), a Japanese consultancy firm providing technical and management support in the infrastructure projects of foreign governments,[3] entered into an Independent Contractor Agreement (ICA) with respondent Minoru Kitamura, a Japanese national permanently residing in the Philippines.[4] The agreement provides that respondent was to extend professional services to Nippon for a year starting on April 1, 1999.[5] Nippon then assigned respondent to work as the project manager of the Southern Tagalog Access Road (STAR) Project in the Philippines, following the company's consultancy contract with the Philippine Government.[6]

When the STAR Project was near completion, the Department of Public Works and Highways (DPWH) engaged the consultancy services of Nippon, on January 28, 2000, this time for the detailed engineering and construction supervision of the Bongabon-Baler Road Improvement (BBRI) Project.[7] Respondent was named as the project manager in the contract's Appendix 3.1.[8]

On February 28, 2000, petitioner Kazuhiro Hasegawa, Nippon's general manager for its International Division, informed respondent that the company had no more intention of automatically renewing his ICA. His services would be engaged by the company only up to the substantial completion of the STAR Project on March 31, 2000, just in time for the ICA's expiry.[9]

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[2] *Id*. at 46-47.

[3] CA *rollo* (CA-G.R. SP No. 60827), p. 84.

[4] *Id*. at 116-120.

[5] *Id*. at 32-36.

[6] *Id*. at 85.

[7] *Id*. at 121-148.

[8] *Id*. at 166-171.

[9] *Id*. at 38.

Threatened with impending unemployment, respondent, through his lawyer, requested a negotiation conference and demanded that he be assigned to the BBRI project. Nippon insisted that respondent's contract was for a fixed term that had already expired, and refused to negotiate for the renewal of the ICA.[10]

As he was not able to generate a positive response from the petitioners, respondent consequently initiated on June 1, 2000 Civil Case No. 00-0264 for specific performance and damages with the Regional Trial Court of Lipa City.[11]

For their part, petitioners, contending that the ICA had been perfected in Japan and executed by and between Japanese nationals, moved to dismiss the complaint for lack of jurisdiction. They asserted that the claim for improper pre-termination of respondent's ICA could only be heard and ventilated in the proper courts of Japan following the principles of *lex loci celebrationis* and *lex contractus*.[12]

In the meantime, on June 20, 2000, the DPWH approved Nippon's request for the replacement of Kitamura by a certain Y. Kotake as project manager of the BBRI Project.[13]

On June 29, 2000, the RTC, invoking our ruling in *Insular Government v. Frank*[14] that matters connected with the performance of contracts are regulated by the law prevailing at the place of performance,[15] denied the motion to dismiss.[16] The trial court subsequently denied petitioners' motion for reconsideration,[17] prompting them to file with the appellate court, on August 14, 2000, their **first** Petition for *Certiorari*

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[10] *Id*. at 39-41.

[11] *Id*. at 109.

[12] *Id*. at 53-57.

[13] *Id*. at 42-43.

[14] 13 Phil. 236 (1909).

[15] *Insular Government v. Frank*, *id*. at 240.

[16] CA *rollo* (CA-G.R. SP No. 60827), pp. 25-26.

[17] *Id*. at 27-28.

under Rule 65 [docketed as CA-G.R. SP No. 60205].[18] On August 23, 2000, the CA resolved to dismiss the petition on procedural grounds—for lack of statement of material dates and for insufficient verification and certification against forum shopping.[19] An Entry of Judgment was later issued by the appellate court on September 20, 2000.[20]

Aggrieved by this development, petitioners filed with the CA, on September 19, 2000, still within the reglementary period, a **second** Petition for *Certiorari* under Rule 65 already stating therein the material dates and attaching thereto the proper verification and certification. This second petition, which substantially raised the same issues as those in the first, was docketed as CA-G.R. SP No. **60827**.[21]

Ruling on the merits of the second petition, the appellate court rendered the assailed April 18, 2001 Decision[22] finding no grave abuse of discretion in the trial court's denial of the motion to dismiss. The CA ruled, among others, that the principle of *lex loci celebrationis* was not applicable to the case, because nowhere in the pleadings was the validity of the written agreement

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[18] CA *rollo* (CA-G.R. SP No. 60205), pp. 2-42.

[19] *Id*. at 44. The August 23, 2000 Resolution penned by Associate Justice Delilah Vidallon-Magtolis (retired), with the concurrence of Associate Justices Eloy R. Bello, Jr. (retired) and Elvi John S. Asuncion (dismissed) pertinently provides as follows:

"A cursory reading of the petition indicates no statement as to the date when the petitioners filed their motion for reconsideration and when they received the order of denial thereof, as required in Section 3, paragraph 2, Rule 46 of the 1997 Rules of Civil Procedure as amended by Circular No. 39-98 dated August 18, 1998 of the Supreme Court. Moreover, the verification and certification of non-forum shopping was executed by petitioner Kazuhiro Hasegawa for both petitioners without any indication that the latter had authorized him to file the same.

"WHEREFORE, the [petition] is *DENIED* due course and *DISMISSED* outright.

"SO ORDERED."

[20] *Id*. at 45.

[21] CA *rollo* (CA-G.R. SP No. 60827), pp. 2-24.

[22] *Supra* note 1.

put in issue. The CA thus declared that the trial court was correct in applying instead the principle of *lex loci solutionis*.[23]

Petitioners' motion for reconsideration was subsequently denied by the CA in the assailed July 25, 2001 Resolution.[24]

Remaining steadfast in their stance despite the series of denials, petitioners instituted the instant Petition for Review on *Certiorari*[25] imputing the following errors to the appellate court:

A. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE TRIAL COURT VALIDLY EXERCISED JURISDICTION OVER THE INSTANT CONTROVERSY, DESPITE THE FACT THAT THE CONTRACT SUBJECT MATTER OF THE PROCEEDINGS *A QUO* WAS ENTERED INTO BY AND BETWEEN TWO JAPANESE NATIONALS, WRITTEN WHOLLY IN THE JAPANESE LANGUAGE AND EXECUTED IN TOKYO, JAPAN.

B. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN OVERLOOKING THE NEED TO REVIEW OUR ADHERENCE TO THE PRINCIPLE OF *LEX LOCI SOLUTIONIS* IN THE LIGHT OF RECENT DEVELOPMENT[S] IN PRIVATE INTERNATIONAL LAWS.[26]

The pivotal question that this Court is called upon to resolve is whether the subject matter jurisdiction of Philippine courts in civil cases for specific performance and damages involving contracts executed outside the country by foreign nationals may be assailed on the principles of *lex loci celebrationis*, *lex contractus*, the "state of the most significant relationship rule," or *forum non conveniens*.

However, before ruling on this issue, we must first dispose of the procedural matters raised by the respondent.

Kitamura contends that the finality of the appellate court's decision in CA-G.R. SP No. 60205 has already barred the filing of the second petition docketed as CA-G.R. SP No. 60827

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[23] *Id*. at 222.

[24] *Supra* note 2.

[25] *Rollo*, pp. 3-35.

[26] *Id*. at 15.

(fundamentally raising the same issues as those in the first one) and the instant petition for review thereof.

We do not agree. When the CA dismissed CA-G.R. SP No. 60205 on account of the petition's defective certification of non-forum shopping, it was a dismissal without prejudice.[27] The same holds true in the CA's dismissal of the said case due to defects in the formal requirement of verification[28] and in the other requirement in Rule 46 of the Rules of Court on the statement of the material dates.[29] The dismissal being without prejudice, petitioners can re-file the petition, or file a second petition attaching thereto the appropriate verification and certification—as they, in fact did—and stating therein the material dates, within the prescribed period[30] in Section 4, Rule 65 of the said Rules.[31]

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[27] See *Spouses Melo v. Court of Appeals*, 376 Phil. 204, 213-214 (1999), in which the Supreme Court ruled that compliance with the certification against forum shopping is separate from, and independent of, the avoidance of forum shopping itself. Thus, there is a difference in the treatment—in terms of imposable sanctions—between failure to comply with the certification requirement and violation of the prohibition against forum shopping. The former is merely a cause for the dismissal, without prejudice, of the complaint or initiatory pleading, while the latter is a ground for summary dismissal thereof and constitutes direct contempt. See also *Philippine Radiant Products, Inc. v. Metropolitan Bank & Trust Company, Inc.*, G.R. No. 163569, December 9, 2005, 477 SCRA 299, 314, in which the Court ruled that the dismissal due to failure to append to the petition the board resolution authorizing a corporate officer to file the same for and in behalf of the corporation is without prejudice. So is the dismissal of the petition for failure of the petitioner to append thereto the requisite copies of the assailed order/s.

[28] See *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, July 6, 2004, 433 SCRA 455, 463-464, in which the Court made the pronouncement that the requirement of verification is simply a condition affecting the form of pleadings, and noncompliance therewith does not necessarily render it fatally defective.

[29] Section 3, Rule 46 of the Rules of Court pertinently states that "x x x [i]n actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received. x x x"

[30] *Estrera v. Court of Appeals*, G.R. Nos. 154235-36, August 16, 2006, 499 SCRA 86, 95; and *Spouses Melo v. Court of Appeals*, *supra* note 27, at 214.

[31] The Rules of Court pertinently provides in Section 4, Rule 65 that "[t]he petition may be filed not later than sixty (60) days from notice of the judgment,

The dismissal of a case without prejudice signifies the absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action as though the dismissed action had not been commenced. In other words, the termination of a case not on the merits does not bar another action involving the same parties, on the same subject matter and theory.[32]

Necessarily, because the said dismissal is without prejudice and has no *res judicata* effect, and even if petitioners still indicated in the verification and certification of the second *certiorari* petition that the first had already been dismissed on procedural grounds,[33] petitioners are no longer required by the Rules to indicate in their certification of non-forum shopping *in the instant petition for review of the second* <u>*certiorari*</u> *petition*, the status of the aforesaid first petition before the CA. In any case, an omission in the certificate of non-forum shopping about any event that will not constitute *res judicata* and *litis pendentia*, as in the present case, is not a fatal defect. It will not warrant the dismissal and nullification of the entire proceedings, considering that the evils sought to be prevented by the said certificate are no longer present.[34]

The Court also finds no merit in respondent's contention that petitioner Hasegawa is only authorized to verify and certify, on behalf of Nippon, the *certiorari* petition filed with the CA and not the instant petition. True, the Authorization[35] dated

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order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. x x x"

[32] *Delgado v. Court of Appeals*, G.R. No. 137881, December 21, 2004, 447 SCRA 402, 415.

[33] CA *rollo* (CA-G.R. SP No. 60827), p. 21.

[34] *Fuentebella v. Castro*, G.R. No. 150865, June 30, 2006, 494 SCRA 183, 193-194; see *Roxas v. Court of Appeals*, 415 Phil. 430 (2001).

[35] *Rollo*, p. 33; CA *rollo* (CA-G.R. SP No. 60827), p. 23. The Authorization dated September 4, 2000 pertinently reads:

"I, KEN TAKAGI, President and Chief Executive Officer of NIPPON ENGINEERING CONSULTANTS CO., LTD., a corporation duly organized and existing in accordance with the corporation laws of Japan, with principal

September 4, 2000, which is attached to the second *certiorari* petition and which is also attached to the instant petition for review, is limited in scope—its wordings indicate that Hasegawa is given the authority to sign for and act on behalf of the company only in the petition filed with the appellate court, and that authority cannot extend to the instant petition for review.[36] In a plethora of cases, however, this Court has liberally applied the Rules or even suspended its application whenever a satisfactory explanation and a subsequent fulfillment of the requirements have been made.[37] Given that petitioners herein sufficiently explained their misgivings on this point and appended to their Reply[38] an updated Authorization[39] for Hasegawa to act on behalf of the company in the instant petition, the Court finds the same as sufficient compliance with the Rules.

However, the Court cannot extend the same liberal treatment to the defect in the verification and certification. As respondent pointed out, and to which we agree, Hasegawa is truly not authorized to act on behalf of Nippon in this case. The aforesaid September 4, 2000 Authorization and even the subsequent August 17, 2001 Authorization were issued only by Nippon's president and chief executive officer, not by the company's board of

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address at 3-23-1 Komagome, Toshima-ku Tokyo, Japan, hereby authorize its International Division General Manager, Mr. Kazuhiro Hasegawa, to sign and act for and in behalf of Nippon Engineering Consultants Co., Ltd., for purposes of filing a Petition for *Certiorari* before the proper tribunal in the case entitled: *"Kazuhiro Hasegawa and Nippon Engineering Consultants Co., Ltd. vs. Minoru Kitamura and Hon. Avelino C. Demetria of the Regional Trial Court, Fourth Judicial Region-Branch 85, Lipa City," and to do such other things, acts and deals which may be necessary and proper for the attainment of the said objectives"* [Underscoring ours].

[36] *Cf. Orbeta v. Sendiong*, G.R. No. 155236, July 8, 2005, 463 SCRA 180, 199-200, in which the Court ruled that the agent's signing therein of the verification and certification is already covered by the provisions of the general power of attorney issued by the principal.

[37] *Barcenas v. Tomas*, G.R. No. 150321, March 31, 2005, 454 SCRA 593, 604.

[38] Dated October 11, 2001; *rollo*, pp. 192-203.

[39] Dated August 17, 2001, *id.* at 202.

directors. In not a few cases, we have ruled that corporate powers are exercised by the board of directors; thus, no person, not even its officers, can bind the corporation, in the absence of authority from the board.[40] Considering that Hasegawa verified and certified the petition only on his behalf and not on behalf of the other petitioner, the petition has to be denied pursuant to *Loquias v. Office of the Ombudsman*.[41] Substantial compliance will not suffice in a matter that demands strict observance of the Rules.[42] While technical rules of procedure are designed not to frustrate the ends of justice, nonetheless, they are intended to effect the proper and orderly disposition of cases and effectively prevent the clogging of court dockets.[43]

Further, the Court has observed that petitioners incorrectly filed a Rule 65 petition to question the trial court's denial of their motion to dismiss. It is a well-established rule that an order denying a motion to dismiss is interlocutory, and cannot be the subject of the extraordinary petition for *certiorari* or *mandamus*. The appropriate recourse is to file an answer and to interpose as defenses the objections raised in the motion, to proceed to trial, and, in case of an adverse decision, to elevate the entire case by appeal in due course.[44] While there are recognized exceptions to this rule,[45] petitioners' case does not fall among them.

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[40] *San Pablo Manufacturing Corporation v. Commissioner of Internal Revenue*, G.R. No. 147749, June 22, 2006, 492 SCRA 192, 197; *LDP Marketing, Inc. v. Monter*, G.R. No. 159653, January 25, 2006, 480 SCRA 137, 142; *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 152392, May 26, 2005, 459 SCRA 147, 160.

[41] 392 Phil. 596, 603-604 (2000).

[42] *Loquias v. Office of the Ombudsman*, *id.* at 604.

[43] *Santos v. Court of Appeals*, 413 Phil. 41, 54 (2001).

[44] *Yutingco v. Court of Appeals*, 435 Phil. 83, 92 (2002).

[45] *Bank of America NT & SA v. Court of Appeals*, 448 Phil. 181, 193 (2003). As stated herein, under certain situations resort to *certiorari* is considered appropriate when: (1) the trial court issued the order without or in excess of jurisdiction; (2) there is patent grave abuse of discretion by the trial court; or (3) appeal would not prove to be a speedy and adequate remedy as when an appeal would not promptly relieve a defendant from

This brings us to the discussion of the substantive issue of the case.

Asserting that the RTC of Lipa City is an inconvenient forum, petitioners question its jurisdiction to hear and resolve the civil case for specific performance and damages filed by the respondent. The ICA subject of the litigation was entered into and perfected in Tokyo, Japan, by Japanese nationals, and written wholly in the Japanese language. Thus, petitioners posit that local courts have no substantial relationship to the parties[46] following the [state of the] most significant relationship rule in Private International Law.[47]

The Court notes that petitioners adopted an additional but different theory when they elevated the case to the appellate court. In the Motion to Dismiss[48] filed with the trial court, petitioners never contended that the RTC is an inconvenient forum. They merely argued that the applicable law which will determine the validity or invalidity of respondent's claim is that of Japan, following the principles of *lex loci celebrationis* and *lex contractus*.[49] While not abandoning this stance in their petition before the appellate court, petitioners on *certiorari* significantly invoked the defense of *forum non conveniens*.[50] On petition for review before this Court, petitioners dropped their other arguments, maintained the *forum non conveniens* defense, and introduced their new argument that the applicable principle is the [state of the] most significant relationship rule.[51]

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remedy as when an appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff's baseless action and compelling the defendants needlessly to go through a protracted trial and clogging the court dockets with another futile case.

[46] *Rollo*, p. 228.

[47] *Id*. at 234-245.

[48] Dated June 5, 2000; CA *rollo* (CA-G.R. SP No. 60827), pp. 53-57.

[49] *Id*. at 55.

[50] *Id*. at 14.

[51] *Rollo*, pp. 19-28.

Be that as it may, this Court is not inclined to deny this petition merely on the basis of the change in theory, as explained in *Philippine Ports Authority v. City of Iloilo*.[52] We only pointed out petitioners' inconstancy in their arguments to emphasize their incorrect assertion of conflict of laws principles.

To elucidate, in the judicial resolution of conflicts problems, three consecutive phases are involved: jurisdiction, choice of law, and recognition and enforcement of judgments. Corresponding to these phases are the following questions: (1) Where can or should litigation be initiated? (2) Which law will the court apply? and (3) Where can the resulting judgment be enforced?[53]

Analytically, jurisdiction and choice of law are two distinct concepts.[54] Jurisdiction considers whether it is fair to cause a defendant to travel to this state; choice of law asks the further question whether the application of a substantive law which will determine the merits of the case is fair to both parties. The power to exercise jurisdiction does not automatically give a state constitutional authority to apply forum law. While jurisdiction and the choice of the *lex fori* will often coincide, the "minimum contacts" for one do not always provide the necessary "significant contacts" for the other.[55] The question of whether the law of a state can be applied to a transaction is different from the question of whether the courts of that state have jurisdiction to enter a judgment.[56]

In this case, only the first phase is at issue—jurisdiction. Jurisdiction, however, has various aspects. For a court to validly

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[52] 453 Phil. 927, 934 (2003).

[53] Scoles, Hay, Borchers, Symeonides, *Conflict of Laws*, 3rd ed. (2000), p. 3.

[54] Coquia and Aguiling-Pangalangan, *Conflict of Laws*, 1995 ed., p. 64.

[55] *Supra* note 53, at 162, citing Hay, *The Interrelation of Jurisdictional Choice of Law in U.S. Conflicts Law,* 28 Int'l. & Comp. L.Q. 161 (1979).

[56] *Shaffer v. Heitner*, 433 U.S. 186, 215; 97 S.Ct. 2569, 2585 (1977), citing Justice Black's Dissenting Opinion in *Hanson v. Denckla*, 357 U.S. 235, 258; 78 S. Ct. 1228, 1242 (1958).

exercise its power to adjudicate a controversy, it must have jurisdiction over the plaintiff or the petitioner, over the defendant or the respondent, over the subject matter, over the issues of the case and, in cases involving property, over the *res* or the thing which is the subject of the litigation.[57] In assailing the trial court's jurisdiction herein, petitioners are actually referring to subject matter jurisdiction.

Jurisdiction *over the subject matter* in a judicial proceeding is conferred by the sovereign authority which establishes and organizes the court. It is given only by law and in the manner prescribed by law. [58] It is further determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein.[59] To succeed in its motion for the dismissal of an action for lack of jurisdiction over the subject matter of the claim,[60] the movant must show that the court or tribunal cannot act on the matter submitted to it because no law grants it the power to adjudicate the claims.[61]

In the instant case, petitioners, in their motion to dismiss, do not claim that the trial court is not properly vested by law with jurisdiction to hear the subject controversy for, indeed, Civil Case No. 00-0264 for specific performance and damages is one not capable of pecuniary estimation and is properly cognizable by the RTC of Lipa City.[62] What they rather raise as grounds to question subject matter jurisdiction are the principles of *lex loci celebrationis* and *lex contractus*, and the "state of the most significant relationship rule."

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[57] See Regalado, *Remedial Law Compendium*, Vol. 1, 8th Revised Ed., pp. 7-8.

[58] *U.S. v. De La Santa*, 9 Phil. 22, 25-26 (1907).

[59] *Bokingo v. Court of Appeals*, G.R. No. 161739, May 4, 2006, 489 SCRA 521, 530; *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, 374 Phil. 859, 864 (1999).

[60] See RULES OF COURT, Rule 16, Sec. 1.

[61] See *In Re: Calloway*, 1 Phil. 11, 12 (1901).

[62] *Bokingo v. Court of Appeals*, *supra* note 59, at 531-533; *Radio Communications of the Phils. Inc. v. Court of Appeal*s, 435 Phil. 62, 68-69 (2002).

The Court finds the invocation of these grounds unsound.

Lex loci celebrationis relates to the "law of the place of the ceremony"[63] or the law of the place where a contract is made.[64] The doctrine of *lex contractus* or *lex loci contractus* means the "law of the place where a contract is executed or to be performed."[65] It controls the nature, construction, and validity of the contract[66] and it may pertain to the law voluntarily agreed upon by the parties or the law intended by them either expressly or implicitly.[67] Under the "state of the most significant relationship rule," to ascertain what state law to apply to a dispute, the court should determine which state has the most substantial connection to the occurrence and the parties. In a case involving a contract, the court should consider where the contract was made, was negotiated, was to be performed, and the domicile, place of business, or place of incorporation of the parties.[68] This rule takes into account several contacts and

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[63] *Garcia v. Recio*, 418 Phil. 723, 729 (2001); *Board of Commissioners (CID) v. Dela Rosa*, G.R. Nos. 95122-23, May 31, 1991, 197 SCRA 853, 888.

[64] <ttp://web2.westlaw.com/search/default.wl?rs=WLW7.10&action=Search&fn=top&sv=Split&method=TNC&query=CA(+lex=loci=celebrationis+)&db=DIBLACK&utid=%7bDOAE3BEE-91BC-4B2B-B788-3FB4D963677B%7d&vr=2.0&rp=%2fsearch%2fdefault.wl&mt=WLIGeneralSubscription>(visited October 22, 2007).

[65] <ttp://web2.westlaw.com/search/default.wl?rs=WLW7.10&action=Search&fn=top&sv=Split&method=TNC&query=CA(+lex=loci=contractus+)&db=DIBLACK&utid=%7bDOAE3BEE-91BC-4B2B-B788-3FB4D963677B%7d&vr=2.0&rp=%2fsearch%2fdefault.wl&mt=WLIGeneralSubscription>(visited October 22, 2007).

[66] *Id.*

[67] *Philippine Export and Foreign Loan Guarantee Corporation v. V.P. Eusebio Construction, Inc.*, G.R. No. 140047, July 13, 2004, 434 SCRA 202, 214-215.

[68] <ttp://web2.westlaw.com/search/default.wl?rs=WLW7.10&action=Search&fn=top&sv=Split&method=TNC&query=CA(+most+significant+relationship+)&db=DIBLACK&utid=%7bDOAE3BEE-91BC-4B2B-B788-3FB4D963677B%7d&vr=2.0&rp=%2fsearch%2fdefault.wl&mt=WLIGeneralSubscription>(visited October 22, 2007).

evaluates them according to their relative importance with respect to the particular issue to be resolved.[69]

Since these three principles in conflict of laws make reference to the law applicable to a dispute, they are rules proper for the second phase, the choice of law.[70] They determine which state's law is to be applied in resolving the substantive issues of a conflicts problem.[71] Necessarily, as the only issue in this case is that of jurisdiction, choice-of-law rules are not only inapplicable but also not yet called for.

Further, petitioners' premature invocation of choice-of-law rules is exposed by the fact that they have not yet pointed out any conflict between the laws of Japan and ours. Before determining which law should apply, first there should exist a conflict of laws situation requiring the application of the conflict of laws rules.[72] Also, when the law of a foreign country is invoked to provide the proper rules for the solution of a case, the existence of such law must be pleaded and proved.[73]

It should be noted that when a conflicts case, one involving a foreign element, is brought before a court or administrative agency, there are three alternatives open to the latter in disposing of it: (1) dismiss the case, either because of lack of jurisdiction or refusal to assume jurisdiction over the case; (2) assume jurisdiction over the case and apply the internal law of the forum; or (3) assume jurisdiction over the case and take into account

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[69] *Saudi Arabian Airlines v. Court of Appeals*, 358 Phil. 105, 127 (1998). The contacts which were taken into account in this case are the following: (a) the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (d) the place where the relationship, if any, between the parties is centered.

[70] See *Auten v. Auten*, 308 N.Y 155, 159-160 (1954).

[71] *Supra* note 53, at 117-118; *supra* note 54, at 64-65.

[72] *Laurel v. Garcia*, G.R. Nos. 92013 and 92047, July 25, 1990, 187 SCRA 797, 810-811.

[73] *International Harvester Company in Russia v. Hamburg-American Line*, 42 Phil. 845, 855 (1918).

or apply the law of some other State or States.[74] The court's power to hear cases and controversies is derived from the Constitution and the laws. While it may choose to recognize laws of foreign nations, the court is not limited by foreign sovereign law short of treaties or other formal agreements, even in matters regarding rights provided by foreign sovereigns.[75]

Neither can the other ground raised, *forum non conveniens*,[76] be used to deprive the trial court of its jurisdiction herein. First, it is not a proper basis for a motion to dismiss because Section 1, Rule 16 of the Rules of Court does not include it as a ground.[77] Second, whether a suit should be entertained or dismissed on the basis of the said doctrine depends largely upon the facts of the particular case and is addressed to the sound discretion of the trial court.[78] In this case, the RTC decided to assume jurisdiction. Third, the propriety of dismissing a case based on this principle requires a factual determination; hence, this conflicts principle is more properly considered a matter of defense.[79]

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[74] Salonga, *Private International Law*, 1995 ed., p. 44.

[75] *Veitz, Jr. v. Unisys Corporation*, 676 F. Supp. 99, 101 (1987), citing *Randall v. Arabian Am. Oil. Co.*, 778 F. 2d 1146 (1985).

[76] Under this rule, a court, in conflicts cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere (*Bank of America NT & SA v. Court of Appeals*, *supra* note 45, at 196). The court may refuse to entertain a case for any of the following practical reasons: (1) the belief that the matter can be better tried and decided elsewhere, either because the main aspects of the case transpired in a foreign jurisdiction or the material witnesses have their residence there; (2) the belief that the non-resident plaintiff sought the forum, a practice known as forum shopping, merely to secure procedural advantages or to convey or harass the defendant; (3) the unwillingness to extend local judicial facilities to non-residents or aliens when the docket may already be overcrowded; (4) the inadequacy of the local judicial machinery for effectuating the right sought to be maintained; and (5) the difficulty of ascertaining foreign law (*Puyat v. Zabarte*, 405 Phil. 413, 432 [2001]).

[77] *Philsec Investment Corporation v. Court of Appeals*, G.R. No. 103493, June 19, 1997, 274 SCRA 102, 113.

[78] *Bank of America NT & SA v. Court of Appeals*, *supra* note 45, at 196.

[79] *Bank of America NT & SA v. Court of Appeals*, *supra* note 45, at 197.

Accordingly, since the RTC is vested by law with the power to entertain and hear the civil case filed by respondent and the grounds raised by petitioners to assail that jurisdiction are inappropriate, the trial and appellate courts correctly denied the petitioners' motion to dismiss.

WHEREFORE, premises considered, the petition for review on *certiorari* is *DENIED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 150251. November 23, 2007]

CAYETANO CAPANGPANGAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY NOT DISTURBED ON APPEAL; RATIONALE; EXCEPTIONS. —** It is well-settled in our jurisdiction that the determination of credibility of witnesses is properly within the domain of the trial court. The investigating judge is in the best position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying. As this Court has ruled in innumerable cases, the trial court is best equipped to make the assessment on said issue and, therefore, its factual findings are generally not disturbed on appeal, "unless: (1) it is found to be clearly arbitrary or unfounded; (2) some substantial fact or circumstance that could materially affect the disposition of

the case was overlooked, misunderstood, or misinterpreted; or (3) the trial judge gravely abused his or her discretion."

2. **ID.; ID.; PRESENTATION OF WITNESS; SOLE PREROGATIVE OF PROSECUTION. —** Moreover, the non-presentation of some witnesses does not necessarily give rise to an adverse presumption, as these persons are equally at the disposal of the defense, who definitely have the constitutional guaranteed right "to have compulsory process to secure the attendance of witnesses." If the prosecution deems it fit not to present the *barangay kagawads* who were present in the search and who duly signed the inventory, it is their call and prerogative. Besides, the defense could have proven that said *barangay kagawads* were not there at his house by summoning them as his witnesses. Again, he did not. He cannot now assail that their failure to testify in the rebuttal is due to the fact that they were not there. Verily, with the overwhelming evidence presented by the prosecution, it has convincingly proven beyond reasonable doubt the guilt of petitioner.

3. **CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1866, AS AMENDED; ESSENCE THEREOF, EXPLAINED.—** The essence of the crime penalized under PD 1866, as amended, is primarily the accused's lack of license or permit to carry or possess the firearm, as possession itself is not prohibited by law. In cases of indictment for illegal possession of firearms, a negative allegation of lack of license or permit is an essential ingredient of the offense that must be proved by the prosecution. In this case there exists a *prima facie* case from the best available evidence. This is so since a firearm license is within accused's peculiar knowledge or relates to him personally. American case law likewise elucidates on this issue, thus: Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the *onus probandi* rests upon him. Stated otherwise, it is not incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence probably within the defendant's possession or control. For example, where a charge is made that the defendant carried on a certain business without a license, the fact that he has a

license is peculiarly within his knowledge and he must establish that fact or suffer conviction. Similarly, the burden of proof as to whether a certain offense against property was committed without the owner's consent rests on the accused, since that is a fact or circumstance peculiarly within his own knowledge. In our view, the prosecution has carried such burden to prove lack of license or permit to possess firearms by presenting the best available evidence, that is, the duly admitted Certification.

APPEARANCES OF COUNSEL

Gerardo A. Paguio, Jr. for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 assailing the July 12, 2001 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR No. 23655, which affirmed the conviction of petitioner Capangpangan in Criminal Case No. 03-6752 for illegal possession of firearms, ammunitions and explosives under Presidential Decree No. (PD) 1866,[3] as amended. Also assailed is the September 13, 2001 Resolution[4] of the CA denying petitioner's motion for reconsideration.

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[1] *Rollo*, pp. 12-36.

[2] *Id*. at 38-45. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Hilarion L. Aquino and Ma. Alicia Austria-Martinez (Chairperson, now a member of this Court) of the Second Division.

[3] "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations thereof and for Relevant Purposes" (1983).

[4] *Rollo*, p. 57.

Petitioner was charged with Violation of PD 1866. The case was docketed as Criminal Case No. 03-6752 in the Iligan City RTC. The Information reads as follows:

> That on or about the 1st day of July, 1997, at Tagoloan, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control the following items, to wit:
>
> 1. Five (5) pcs. Handgrenades (live);
> 2. Eight (8) pcs. garand clips;
> 3. Sixteen (16) pcs. garand clips without ammo;
> 4. Twenty-two (22) pcs. of cal. .45 ammo;
> 5. Forty (40) pcs. M16 Armalite ammo;
> 6. Five (5) pcs. Carbine ammo;
> 7. Three (3) pcs. M16 magazine (empty);
> 8. One (1) piece garand trigger housing group;
> 9. One (1) piece shotgun rifle with SN-126184;
> 10. Two (2) pcs. cal. .22 rifles with SN-2224758 and 126404, ARMSCOR;
> 11. One (1) piece shotgun (defaced);
> 12. One (1) piece cal. .22 rifle SN (defaced single shot M16 home-made); and
> 13. One (1) piece cal. .22 magnum S&W, SN-175448,
>
> without having first obtained the necessary [licenses] and/or permits to possess the same from the proper authorities.[5]

Petitioner pleaded not guilty.

Evidence for the Prosecution

Armed with a valid warrant to search the house of petitioner Cayetano "Tano" Capangpangan, National Bureau of

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[5] *Id*. at 47-48.

Investigation (NBI) agents with soldiers from the 30th Infantry Brigade and *barangay* officials searched petitioner's house in Patag, Tagoloan, Lanao del Sur. Upon opening a portion of the ceiling, they saw, photographed, and opened an ammunition box. They found various ammunitions, ammunition magazines, hand grenades, and assorted firearms. They made an inventory and had NBI agent Nolan Gadia and *barangay kagawads* Esterlita Laurente and Renato Abellar sign it. The inventory was prepared in the presence of petitioner and his wife, Eldrid Nacua, the *barangay kagawads*, and the members of the 30th Infantry Brigade. Petitioner admitted he did not have firearms licenses to possess the seized firearms.

Evidence for the Defense

Petitioner interposed that the search was illegal since firearms, ammunitions, and grenades were found in an abandoned hut, while the warrant was for the search of his house.

Sgt. Roberto Legaspi, a member of the Infantry Brigade, testified that on the way to Patag, Tagoloan with other members of his company, they met petitioner and 10 others surveying their land. They saw a hut along their path and decided to rest. Upon entering the hut, they were surprised to find firearms, ammunitions, and grenades. They seized the cache. Along the way, they were joined by Rolando Guevara. Before reaching Patag, they met three or four NBI agents who immediately handcuffed petitioner and Guevara. Subsequently, they gave the contraband to the NBI agents without demanding a receipt. Upon arriving at their headquarters, they did not bother to report the incident to their company commander, Lt. Yecla.

Cpl. Romeo Sagarino corroborated Sgt. Legaspi's testimony.

For his part, petitioner stated that around 1 p.m. on July 1, 1997, he was in his land at Sitio Paliamon, Tagoloan, while his brothers Popoy and Erlito Fernandez were plowing the land. He said the soldiers found the cache in an uninhabited hut. When they passed by his house, Guevarra and he were handcuffed, and he saw several men, some wearing bonnets.

He claimed there were no *barangay* officials in his house when he was made to sign a receipt.

Rodolfo Fernandez and Guevarra substantially corroborated petitioner's story on the incident that took place in the early afternoon of July 1, 1997.

The Ruling of the Regional Trial Court

On August 5, 1999, the trial court rendered a Decision convicting petitioner of the crime charged. The dispositive portion reads:

> WHEREFORE, premises all considered, judgment is hereby rendered finding the accused Cayetano "Tano" Capangpangan guilty of the offense charged, beyond reasonable doubt. Accordingly, he is hereby sentenced to suffer an Indeterminate penalty of four (4) years, two (2) months and one (1) day to eight (8) years. Consequently, the bail bond posted by the accused is cancelled and the accused is ordered incarcerated immediately.
>
> Finally, the firearms are ordered confiscated in favor of the government.
>
> SO ORDERED.[6]

In its decision, the trial court gave credence to witnesses of the prosecution and noted that the presumption of regularity in the performance of official duty by the soldiers-witnesses had not been successfully overturned in the absence of showing of any ill-motive on the part of the NBI agents.

The RTC found incredulous the defense that the seized items were just left by some strangers in an uninhabited hut. It found highly unusual petitioner's version that the soldiers who allegedly found the arms would simply turn these over to NBI agents without asking for a receipt nor their names. The trial court likewise found it strange that the soldiers did not report back to their commanding officer. Lastly, it observed glaring inconsistencies in the testimonies of the defense on the time petitioner was found by the soldiers.

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[6] *Id.* at 55.

The Ruling of the Court of Appeals

Petitioner appealed to the CA.

Before the CA was the sole issue of credibility of witnesses. In affirming the trial court's findings, the CA ruled that petitioner has not given cogent and weighty reasons for the appellate court to abandon the findings of the trial court. According to the CA, it was bound by the findings of the trial court unless it was shown that the RTC overlooked, misunderstood, or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case.[7]

The CA found that petitioner violated PD 1866 as the Certification issued by SPO1 Delfin E. Regis of the Philippine National Police (PNP) in Iligan City was proof that the firearms found in petitioner's possession were unlicensed.

The appellate court rendered the assailed Decision which affirmed *in toto* the August 5, 1999 RTC Decision. The decretal portion reads:

> WHEREFORE, foregoing premises considered, and pursuant to applicable law and jurisprudence on the matter, judgment is hereby rendered dismissing the instant appeal for lack of merit in fact and in law. The assailed decision dated August [5], 1995 is AFFIRMED *IN TOTO*. No costs.
>
> SO ORDERED.[8]

The appellate court denied petitioner's motion for reconsideration.[9]

The Issues

Hence, the instant petition with petitioner ascribing the following errors:

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[7] *People v. Campos*, G.R. Nos. 133373-77, September 18, 2000, 340 SCRA 517, 521.

[8] *Supra* note 2, at 44-45.

[9] *Supra* note 4.

I

THE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED DESPITE LACK OF ADEQUATE PROOF TO SHOW THE ABSENCE OF A FIREARMS LICENSE.

II

THE COURT OF APPEALS ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PLAINTIFF-APPELLEE'S [PROSECUTION, HEREINAFTER] NBI WITNESSES WHICH HAVE BEEN TOTALLY NEGATED, BELIED AND REBUTTED BY THE WITNESSES FOR THE ACCUSED-APPELLANT TWO OF WHOM ARE MEMBERS OF THE ARMY, WHOSE TESTIMONIES HAVE NOT BEEN REBUTTED BY PLAINTIFF-APPELLEE; FURTHERMORE, THE PLAINTIFF-APPELLEE HAS SUPPRESSED EVIDENCE.

III

THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE DEFENSE OF ACCUSED-APPELLANT THAT THE FIREARMS, *ETC.* WERE NOT TAKEN FROM HIS HOUSE BUT ELSEWHERE.

IV

THE LOWER COURT ERRED IN FINDING THAT ACCUSED-APPELLANT IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF VIOLATION OF P.D. 1866, AS AMENDED.[10]

The Court's Ruling

The instant petition hinges primarily on the issue of credibility of witnesses. As this Court has ruled in innumerable cases, the trial court is best equipped to make the assessment on said issue and, therefore, its factual findings are generally not disturbed on appeal, "unless: (1) it is found to be clearly arbitrary or unfounded; (2) some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted; or (3) the trial judge gravely abused his or her discretion."[11] We do not find in the instant case any of the above exceptions to make us reverse the factual

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[10] *Rollo*, p. 14.

[11] *People v. Casela*, G.R. No. 173243, March 23, 2007, 519 SCRA 30, 39.

findings of the trial court nor those of the CA. However, in the interest of substantial justice, we will tackle the issues raised by petitioner.

Petitioner had no license to possess firearms

In the first assignment of error, petitioner contends that there is no sufficient proof that he is not licensed to possess firearms. He argues that the Certification submitted by the prosecution came from the PNP in Iligan City and not from the Firearms and Explosives Unit at the PNP in Camp Crame, the repository of the records for all firearms licenses. Moreover, petitioner asserts that said certification is only limited to the Iligan City area and that it was not properly identified during the trial. Thus, petitioner strongly asserts that said certification from the local police unit is not sufficient and does not discount the issuance of the proper license or authority from any other legitimate source.

We disagree.

The essence of the crime penalized under PD 1866, as amended, is primarily the accused's lack of license or permit to carry or possess the firearm, as possession itself is not prohibited by law.[12] In the instant case, the prosecution has duly proven that petitioner has no license or permit to possess the seized contraband. The Certification dated January 23, 1998 issued by SPO1 Regis, Assistant Team Leader of the 90th Civil Security Team, PNP Headquarters, Iligan City, pertinently enunciates:

> This is to certify that as per verification of records filed from this office as of [sic] Iligan City area, their [*sic*] is no name of Cayetano "Tano" Capangpangan appears [*sic*] in computerized firearm license as of this date.
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> This certification is issued for whatever legal purpose that may be serve [sic].

The contents, authenticity, and import of the above certification were admitted during the hearing by petitioner, thereby dispensing

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[12] *People v. Mejeca*, G.R. No. 146425, November 21, 2002, 392 SCRA 420, 433.

with the testimony of the issuing officer, SPO1 Regis.[13] Under Section 4 of Rule 129 of the Revised Rules on Evidence, "[A]n 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." Clearly, petitioner cannot take a contrary or different position considering that he has made an express admission of the Certification, which does not require proof and cannot be contradicted because there is no previous evidence that the admission was made through palpable mistake. After admitting it, he cannot now assail that said certification has not been properly identified.[14] Besides, he has had several occasions to present proof that he was licensed to possess firearms. Yet, even in this late stage he has not.

Petitioner's view that the certification is limited in scope, covering only Iligan City, and thus does not discount a proper license from any other legitimate source, cannot be sustained. The prosecution has presented the best evidence available. The Certification, duly admitted by petitioner, was issued by the proper authority and ineluctably attests that petitioner does not have any license or permit to possess firearms.

In cases of indictment for illegal possession of firearms, a negative allegation of lack of license or permit is an essential ingredient of the offense that must be proved by the prosecution. In this case there exists a *prima facie* case from the best available evidence.[15] This is so since a firearm license is within accused's peculiar knowledge or relates to him personally.

American case law likewise elucidates on this issue, thus:

> Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the

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[13] *Rollo*, p. 50, August 5, 1999 RTC Decision.

[14] *Id*.

[15] *United States v. Adyuba*, 42 Phil. 17, 20 (1921); citing *United States v. Tria*, 17 Phil. 303 (1910).

accused, the *onus probandi* rests upon him. Stated otherwise, it is not incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence probably within the defendant's possession or control. For example, where a charge is made that the defendant carried on a certain business without a license, the fact that he has a license is peculiarly within his knowledge and he must establish that fact or suffer conviction. Similarly, the burden of proof as to whether a certain offense against property was committed without the owner's consent rests on the accused, since that is a fact or circumstance peculiarly within his own knowledge.[16]

In our view, the prosecution has carried such burden to prove lack of license or permit to possess firearms by presenting the best available evidence, that is, the duly admitted Certification.

Credibility of witnesses is domain of the trial court

Petitioner contends that the prosecution did not present evidence, such as the photographs allegedly taken by the NBI agents of the search, nor the testimonies of the two *barangay kagawads* who were allegedly present during the search of his house, to corroborate the testimonies of the NBI agents. Thus, according to him, his own evidence stands unrebutted and so must prevail. He also posits that the prosecution's failure to present the photographs amounts to evidence willfully suppressed and thus must be presumed as adverse to the prosecution if produced. He adds that in a place that is a hot bed for insurgency, it was not unusual that firearms are left unattended in abandoned huts. Petitioner explains that the surrender of the cache by army men without asking for a receipt and their failure to report to their commanding officer were minor details which do not detract from the significant fact that the cache was seized in Paliamon, Tagoloan, and not from petitioner's house in Patag, Tagoloan, five kilometers away.

We are unconvinced by petitioner.

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[16] 29 Am Jur 2d, Evidence § 153, p. 184; citations omitted.

It is well-settled in our jurisdiction that the determination of credibility of witnesses is properly within the domain of the trial court. The investigating judge is in the best position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.[17] After review of the records, we find no reason to disbelieve the trial judge's assessment of the credibility of the witnesses.

Neither have we in our review, found palpable discrepancies in the testimonies of Sgt. Legaspi, Fernandez, and petitioner. Verily, the testimony of Sgt. Legaspi that petitioner was with 10 others conducting a survey of their land when they came upon petitioner in Paliamon, Tagoloan cannot be logically reconciled with petitioner's testimony that he was with the two Fernandez brothers who were plowing his field. Aside from being self-serving in his testimony, we have found no reason why we should depart from the familiar and fundamental presumption that officials have performed their tasks with regularity.

We likewise note the other discrepancies pointed out by the trial court which greatly put in suspect the testimonies of the defense. Indeed, we agree with the court *a quo* in finding highly unusual that the soldiers who fetched petitioner, and allegedly found the contraband in an uninhabited hut would, without even asking for a receipt, turn the arms and ammunition over to the NBI agents whom they did not know and had only met by chance. We find it likewise illogical and incredulous that the soldiers, particularly Sgt. Legaspi who was ordered to fetch petitioner and Guevara, did not report to their commanding officer upon their return. These discrepancies are not minor as they go against prudence and human nature. We will not belabor the matter further. We are not convinced that the trial court has overlooked, misunderstood, or misinterpreted some substantial fact or circumstance that could materially affect the disposition of the case. Besides, petitioner has not shown that the trial court has gravely abused its discretion or that the decision was clearly arbitrary or unfounded.

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[17] *Melecio v. Tan*, A.M. No. MTJ-04-1566, August 22, 2005, 467 SCRA 474, 480.

Omission of documentary evidence not fatal

Anent the issue that the prosecution did not present testimonial and documentary evidence. Suffice it to say that these are not necessary. Certainly, the documentary pieces of evidence presented by the prosecution clearly show the legal basis for the search—the clear inventory of the seized contraband, and the signatures of the persons present when the search was made. That the photograph mentioned in the testimony of NBI agent Gadia was not presented will not detract from the eyewitness testimonies nor other documentary evidence. Petitioner could have, through a subpoena *duces tecum*, asked for these photographs, but he did not. The mere allegation of petitioner of suppression of evidence, therefore, has no factual basis.

Presentation of witness sole prerogative of prosecution

Moreover, the non-presentation of some witnesses does not necessarily give rise to an adverse presumption, as these persons are equally at the disposal of the defense,[18] who definitely have the constitutional guaranteed right "to have compulsory process to secure the attendance of witnesses."[19] If the prosecution deems it fit not to present the *barangay kagawads* who were present in the search and who duly signed the inventory, it is their call and prerogative. Besides, the defense could have proven that said *barangay kagawads* were not there at his house by summoning them as his witnesses. Again, he did not. He cannot now assail that their failure to testify in the rebuttal is due to the fact that they were not there. Verily, with the overwhelming evidence presented by the prosecution, it has convincingly proven beyond reasonable doubt the guilt of petitioner.

WHEREFORE, we *DENY* the petition for lack of merit, and *AFFIRM* the July 12, 2001 Decision and September 13, 2001 Resolution in CA-G.R. CR No. 23655. Costs against petitioner.

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[18] *People v. Cristobal*, No. L-13062, January 28, 1961, 1 SCRA 151, 155.

[19] CONSTITUTION, Art. III, Sec. 14 (2).

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 150648. November 23, 2007]

ROSENDO TANDOC *y* DE LEON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE APPELLATE COURT, RESPECTED. —** The CA committed no reversible error in affirming the Decision of the RTC. Rosendo was not deprived of his day on court. He was given the opportunity to clearly present his side during the trial. The Court notes that the alleged negligence of Rosendo's counsel, if there was any, was not so gross or appalling that it amounted to denial of his right to counsel. Based on the findings of facts of the RTC, as sustained by the CA, the evidence of Rosendo's culpability was overwhelming and his claim of self-defense was highly improbable. It is only when the findings of the trial court and the Court of Appeals are absurd, contrary to the evidence on record, impossible, capricious, arbitrary, or based on a misappreciation of facts that this Court may delve into and resolve factual issues. Not one of these circumstances is present in the case at bar.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. —** The trial court was categorical in saying that the prosecution witnesses testified in a candid and straightforward manner. In contrast, Rosendo was uncertain of his answers to the questions propounded to him; thus, the RTC gave no credence to his testimony. Much weight is given to the factual findings of the trial judge on the credibility of

witnesses and their testimonies as he is in the best position to observe the demeanor of witnesses during trial.

3. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; BURDEN OF PROOF. —** On the issue of self-defense, we adopt the finding of both the RTC and CA. Whether or not the accused acted in self-defense is a factual issue. By invoking self-defense, Rosendo, in fact, admitted that he inflicted injuries on Mario. The burden of proving with clear and convincing evidence the justifying circumstances to exculpate him from criminal liability was thereby shifted to him.

4. **CIVIL LAW; DAMAGES; ACTUAL DAMAGES; *AMOUNT* DETERMINED BY THE TRIAL COURT, RESPECTED. —** The matter on the award of damages is also a factual issue that was aptly addressed by the trial court. We see no reason to annul or modify the amount of actual or compensatory damages awarded to Mario. The same was based on facts and law. We recognize that it is within the domain of lower courts to determine the proper amount of damages that may be awarded, and such determination binds this Court especially if sufficiently supported by evidence and not unconscionable or excessive. Rosendo should be held liable for all the natural and probable consequences of his criminal acts. It is only proper that he compensate Mario for the amount of money that the latter lost because of his failure to work abroad due to the injuries he sustained from Rosendo.

APPEARANCES OF COUNSEL

Candido G. Del Rosario and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari*[1] of the Decision[2] of the Court of Appeals in CA-G.R. CR No.

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[1] RULES OF COURT, Rule 45.

[2] Penned by Associate Justice Romeo J. Callejo, Sr., with Associate Justices Renato C. Dacudao and Josefina Guevarra-Salonga, concurring; *rollo*, pp. 19-34.

23259, convicting Rosendo de Leon Tandoc (Rosendo) of the crime of frustrated homicide and the Resolution[3] of the same court denying his Motion for Reconsideration.

A complaint for frustrated homicide was filed against Rosendo in the Office of the City Prosecutor. Rosendo did not appear or submit a counter-affidavit on preliminary investigation. On October 2, 1995, a case for frustrated homicide was filed against Rosendo in the Regional Trial Court (RTC) of Quezon City, Branch 81, in an Information which reads:

That on or about the 9th day of May, 1995, in Quezon City, Philippines, the said accused, did then and there willfully and unlawfully and feloniously with intent to kill, attack, assault and employ personal violence upon the person of one Mario Candaliza by then and there hitting him with a bladed weapon on his left face and left hand finger, thereby inflicting upon him serious and grave wounds, thus the accused performing all the acts of execution that would produce the crime of homicide, as a consequence but nevertheless was not produced by reason of some causes independent of the will of the perpetrator, that is, by the timely arrival of the bystanders, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[4]

The RTC issued a Warrant of Arrest against Rosendo, however, the same was returned unserved because he could not be located. On August 23, 1996, the case was archived since Rosendo's whereabouts were unknown.[5] Two years after the incident, or on April 30, 1997, Rosendo was arrested. On May 2, 1997, he was arraigned and pleaded not guilty to the charge. On the same day, he posted bail and was released from detention.[6] During trial, it was established that Rosendo left his residence after the stabbing incident and lived at Agoho Street, *Barangay* Duyan-Duyan, Marikina City. He ran for

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3 *Id*. at 39.

4 *Rollo*, p. 40.

5 *Id*. at 42.

6 *Id*. at 43.

the office of *Barangay* Chairman in the May 1997 elections and won.[7]

It appears that at the time of the incident on May 9, 1995, Rosendo and Mario Candaliza (Mario) were neighbors in Project 3, Quezon City. Mario was a resident of No. 22 Dapdap Street, while Rosendo lived at No. 6 in the same street.[8]

The evidence for the prosecution shows that on April 25, 1995, Rosendo placed political campaign streamers in front of the house of Mario. The latter found the streamers a nuisance and removed the same. The removal of the streamers infuriated Rosendo. On April 27, 1995, he confronted Mario about it. Mario was apologetic, but Rosendo ran after him with a knife but failed to reach him. Mario reported the incident to the police but did not institute a case against Rosendo.[9]

On May 9, 1995, around 9:30 in the evening, while Rosendo and his friends were having a drinking spree in a store near Mario's house, Mario and his girlfriend Marie Antonnette Timbol (Marie), who lived at No. 40-D Molave Street, Project 3, Quezon City, arrived, as Marie intended to make a call from the telephone in the store. Mario was standing beside Marie who was making a call when Rosendo approached the couple and asked Mario why he boxed him the month before. A heated argument between Mario and Rosendo ensued. Rosendo pulled a double bladed knife from his pants and stabbed Mario but missed. Horrified by the sudden turn of events, Marie fled to her house and told her brother, Rodel Timbol, of the ongoing fight. Rodel ran to the scene. In the intervening time, Mario tried to wrest possession of the knife from Rosendo. The two fell to the ground, Rosendo on top of Mario. Rosendo stabbed Mario, hitting the latter's face. Rosendo stabbed Mario again, but to elude the thrust, Mario held the blade of the knife with his left hand. By that time, onlookers were then able to take hold of Rosendo. They

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[7] *Id*. at 22.

[8] *Id*. at 43.

[9] *Id*.

also took possession of the knife. Thereafter, Rosendo fled from the scene.[10]

Marie and Rodel proceeded to the police station to report the incident and to give their sworn statements, while Mario was brought to the Quezon City Medical Center by his mother and sister. In the hospital, Mario was bleeding profusely. He was immediately operated by Dr. Alfredo Lo (Dr. Lo).

In his testimony in open court, Dr. Lo said that Mario's left side of the face sustained a laceration thru and thru to the back of the neck, damaging facial muscles and the parotid gland;[11] the second, third, and fourth fingers of the left hand were badly lacerated; and the internal tendon of the fourth finger was also injured. Dr. Lo testified that if Mario's injuries had not been immediately attended to, he would have died from loss of blood. Dr. Lo issued a Medical Certificate relative to the injuries sustained by Mario who was confined for four days.[12]

It was also shown that Mario had an employment contract with Atlantic Gulf & Pacific Company (AG & P) for a period of twelve months with a monthly salary of U.S. $875.00 plus two hours guaranteed overtime every working day at U.S. $6.31 per hour. Due to the injuries he sustained, Mario was not able to leave the country on May 10, 1995 and work in Algeria as a Field Electrical Engineer. It was only ten months after the incident that Mario was able to secure another foreign employment, for a different salary and destination.[13]

In his defense, Rosendo denied having inflicted any injuries on Mario. He testified that on May 9, 1995, about 9:00 to 9:30 in the evening, he was in the compound of Abe Lazo talking

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[10] *Id.* at 20.

[11] The parotid gland is the largest of the salivary glands. It is found wrapped around the mandibular ramus, and it secretes saliva through Stensen's duct into the oral cavity, to facilitate mastication and swallowing. <http://en.wikipedia.org/wiki/Parotid-gland>(visited October 19, 2007).

[12] *Id.* at 44-45.

[13] *Id.* at 45.

to Major Fajardo, Samina Balta and Eliza. He then went to the store to buy cigarettes; there he saw Mario and Marie. Mario confronted Rosendo, and then all of a sudden boxed him. He retaliated. Mario then took out a knife from his waist, but Rosendo wrestled for the possession of the knife. In the process, they fell to the ground with Mario on top of him. They continued to grapple for possession of the knife, with both of them holding the handle of the knife, and Mario's hand holding the portion next to the blade. Mario bit Rosendo's right arm and his left wrist was hit by the knife. Momentarily, a bystander intervened; in the process Rosendo's left wrist was injured. The bystander got hold of the knife from them. Both of them stood up. Afraid that the person who took the knife from them was not on his side, Rosendo ran towards Aurora Boulevard and then took a ride to Cubao. He afterward proceeded to Quezon City Hall and slept in one of the tents there. He did not report the incident to the police, neither did he go to a hospital for treatment of the injuries he sustained in the fight. The next day, he learned that Mario filed a case against him but he did not go to the police to air his side.[14]

Rosendo explained that Mario's hand was injured because he held the handle of the knife near the blade. Mario's left side of the face must have been injured when he bit Rosendo's hand while they were scuffling for the possession of the knife.[15]

Rosendo claimed that Mario nurtured a grudge against him, allegedly for failing to support Mario when he ran for Kagawad in 1994, because he supported instead the latter's political rival.[16] Moreover, a month before the May 9, 1995 incident, Mario and his brother, Roland Candaliza, who is a drug user, boxed him as he was passing by. However, he did not report the matter to the police authorities.[17]

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[14] *Id*. at 45-46.

[15] *Id*. at 46.

[16] *Id*.

[17] *Id*.

The prosecution presented four witnesses, Mario, Marie, Rodel Timbol and Dr. Alfredo L. Lo.[18] Only Rosendo testified for the defense.[19]

On May 14, 1999, the RTC rendered a Decision[20] convicting Rosendo of the crime charged. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Court finds accused Rosendo Tandoc guilty beyond reasonable doubt of the crime of frustrated homicide. The imposable penalty is *prision mayor* in its medium period, there being neither aggravating nor mitigating circumstances. Applying the Indeterminate Sentence Law, the accused is hereby sentenced to suffer imprisonment for a term ranging from four years and two months of *prision correccional* as minimum, to eight years and one day of *prision mayor* as maximum, and to pay private complainant Mario Candaliza the amount of ₱50,000.00 as moral damages, plus the amount of ₱218,750.00, the peso equivalent of U.S.$8,750.00 (at ₱25.00 per dollar, the exchange rate prevailing in 1995) which Candaliza failed to earn when he was not able to leave for abroad for ten months.

IT IS SO ORDERED.[21]

In his appeal to the Court of Appeals (CA), Rosendo averred that the RTC committed reversible error in not believing his plea of self-defense when he inflicted the injuries on Mario. Also, assuming *arguendo* that he was guilty of the crime charged, there was allegedly no basis for the award of actual and moral damages.[22]

On March 13, 2001, the CA rendered a Decision[23] affirming *in toto* the judgment of the RTC. A Motion for Reconsideration was duly filed by Rosendo, but the same was denied in a Resolution[24] dated September 26, 2001.

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[18] *Id*. at 45.

[19] *Id*. at 46.

[20] Penned by Presiding Judge Wenceslao I. Agnir, Jr.; *id*. at 42-49.

[21] *Id*. at 49.

[22] *Rollo*, p. 23.

[23] *Supra* note 2.

[24] *Rollo*, p. 39.

In this petition for review on *certiorari*,[25] Rosendo avers that he was deprived of due process because of the incompetence of his counsel, *viz.*:

> Gleaned from the records is the naked fact that the prosecution presented no less than four (4) witnesses to buttress the case for the people. Petitioner, for his defense presented no witness other than his own self. Petitioner's counsel of record (Atty. Raul Tolentino; tsn., pp. 1-30, Hearing on November 19, 1998) marked a single documentary evidence. But he didn't even make a formal offer of his exhibit, a clear indication of a lackadaisical attitude if not gross incompetence, highly prejudicial to petitioner's right to due process of law. In his testimony, petitioner named various witnesses who could have corroborated his testimony to bolster his defense. They are "Mr. Abe Lazo," Major Fajardo, a certain "Elsa" and Samina Balta (tsn., p. 3, Hearing on Feb. 08, 1999). But his above-named counsel didn't even exert any effort whatsoever to present anyone of them. Clearly, said counsel displayed his incompetence, ignorance or inexperience in violation of CANON 12, Rule 12.01, CODE OF JUDICIAL CONDUCT x x x.
>
> x x x x x x x x x
>
> It appearing that the incompetence of petitioner's counsel before the lower court is too blatant and palpable, his acts should not be binding upon petitioner.[26]

Additionally, Rosendo contests the award of actual damages in favor of Mario. He claims that Mario was hospitalized only for four days. A month after his hospitalization, it was established during trial that Mario was able to go back to his previous job at AG & P; and after ten months, Mario was able to get another job abroad. Rosendo argues that the CA committed reversible error in awarding actual damages for Mario's alleged loss of income for ten months. He maintains that Mario did not lose any income during the ten-month period after the May 9, 1995 incident and that the award of damages based on the alleged loss of income is without legal and factual bases.[27]

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[25] *Id*. at 8-17.

[26] *Id*. at 11-12.

[27] *Id*. at 13-15.

The petition must fail.

The CA committed no reversible error in affirming the Decision of the RTC. Rosendo was not deprived of his day on court. He was given the opportunity to clearly present his side during the trial. The Court notes that the alleged negligence of Rosendo's counsel, if there was any, was not so gross or appalling that it amounted to denial of his right to counsel. Based on the findings of facts of the RTC, as sustained by the CA, the evidence of Rosendo's culpability was overwhelming and his claim of self-defense was highly improbable. It is only when the findings of the trial court and the Court of Appeals are absurd, contrary to the evidence on record, impossible, capricious, arbitrary, or based on a misappreciation of facts that this Court may delve into and resolve factual issues.[28] Not one of these circumstances is present in the case at bar.

Furthermore, the trial court was categorical in saying that the prosecution witnesses testified in a candid and straightforward manner. In contrast, Rosendo was uncertain of his answers to the questions propounded to him; thus, the RTC gave no credence to his testimony. Much weight is given to the factual findings of the trial judge on the credibility of witnesses and their testimonies as he is in the best position to observe the demeanor of witnesses during trial.[29]

On the issue of self-defense, we adopt the finding of both the RTC and CA. Whether or not the accused acted in self-defense is a factual issue. By invoking self-defense, Rosendo, in fact, admitted that he inflicted injuries on Mario. The burden of proving with clear and convincing evidence the justifying circumstances to exculpate him from criminal liability was thereby

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[28] *Tad-y v. People*, G.R. No. 148862, August 11, 2005, 466 SCRA 474, 492.

[29] *People v. Roma*, G.R. No. 147996, September 30, 2005, 471 SCRA 413, 426-427; *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 658; *Vidallon-Magtolis v. Salud*, A.M. No. CA-05-20-P, September 9, 2005, 469 SCRA 439, 458; *People v. Macapal, Jr.,* G.R. No. 155335, July 14, 2005, 463 SCRA 387, 400; *Llanto v. Alzona*, G.R. No. 150730, January 31, 2005, 450 SCRA 288, 295-296.

shifted to him.[30] We find appropriate the RTC's disquisition on the matter, thus:

> In particular, the Court cannot believe the allegation of the accused [Rosendo] that it was [Mario] Candaliza who drew a knife. The Court observed that [Mario] Candaliza is much bigger than the accused [Rosendo] and could easily beat the accused [Rosendo] in a one-on-one fistfight. There was no need for him to use a knife. By the same token, it was the accused [Rosendo] who needed a knife to fight [Mario] Candaliza. Furthermore, [Mario] Candaliza was scheduled to leave for abroad the very next day. Why should he provoke a fight and risk losing a once-in-a-lifetime opportunity?
>
> Likewise, the allegation of the accused [Rosendo] that [Mario] Candaliza was holding the knife near the blade is improbable. If, as claimed by the accused [Rosendo], [Mario] Candaliza owned the knife and drew it from his waist while the accused [Rosendo] grabbed it, [Mario] Candaliza would have been holding the knife properly while it would have been the accused [Rosendo] who would have been holding the knife near its blade.
>
> There is also the undisputed fact that immediately after the stabbing incident, the accused [Rosendo] left his place of residence and evaded arrest for two years. It is established doctrine that flight is an indication of guilt for the guilty flee[s] even when no man pursueth but the innocent stand bold as a lion.
>
> The evidence is clear that it was the accused [Rosendo] who approached [Mario] Candaliza and provoked the fight. As testified to by [Mario] Candaliza and Marie Antonnette, it was the accused [Rosendo] who drew a knife, not [Mario] Candaliza who merely reacted to protect himself. The Court gives credence to the positive testimony of [Mario] Candaliza, corroborated by Rodel Timbol, that the accused [Rosendo] stabbed [Mario] Candaliza while they were lying on the ground, hitting [Mario] Candaliza on the left face causing a laceration thru' and thru' that damaged the facial muscles and parotid gland, and injuring three fingers of his left hand, one finger suffering tendon damage (Exh. "A"). The trajectory of the stabbing thrusts which were aimed at [Mario] Candaliza's body shows intent to kill and the only reason no vital organs were hit is because [Mario] Candaliza

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[30] *Cabuslay v. People*, G.R. No. 129875, September 30, 2005, 471 SCRA 241, 256; *People v. De los Reyes*, G.R. No. 140680, May 28, 2004, 430 SCRA 166, 172.

kept moving while he and the accused [Rosendo] were struggling and he bravely stopped the thrust with his bare hands. As testified by Dr. Alfredo Lo, [Mario] Candaliza's injuries would have caused his death were it not for [the] timely medical attention (tsn, 11-19-98, p. 6).[31]

The matter on the award of damages is also a factual issue that was aptly addressed by the trial court, *viz.*:

> The evidence is likewise clear that as a result of his injuries, [Mario] Candaliza was not able to leave for abroad and thus lost an opportunity to earn U.S. $875.00 a month plus guaranteed two hours overtime every working day at U.S. $6.31 per hour (Exhs. "B", "B-3", "E" & "F"; tsn, 11-10-87, pp. 39-40). However, expenses for [Mario] Candaliza's hospitalization were paid for by his employer, Atlantic Gulf & Pacific Co. (tsn, 11-10-97, p. 37).[32]

We see no reason to annul or modify the amount of actual or compensatory damages awarded to Mario. The same was based on facts and law. We recognize that it is within the domain of lower courts to determine the proper amount of damages that may be awarded, and such determination binds this Court especially if sufficiently supported by evidence and not unconscionable or excessive.[33]

Rosendo should be held liable for all the natural and probable consequences of his criminal acts. It is only proper that he compensate Mario for the amount of money that the latter lost because of his failure to work abroad due to the injuries he sustained from Rosendo.

WHEREFORE, in view of the foregoing, the petition is *DENIED* for lack of merit. The Decision of the Court of Appeals in CA-G.R. CR No. 23259 is hereby *AFFIRMED*.

SO ORDERED.

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

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[31] *Rollo*, pp. 47-48.

[32] *Id.* at 48-49.

[33] *YHT Realty Corporation v. Court of Appeals,* G.R. No. 126780, February 17, 2005, 451 SCRA 638, 660.

SECOND DIVISION

[G.R. No. 152164. November 23, 2007]

ADELFA DEMAFELIS, *petitioner, vs.* **COURT OF APPEALS and FERNANDO CONDEZ,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; THE COURT OF APPEALS IS IMBUED WITH SUFFICIENT AUTHORITY AND DISCRETION TO REVIEW MATTERS, NOT OTHERWISE ASSIGNED AS ERRORS ON APPEAL IF NECESSARY IN ARRIVING AT A COMPLETE AND JUST RESOLUTION OF THE CASE OR TO SERVE THE INTERESTS OF JUSTICE OR TO AVOID DISPENSING PIECEMEAL JUSTICE. — Did the Court of Appeals err in going beyond the issues raised in the petition for review? Petitioner contends that a review of the arguments of respondent in the MeTC would clearly reveal that the matter of identity of the property subject of ejectment was not raised. In fact, the first time that the matter surfaced was when the Court of Appeals rendered the decision which is sought to be reviewed in this appeal. Respondent, on the other hand, states that the Court of Appeals is clothed with ample authority to review matters although not assigned as errors if their consideration is necessary in arriving at a just decision. The pertinent rule is Section 8, Rule 51 of the Revised Rules of Court. It states: **SEC. 8.** *Questions that may be decided.* – No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors. In several cases we have also explained that the Court of Appeals is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or

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[*] Condes in some parts of the records.

to avoid dispensing piecemeal justice. In *Sesbreño v. Central Board of Assessment Appeals* we held that an appellate court has an inherent authority to review unassigned errors, *e.g.* (1) which are closely related to an error properly raised; (2) upon which the determination of the error properly assigned is dependent; or (3) where the Court finds that consideration of them is necessary in arriving at a just decision of the case. We note that the issue raised in the court *a quo* was: Whether the affirmance by the Regional Trial Court, Branch 274, Parañaque City, of the decision of the Metropolitan Trial Court, Branch 78, Parañaque City is proper under the circumstances. Patently, the matter of identity of the property subject of ejectment is closely related to the error raised. Even the petitioner herself in her Memorandum admitted that the issue raised was broad enough to cover a lot of issues. Here therefore, the resolution of the assigned error is dependent on the matter of identity of the property subject of ejectment, and the identification of the property is necessary in arriving at a just decision of the case. Thus, we agree that the appellate court did not err in tackling the issue.

2. **ID.; ID.; APPEALS; QUESTION OF FACT, NOT PROPER SUBJECT; CASE AT BAR. —** In the case of *Towne & City Development Corporation v. Court of Appeals*, the Court said that there is a question of fact when a doubt or difference arises as to the truth or the falsehood of alleged facts, while there is a question of law when such doubt or difference refers to what the law is on a certain state of facts. The identity of the subject land is a factual finding supported by evidence, hence, cannot be disturbed in this petition. We are bound by this factual finding of the appellate court, and cannot review again the credibility of witnesses and calibrate the probative value of the evidence on record.

3. **CIVIL LAW; SPECIAL CONTRACTS; SALE; CONDITIONAL SALE; CONTRACT TO SELL; CASE AT BAR. —** The trial court held that there was a contract to sell or conditional sale between Bernabe and respondent, while, according to the petitioner, the Court of Appeals implied that the parties had entered into a contract of sale. The case of *Gomez v. Court of Appeals* held: To be sure, a contract of sale may either be absolute or conditional. One form of conditional sale is what is now popularly termed as a "Contract to Sell," where

ownership or title is retained until the fulfillment of a positive suspensive condition normally the payment of the purchase price in the manner agreed upon. It would seem that the *Kasunduan*, showing payment by installment, embodied a contract to sell or a conditional sale, reserving ownership in the vendor Bernabe until the full payment by respondent of the purchase price. However, the fact that the *Kasunduan* was a contract to sell does not necessarily mean that the Court of Appeals erred when it said "a portion of 75 square meters of which was in turn sold by Bernabe to petitioner Condez, is described as Lot 1, Psu-55940, and covered by TCT No. 272." Patently, the Court of Appeals implied only that ownership had transferred to the respondent when it said this, a fact which is not inconsistent with the Deed of Sale being conditional at first. That the Court of Appeals concluded that the document of sale or the *Kasunduan* in favor of respondent transferred ownership cannot be inferred in its assailed Decision or Resolution.

APPEARANCES OF COUNSEL

Francisco B. Jose, Jr. and Associates Law Offices for petitioner.

Public Attorney's Office for private respondent.

R E S O L U T I O N

QUISUMBING, *J*.:

On appeal are the Decision[1] dated September 6, 2001 and the Resolution[2] dated February 8, 2002 of the Court of Appeals in CA-G.R. SP No. 58859. The appellate court had reversed the Decision[3] dated July 28, 1995 of the Regional Trial Court (RTC), Branch 274, Parañaque City.

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[1] *Rollo*, pp. 22-28. Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Godardo A. Jacinto and Eliezer R. De Los Santos concurring.

[2] *Id*. at 29.

[3] CA *rollo,* pp. 51-55. Penned by Judge Amelita G. Tolentino.

The facts of the case are as follows:

On April 17, 1987, petitioner Adelfa Demafelis bought from the heirs of Hermogenes Rodriguez a 155-square meter parcel of land, part of a larger undivided parcel, Lot No. Psu-103596 covered by Tax Declaration No. D-010-07184. The land is situated in the Barrio of San Dionisio, Parañaque City. Petitioner said that she had allowed respondent Fernando Condez to stay in the property but later, she asked respondent to vacate the property. However, respondent did not leave. Thus, she filed with the Metropolitan Trial Court (MeTC), Branch 78, Parañaque City, a complaint for ejectment against respondent.

Respondent for his part maintains that on March 7, 1988, he bought the property from Antonio F. Bernabe[4] and that he had stayed in the said property as early as 1985, even before he acquired it from Bernabe.

The MeTC ordered respondent's eviction.[5] Respondent appealed to the RTC which affirmed the findings of the MeTC. The dispositive portion of the decision reads:

> WHEREFORE, the decision of the court *a quo* is hereby affirmed in its entirety, and that, the court *a quo* is hereby ordered to issue a writ of execution in favor of the [petitioner].
>
> SO ORDERED.[6]

Respondent appealed to the Court of Appeals, asking whether the affirmation by the RTC of the decision of the MeTC was proper under the circumstances.[7] The Court of Appeals held:

> Comparing the two lots, *i.e.,* 75 square meters allegedly purchased by petitioner from Antonio Bernabe, Jr., and the 115 square meters portion allegedly bought by respondent from Ismael Favila, it appears that the lot sold by Favila to Bernabe on March 7, 1998, which consists of 115,132 square meters, a portion of 75 square meters of which

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[4] *Id.* at 28.

[5] *Id.* at 41.

[6] *Id.* at 55.

[7] *Id.* at 13.

was in turn sold by Bernabe to petitioner Condes, is described as **Lot 1, Psu-55940**, and covered by TCT No. 272. On the other hand, the lot sold by Favila to respondent Demafelis with an area of 115 square meters is a portion of the 86,320 square meters known as **Lot No. Psu-103592**, and covered by Tax Declaration No. 010-07184. On the basis of the Psu number alone, it shows that the origin of the lot claimed by petitioner is different from the origin of the lot claimed by respondent.

Correspondingly, there is no certainty as to the identity of the property purchased by petitioner and that of respondent, except the bare contracts executed in their favor. Had there been a relocation survey of the boundaries of the property in question, the controversy as to the identity of the lot subject matter of the instant case would have been avoided. If there is no identity between the property purchased by petitioner and the property purchased by respondent, the instant case for ejectment will not prosper as the parties have exclusive rights over their respective property.

WHEREFORE, the Decision, dated July 28, 1995, of the Regional Trial Court affirming the Decision, dated March 12, 1995, of the Metropolitan Trial Court is **REVERSED** and **SET ASIDE.** Civil Case No. 9216 of the M[e]TC, Branch 78, Parañaque City, is **DISMISSED.**

SO ORDERED.[8]

The Court of Appeals later denied petitioner's subsequent motion for reconsideration.[9]

Hence, the instant petition, which raises the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, SEVENTH DIVISION WENT BEYOND THE ISSUES RAISED IN THE PETITION FOR REVIEW IN RENDERING THE DECISION SOUGHT TO BE REVIEWED.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, SEVENTH DIVISION ERRED IN ITS FINDINGS THAT THERE IS

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[8] *Rollo*, p. 27.

[9] *Id*. at 29.

NO IDENTITY OF THE PROPERTY SUBJECT OF EJECTMENT BEING CONTRARY TO THE EVIDENCE ON RECORD.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, SEVENTH DIVISION ERRED IN CONCLUDING THAT THE DOCUMENT OF SALE IN FAVOR OF RESPONDENT FERNANDO CONDES TRANSFERRED OWNERSHIP CONTRARY TO THE FINDINGS OF THE LOWER COURT THAT THE DOCUMENT NAMELY: *"KASUNDUAN SA BILIHAN NG LUPA"* IS ACTUALLY AN AGREEMENT TO ENTER INTO A CONTRACT TO SELL AND DID NOT TRANSFER THE OWNERSHIP OF THE LOT SUBJECT THEREIN.

IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, SEVENTH DIVISION ERRED IN NOT REMANDING THE CASE TO THE COURT OF ORIGIN FOR THE PURPOSE OF ESTABLISHING IDENTITY OF THE PROPERTY RATHER THAN DISMISSING OUTRIGHT CIVIL CASE NO. 9216 OF THE M[e]TC, BRANCH 78, PARAÑAQUE CITY.[10]

More simply stated, the issues for resolution now are: (1) Did the Court of Appeals err in going beyond the issues raised in the petition for review? (2) Did the Court of Appeals err in finding that the identity of the property in question has not been established? (3) Lastly, did the Court of Appeals err in concluding that the document of sale in favor of respondent transferred ownership?

On the first issue, petitioner contends that a review of the arguments of respondent in the MeTC would clearly reveal that the matter of identity of the property subject of ejectment was not raised. In fact, the first time that the matter surfaced was when the Court of Appeals rendered the decision which is sought to be reviewed in this appeal.[11]

Respondent, on the other hand, states that the Court of Appeals is clothed with ample authority to review matters although not

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[10] *Id.* at 76.

[11] *Id.* at 77.

assigned as errors if their consideration is necessary in arriving at a just decision.[12]

The pertinent rule is Section 8, Rule 51 of the Revised Rules of Court. It states:

> **SEC. 8.** *Questions that may be decided.* – No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

In several cases we have also explained that the Court of Appeals is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice.[13] In *Sesbreño v. Central Board of Assessment Appeals*[14] we held that an appellate court has an inherent authority to review unassigned errors, *e.g.* (1) which are closely related to an error properly raised; (2) upon which the determination of the error properly assigned is dependent; or (3) where the Court finds that consideration of them is necessary in arriving at a just decision of the case.[15]

We note that the issue raised in the court *a quo* was:

> Whether the affirmance by the Regional Trial Court, Branch 274, Parañaque City, of the decision of the Metropolitan Trial Court, Branch 78, Parañaque City is proper under the circumstances.[16]

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[12] *Id.* at 63.

[13] *St. Michael's Institute v. Santos,* G.R. No. 145280, December 4, 2001, 371 SCRA 383, 394; *Heirs of Ramon Durano, Sr. v. Uy*, G.R. No. 136456, October 24, 2000, 344 SCRA 238, 257-258.

[14] G.R. No. 106588, March 24, 1997, 270 SCRA 360.

[15] *Id.* at 370.

[16] *Rollo*, p. 24.

Patently, the matter of identity of the property subject of ejectment is closely related to the error raised. Even the petitioner herself in her Memorandum admitted that the issue raised was broad enough to cover a lot of issues.[17] Here therefore, the resolution of the assigned error is dependent on the matter of identity of the property subject of ejectment, and the identification of the property is necessary in arriving at a just decision of the case. Thus, we agree that the appellate court did not err in tackling the issue.

On the second issue, petitioner contends that the Court of Appeals simply overlooked the existence of the Location Plan submitted in evidence by petitioner in the lower court when it found that there was no identity of the property subject of ejectment.[18]

Respondent counters that the issue as to the identity of the subject land is a question of fact already determined by the appellate court which cannot be raised in a petition for review on *certiorari* and cannot be disturbed by this Court unless those findings are not supported by the evidence.[19]

In the case of *Towne & City Development Corporation v. Court of Appeals*,[20] the Court said that there is a question of fact when a doubt or difference arises as to the truth or the falsehood of alleged facts, while there is a question of law when such doubt or difference refers to what the law is on a certain state of facts.[21] The identity of the subject land is a factual finding supported by evidence, hence, cannot be disturbed in this petition. We are bound by this factual finding of the appellate court, and cannot review again the credibility of witnesses and calibrate the probative value of the evidence on record.[22]

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[17] *Id*. at 77.

[18] *Id*. at 79.

[19] *Id*. at 65.

[20] G.R. No. 135043, July 14, 2004, 434 SCRA 356.

[21] *Id*. at 360, citing *Naguiat v. Court of Appeals*, G.R. No. 118375, October 3, 2003, 412 SCRA 591, 596.

[22] *Central Bank of the Philippines v. Castro,* G.R. No. 156311, December 16, 2005, 478 SCRA 235, 244.

At this juncture, it is worthy to note that the petitioner's Location Plan was not even mentioned in her Complaint[23] before the MeTC. Nor was it attached to her Motion for Reconsideration and Reply to Comment in the Court of Appeals when she raised this as the main ground for the reconsideration of the Court of Appeals' decision. But assuming *arguendo* that the Location Plan was attached, there is still not enough reason to say that the Court of Appeals overlooked the Location Plan submitted by petitioner. Lending more credence to the evidence of one party does not necessarily mean overlooking the evidence of the other.

On the third issue, petitioner contends that the statement of the Court of Appeals that respondent was the owner of the lot that he allegedly purchased from Antonio F. Bernabe is contrary to the statements of the lower courts which should be binding and conclusive upon the Court of Appeals.[24] She further argues in her reply that the findings of facts by the Court of Appeals are subject to review by the Court.[25]

On the other hand, respondent reiterates that the findings of the Court of Appeals as to the lack of identity of the subject lot, are amply supported by evidence, hence, they should not be disturbed by the Court, as these are now conclusive on the parties and are not reviewable by this Court.[26]

The trial court held that there was a contract to sell or conditional sale between Bernabe and respondent, while, according to the petitioner, the Court of Appeals implied that the parties had entered into a contract of sale. Since there was an apparent conflict between the findings of the Court of Appeals and the trial court, we went through the records of the case.

The *Kasunduan sa Bilihan ng Lupa*[27] or *Kasunduan* between Bernabe and the respondent reads:

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[23] CA *rollo*, pp. 22-24.

[24] *Rollo*, p. 82.

[25] *Id*. at 53.

[26] *Id*. at 66.

[27] CA *rollo*, p. 28.

SA SINUMANG MAKAKAALAM:

Ako si Ginoong Antonio F. Bernabe, may asawa nakatira sa 54 Bonn st. BF Homes, Paranaque Metro Manila. May-ari sa isang parcelang lupa na aking pinahuhulugang sa mababang halaga.

Ang kabuang sukat ng lupa ay humigit kumulang sa 75 metro kuadrado. Bilang may-ari ng lupa ay sumangayon ako sa [kasunduan] ng bilihan ng lupa sa murang halaga.

Ako si Ginoong Fernando Condez may asawa nakatira sa Sucat Paranaque. Bumili ng lupa kay Ginoong Antonio F. Bernabe sa murang halaga. Aking pong huhulugan ang lote sa mababang halaga.

Na si Ginoong Fernando Condez ay nangangako na ang halagang ₱18,550.00 (labing walo libo limangdaan limangpung piso) ay babayaran niya sa may-ari sa [loob] [ng] labing dalawang taon (12 years) sa halagang ₱250.00 ang hulog buwan buwan.

Na kung hindi makahulog si G. Fernando Condez sa buwaanang hulog siya ay magbabayad ng multang ₱50.00 isang buwan.

Sa katunayan, si G. Antonio F. Bernabe at si G. Fernando Condez ay lumagda ngayon ika 7 Marso 1988 Bernabe Subd. Sucat Parque., Metro Manila.

(Nilagdaan)	*(Nilagdaan)*
G. Antonio F. Bernabe	*G. Fernando Condez*
NAGBIBILI	*BUMILI*

Lumagda sa harap nina:

(Nilagdaan)	*(Nilagdaan)*

The case of *Gomez v. Court of Appeals* held:

To be sure, a contract of sale may either be absolute or conditional. One form of conditional sale is what is now popularly termed as a "Contract to Sell," where ownership or title is retained until the fulfillment of a positive suspensive condition normally the payment of the purchase price in the manner agreed upon.[28]

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[28] *Gomez v. Court of Appeals,* G.R. No. 120747, September 21, 2000, 340 SCRA 720, 727-728.

It would seem that the *Kasunduan*, showing payment by installment, embodied a contract to sell or a conditional sale, reserving ownership in the vendor Bernabe until the full payment by respondent of the purchase price. However, the fact that the *Kasunduan* was a contract to sell does not necessarily mean that the Court of Appeals erred when it said "a portion of 75 square meters of which was in turn sold by Bernabe to petitioner Condez, is described as Lot 1, Psu-55940, and covered by TCT No. 272." Patently, the Court of Appeals implied only that ownership had transferred to the respondent when it said this, a fact which is not inconsistent with the Deed of Sale being conditional at first. That the Court of Appeals concluded that the document of sale or the *Kasunduan* in favor of respondent transferred ownership cannot be inferred in its assailed Decision or Resolution.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Decision dated September 6, 2001 and the Resolution dated February 8, 2002 of the Court of Appeals in CA-G.R. SP No. 58859 are **AFFIRMED.**

Costs against petitioner.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 153595. November 23, 2007]

CORNELIO DE JESUS, SERVILLANO HERRERA, JACINTO HERRERA, FLORENCIO LINQUICO, MARIA BALTAZAR, LETICIA ESPAÑOLA, ALBERTO GOJO-CRUZ, PABLO GENER, HILARIO GENER, DAMASO LEANG, AGUSTIN CAPA, FELIPE GENER, ANTONIA LINQUICO, OSCAR DIAZ and SIXTA ELFA, *petitioners, vs.* **MOLDEX REALTY, INC.,** *respondent.*[*]

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; TENANCY RELATIONSHIP; ELEMENTS. —** Tenancy relationship cannot be presumed. Claims that one is a tenant do not automatically give rise to security of tenure. The elements of tenancy, to wit – (1) The parties are the landowner and the tenant or agricultural lessee; (2) The subject of the relationship is agricultural land; (3) There is mutual consent to the tenancy between the parties; (4) The purpose of the relationship is agricultural production; (5) There is personal cultivation by the tenant or agricultural lessee; and (6) There is a sharing of harvests between the parties. must first be proved in order to entitle the claimant to security of tenure. There must be evidence to prove the allegation that an agricultural tenant tilled the land in question. Mere occupation or cultivation of an agricultural land does not automatically convert a tiller or farmworker into an agricultural tenant recognized under agrarian laws.

2. **ID.; ID.; ID.; CERTIFICATIONS THEREOF ISSUED BY MUNICIPAL AGRARIAN REFORM OFFICERS, NOT BINDING ON THE COURTS.—** The settled rule is that certifications issued by municipal agrarian reform officers are not binding on the courts. In a given locality, the certifications

[*] The Court of Appeals is deleted from the title of the case pursuant to Section 4, Rule 45 of the Rules of Court.

or findings of the secretary of agrarian reform (or of an authorized representative) concerning the presence or the absence of a tenancy relationship between the contending parties are merely preliminary or provisional; hence, such certifications do not bind the judiciary.

3. **ID.; ID.; ID.; REQUIRES INDEPENDENT EVIDENCE; NOT PRESENT IN CASE AT BAR. —** The rule is settled that independent evidence, aside from self-serving statements, is needed to prove personal cultivation, sharing of harvests, or consent of the landowner in order to establish a tenancy relationship. In *Heirs of Jugalbot v. Court of Appeals*, the Court stated – In *Berenguer, Jr. v. Court of Appeals*, we ruled that the respondents' self-serving statements regarding their tenancy relations could not establish the claimed relationship. The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. Substantial evidence does not only entail the presence of a mere scintilla of evidence in order that the fact of sharing can be established; there must be concrete evidence on record adequate enough to prove the element of sharing. We further observed in *Berenguer, Jr.:* x x x In the absence of any substantial evidence from which it can be satisfactorily inferred that a sharing arrangement is present between the contending parties, we, as a court of last resort, are duty-bound to correct inferences made by the courts below which are manifestly mistaken or absurd. x x x **Without the essential elements of consent and sharing, no tenancy relationship can exist between the petitioner and the private respondents.** Thus, aside from their bare allegations, petitioners must submit competent proof to establish the existence of such a sharing agreement. The receipts proffered as evidence by petitioners do not prove sharing in the agricultural production. The statement of rentals and expenses *(Ulat nang Buwis at mga Gastos)* merely provided for an accounting of the expenses incurred from the crop years 1985-1989, the total number of cavans received as rentals, which were sold to and/or received by different persons. These are not sufficient to establish petitioners' claim. The fact of receipt, without an agreed system of sharing, does not *ipso facto* create a tenancy.

APPEARANCES OF COUNSEL

Legal Division (DAR) for petitioners.
J.M. Sidiangco Law Offices for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Petitioners Cornelio de Jesus, Servillano Herrera, Jacinto Herrera, Florencio Linquico, Maria Baltazar, Leticia Española, Alberto Gojo-Cruz, Pablo Gener, Hilario Gener, Antonia Linquico and Oscar Diaz insist that they are legitimate tenants of the property in dispute. The property, known as Hacienda Sapang Palay, is a portion of Lot No. 255 with an area of 108.5 hectares and situated in San Jose, Del Monte, Bulacan.

Cipriano de Guzman, as attorney-in-fact of the other lot owners, sold to United Tai-Phil Development Corporation the property on June 1, 1993. United Tai-Phil, in turn, sold to respondent Moldex Realty, Incorporated (Moldex) all its rights over the property in a Contract of Conditional Sale of Land dated November 16, 1994. Moldex then proceeded to convert the property to residential use.

On August 31, 1995, petitioners filed with the Department of Agrarian Reform Adjudication Board (DARAB) a complaint for Maintenance of Peaceful Possession and Damages with Preliminary Injunction. Claiming security of tenure, petitioners alleged that they were the actual and lawful tenants of Hacienda Sapang Palay, and that they had been remitting the rentals to the property owner.

Respondent, however, recognized only Damaso Leang and Antonia Linquico as the legitimate tenants and disclaimed the tenancy allegations of the other petitioners.

In a Decision dated May 20, 1996, Provincial Adjudicator Gregorio D. Sapera dismissed the complaint for lack of merit.[1]

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[1] CA *rollo*, p. 47.

On appeal, the DARAB reversed and set aside the May 20, 1996 Decision and rendered a new judgment recognizing petitioners' rights as tenants and/or actual tillers, ordering Moldex to respect and maintain their peaceful possession and cultivation of the property, and ordering the Region III Director to place the property under leasehold, with petitioners as qualified beneficiaries.[2]

Moldex sought recourse with the Court of Appeals (CA),[3] which in a Decision rendered on July 31, 2001, disposed as follows:

> WHEREFORE, the decision of the Department of Agrarian Reform Board is AFFIRMED insofar as it pertains to respondents Damaso Leang, Agustin Capa, Antonia Linquico and Sixto Elfa but is REVERSED and SET ASIDE in respect to respondents Cornelio de Jesus, Servillano Herrera, Jacinto Herrera, Florencio Linquico, Maria Baltazar, Leticia Española, Alberto Gojo-Cruz, Pablo Gener, Hilario Gener, Felipe Gener and Oscar Diaz, whose complaint is DISMISSED.
>
> SO ORDERED.[4]

Petitioners filed a Partial Motion for Reconsideration, which was denied by the CA in a Resolution dated May 9, 2002.[5]

Hence, herein petition for review under Rule 45 of the Rules of Court premised on the lone assignment of error, that:

I

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THERE EXISTS NO TENANCY RELATIONSHIP BETWEEN THE LANDOWNERS AND THE PETITIONERS, NAMELY: CORNELIO DE JESUS, SERVILLANO HERRERA, JACINTO HERRERA, FLORENCIO LINQUICO, LETICIA ESPAÑOLA, ALBERTO GOJO-CRUZ, PABLO

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[2] *Id*. at 62-63.

[3] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Ramon Mabutas, Jr. and Roberto A. Barrios, concurring.

[4] CA *rollo*, p. 125.

[5] *Id*. at 247.

GENER, HILARIO GENER, OSCAR DIAZ, MARIA BALTAZAR AND FELIPE GENER.[6]

The question of whether one is a tenant is basically a question of fact, which is not proper in a petition under Rule 45. Nonetheless, since the findings of facts of the DARAB and the CA contradict each other, the Court must now go through the evidence and documents on record as a matter of exception to the rule.[7]

Petitioners argue that in determining the existence of a tenancy relationship between them and the landowners, the CA failed to take into consideration the verbal agreement between them and Cipriano de Guzman who collected the lease rentals from them.[8]

Notably, the CA sustained the DARAB findings that petitioners Damaso Leang, Agustin Capa, Antonia Linquico and Sixto Elfa were *bona fide* tenants of the property in light of the MARO Certification dated January 2, 1990 listing them as "registered legitimate tenants." The CA, however, disregarded the MARO Certification as regards the other petitioners inasmuch as they were noted merely as "non-registered/non-legitimate (but actual tillers)." According to the CA, said petitioners were not able to prove their claim of production sharing, therefore, no tenancy relationship existed between them.[9]

The Court agrees with the CA that petitioners Cornelio de Jesus, Servillano Herrera, Jacinto Herrera, Florencio Linquico, Maria Baltazar, Leticia Española, Alberto Gojo-Cruz, Pablo Gener, Hilario Gener, Felipe Gener and Oscar Diaz are not tenants *de jure* of the subject landholding.

Tenancy relationship cannot be presumed. Claims that one is a tenant do not automatically give rise to security of tenure. The elements of tenancy, to wit –

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[6] *Rollo*, p. 12.

[7] *Esquivel v. Reyes*, 457 Phil. 509, 516-517 (2003).

[8] *Rollo*, p. 13.

[9] CA *rollo*, p. 124.

(1) The parties are the landowner and the tenant or agricultural lessee;

(2) The subject of the relationship is agricultural land;

(3) There is mutual consent to the tenancy between the parties;

(4) The purpose of the relationship is agricultural production;

(5) There is personal cultivation by the tenant or agricultural lessee; and

(6) There is a sharing of harvests between the parties.[10]

must first be proved in order to entitle the claimant to security of tenure. There must be evidence to prove the allegation that an agricultural tenant tilled the land in question.[11]

As correctly ruled by the CA, petitioners failed to substantiate their claim that they were tenants of the landholding.

To begin with, the MARO Certification merely said that petitioners Cornelio de Jesus, Servillano Herrera, Jacinto Herrera, Florencio Linquico, Maria Baltazar, Leticia Española, Alberto Gojo-Cruz, Pablo Gener, Hilario Gener, Felipe Gener and Oscar Diaz were "non-registered/non-legitimate (but actual tillers)."[12] Mere occupation or cultivation of an agricultural land does not automatically convert a tiller or farmworker into an agricultural tenant recognized under agrarian laws.[13] Moreover, the settled rule is that certifications issued by municipal agrarian reform officers are not binding on the courts. In a given locality, the certifications or findings of the secretary of agrarian reform (or of an authorized representative) concerning the presence or the absence of a tenancy relationship between the contending parties

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[10] *Vda. de Victoria v. Court of Appeals*, G.R. No. 147550, January 26, 2005, 449 SCRA 319, 335.

[11] *Heirs of Jugalbot v. Court of Appeals*, G.R. No. 170346, March 12, 2007, 518 SCRA 202, 213; *Valencia v. Court of Appeals*, 449 Phil. 711, 737 (2003).

[12] CA *rollo*, p. 89.

[13] *Danan v. Court of Appeals*, G.R. No. 132759, October 25, 2005, 474 SCRA 113, 126.

are merely preliminary or provisional; hence, such certifications do not bind the judiciary.[14]

Petitioners, however, insist that there is a verbal agreement between them and Cipriano de Guzman regarding the sharing of the produce.

The rule is settled that independent evidence, aside from self-serving statements, is needed to prove personal cultivation, sharing of harvests, or consent of the landowner in order to establish a tenancy relationship.[15] In *Heirs of Jugalbot v. Court of Appeals*, the Court stated –

In *Berenguer, Jr. v. Court of Appeals*, we ruled that the respondents' self-serving statements regarding their tenancy relations could not establish the claimed relationship. The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. Substantial evidence does not only entail the presence of a mere scintilla of evidence in order that the fact of sharing can be established; there must be concrete evidence on record adequate enough to prove the element of sharing. We further observed in *Berenguer, Jr.*:

x x x x x x x x x

> In the absence of any substantial evidence from which it can be satisfactorily inferred that a sharing arrangement is present between the contending parties, we, as a court of last resort, are duty-bound to correct inferences made by the courts below which are manifestly mistaken or absurd. x x x
>
> **Without the essential elements of consent and sharing, no tenancy relationship can exist between the petitioner and the private respondents**.[16]

Thus, aside from their bare allegations, petitioners must submit competent proof to establish the existence of such a sharing agreement. The receipts proffered as evidence by petitioners

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[14] *Bautista v. Mag-isa Vda. De Villena*, G.R. No. 152564, September 13, 2004, 438 SCRA 259, 271.

[15] *Supra* note 11, at 213.

[16] *Id.* at 214-215.

do not prove sharing in the agricultural production. The receipt dated March 26, 1989 merely shows that Cipriano de Guzman received from one *Ginang Piping Limquico* the amount of ₱10,000.00 as advance payment for the 118 cavans of *palay* produced during the 1988 crop year, while the receipt dated June 10, 1989 shows that de Guzman received ₱32,000.00 as third and final payment for 118 cavans harvested for the same crop year.[17] Meanwhile, the statement of rentals and expenses (*Ulat nang Buwis at mga Gastos*) merely provided for an accounting of the expenses incurred from the crop years 1985-1989, the total number of cavans received as rentals, which were sold to and/or received by different persons.[18] These are not sufficient to establish petitioners' claim. The fact of receipt, without an agreed system of sharing, does not *ipso facto* create a tenancy.[19]

Consequently, there is no cogent reason to grant the present petition.

WHEREFORE, the petition is *DENIED*. The Decision dated July 31, 2001 and the Resolution dated May 9, 2002 of the Court of Appeals in CA-G.R. SP No. 45247 are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

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[17] CA *rollo*, p. 148.

[18] *Id*. at 151-154.

[19] *Heirs of Magpily v. De Jesus*, G.R. No. 167748, November 8, 2005, 474 SCRA 366, 376.

THIRD DIVISION

[G.R. No. 154110. November 23, 2007]

FELIZARDO B. SARAPAT, AMELITA DURIAN and FERMIN G. CASTILLO, *petitioners, vs.* **SYLVIA SALANGA and LIWAYWAY SILAPAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS; AFFORDED WHERE PARTIES WAS GIVEN OPPORTUNITY TO BE HEARD; CASE AT BAR. — Well-settled is the rule that the essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. Not all cases require a trial-type hearing. The requirement of due process in labor cases is satisfied when the parties are given the opportunity to submit their position papers to which they are supposed to attach all the supporting documents or documentary evidence that would prove their respective claims. Thus, in *Samalio v. Court of Appeals*, the Court held: Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process. A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. In other words, it is not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as affidavits of witnesses may take the place of their direct testimony. In the present case, since the inception of the case before the Department of Labor and Employment - National Capital Region (DOLE-NCR), petitioners were given every opportunity to

present their side and submit the union books of accounts and other needed documents to justify the litigation expenses incurred in the prosecution of the labor cases upon which the 5% special assessment fee was based. They failed to do so, even when they requested time, on several occasions, to submit the necessary documents. Besides, when petitioners filed a motion for reconsideration assailing the act of the BLR in ruling on the propriety of the litigation expenses, such action satisfied the requirement of due process. As the Court has consistently held, where the parties were given the opportunity to seek a reconsideration of the action or ruling complained of, they cannot claim denial of due process of law.

2. **LABOR AND SOCIAL LEGISLATION; BUREAU OF LABOR RELATIONS (BLR); JURISDICTION; ESTOPPED FROM ASSAILING JURISDICTION; PETITIONERS FILED A COMPLIANCE WITH THE BLR'S DIRECTIVES WITHOUT RAISING AN OBJECTION. —** Petitioners are estopped from assailing the jurisdiction of the BLR to rule on the propriety of the litigation expenses. Nary a howl of protest or shout of defiance spewed forth from petitioners' lips when the BLR took cognizance of the case and directed them to submit documents in support of the alleged litigation expenses. Petitioners filed a Compliance with the BLR's directive without raising an objection.

3. **ID.; ID.; ID.; INTRA-UNION CONFLICTS; EXAMINATION OF ACCOUNTS, INCLUDED. —** The BLR is clothed with ample authority to rule, *motu proprio*, on the propriety of the litigation expenses. The authority of the BLR is found in Article 226 of the Labor Code of the Philippines, which reads: Art. 226. *Bureau of Labor Relations*. – The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of the Department of Labor shall have original and exclusive authority to act, *at their own initiative* or upon request of either or both parties, on all inter-union and *intra-union conflicts*, x x x. As held by the Court in *La Tondeña Workers Union v. Secretary of Labor*, intra-union conflicts such as examinations of accounts are under the jurisdiction of the BLR.

4. **ID.; ID.; TECHNICAL RULES, OF SUPPLETORY APPLICATION ONLY. —** Hearings and resolutions of labor disputes are not governed by the strict and technical rules of evidence and

procedure observed in the regular courts of law. Technical rules of procedure are not applicable in labor cases, but may apply only by analogy or in a suppletory character, for instance, when there is a need to attain substantial justice and an expeditious, practical and convenient solution to a labor problem. The BLR was therefore empowered to rule on the same to avoid further delay of the case. Clearly, consideration of the issue became necessary to arrive at a just decision and complete resolution of the case.

5. **ID.; ID.; JURISDICTION.; PROPRIETY OF LITIGATION EXPENSES, NOT ESTABLISHED IN THE ABSENCE OF SUBSTANTIAL PROOF THEREOF. —** No grave abuse of discretion can be ascribed to the BLR in denying petitioners' Statement of Receipts and Disbursements as proof of litigation expenses incurred since petitioners failed to submit supporting receipts and other documents. Truly, the BLR could only give credence to actual expenses supported by receipts and which appear to have been genuinely expended in connection with the labor cases. The expenses must be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. It cannot be based simply on mere allegation without any tangible proof, such as receipts or other documentary proofs to support such claim.

6. **ID.; ID.; ID.; ID.; RESTITUTION OF AMOUNT DEDUCTED THEREFOR, PROPER. —**The order for restitution was proper since the petitioners failed to prove the justification for the deduction of the 5% special assessment fee from the members' settlement amount. Restitution is defined as the "act of making good or giving an equivalent for any loss, damage or injury; and indemnification." The Compromise Agreement was entered into, not to benefit the union, but to settle the claims and for the welfare of the union members. In fine, the CA did not commit any error in upholding the Resolution of the BLR disallowing the 5% special assessment fee for petitioners' failure to support the alleged litigation expenses upon which the 5% special assessment fee was based.

APPEARANCES OF COUNSEL

Jose P. Fernandez & Cristobal P. Fernandez for petitioners.
Carlo A. Domingo for respondents.

DECISION

AUSTRIA-MARTINEZ, *J*.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated January 29, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 63688 which denied petitioners' Petition for *Certiorari* and the CA Resolution[2] dated June 27, 2002 which denied petitioners' Motion for Reconsideration.

The factual background of the case is as follows:

Felizardo B. Sarapat, Amelita Durian and Fermin G. Castillo (petitioners) are President, Treasurer and Director, respectively, of the Philippine Veterans Bank Employees Union-National Union of Bank Employees (PVBEU-NUBE). Sylvia Salanga and Liwayway Silapan (respondents) are members of PVBEU-NUBE.

Sometime in 1985, the Philippine Veterans Bank (PVB) went bankrupt and was placed under receivership/liquidation by the Central Bank. As a result, the services of PVB employees were terminated. When PVB re-opened in 1992, the PVB employees were not re-hired. Thus, PVBEU-NUBE filed a notice of strike and cases of unfair labor practice against PVB before the National Labor Relations Commission (NLRC).

On January 26, 1996, PVB and PVBEU-NUBE entered into a Compromise Agreement for the amicable settlement of all their cases and claims then pending with the NLRC and other tribunals. The total financial settlement granted to PVBEU-NUBE amounted to ₱35,000,000.00, 10% thereof as attorney's fees, and 5% thereof as special assessment fee to be deducted from the settlement amount of each member to defray the expenses incurred by the union in the prosecution of the labor cases.

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[1] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Oswaldo D. Agcaoili (now retired) and Sergio L. Pestaño, CA *rollo*, p. 126.

[2] *Id*. at 156.

On April 10, 1996, respondents, in their behalf and in behalf of 43 other PVBEU-NUBE members, filed with the Department of Labor and Employment-National Capital Region (DOLE-NCR) a petition[3] requesting an audit of the finances of the PVBEU-NUBE. Specifically, the request requires a separate and full accounting of the ₱600,000.00 representing the special assessment fee of 5% of the first installment of ₱12,000,000.00 of the Compromise Agreement.[4]

Pre-audit conferences were called. However, despite notices and directives served upon petitioners for them to appear and submit pertinent documents for the audit, they failed to do so.

On April 23, 1999, DOLE-NCR Regional Director Maximo B. Lim issued an Order[5] directing petitioners to open the union books of account to the respondents and to hold a general membership meeting to explain the financial status of the union to the members.

Petitioners filed an appeal with the Bureau of Labor Relations (BLR) questioning the Order calling for the conduct of a general membership meeting.[6]

On September 22, 1999, the parties were summoned to a conference by the BLR. At said conference, the parties agreed that the case be limited to the audit and accounting of all litigation expenses incurred by the union, upon which the 5% special assessment fee was based. They also admitted that the conduct of a general membership meeting of 529 members was no longer feasible because of the dissolution of the union and the termination of the members' employment in PVB.

On March 17, 2000, the BLR issued an Order[7] taking cognizance of the requested audit and accounting of the litigation

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[3] CA *rollo,* p. 14.

[4] CA *rollo*, p. 15.

[5] *Id.* at 19.

[6] *Id.* at 24.

[7] *Id.* at 31.

expenses incurred by the union in the prosecution of its labor cases, considering that a general membership meeting was no longer feasible. Since petitioners did not submit any documents to the Regional Office in support of the alleged litigation expenses despite repeated summons made upon them, the BLR gave them a final chance to submit such documents. The BLR also required PVBEU-NUBE to comment on the petition since ₱1,372,953.00, part of the ₱12,000,000.00 special assessment fee, was allegedly remitted to PVBEU-NUBE.

On April 25, 2000, the parties and PVBEU-NUBE were summoned to appear before the BLR. At said conference, Jose P. Umali, representing PVBEU-NUBE, denied participation in the preparation and execution of the Compromise Agreement relative to the PVBEU-NUBE cases with the NLRC, as well as receipt of a check from PVB or PVBEU-NUBE representing the 5% special assessment fee referred to in the Compromise Agreement.

On the other hand, petitioner Sarapat stated that the litigation expenses incurred by PVBEU-NUBE was not limited to the NLRC but included the Supreme Court, the Office of the Secretary of Labor and Employment, and the NCR Arbitration Branch of the NLRC. He requested a period of 20 days or until May 8, 2000 within which to submit the necessary documents to support the alleged litigation expenses.

On May 9, 2000, petitioners filed their Compliance,[8] attaching a Statement of Receipts and Disbursements for the period June 15, 1985 to December 31, 1999, indicating the following disbursements:

Representation and entertainment	₱1,282,750.00
Gasoline Expense	110,756.75
Membership dues – NUBE	160,000.00
Legal Fees	883,720.00
Christmas Gifts	50,750.25
Office supplies	19,665.35

[8] CA *rollo,* p. 37.

Advertisement	20,000.00
Research Expenses	10,000.00
Telegrams and Postage	7,546.65
Notarial and other fees	5,000.00
Transcript/clerical fees	5,000.00
Filing/appeal fees	10,000.00
Miscellaneous expenses (streamers)	15,000.00
Total	₱2,580,189.00

On October 5, 2000, the BLR issued a Resolution[9] declaring the Statement of Receipts and Disbursements as insufficient to prove the actual litigation expenses incurred in the prosecution of labor cases or to justify the 5% special assessment fee since no official receipts, disbursement vouchers, checks, acknowledgment receipts and such other documents which would show actual disbursement of funds and the purpose thereof were submitted.

Thus, the BLR held petitioners solidarily liable to restitute to the PVBEU-NUBE members the total amount of ₱1,409,946.00, representing the ₱1,399,246.00 partial remittance of the 5% check-off for the special assessment fee and ₱10,700.00 personal donations and contributions from PVBEU-NUBE members. It also directed PVB to refrain from deducting anymore 5% special assessment fee from any of the other members' settlement amount under the Compromise Agreement in view of petitioners' failure to justify the purpose of such deduction.

Petitioners filed a Motion for Reconsideration[10] but the BLR denied the same in a Resolution[11] dated December 26, 2000.

On March 12, 2001, petitioners filed a Petition for *Certiorari*[12] with the CA ascribing grave abuse of discretion to the BLR.

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[9] CA *rollo*, p. 42.

[10] *Id.* at 48.

[11] *Id.* at 55.

[12] *Id.* at 2.

On January 29, 2002, the CA rendered a Decision[13] dismissing the petition. It held that petitioners failed to prove that the BLR acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment, since all the issues raised by petitioners were judiciously addressed by the BLR after due consideration of the submissions of the parties.

Petitioners filed a Motion for Reconsideration[14] but the CA denied it in a Resolution[15] dated June 27, 2002.

Hence, the present petition anchored on the following grounds:

A. THE COURT OF APPEALS COMMITTED GRAVE ERROR IN HOLDING THAT PETITIONERS WERE NOT DENIED DUE PROCESS OF LAW.[16]

B. THE COURT OF APPEALS COMMITTED GRAVE ERROR IN NOT RESOLVING THE MAIN ISSUE BROUGHT BEFORE IT, THAT THE BLR ACTED WITHOUT JURISDICTION.[17]

C. THE COURT OF APPEALS COMMITTED GRAVE ERROR IN NOT RULING ON THE ISSUE OF WHETHER OR NOT THE BLR ACTED IN EXCESS OF JURISDICTION IN ISSUING THE RESOLUTION OF 05 OCTOBER 2000 SINCE IT PASSED UPON ISSUES NOT BROUGHT TO IT ON APPEAL.[18]

D. THE COURT OF APPEALS COMMITTED GRAVE ERROR IN IGNORING THE ISSUE OF WHETHER OR NOT RESPONDENT BLR ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DENYING THE VALIDITY OF RESPONDENTS-APPELLANTS' ACCOUNTING.[19]

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[13] *Id.* at 126.

[14] CA *rollo*, p. 136.

[15] *Id.* at 156.

[16] *Rollo*, p. 15.

[17] *Id.* at 16.

[18] *Id.* at 17.

[19] *Id.* at 18.

E. THE COURT OF APPEALS COMMITTED GRAVE ERROR IN IGNORING THE ISSUE RAISED OF WHETHER RESPONDENT BLR ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ORDERING RESTITUTION.[20]

In a Resolution[21] dated July 19, 2006, the Court required the parties to submit memoranda but only respondents complied therewith.

Petitioners submit that they were denied due process of law since the BLR ruled *motu proprio* on the propriety of the litigation expenses and ordered restitution without holding a hearing to ask petitioners to explain the accounting or to produce the books of account and receipts of the union; that the appeal before the BLR involved only the Order of the DOLE-NCR Regional Director calling for a general membership meeting; that the propriety of the litigation expenses claimed by petitioners and restitution were not issues on appeal; that a statement of expenses duly attested to by a certified public accountant is competent and valid evidence to prove expenses; that restitution was improper since the 5% special assessment fee became property of the union upon approval of the union members of the Compromise Agreement.

Respondents, on the other hand, aver that the BLR did not lose jurisdiction to pass upon the propriety of the litigation expenses when petitioners submitted its alleged accounting; that petitioners were not denied due process since they were given all the opportunities to present the required documents but they failed to do so; that as the real owners of the union funds are the union members, it was just proper for the restitution of the same to the members.

The petition is bereft of merit for the following reasons.

Firstly, petitioners cannot maintain that they were denied due process. Well-settled is the rule that the essence of due

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[20] *Id.* at 19.

[21] *Id.* at 141.

process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[22] Not all cases require a trial-type hearing. The requirement of due process in labor cases is satisfied when the parties are given the opportunity to submit their position papers to which they are supposed to attach all the supporting documents or documentary evidence that would prove their respective claims.[23] Thus, in *Samalio v. Court of Appeals*,[24] the Court held:

> Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process. A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. In other words, it is not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as affidavits of witnesses may take the place of their direct testimony.[25]

In the present case, since the inception of the case before the DOLE-NCR, petitioners were given every opportunity to present their side and submit the union books of accounts and other needed documents to justify the litigation expenses incurred

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[22] *Westmont Pharmaceuticals, Inc. v. Samaniego,* G.R. Nos. 146653-54 and *Samaniego v. Westmont Pharmaceuticals, Inc.,* G.R. Nos. 147407-408, February 20, 2006, 482 SCRA 611, 619; *Mariveles Shipyard Corp. v. Court of Appeals*, 461 Phil. 249, 265 (2003); *St. Michael Academy v. National Labor Relations Commission*, 354 Phil. 491, 511 (1998).

[23] *Mariveles Shipyard Corp. v. Court of Appeals, supra.*; *Columbus Philippines Bus Corp. v. National Labor Relations Commission*, 417 Phil. 81, 98 (2001).

[24] G.R. No. 140079, March 31, 2005, 454 SCRA 462.

[25] *Id.* at 472-473.

in the prosecution of the labor cases upon which the 5% special assessment fee was based. They failed to do so, even when they requested time, on several occasions, to submit the necessary documents. Besides, when petitioners filed a motion for reconsideration assailing the act of the BLR in ruling on the propriety of the litigation expenses, such action satisfied the requirement of due process. As the Court has consistently held, where the parties were given the opportunity to seek a reconsideration of the action or ruling complained of, they cannot claim denial of due process of law.[26]

Secondly, petitioners are estopped from assailing the jurisdiction of the BLR to rule on the propriety of the litigation expenses. Nary a howl of protest or shout of defiance spewed forth from petitioners' lips when the BLR took cognizance of the case and directed them to submit documents in support of the alleged litigation expenses. Petitioners filed a Compliance with the BLR's directive without raising an objection.

Thirdly, the BLR is clothed with ample authority to rule, *motu proprio*, on the propriety of the litigation expenses. The authority of the BLR is found in Article 226 of the Labor Code of the Philippines, which reads:

> Art. 226. *Bureau of Labor Relations*. – The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of the Department of Labor shall have original and exclusive authority to act, *at their own initiative* or upon request of either or both parties, on all inter-union and *intra-union conflicts*, x x x. (emphasis supplied)

As held by the Court in *La Tondeña Workers Union v. Secretary of Labor*, intra-union conflicts such as examinations of accounts are under the jurisdiction of the BLR.[27]

Fourthly, even though the issue initially raised on appeal was limited to the Order of the DOLE-NCR Regional Director

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[26] *Amarillo v. Sandiganbayan,* 444 Phil. 487 (2003); *Toh v. Court of Appeals*, 398 Phil. 793, 800 (2000); *NAPOLCOM v. Inspector Bernabe*, 387 Phil. 819, 827 (2000).

[27] G.R. No. 96821, December 9, 1994, 239 SCRA 117, 124.

to hold a general membership meeting, since the petitioners admitted during the BLR conference on September 22, 1999 that such meeting was no longer feasible, the BLR was justified in taking cognizance of the case to resolve the issue of the propriety of the litigation expenses upon which the 5% special assessment fee was based. Considering that petitioners admitted on appeal that the case was limited to the audit and accounting of the litigation expenses incurred, such matter was open to evaluation.

Indeed, hearings and resolutions of labor disputes are not governed by the strict and technical rules of evidence and procedure observed in the regular courts of law. Technical rules of procedure are not applicable in labor cases, but may apply only by analogy or in a suppletory character, for instance, when there is a need to attain substantial justice and an expeditious, practical and convenient solution to a labor problem.[28] The BLR was therefore empowered to rule on the same to avoid further delay of the case. Clearly, consideration of the issue became necessary to arrive at a just decision and complete resolution of the case.

Fifthly, no grave abuse of discretion can be ascribed to the BLR in denying petitioners' Statement of Receipts and Disbursements as proof of litigation expenses incurred since petitioners failed to submit supporting receipts and other documents. Truly, the BLR could only give credence to actual expenses supported by receipts and which appear to have been genuinely expended in connection with the labor cases. The expenses must be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable.[29] It cannot be based simply on mere allegation without any tangible proof, such as receipts or other documentary proofs to support such claim.

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[28] *Sime Darby Employees Association v. National Labor Relations Commission*, G.R. No. 148021, December 6, 2006, 510 SCRA 204, 42; *ABD Overseas Manpower Corporation v. National Labor Relations Commission*, 350 Phil. 92, 104 (1998).

[29] See *Sps. Quisumbing v. Manila Electric Company*, 429 Phil. 727, 747 (2002); *Fernandez v. Fernandez*, 416 Phil. 322, 343 (2001).

Besides, it is absurd to consider expenses for representation and entertainment, membership dues to PVBEU-NUBE, Christmas gifts, advertisements and streamers as litigation expenses. As the BLR aptly stated, the 5% special assessment fee was not intended to form a general fund for the union, but for expenses incurred in the prosecution of the labor cases. Petitioners' failure to substantiate their claim of actual litigation expenses incurred in the prosecution of labor cases, by not presenting in evidence the actual receipts of such expenses and the relevance thereof, did not help their cause.

Lastly, the order for restitution was proper since the petitioners failed to prove the justification for the deduction of the 5% special assessment fee from the members' settlement amount. Restitution is defined as the "act of making good or giving an equivalent for any loss, damage or injury; and indemnification.[30] The Compromise Agreement was entered into, not to benefit the union, but to settle the claims and for the welfare of the union members.

In fine, the CA did not commit any error in upholding the Resolution of the BLR disallowing the 5% special assessment fee for petitioners' failure to support the alleged litigation expenses upon which the 5% special assessment fee was based.

WHEREFORE, the instant petition is *DENIED*. The Decision dated January 29, 2002 and Resolution dated June 27, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 63688 are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

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[30] BLACK'S *LAW DICTIONARY* (Fifth Edition).

THIRD DIVISION

[G.R. No. 155647. November 23, 2007]

METROPOLITAN BANK & TRUST COMPANY, *petitioner, vs.* **JIMMY GO and BEMJAMIN GO BAUTISTA** ***alias*** **BENJAMIN GO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW, PROPER. —** In an appeal via *certiorari*, only questions of law may be raised because this Court is not a trier of facts. Metrobank wants to make this case an exception to the rule, as it attributes to the Office of the City Prosecutor of Manila, the Secretary of Justice, and the Court of Appeals a misapprehension of the facts. Unfortunately, there is no adequate support for this imputation.

2. **CRIMINAL LAW; REVISED PENAL CODE; ESTAFA UNDER PAR. B, ART. 315, IN RELATION TO SEC. 13 OF THE TRUST RECEIPTS LAW; ELEMENTS; NOT PRESENT IN CASE AT BAR. —** In order that respondents Jimmy and Benjamin Go may be validly prosecuted for estafa under Article 315, paragraph 1(b) of the Revised Penal Code, in relation to Section 13 of the Trust Receipts Law, the following elements must be established: (a) they received the subject goods in trust or under the obligation to sell the same and to remit the proceeds thereof to Metrobank, or to return the goods if not sold; (b) they misappropriated or converted the goods and/or the proceeds of the sale; (c) they performed such acts with abuse of confidence to the damage and prejudice of Metrobank; and (d) demand was made on them by Metrobank for the remittance of the proceeds or the return of the unsold goods. The Office of the City Prosecutor and the Secretary of Justice had identical findings that the element of misappropriation or conversion is absent, and that Jimmy and Benjamin Go could not deliver the proceeds of the sale of the merchandise to Metrobank because the goods remained unsold. Both offices similarly found that the failure of the respondents to account for the proceeds of the sale or of the goods only created a disputable presumption that either the proceeds or the goods

themselves were converted or misappropriated, but the presumption was overturned when the goods were offered to be inventoried and returned as they remained intact in the warehouse at the Bataan Export Processing Zone. Accordingly, they both ruled that the liability of Jimmy and Benjamin Go was merely civil in nature, and the criminal complaints were dismissed for lack of probable cause. The prosecution for estafa under Article 315, paragraph 1(b) of the Revised Penal code, cannot prosper because the second (misappropriation/ conversion) and the fourth (demand) elements of the offense are not present.

3. **COMMERCIAL LAW; TRUST RECEIPTS LAW; CONSTRUCTION; WHERE TRUST RECEIPTS IS IN THE NATURE OF CONTRACT OF ADHESION, THE SAME IS STRICTLY INTERPRETED AGAINST THE PARTY WHO PREPARED THE DOCUMENT. —** The trust receipts subject of this case partake of the nature of contracts of adhesion. A contract of adhesion is defined as one in which one party imposes a ready-made form of contract which the other party may accept or reject, but which the latter cannot modify; one party prepares the stipulations in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation, and resulting in deprivation of the latter of the opportunity to bargain on equal footing. In this case, the trust receipts were prepared solely by Metrobank with Jimmy and Benjamin Go having no choice but to adhere entirely to their provisions. In fact, the trust receipts stipulated that the goods subject thereof were the exclusive property of Metrobank, contrary to the essence of a trust receipt. A trust receipt is considered a security transaction designed to provide financial assistance to importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased. It is a document in which is expressed a security transaction where the lender, having no prior title to the goods on which the lien is to be constituted, and not having possession over the same since possession thereof remains in the borrower, lends his money to the borrower on security of the goods which the borrower is privileged to sell, clear of the lien, with an agreement to pay all or part of the

proceeds of the sale to the lender. It is a security agreement pursuant to which a bank acquires a "security interest" in the goods. It secures a debt, and there can be no such thing as security interest that secures no obligation. The subject trust receipts, being contracts of adhesion, are not *per se* invalid and inefficacious. But should there be ambiguities therein, such ambiguities are to be strictly construed against Metrobank, the party that prepared them.

4. **ID.; ID.; VIOLATION; DISHONESTY AND ABUSE OF CONFIDENCE IN HANDLING OF MONEY OR GOOD TO THE PREJUDICE OF ANOTHER MUST BE SUFFICIENTLY PROVED. —** As to the other obligations under the trust receipts adapted from Section 9 of the Trust Receipts Law, there is no sufficient evidence proffered by Metrobank that Jimmy and Benjamin Go had actually violated them. What the law punishes is the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another, whether the latter is the owner. The *malum prohibitum* nature of the offense notwithstanding, the intent to misuse or misappropriate the goods or their proceeds on the part of Jimmy and Benjamin Go should have been proved. Unfortunately, no such proof appears on record. In the prosecution of criminal cases, it is the complainant who has the burden to prove the elements of the crime which the respondents are probably guilty of.

5. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; FINDINGS OF THE OFFICE OF THE CITY PROSECUTOR, AFFIRMED IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION. —** There is neither error nor grave abuse of discretion which can be attributed to the Office of the City Prosecutor of Manila when it dismissed the criminal complaints for lack of probable cause. In the absence of grave abuse of discretion on the part of the Office of the City Prosecutor of Manila, this Court must not interfere in its findings, considering that full discretionary authority has been delegated to the latter in determining whether or not a criminal charge should be instituted. With greater reason should we respect this finding, as it had been uniformly affirmed not only by the reviewing prosecutor but also by the Secretary of Justice and by the Court of Appeals.

APPEARANCES OF COUNSEL

Perez Calima Law Offices for petitioner.
Arturo S. Santos for respondents.

D E C I S I O N

NACHURA, *J.*:

Petitioner Metropolitan Bank & Trust Company (Metrobank) urges this Court to review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure the Decision dated August 15, 2002 and the Resolution dated October 15, 2002, both of the Court of Appeals in CA-G.R. SP No. 61544.[1]

The Facts of the Case

On September 30, 1988, Metrobank, through its Assistant Vice- President Leonardo B. Lejano, executed a Credit Line Agreement [2] in favor of its client, BGB Industrial Textile Mills, Inc. (BGB) in the total amount of ₱10,000,000.00. As security for the obligation, private respondent Benjamin Go (now deceased), being an officer of BGB, executed a Continuing Surety Agreement[3] in favor of Metrobank, binding himself solidarily with BGB to pay Metrobank the said amount of ₱10,000,000.00.

In November 1988, private respondent Jimmy Go, as general manager of BGB, applied for eleven (11) commercial letters of credit to cover the shipment of raw materials and spare parts. Accordingly, Metrobank issued the 11 irrevocable letters of credit to BGB. The merchandise/shipments were delivered to and accepted by BGB on different dates. Consequently, 11 trust receipts were executed by BGB thru Jimmy Go and Benjamin Go, as entrustees, in favor of Metrobank as entruster. The letters of credit and their corresponding trust receipts are listed below:

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[1] Petition dated December 1, 2002; *rollo*, pp. 12-47.

[2] *Rollo*, p. 71.

[3] *Id.* at 72.

Letter of Credit No.	Expiry Date of Trust Receipt	Amount of Trust Receipt
DIV88-1941NC[4]	Feb. 18, 1989	₱1,625,395.38[5]
DIV88-1940NC[6]	March 04, 1989	₱3,011,249.77[7]
DIV88-1925NC[8]	March 07, 1989	₱ 508,252.16[9]
DIV88-1926NC[10]	March 07, 1989	₱ 626,165.28[11]
DIV88-1924NC[12]	March 14, 1989	₱ 452,289.55[13]
DIV88-1930NC[14]	April 04, 1989	₱ 660,348.00[15]
DIV88-1931NC[16]	April 04, 1989	₱ 594,313.20[17]
DIV88-1923NC[18]	April 10, 1989	₱ 358,113.33[19]
DIV88-1951NC[20]	April 12, 1989	₱1,720,882.07[21]

[4] *Id*. at 130.

[5] *Id*. at 133.

[6] *Id*. at 73.

[7] *Id*. at 76.

[8] *Id*. at 148.

[9] *Id*. at 151.

[10] *Id*. at 82.

[11] *Id*. at 85.

[12] *Id*. at 139.

[13] *Id*. at 142.

[14] *Id*. at 158.

[15] *Id*. at 161.

[16] *Id*. at 102.

[17] *Id*. at 105.

[18] *Id*. at 121.

[19] *Id*. at 124.

[20] *Id*. at 91.

[21] *Id*. at 96.

DIV88-1932NC[22]	April 19, 1989	₱ 244,250.26[23]
DIV88-1952NC[24]	May 25, 1989	₱1,413,999.11[25]

By the terms of the trust receipts, BGB agreed to hold the goods in trust for Metrobank and, in case of sale of the goods, to hand the proceeds to the bank to be applied against the total obligation object of the trust receipts.

On maturity dates of the trust receipts, because the goods remained unsold, BGB and Jimmy and Benjamin Go failed to satisfy their obligation. Metrobank filed three (3) separate complaints against BGB, for collection of sum of money equivalent to the value of the goods subject of the trust receipts. The cases were filed with the Makati Regional Trial Court and docketed as Civil Case Nos. 93-496, 93-509, and 93-910.

Later, Metrobank instituted 11 criminal charges against Jimmy and Benjamin Go for violation of Presidential Decree No. 115 (Trust Receipts Law) before the Office of the City Prosecutor of Manila.

After preliminary investigation, the Office of the City Prosecutor of Manila issued a Resolution[26] in I.S. Nos. 94D-09945-55 dated May 31, 1995 recommending the dismissal of the case, *viz.*:

The liability of respondents is only civil in nature in the absence of commission and misappropriation. Respondents are liable ex-contractu for breach of the Letters of Credit–Trust Receipt.

In the instant case, the goods subject of the trust receipts have not been sold, so there is (sic) no proceeds to deliver to the bank.

Granting for the sake of argument that respondents failed to account for said goods, the failure is only a mere disputable presumption

[22] *Id*. at 169.

[23] *Id*. at 173.

[24] *Id*. at 111.

[25] *Id*. at 121.

[26] *Id*. at 62-65

which has been overturned by the submission of an inventory showing that the goods are intact and in the warehouse in Bataan.

Considering that the goods are still intact in the [respondents'] warehouse at the Bataan Export Processing Zone, considering further the fact that the goods were never processed, and considering finally that the goods have not been sold, ergo, there is no violation of [the] Presidential Decree. As already stated, respondents' liability is only civil in nature.

On June 22, 1995, Metrobank filed a motion for reconsideration, but the same was denied for lack of merit in the Review Resolution[27] dated October 25, 1999. Metrobank appealed to the Department of Justice. On September 5, 2000, then Acting Secretary of Justice, Ramon J. Liwag, rendered a Resolution[28] dismissing the appeal on two grounds: (1) the resolution issued by the City Fiscal is in accord with law and evidence; and (2) Metrobank failed to submit proof of service of a copy of the appeal to the prosecutor either by personal service or registered mail as required by Section 3 of Department Order No. 223.

Metrobank went to the Court of Appeals via a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. However, the Court of Appeals dismissed the petition for lack of merit. Metrobank moved to reconsider the dismissal, but the motion was denied. Hence, this petition.

The Issues

The reasons given by Metrobank for the allowance of its petition are as follows:

First Reason

BOTH THE RESOLUTION AND THE DECISION OF THE COURT OF APPEALS DELIBERATELY IGNORED THE GLARING VIOLATION COMMITTED BY THE RESPONDENTS OF BOTH THE PROVISIONS OF THE SUBJECT TRUST RECEIPTS AND OF *PRESIDENTIAL DECREE NO. 115.*

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[27] *Id*. at 66-67.

[28] *Id*. at 60-61.

Second Reason

BOTH THE RESOLUTION AND THE DECISION OF THE COURT OF APPEALS DELIBERATELY IGNORED THE FACT THAT THE OFFER MADE BY THE RESPONDENTS TO ALLEGEDLY RETURN THE SUBJECT MERCHANDISE IS A MERE AFTERTHOUGHT.

Third Reason

BOTH THE RESOLUTION AND THE DECISION DELIBERATELY IGNORED THE FACT THAT A VIOLATION OF *PRESIDENTIAL DECREE NO. 115*, AS SETTLED JURISPRUDENCE HOLD, IS AN OFFENSE AGAINST PUBLIC ORDER AND NOT MERELY AGAINST PROPERTY.[29]

Petitioner Metrobank ascribed error to the Office of the City Prosecutor of Manila when it found that the liability of respondents Jimmy and Benjamin Go was only civil in nature, *i.e.*, to return the merchandise subject of the 11 trust receipts, considering that they were never sold, and to pay their obligation under the letters of credit. Citing jurisprudence,[30] it contends that Section 13,[31] the penal provision of the Trust Receipts Law, encompasses any act violative of an obligation covered by the trust receipt and is not limited to transactions in goods which

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[29] *Id.* at 27-28.

[30] *Allied Banking Corporation v. Ordoñez,* G.R. No. 82495, December 10, 1990, 192 SCRA 246, 254-255.

[31] SECTION 13. *Penalty clause.* – **The failure of an entrustee to turn over the proceeds of the sale of the goods, documents, or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents, or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred and fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code.** If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense. (Emphasis supplied)

are to be sold (retailed), reshipped, stored, and processed as a component of a product ultimately sold. It posits that a violation of the Trust Receipts Law can be committed by mere failure of the entrustee to discharge any of the obligations imposed upon him under Section 9[32] of the said law.

According to Metrobank, Jimmy and Benjamin Go's offer to deliver the merchandise subject of the trust receipts cannot exculpate them from criminal liability because they failed to offer to surrender and to actually surrender the goods upon maturity of the trust receipts and even when several demands were made upon them. Stated differently, it was Metrobank's position that there was already a violation of the Trust Receipts Law committed by Jimmy and Benjamin Go even before they made their offer to return the merchandise to Metrobank in their pleadings before the Office of the City Prosecutor of Manila. Metrobank claimed that the belated offer of Jimmy and Benjamin Go to return the goods was a mere afterthought in order to evade indictment and prosecution.

Metrobank further argues that the dismissal by the Office of the City Prosecutor of Manila of the 11 criminal charges for violation of the Trust Receipts Law against Jimmy and Benjamin Go for want of probable cause, grounded on the absence of conversion or misappropriation, is tantamount to holding that a violation of the Trust Receipts Law is merely a crime against property and not against public order, contrary to prevailing jurisprudence.

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[32] SECTION 9. *Obligations of the entrustee.* – The entrustee shall (1) hold the goods, documents, or instruments in trust for the entruster and shall dispose of them strictly in accordance with the terms and conditions of the trust receipt; (2) receive the proceeds in trust for the entruster and turn over the same to the entruster to the extent of the amount owing to the entruster or as appears on the trust receipt; (3) insure the goods for their total value against loss from fire, theft, pilferage, or other casualties; (4) keep said goods or proceeds thereof whether in money or whatever form, separate and capable of identification as property of the entruster; (5) return the goods, documents, or instruments in the event of non-sale or upon demand of the entruster; and (6) observe all other terms and conditions of the trust receipt not contrary to the provisions of this Decree.

The Ruling of the Court

After a judicious study of the records of this case, this Court does not find any cogent reason to reverse the assailed Decision and Resolution of the Court of Appeals, and the Resolutions of the Office of the City Prosecutor of Manila and of the Secretary of Justice.

First. The issues raised in this petition are substantially factual. Essentially, Metrobank urges this Court to determine whether or not Jimmy and Benjamin Go failed to turn over the proceeds of the sale of the goods or to return them, if unsold, in accordance with the terms of the 11 trust receipts. This failure, Metrobank adds, amounts to a violation of Section 13 of the Trust Receipts Law and warrants the prosecution of respondents for estafa under Article 315, paragraph 1(b)[33] of the Revised Penal Code.

In an appeal via *certiorari*, only questions of law may be raised because this Court is not a trier of facts.[34] Metrobank wants to make this case an exception to the rule, as it attributes to the Office of the City Prosecutor of Manila, the Secretary of Justice, and the Court of Appeals a misapprehension of the facts. Unfortunately, there is no adequate support for this imputation.

In order that respondents Jimmy and Benjamin Go may be validly prosecuted for estafa under Article 315, paragraph 1(b)

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[33] Art. 315. *Swindling (estafa)* – x x x

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 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. (Emphasis supplied.)

[34] *Bank of Commerce v. Serrano,* G.R. No. 151895, February 16, 2005, 451 SCRA 484, 492; *Milestone Realty and Co., Inc. v. Court of Appeals,* 431 Phil. 119, 132 (2002).

of the Revised Penal Code, in relation to Section 13 of the Trust Receipts Law, the following elements must be established: (a) they received the subject goods in trust or under the obligation to sell the same and to remit the proceeds thereof to Metrobank, or to return the goods if not sold; (b) they misappropriated or converted the goods and/or the proceeds of the sale; (c) they performed such acts with abuse of confidence to the damage and prejudice of Metrobank; and (d) demand was made on them by Metrobank for the remittance of the proceeds or the return of the unsold goods.[35]

The Office of the City Prosecutor and the Secretary of Justice had identical findings that the element of misappropriation or conversion is absent, and that Jimmy and Benjamin Go could not deliver the proceeds of the sale of the merchandise to Metrobank because the goods remained unsold. Both offices similarly found that the failure of the respondents to account for the proceeds of the sale or of the goods only created a disputable presumption that either the proceeds or the goods themselves were converted or misappropriated, but the presumption was overturned when the goods were offered to be inventoried and returned as they remained intact in the warehouse at the Bataan Export Processing Zone. Accordingly, they both ruled that the liability of Jimmy and Benjamin Go was merely civil in nature, and the criminal complaints were dismissed for lack of probable cause.

Declaring that the Office of the City Prosecutor did not commit grave abuse of discretion, the Court of Appeals likewise made a factual finding that Jimmy and Benjamin Go offered to return the goods even prior to the filing of the civil cases against them, although the offer was not accepted because Metrobank appeared more interested in collecting the amount it advanced under the letters of credit. It also found that Metrobank failed to prove its demand for the return of the goods.

Thus, even if we accommodate the petitioner's plea to review the case's factual milieu, we still have to agree with the findings

[35] *Ching v. Court of Appeals*, 387 Phil. 28, 40 (2000).

of fact of the Office of the City Prosecutor and of the Court of Appeals. These findings appear to be supported by the evidence on record. The prosecution for estafa under Article 315, paragraph 1(b) of the Revised Penal code, cannot prosper because the second (misappropriation/conversion) and the fourth (demand) elements of the offense are not present.

Under the pro-forma trust receipts subject of this case, Jimmy and Benjamin Go, as entrustees, agreed to hold the goods (whether in their original, processed or manufactured state, and irrespective of the fact that a different merchandise is used in completing such manufacture) in trust for Metrobank, as its exclusive property, with liberty to sell them for cash only for the latter's account, but without authority to make any other disposition whatsoever of the said goods or any part (or the proceeds) thereof by way of conditional sale, pledge, or otherwise. They further agreed that in case of sale of the goods, or if the goods are used for the manufacture of finished products and are sold, they will turn over the proceeds to Metrobank to be applied against their total obligation under the trust receipts and for the payment of other debts to Metrobank.

It is noteworthy that Jimmy and Benjamin Go processed the goods into textiles, to be sold for cash only, and that not all of the merchandise were sold such that they were able to remit only enough proceeds to fully settle their accounts under Letters of Credit-Trust Receipt Nos. 1922 and 1939, which were not subject of the 11 criminal complaints filed by Metrobank. Metrobank wants us to interpret this as confirmation that Jimmy and Benjamin Go had sold all the other merchandise but deliberately failed to turn over their corresponding proceeds. However, the Court sees this circumstance for what it simply and truly is, *i.e.*, that Jimmy and Benjamin Go exerted efforts to comply with their obligation to sell the merchandise and remit the proceeds thereof. Unfortunately, the rest of the merchandise remained unsold in the warehouse at the Bataan Export Processing Zone, such that no proceeds thereof could be remitted to Metrobank.

This Court also observes that the same trust receipts provide that Metrobank has the option to take possession of the goods upon default of Jimmy and Benjamin Go on any of their obligations and to sell them, with the proceeds thereof to be applied to the principal obligation and also to the expenses to be incurred by Metrobank in selling the same.[36] But Metrobank did not exercise this option. Instead, it filed three (3) complaints to collect the value of the merchandise. Jimmy and Benjamin Go offered to return the merchandise to Metrobank even before these civil cases were filed. Then, Jimmy and Benjamin Go reiterated the offer to return the goods in their answer to the civil complaints. Again, Metrobank did not accept the offer, and instead filed the 11 criminal complaints for alleged violation of the Trust Receipts Law to be prosecuted as estafa under Article 315, paragraph 1(b) of the Revised Penal Code. This chain of events validates the finding of the Court of Appeals that Metrobank is not interested in the return of the goods but only in collecting the money it extended to the respondents.

Furthermore, the trust receipts uniformly contain the following provision:

> Failure on the part of the ENTRUSTEE to account to the BANK/ ENTRUSTER for the goods/documents/instruments received in trust and/or for the proceeds of the sale thereof within thirty (30) days from demand made by the BANK/ENTRUSTER shall constitute an admission that the ENTRUSTEE has converted or misappropriated said goods/documents/instruments for the personal benefit of the ENTRUSTEE and to the detriment and prejudice of the BANK/ ENTRUSTER, and the BANK/ENTRUSTER is forthwith authorized to file and prosecute the corresponding and appropriate action, civil or criminal, against the ENTRUSTEE.[37]

Yet, not one of the 11 criminal complaints was accompanied by a demand letter to show that Metrobank demanded the remittance of the proceeds of the sale of the goods or the return of goods, if unsold. We find this deficiency exceptionally revealing,

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[36] 3rd paragraph of the trust receipts, *supra*.

[37] 14th paragraph of the trust receipts, *supra*.

especially considering that the said trust receipts had different maturity dates.

Second. The trust receipts subject of this case partake of the nature of contracts of adhesion. A contract of adhesion is defined as one in which one party imposes a ready-made form of contract which the other party may accept or reject, but which the latter cannot modify; one party prepares the stipulations in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation, and resulting in deprivation of the latter of the opportunity to bargain on equal footing.[38]

In this case, the trust receipts were prepared solely by Metrobank with Jimmy and Benjamin Go having no choice but to adhere entirely to their provisions. In fact, the trust receipts stipulated that the goods subject thereof were the exclusive property of Metrobank, contrary to the essence of a trust receipt.

A trust receipt is considered a security transaction designed to provide financial assistance to importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased. It is a document in which is expressed a security transaction where the lender, having no prior title to the goods on which the lien is to be constituted, and not having possession over the same since possession thereof remains in the borrower, lends his money to the borrower on security of the goods which the borrower is privileged to sell, clear of the lien, with an agreement to pay all or part of the proceeds of the sale to the lender. It is a security agreement pursuant to which a bank acquires a "security interest" in the goods. It secures a debt, and there can be no such thing as security interest that secures no obligation.[39]

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[38] *Philippine Commercial International Bank v. Court of Appeals,* 325 Phil. 588, 597 (1996).

[39] *Ching v. Court of Appeals, supra* note 35, at 43-44, citing *Samo v. People,* 5 SCRA 354 (1962) and *Vintola v. Insular Bank of Asia and America,* 150 SCRA 578 (1987).

The subject trust receipts, being contracts of adhesion, are not *per se* invalid and inefficacious. But should there be ambiguities therein, such ambiguities are to be strictly construed against Metrobank, the party that prepared them.[40]

There is no doubt as to the obligation of Jimmy and Benjamin Go to turn over the proceeds of the sale of the goods or to return the unsold goods. However, an ambiguity exists as to when this obligation arises, whether upon maturity of the trust receipts or upon demand by Metrobank. A strict construction of the provisions of the contracts of adhesion dictates that the reckoning point should be the demand made by Metrobank.

As already discussed above, Jimmy and Benjamin Go turned over the proceeds of the goods sold under the two letters of credit/trust receipts which were not subject of the criminal cases. They also made the offer to return the unsold goods covered by the eleven trust receipts even before the three civil cases were filed against them. The offer was reiterated in their answer. More importantly, the unsold goods remained intact, contrary to the claim of Metrobank that they had misappropriated or converted the same. While there was a stipulation of a presumptive admission on the part of Jimmy and Benjamin Go of misappropriation or conversion upon failure to account for the goods or for the proceeds of the sale thereof within 30 days from demand, which will authorize Metrobank to pursue legal remedies in court, the fact of demand made by Metrobank was not established by competent evidence. Except for the bare allegation that it did so in the 11 criminal complaints, no letter of demand accompanied all of the criminal complaints.

As to the other obligations under the trust receipts adapted from Section 9 of the Trust Receipts Law, there is no sufficient evidence proffered by Metrobank that Jimmy and Benjamin Go had actually violated them. What the law punishes is the dishonesty and abuse of confidence in the handling of money

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[40] *Pilipino Telephone Corporation v. Tecson,* G.R. No. 156966, May 7, 2004, 428 SCRA 378, 380; *National Development Company v. Madrigal Wan Hai Lines Corporation*, 458 Phil. 1038, 1050-1051 (2003).

or goods to the prejudice of another, whether the latter is the owner.[41] The *malum prohibitum* nature of the offense notwithstanding, the intent to misuse or misappropriate the goods or their proceeds on the part of Jimmy and Benjamin Go should have been proved. Unfortunately, no such proof appears on record.[42]

In the prosecution of criminal cases, it is the complainant who has the burden to prove the elements of the crime which the respondents are probably guilty of.[43] Obviously, Metrobank failed to discharge this burden.

Indeed, there is neither error nor grave abuse of discretion which can be attributed to the Office of the City Prosecutor of Manila when it dismissed the criminal complaints for lack of probable cause. In the absence of grave abuse of discretion on the part of the Office of the City Prosecutor of Manila, this Court must not interfere in its findings, considering that full discretionary authority has been delegated to the latter in determining whether or not a criminal charge should be instituted.[44] With greater reason should we respect this finding, as it had been uniformly affirmed not only by the reviewing prosecutor but also by the Secretary of Justice and by the Court of Appeals.

WHEREFORE, the petition is *DENIED* for lack of merit. Accordingly, the assailed Decision dated August 15, 2002 and the Resolution dated October 15, 2002 of the Court of Appeals in CA-G.R. SP No. 61544 are *AFFIRMED.*

SO ORDERED.

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

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[41] *Metropolitan Bank and Trust Company v. Tonda,* 392 Phil. 797, 813 (2000).

[42] *Colinares v. Court of Appeals*, 394 Phil. 106, 123 (2000).

[43] *Kilosbayan, Inc. v. COMELEC,* 345 Phil. 1140, 1176 (1997).

[44] *Serapio v. Sandiganbayan,* 444 Phil. 499, 528-529 (2003); *Metropolitan Bank and Trust Company v. Tonda, supra* note 41, at 814.

THIRD DIVISION

[G.R. No. 156668. November 23, 2007]

KIMBERLY-CLARK (PHILS.), INC., *petitioner, vs.* **SECRETARY OF LABOR, AMBROCIO GRAVADOR, ENRICO PILI, PAQUITO GILBUENA, ROBERTO DEL MUNDO, ALMARIO ROMINQUIT, ANTONIO BALANO, RIZALDY GAPUZ, RUFINO FELICIANO, RESTITUTO DEAROZ, FERMIN BERNIL, DANIEL ISIDRO, LEOPOLDO SUNGA, ANTONIO SONGRONES, EDMUND MAPANOO, SALVADOR SAN MIGUEL, SANTOS CANTOS, JR., EMILIO DAGARAG, NOEL MULDONG, FELIXBERTO DELA CRUZ, ALBERTO MANAHAN, LUNA ESPIRITU, DONATO BAQUILOD, FLORENCIO CORREA, CAMILO LEONARDO, GENER MANGIBUNOG, REYNALDO MIRANDA, ARNEL ZULUETA, PEDRO ODEVILLAS, CONRADO DICHOSO, NELSON ALAMO, ROMEO LIGUAN, RAYCHARD CARNAJE, FELINO GUANEZ, ANTONIO MARTIN, WALLYFREDO ALZONA, VICTOR ABANDO, ALFREDO AUSTRIA, NESTOR SEPRADO, RICHARD GILBUENA, EDWIN SILAYCO, JOSEPH MARCOS, NOEL OMALIN, DANILO DORADO, LUISITO DE JESUS, EFREN SUMAGUE, CARLOS PILI, MIGUELITO ROA, and KILUSAN-OLALIA, and SHERIFF P. PAREDES,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; REGULAR EMPLOYMENT; RECKONING DATE IS HIRING DATE AND STATUS ATTAINED BY OPERATION OF LAW; BENEFIT OF REGULARIZATION EXTENDS TO THOSE WHO ARE SIMILARLY SITUATED.** — Considering that an employee becomes regular with respect to the activity in which he is employed one year after he is employed, the reckoning date for determining his regularization

is his hiring date. x x x The concerned employees attained regular status by operation of law. Further, the grant of the benefit of regularization should not be limited to the employees who questioned their status before the labor tribunal/court and asserted their rights; it should also extend to those similarly situated. There is, thus, no merit in petitioner's contention that only those who presented their circumstances of employment to the courts are entitled to regularization.

2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED. —** As to Kimberly's assertions that some of the employees were already recalled, reassigned or replaced by the RANK Manpower Services, and that some did not return to work, the Court notes that these are questions of fact. Basic is the rule that, in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised, except, if the factual findings of the appellate court are mistaken, absurd, speculative, conjectural, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the court of origin, which is not so in the instant case. The DOLE and the appellate court herein are uniform in their findings.

3. **ID.; ID.; ID.; FACTUAL FINDINGS OF LABOR TRIBUNAL, RESPECTED. —** Oft-repeated is the rule that appellate courts accord the factual findings of the labor tribunal not only respect but also finality when supported by substantial evidence, unless there is showing that the labor tribunal arbitrarily disregarded evidence before it or misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated. Likewise, the appellate court cannot substitute its own judgment or criterion for that of the labor tribunal in determining wherein lies the weight of evidence or what evidence is entitled to belief.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma and Carbonell and *Laguesma Magsalin Consulta & Gastardo Law Offices* for petitioner.

Potenciano A. Flores, Jr. for Kilusan-Olalia, *et al.*

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the June 27, 2002 Decision[1] of the appellate court in CA-G.R. SP No. 62257, and the January 8, 2003 Resolution[2] denying the motion for reconsideration thereof.

On the recommendation of the Division Clerk of Court and in the interest of orderly administration of justice, the Court initially consolidated this case with G.R. Nos. 149158-59 entitled *Kimberly Independent Labor Union for Solidarity Activism and Nationalism (KILUSAN)-Organized Labor Associations in Line Industries and Agriculture (OLALIA), et al. v. Court of Appeals, et al.* We, however, already disposed of the issue in G.R. Nos. 149158-59 in the Court's Resolution promulgated on July 24, 2007.[3] Left for the Court to resolve then are the matters raised in the instant petition.

We pertinently quote from the said July 24, 2007 Resolution the facts, thus:

> On June 30, 1986, the Collective Bargaining Agreement (CBA) executed by and between Kimberly-Clark (Phils.), Inc., (Kimberly), a Philippine-registered corporation engaged in the manufacture, distribution, sale and exportation of paper products, and United Kimberly-Clark Employees Union-Philippine Transport and General Workers' Organization (UKCEO-PTGWO) expired. Within the freedom period, on April 21, 1986, KILUSAN-OLALIA, then a

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[1] Penned by Associate Justice Eugenio S. Labitoria (retired), with Associate Justices Juan Q. Enriquez, Jr. and Mariano C. del Castillo concurring; *rollo*, pp. 42-51.

[2] *Id*. at 53-54.

[3] *Id*. at 192-210. In the said Resolution, the Court ordered the de-consolidation of the cases for they do not involve a common question of law. After resolving the procedural issues raised in G.R. Nos. 149158-59, the Court remanded the said cases to the Court of Appeals for adjudication on the merits.

newly-formed labor organization, challenged the incumbency of UKCEO-PTGWO, by filing a petition for certification election with the Ministry (now Department) of Labor and Employment (MOLE), Regional Office No. IV, Quezon City.

A certification election was subsequently conducted on July 1, 1986 with UKCEO-PTGWO winning by a margin of 20 votes over KILUSAN-OLALIA. Remaining as uncounted were 64 challenged ballots cast by 64 casual workers whose regularization was in question. KILUSAN-OLALIA filed a protest.

On November 13, 1986, MOLE issued an Order stating, among others, that the casual workers not performing janitorial and yard maintenance services had attained regular status on even date. UKCEO-PTGWO was then declared as the exclusive bargaining representative of Kimberly's employees, having garnered the highest number of votes in the certification election.

On March 16, 1987, KILUSAN-OLALIA filed with this Court a petition for *certiorari* which was docketed as G.R. No. 77629 assailing the Order of the MOLE with prayer for a temporary restraining order (TRO).

During the pendency of G.R. No. 77629, Kimberly dismissed from service several employees and refused to heed the workers' grievances, impelling KILUSAN-OLALIA to stage a strike on May 17, 1987. Kimberly filed an injunction case with the National Labor Relations Commission (NLRC), which prompted the latter to issue temporary restraining orders (TRO's). The propriety of the issuance of the TRO's was again brought by KILUSAN-OLALIA to this Court via a petition for *certiorari* and prohibition which was docketed as G.R. No. 78791.

G.R. Nos. 77629 and 78791 were eventually consolidated by this Court and decided on May 9, 1990. The dispositive portion of the decision reads as follows:

> WHEREFORE, judgment is hereby rendered in G.R. No. 77629:
>
> 1. Ordering the med-arbiter in Case No. R04-OD-M-4-15-86 to open and count the 64 challenged votes, and that the union with the highest number of votes be thereafter declared as the duly elected certified bargaining representative of the regular employees of KIMBERLY;

2. Ordering KIMBERLY to pay the workers who have been regularized their differential pay with respect to minimum wage, cost of living allowance, 13th month pay, and benefits provided for under the applicable collective bargaining agreement from the time they became regular employees.

All other aspects of the decision appealed from, which are not so modified or affected thereby, are hereby AFFIRMED. The temporary restraining order issued in G.R. No. 77629 is hereby made permanent.

The petition filed in G.R. No. 78791 is hereby DISMISSED.

SO ORDERED.

x x x x x x x x x

On the Decision of the Court dated May 9, 1990, KILUSAN-OLALIA and 76 individual complainants filed a motion for execution with the DOLE (formerly MOLE). In an Order issued on June 29, 2000, the DOLE considered as physically impossible, and moot and academic the opening and counting of the 64 challenged ballots because they could no longer be located despite diligent efforts, and KILUSAN-OLALIA no longer actively participated when the company went through another CBA cycle. However, the DOLE ordered the payment of the differential wages and other benefits of the regularized workers, to wit:

ACCORDINGLY, let a partial writ of execution issue to enforce payment of the sum of (*sic*) ₱576,510.57 to the 22 individual workers listed in ANNEX A of Kimberly's Comment/Reply dated 31 October 1991 representing their differential pay with respect to the minimum wage, cost of living allowance, 13th month pay and benefits provided under the applicable collective bargaining agreement from the time they became regular employees as above-indicated.

Further, the Bureau of Working Conditions is hereby directed to submit, within twenty (20) days from receipt of this Order, a list of workers who have been regularized and the corresponding benefits owing to them from the time they became regular employees.

SO ORDERED.

Pursuant thereto, on August 1, 2000, the Bureau of Working Conditions (BWC) submitted its report finding 47 out of the 76 complainants as entitled to be regularized.

Kimberly filed a motion for reconsideration of the DOLE Order as well as the BWC Report, arguing in the main that the decision in G.R. Nos. 77629 and 78791 only pertained to casuals who had rendered one year of service as of April 21, 1986, the filing date of KILUSAN-OLALIA's petition for certification election. On December 6, 2000, however, the DOLE denied the motion, disposing of it as follows:

> WHEREFORE, the motion for reconsideration filed by the COMPANY is hereby DENIED for lack of merit. No further motion of the same nature shall be entertained. Further, the Report of computation submitted by the Bureau of Working Conditions is hereby APPROVED and made an integral part of this Order.
>
> Let a writ of execution be issued immediately.
>
> SO ORDERED.

Kimberly, steadfast in its stand, filed a petition for *certiorari* before the appellate court, which was docketed as CA-G.R. SP No. 62257 alleging that the employees who were dismissed due to the illegal strike staged on May 17, 1987 (the subject of G.R. Nos. 149158-59) should not be awarded regularization differentials.

On June 27, 2002, the CA dismissed Kimberly's petition, and disposed of the case as follows:

> WHEREFORE, the instant petition is DISMISSED for failure to show grave abuse of discretion. The questioned orders dated June 29, 2000 and December 6, 2000 of the Secretary of Labor are AFFIRMED. Costs against petitioners.
>
> SO ORDERED.

With the denial of its motion for reconsideration, Kimberly elevated the case before this Court, on the following grounds:

> 1. The Court of Appeals committed serious error in affirming the ruling of the Secretary of Labor that even casual employees who had not rendered one year of service were considered regular employees, thereby nullifying and

disregarding the Honorable Court's Decision dated May 9, 1990 that only casual employees who had rendered at least one (1) year of service were considered regular employees.

2. The Court of Appeals also gravely erred in upholding the ruling of Labor Secretary that persons not party to the petition in G.R. No. 77629 were entitled to regularization differentials, thereby amending the Honorable Court's decision.[4]

Kimberly, in this case, contends that the reckoning point in determining who among its casual employees are entitled to regularization should be April 21, 1986, the date KILUSAN-OLALIA filed a petition for certification election to challenge the incumbency of UKCEO-PTGWO. It posits that in the implementation of the May 9, 1990 Decision in G.R. No. 77629,[5] the DOLE should then exclude the employees who had not rendered at least one (1) year of service from the said date.[6]

Kimberly also argues that the employees who are not parties in G.R. No. 77629 should not be included in the implementation orders. For DOLE to declare this group of employees as regular and to order the payment of differential pay to them is to amend a final and executory decision of this Court.[7]

We do not agree. In G.R. No. 77629, we ruled as follows:

The law [thus] provides for two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed. The individual petitioners herein who have been adjudged to be regular employees fall under

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[4] *Id.* at 195-205.

[5] *Kimberly Independent Labor Union for Solidarity, Activism and Nationalism-Organized Labor Association In Line Industries and Agriculture v. Drilon,* G.R. Nos. 77629 and 78791, May 9, 1990, 185 SCRA 190.

[6] *Rollo*, pp. 28-32.

[7] *Id.* at 33-35.

the second category. These are the mechanics, electricians, machinists, machine shop helpers, warehouse helpers, painters, carpenters, pipefitters and masons. It is not disputed that these workers have been in the employ of KIMBERLY for more than one year at the time of the filing of the petition for certification election by KILUSAN-OLALIA.

Owing to their length of service with the company, these workers became regular employees, by operation of law, one year after they were employed by KIMBERLY through RANK. While the actual regularization of these employees entails the mechanical act of issuing regular appointment papers and compliance with such other operating procedures as may be adopted by the employer, it is more in keeping with the intent and spirit of the law to rule that the status of regular employment attaches to the casual worker on the day immediately after the end of his first year of service. To rule otherwise, and to instead make their regularization dependent on the happening of some contingency or the fulfillment of certain requirements, is to impose a burden on the employee which is not sanctioned by law.

That the first stated position is the situation contemplated and sanctioned by law is further enhanced by the absence of a statutory limitation before regular status can be acquired by a casual employee. The law is explicit. As long as the employee has rendered at least one year of service, he becomes a regular employee with respect to the activity in which he is employed. The law does not provide the qualification that the employee must first be issued a regular appointment or must first be formally declared as such before he can acquire a regular status. Obviously, where the law does not distinguish, no distinction should be drawn.[8]

Considering that an employee becomes regular with respect to the activity in which he is employed one year after he is employed, the reckoning date for determining his regularization is his hiring date. Therefore, it is error for petitioner Kimberly to claim that it is from April 21, 1986 that the one-year period should be counted. While it is a fact that the issue of regularization came about only when KILUSAN-OLALIA filed a petition for

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[8] *Kimberly Independent Labor Union for Solidarity, Activism and Nationalism-Organized Labor Association In Line Industries and Agriculture v. Drilon*, *supra* note 5, at 203-204.

certification election, the concerned employees attained regular status by operation of law.[9]

Further, the grant of the benefit of regularization should not be limited to the employees who questioned their status before the labor tribunal/court and asserted their rights; it should also extend to those similarly situated.[10] There is, thus, no merit in petitioner's contention that only those who presented their circumstances of employment to the courts are entitled to regularization.[11]

As to Kimberly's assertions that some of the employees were already recalled, reassigned or replaced by the RANK Manpower Services, and that some did not return to work, the Court notes that these are questions of fact. Basic is the rule that, in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised,[12] except, if the factual findings of the appellate court are mistaken, absurd, speculative, conjectural, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the court of origin,[13] which is not so in the instant case. The DOLE and the appellate court herein are uniform in their findings.

Finally, oft-repeated is the rule that appellate courts accord the factual findings of the labor tribunal not only respect but also finality when supported by substantial evidence,[14] unless

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[9] *ABS-CBN Broadcasting Corporation v. Nazareno*, G.R. No. 164156, September 26, 2006, 503 SCRA 204, 228; *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, G.R. No. 141717, April 14, 2004, 427 SCRA 408, 420.

[10] *San Miguel Corporation v. National Labor Relations Commission*, G.R. No. 147566, December 6, 2006, 510 SCRA 181, 190-192.

[11] *Rollo*, p. 35.

[12] *Telefunken Semiconductors Employees Union v. Court of Appeals*, 401 Phil. 776, 791 (2000).

[13] *Gau Sheng Phils., Inc. v. Joaquin*, G.R. No. 144665, September 8, 2004, 437 SCRA 608, 616.

[14] *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 594.

there is showing that the labor tribunal arbitrarily disregarded evidence before it or misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated.[15] Likewise, the appellate court cannot substitute its own judgment or criterion for that of the labor tribunal in determining wherein lies the weight of evidence or what evidence is entitled to belief.[16]

WHEREFORE, premises considered, the petition for review on *certiorari* is *DENIED DUE COURSE.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 158073. November 23, 2007]

ALEX M. CADORNIGARA, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, THIRD DIVISION and/or AMETHYST SHIPPING CO., INC., and/or ESCOBAL NAVIERA, CO., S.A.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS; PRIORITIES IN MODES OF SERVICE AND FILING; PURPOSE. — When we crafted Section 11, Rule 13 of the Rules of Court: *Priorities in modes of service and*

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[15] *Mendoza, Jr. v. San Miguel Foods, Inc.*, G.R. No. 158684, May 16, 2005, 458 SCRA 664, 682-683; *Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering,* 460 Phil. 583, 591 (2003); *University of the Immaculate Concepcion v. U.I.C. Teaching and Non-Teaching Personnel and Employees Union*, 414 Phil. 522, 534 (2001).

[16] *Domasig v. National Labor Relations Commission*, 330 Phil. 518, 524 (1996).

filing. – Whenever practicable, the ***service*** and ***filing*** of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this rule may be cause to consider the paper as not filed, we did not intend it to be just some silly rule the parties can ignore when convenient, and the courts disregard when expedient. We designed it to serve a very real purpose: to ensure that pleadings, motions and other papers reach the courts directly and promptly, so that they may be acted upon expeditiously; and to forestall the deplorable practice among some lawyers of serving or filing pleadings by mail to catch their opposing counsel off-guard. Thus, these lawyers leave the opposing counsel with little or no time to respond accordingly; or, upon receiving notice from the post office of the registered parcel containing the pleading or other papers from the adverse party, the latter may unduly procrastinate before claiming said parcel — or, worse, not claim it at all — and thereby cause undue delay in the disposition of such pleading or other papers.

2. **ID.; ID.; ID.; ID.; PERSONAL SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS, MANDATORY; USE OF ANOTHER MODE OF SERVICE REQUIRES WRITTEN EXPLANATION; EXCEPTIONS. —** Under said rule, personal service and filing of pleadings and other papers is a mandatory mode, especially when the peculiar circumstances of the case — such as the proximity of the office of a party's counsel to the court or to the office of the opposing party's counsel — make such mode practicable. If another mode is employed, there must be attached to the pleading or paper, a written explanation of such recourse. Omission of a written explanation will give the court cause to expunge the pleading or paper not personally served or filed. And ordinarily, such exercise of discretion by the court will not be overruled on appeal, except when: a) on the face of the affidavit of service, it is patent that personal service and filing is impractical, such as when the parties or their counsels live in different provinces; b) there is *prima facie* merit in the pleading or paper expunged; and c) the issue raised therein is of substantial importance. Under these exceptional circumstances the lack of written explanation

may be excused and the pleading or paper served or filed, accepted.

3. **LABOR LAW AND SOCIAL LEGISLATION; POEA-STANDARD EMPLOYMENT CONTRACT; COMPENSATION FOR INJURY/ILLNESS; DISABILITY BENEFITS; CERTIFICATION FROM COMPANY-DESIGNATED PHYSICIAN, REQUIRED; FINDINGS MAY BE IMPUGNED BY CONTRADICTING EVIDENCE; NONE PRESENT IN CASE AT BAR. —** Part of the employment contract of petitioner is Section 20-B of the POEA-Standard Employment Contract. x x x Under said provision, petitioner may claim two forms of monetary compensation or benefit: First, sickness allowance from the date of his sign-off for medical treatment to the date he is declared fit to work or the degree of his permanent disability is assessed by a company-designated physician. In no case shall sickness allowance be paid for a period exceeding 120 days; *and/or* Second, any of the three kinds of disability benefits granted under the Labor Code, as implemented by Section 2, Rule VII of the Implementing Rules of Book V. Petitioner has been paid sickness allowance. The question is whether he should also be paid disability benefits. As provided under Section 20-B of the POEA-SEC, it is the company-designated physician who must certify that petitioner has suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of his employment. While such certification is not conclusive, to impugn the same, petitioner must indicate facts or evidence of record that contradict such finding or present the contrary opinion of his appointed physician. It is of record that right after his repatriation on October 26, 1999, petitioner underwent regular treatment by Dr. Nicomedes Cruz, a company-designated physician. Petitioner's treatment lasted for approximately 96 days or from October 27, 1999 until February 2, 2000, when he was declared by Dr. Cruz already fit to work. Petitioner did not report for work; however, he did not dispute the findings of Dr. Cruz nor did he seek the opinion of another doctor. Instead, petitioner filed against respondents a complaint for total and permanent disability compensation. While his complaint was pending, petitioner sought an order from the LA to submit him to medical examination by a government doctor coming from the Employees' Compensation

Commission (ECC). Both the LA and the NLRC denied petitioner's claim on the ground that he failed to controvert the certification issued by Dr. Cruz that he is fit to work. We completely agree. It is noted that petitioner took six months before disputing the finding of Dr. Cruz by filing a complaint for disability benefits. Worse, in his complaint, petitioner averred that he continued to undergo therapy and medication even after Dr. Cruz certified him fit to work. Yet, petitioner did not secure from the doctors who administered such therapy and medication a certification that would contradict that of Dr. Cruz. Rather, he waited another month to manifest to the LA that he be examined by a government doctor. Such request is not reasonable. As we observed in *Sarocam v. Interorient Maritime Ent. Inc.,* it makes no sense to compare the certification of a company-designated physician with that of an employee-appointed physician if the former is dated seven to eight months earlier than the latter — there would be no basis for comparison at all.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Offices for petitioner.
Del Rosario and Del Rosario for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the December 5, 2002 Court of Appeals (CA) Resolution,[1] which dismissed the petition for *certiorari* docketed as CA-G.R. SP No. 74036, for lack of written explanation why it was not personally filed; and the April 4, 2003 CA Resolution,[2] denying the motion for reconsideration.

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[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with the concurrence of Associate Justices Elvi John S. Asuncion and Sergio L. Pestaño; *rollo*, p. 30.

[2] *Id.* at 33.

Briefly, the material facts are:

Alex M. Cadornigara (petitioner) filed with the National Labor Relations Commission (NLRC) a complaint[3] against his employer, Escobal Naviera Co., S.A., represented by Amethyst Shipping Co., Inc. (respondents), for permanent total disability compensation and damages. The Labor Arbiter (NLRC) dismissed the complaint in a Decision[4] dated August 30, 2001. Petitioner appealed,[5] but the NLRC denied the same in its Resolution[6] of June 20, 2002. Petitioner filed a motion for reconsideration[7] which the NLRC denied in its August 30, 2002 Resolution,[8] a copy of which petitioner received on July 17, 2002.[9]

After receiving a copy of the August 30, 2002 NLRC Resolution on September 19, 2002,[10] petitioner filed with the CA a petition for *certiorari*[11] under Rule 65 of the Rules of Court. The CA issued the questioned December 5, 2002 Resolution, dismissing the petition for *certiorari*, to wit:

For failing to contain a written explanation why this petition was not filed personally (but rather by registered mail), it appearing that personal filing was still very much practicable considering that ***the office of petitioner's counsel is only a walking distance from the court at the 12th Floor, Antonino Bldg., T.M. Kalaw, Ermita, Manila***, and that the petition is dated November 15, 2002 yet, this petition is ordered DISMISSED. The law required that filing of pleadings be done personally and only when personal filing is not practicable that resort to other modes of filing is allowed. If accompanied by a genuine and real reason why personal service was not practicable

[3] CA *rollo*, p. 48.

[4] *Id*. at 133

[5] *Id*. at 163.

[6] *Id*. at 24.

[7] *Id*. at 38.

[8] *Id*. at 36.

[9] Petition, CA *rollo*, p. 4.

[10] *Id*.

[11] *Id*. at 2.

(Section 11, Rule 13 Rules of Civil Procedure, and the ruling in Solar Team Entertainment, Inc. vs. Ricafort, 293 SCRA 661 [1998]), not just any reason however flimsy it may be.

SO ORDERED.[12]

Petitioner filed a motion for reconsideration,[13] explaining that, all along, his counsel was under "the impression or misimpression [that] the petition would be personally filed by his Law Office," but in the end, the said law office had to resort to filing by registered mail because its office-server, Mr. Rizaldo D. Lagunilla, failed to reach the CA before closing time.[14]

In the questioned Resolution dated April 4, 2003, the CA denied petitioner's motion for reconsideration:

The explanation is bereft of truth. Clearly shown in the Affidavit of Service attached to the petition *(p. 23, Rollo)* that petitioner had no intention to personally file and serve this petition, thereby contemptuously betraying the justification in his motion. The affidavit of service categorically states "[t]hat on November 18, 2002, I served a copy of the PETITION FOR *CERTIORARI* in the case entitled *ALEX CADORNIGARA vs. NATIONAL LABOR RELATIONS COMMISSION, ET AL.,* C.A. G.R. NO. ________ dated November 15, 2002, by registered mail" to the Court of Appeals, National Labor Relations Commission, Office of the Solicitor General and Del Rosario & Del Rosario.

ACCORDINGLY, petitioner's Motion for Reconsideration dated January 21, 2001 is DENIED.

SO ORDERED.[15]

Hence, the present petition on this sole ground:

The petitioner submits that the dismissal by the Honorable Court of Appeals of his Petition for *Certiorari* on purely technical ground

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[12] *Id.* at 30.

[13] CA *rollo*, p. 209.

[14] *Id.* at 211.

[15] *Id.* at 33.

grossly violated HIS right to due process and unduly deprived him of the opportunity to establish the merits of his petition.[16]

Petitioner is misinformed.

When we crafted Section 11, Rule 13 of the Rules of Court:

Priorities in modes of service and filing. – Whenever practicable, the ***service*** and ***filing*** of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this rule may be cause to consider the paper as not filed.

we did not intend it to be just some silly rule the parties can ignore when convenient, and the courts disregard when expedient.[17] We designed it to serve a very real purpose: to ensure that pleadings, motions and other papers reach the courts directly and promptly, so that they may be acted upon expeditiously; and to forestall the deplorable practice among some lawyers of serving or filing pleadings by mail to catch their opposing counsel off-guard. Thus, these lawyers leave the opposing counsel with little or no time to respond accordingly; or, upon receiving notice from the post office of the registered parcel containing the pleading or other papers from the adverse party, the latter may unduly procrastinate before claiming said parcel — or, worse, not claim it at all — and thereby cause undue delay in the disposition of such pleading or other papers.[18]

Under said rule, personal service and filing of pleadings and other papers is a mandatory mode, especially when the peculiar circumstances of the case — such as the proximity of the office of a party's counsel to the court or to the office of the opposing party's counsel — make such mode practicable.[19] If another

[16] Petition, *rollo*, p. 15.

[17] *Deliverio v. Galicinao*, G.R. No. 133704, September 18, 2001.

[18] *Penoso v. Dona*, G.R. No. 154018, April 03, 2007.

[19] *Coca-Cola Bottler's Philippines, Inc., v. Cabalo*, G.R. No. 144180, January 30, 2006, 480 SCRA 548, 559.

mode is employed, there must be attached to the pleading or paper, a written explanation of such recourse. Omission of a written explanation will give the court cause to expunge the pleading or paper not personally served or filed.[20] And ordinarily, such exercise of discretion by the court will not be overruled on appeal, except when: a) on the face of the affidavit of service, it is patent that personal service and filing is impractical, such as when the parties or their counsels live in different provinces;[21] b) there is *prima facie* merit in the pleading or paper expunged;[22] and c) the issue raised therein is of substantial importance.[23] Under these exceptional circumstances the lack of written explanation may be excused and the pleading or paper served or filed, accepted.

In the present case, the petition for *certiorari* filed with the CA clearly indicates that the office of petitioner's counsel (Linsangan Law Office) is located at the 12th Floor Antonino Bldg., T.M. Kalaw, Ermita, Manila; while that of respondents' counsel (Del Rosario and Del Rosario Law Offices) is located at 107 Herrera cor. Esteban Street, Legaspi Village, Makati City.[24] Yet, petitioner filed the petition for *certiorari* with the CA and served copies thereof on the other parties, all by registered mail. He did append a written explanation to his petition for *certiorari* but it merely states:

> <u>EXPLANATION</u>: In compliance with Section 11, Rule 13, 1997 Rules of Civil Procedure, it is hereby explained that the foregoing pleading is being ***served by registered mail upon the other parties***, personal service not being practicable due to time constraint. (Emphasis added)

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[20] *MC Engineering, Inc. v. National Labor Relations Commission*, 412 Phil. 614, 624 (2001).

[21] *Maceda v. Macatangay*, G.R. No. 164947, January 31, 2006, 481 SCRA 415, 424

[22] *Penoso v. Dona*, G.R. No. 154018, April 3, 2007.

[23] *Ello v. Court of Appeals*, G.R. No. 141255, June 21, 2005,460 SCRA 406, 415.

[24] Petition, CA *rollo*, p. 4.

It does not include an explanation as to why the filing with the CA was also done by registered mail.

The foregoing circumstances considered, we cannot fault the CA for not accepting the petition for *certiorari*. In *Tagabi v. Tangue*,[25] we upheld the CA for dismissing an appeal that lacked a written explanation of why it was filed by registered mail, even when in said case, petitioner's counsel held office in Iloilo City and found it impractical to personally file the appeal brief with the CA in Manila.

With more reason, we cannot excuse herein petitioner's lapse. It is of judicial notice that the Linsangan Law Office in Ermita, Manila is virtually a stone's throw away from the CA in Ma. Orosa, Manila. The distance between the Linsangan Law Office and the Central Post Office in Manila is approximately ten times farther than that between said law office to the CA. Thus, petitioner's filing of the petition by registered mail through the Central Post Office was actually the more circuitous and impractical course.

Worse, such error was compounded when, in his motion for reconsideration from the December 5, 2002 CA Resolution, petitioner made no effort at all to correct the deficiency and substantially comply with Section 11 of Rule 13 by attaching, even if belatedly, the omitted written explanation. Instead, petitioner foisted upon the CA an untruthful explanation: that his counsel initially intended to personally file the petition with the CA, but that his counsel's office-server failed to reach the court before closing time. As the CA astutely observed, such explanation is contradicted by the affidavit of service attached to the petition, which stated that it was being filed by registered mail.[26]

In fine, the CA acted within the bounds of its discretion under Section 11 of Rule 13 in refusing to accept the petition for *certiorari* for failure of petitioner to attach a written explanation of non-personal filing.

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[25] G.R. No. 144024, July 27, 2006, 496 SCRA 622.

[26] CA *rollo*, p. 23.

That said, we will nonetheless resolve the main issue involved if only to demonstrate that the petition also lacks substance.

Part of the employment contract of petitioner is Section 20-B of the POEA-Standard Employment Contract, which reads:

> Section 20-B. *Compensation and Benefits for Injury and Illness*. - The liabilities of the employer when the seafarer suffers injury or illness
>
> x x x   x x x   x x x
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.
>
> x x x   x x x   x x x
>
> 5. In case of permanent total or partial disability of the seafarer during the term of his employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

Under said provision, petitioner may claim two forms of monetary compensation or benefit:

First, sickness allowance from the date of his sign-off for medical treatment to the date he is declared fit to work or the degree of his permanent disability is assessed by a company-designated physician. In no case shall sickness allowance be paid for a period exceeding 120 days;[27] ***and/or***

Second, any of the three kinds of disability benefits granted under the Labor Code, as implemented by Section 2, Rule VII of the Implementing Rules of Book V.[28]

Petitioner has been paid sickness allowance.[29] The question is whether he should also be paid disability benefits.

As provided under Section 20-B of the POEA-SEC, it is the company-designated physician who must certify that petitioner has suffered a permanent disability, whether total or partial, due to either injury or illness, during the term of his employment.[30] While such certification is not conclusive,[31] to impugn the same, petitioner must indicate facts or evidence of record that contradict such finding[32] or present the contrary opinion of his appointed physician.[33]

It is of record that right after his repatriation on October 26, 1999,[34] petitioner underwent regular treatment by Dr. Nicomedes Cruz, a company-designated physician. Petitioner's treatment lasted for approximately 96 days or from October 27, 1999 until February 2, 2000,[35] when he was declared by Dr. Cruz already fit to work.[36]

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[27] See *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.*, G.R. No. 166649, November 24, 2006, 508 SCRA 87.

[28] *Remigio v. National Labor Relations Commission*, G.R. No. 159887, April 12, 2006, 487 SCRA 190, 209.

[29] *Id.* at 214.

[30] *German Marine Agencies, Inc. v. National Labor Relations Commission*, 403 Phil. 572, 587 (2001).

[31] *Seagull Maritime Corp. v. Dee*, G.R. No. 165156, April 20, 2007.

[32] *Micronesia v. Cantomayor*, G.R. No. 156573, June 19, 2007.

[33] *Supra* note 28, at 209.

[34] CA *rollo*, p. 115.

[35] *Id.* at 108-115.

[36] *Id.* at 115.

Petitioner did not report for work; however, he did not dispute the findings of Dr. Cruz nor did he seek the opinion of another doctor. Instead, petitioner filed against respondents a complaint for total and permanent disability compensation. While his complaint was pending, petitioner sought an order from the LA to submit him to medical examination by a government doctor coming from the Employees' Compensation Commission (ECC).

Both the LA[37] and the NLRC[38] denied petitioner's claim on the ground that he failed to controvert the certification issued by Dr. Cruz that he is fit to work.

We completely agree. It is noted that petitioner took six months before disputing the finding of Dr. Cruz by filing a complaint for disability benefits. Worse, in his complaint, petitioner averred that he continued to undergo therapy and medication even after Dr. Cruz certified him fit to work.[39] Yet, petitioner did not secure from the doctors who administered such therapy and medication a certification that would contradict that of Dr. Cruz. Rather, he waited another month to manifest to the LA that he be examined by a government doctor. Such request is not reasonable. As we observed in *Sarocam v. Interorient Maritime Ent. Inc.,*[40] it makes no sense to compare the certification of a company-designated physician with that of an employee-appointed physician if the former is dated seven to eight months earlier than the latter — there would be no basis for comparison at all.

WHEREFORE, the petition is *DENIED* for utter lack of merit.

Costs against petitioner.

SO ORDERED.

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

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[37] LA Decision, CA *rollo*, pp. 159-160.

[38] NLRC Resolution, CA *rollo*, p. 34.

[39] Position Paper, p. 51.

[40] G.R. No. 167813, June 27, 2006, 493 SCRA 502.

THIRD DIVISION

[G.R. No. 158095. November 23, 2007]

JOEL CUSTODIO MACAHILIG, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, ARACELI DE JESUS BOUTIQUE AND/OR ARACELI S. DE JESUS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL ISSUES, NOT PROPER; EXCEPTIONS.—** As a general rule, we do not entertain factual issues. The scope of our review in petitions filed under Rule 45 is limited to errors of law or jurisdiction. We leave the evaluation of facts to the trial and appellate courts which are better equipped for this task. However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (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) the CA goes beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) 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) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; BURDEN OF PROOF. —** We are well-aware that in labor cases, the employer has the burden of proving that the employee was not dismissed or, if dismissed, that the dismissal was not illegal; and failure to discharge the same would mean that the dismissal is not justified and therefore illegal.

3. **ID.; ID.; ABANDONMENT; WHEN IT EXISTS. —** Jurisprudence holds that for abandonment of work to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship as manifested by some overt acts. Deliberate and unjustified refusal on the part of the employee to go back to his work post and resume his employment must be established. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer. x x x Here, private respondent's claim of abandonment is belied by the fact that four days after petitioner's alleged dismissal on February 8, 2001, he filed a complaint for illegal dismissal with the LA. Such dispatch in protesting his termination belies the claimed abandonment. x x x Abandonment of position is a matter of intention and cannot be lightly inferred, much less legally presumed, from certain equivocal acts.

4. **ID.; ID.; ID.; NOT NECESSARILY MANIFESTED WITH THE PRAYER FOR SEPARATION PAY. —** Petitioner's prayer for separation pay is *not* a manifestation of his lack of intention to work. As held in *Sentinel Security Agency, Inc. v. National Labor Relations Commission*: x x x Abandonment, as a just and valid cause for termination, requires a deliberate and unjustified refusal of an employee to resume his work, coupled with a clear absence of any intention of returning to his or her work. That complainants did not pray for reinstatement is not sufficient proof of abandonment. A strong indication of the intention of complainants to resume work is their allegation that on several dates they reported to the Agency for reassignment, but were not given any. Moreover, there are instances in which what is ordered is not reinstatement but the payment of separation pay, such as when the business of the employer has closed, or when the relations between the employer and the employee have been so severely strained that it is not advisable to order reinstatement, or when the employee decides not to be reinstated.

5. **ID.; ID.; P.D. NO. 851 GIVING EMPLOYEES 13TH MONTH PAY; COMPLIANCE NOT ESTABLISHED IN CASE AT BAR.—** Under Presidential Decree No. 851, 13th month pay is given not

later than December 24 of every year. Considering that private respondent asserts that she has given petitioner his 13th month pay, she has the bounden duty to prove that fact; however, she failed to do so. The affidavits of Amistad and Andrino stating that they are receiving their bonus equivalent to one month pay before Christmas would not suffice to prove payment of the 13th month pay to petitioner after September 1999, the date of the Inspection Report. Thus, the computation of the yearly 13th month pay should start from 1999.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for public respondent.
Abelardo P. De Jesus for private respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated February 27, 2003 and the Resolution[2] dated April 22, 2003 of the Court of Appeals (CA) in CA G.R. SP No. 72762 which reversed and set aside the Resolution dated February 21, 2002 and the Order dated June 28, 2002 of the National Labor Relations Commission (NLRC).

Araceli de Jesus (private respondent) is the owner of a boutique shop bearing her name located in Unit Plaza, J. Bocobo cor. Arquiza Streets, Ermita, Manila which was registered with the Bureau of Domestic Trade on December 23, 1996. Joel Macahilig (petitioner) was one of private respondent's three sales clerks who started working in the boutique shop on January 7, 1997. His latest monthly salary was ₱3,200.00.

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[1] Penned by Justice Mariano C. del Castillo, concurred in by Justices Buenaventura J. Guerrero (retired) and Teodoro P. Regino (retired); *rollo*, pp. 99-108.

[2] Penned by Justice Mariano C. del Castillo, concurred in by Justices Buenaventura J. Guerrero (retired) and Juan Q. Enriquez, Jr.; *id.* at 72.

In 2000, private respondent's boutique shop suffered huge losses due to substantial reduction in sales; thus, she adopted as a cost-saving measure the rotation of her three sales clerks, by which each one of them would take a month's leave of absence without pay to start in 2001. The sales clerks agreed among themselves that petitioner's leave would be in January, Elsa Andrino (Andrino) in February, and Abella Amistad (Amistad) in March, with all of them reporting regularly for work in April as private respondent expected that business conditions would improve. However, due to the zero daily sales in the middle part of January 2001, private respondent temporarily closed the boutique shop on January 22, 2001 to cut down on electricity and the daily meal and transportation allowances of her sales clerks and reopened the boutique shop on February 8, 2001. According to petitioner, private respondent told him on February 8, 2001 that his services were no longer needed.

On February 12, 2001, petitioner filed with the Labor Arbiter (LA) a complaint for illegal dismissal with prayer for separation pay, backwages, and other monetary benefits and damages against private respondent. In his position paper, he alleged that during his vacation leave without pay, he would call private respondent to ask when he would resume his duties but would only get excuses not to return yet; that on February 8, 2001, private respondent told him that she no longer wished to continue his services without giving any reason and prior notice. Petitioner asked for separation pay as reinstatement would not be in the best interest of the parties due to the circumstances availing in their case.

Private respondent denied having dismissed petitioner, as he simply refused to return to work and claimed that he filed the case to exact money from her. She submitted the affidavits of petitioner's co-workers, Andrino[3] and Amistad,[4] in which they stated that it was petitioner who did not return to work anymore, and that they expressed satisfaction as to their salaries and benefits, including their annual 13th month pay; that Amistad

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[3] *Rollo*, p. 43.

[4] *Id*. at 41-42.

stated that petitioner had been complaining incessantly about commuting daily to and from Ermita, Manila since he resides in Caloocan. Private respondent alleged that she received a phone call from a woman who identified herself as petitioner's mother who told her, "*Bigyan mo na lang ng puhunan sa negosyo si Joel*," then hung up. She also denied underpayment or non-payment of petitioner's monetary claims and submitted the Department of Labor and Employment (DOLE) Inspection Report[5] of Senior Labor Enforcement Officer Efren Miranda who inspected the working conditions of the boutique shop in 1999 and reported "no violation" committed by her.

In a Decision[6] dated September 14, 2001, the LA ruled in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of the complainant illegal. Respondents are ordered to pay complainant the following:

1.	Separation pay	₱32,000.00
2.	Backwages	11,093.33
3.	13th Month pay	9,565.33
4.	Service Incentive Leave Pay	not entitled
	Total	₱52,658.66

All other claims are denied for lack of merit.[7]

In finding that petitioner was illegally dismissed, the LA found unmeritorious private respondent's claim that after the lapse of petitioner's one month leave without pay, the latter failed or refused to return to work and thus was guilty of abandonment. The LA found that petitioner never intended to abandon his work since, during the time he was on vacation leave, he had asked private respondent when he would report for work but was finally told on February 8, 2001 that his service was no

[5] *Id*. at 44.

[6] *Id*. at 45-49; Penned by Labor Arbiter Florentino R. Darlucio.

[7] *Id*. at 49.

longer needed; and that the filing of the case negated petitioner's charge of abandonment.

The LA held that since petitioner was illegally dismissed, he should be reinstated to his former position, but that because petitioner opted for a separation pay, the payment of his backwages and separation pay of one month for every year of service was in order; and considering that the boutique shop was registered only on December 23, 1996, and therefore, petitioner officially started working in the boutique on January 7, 1997, his separation pay must start from the year 1997, and his backwages from the date of his dismissal, *i.e.*, February 8, 2001, both up to the promulgation of the decision.

Private respondent appealed to the NLRC.

On February 21, 2002, the NLRC rendered its Resolution[8] affirming with modification the decision of the LA, the dispositive portion of which reads:

> WHEREFORE, finding no cogent reason to modify, alter, much less reverse the decision appealed from, the same is AFFIRMED with the MODIFICATION that the award of separation pay should be reduced to ₱16,000.00 covering the period of almost 5 years of service, which is from January 7, 1997 to September 14, 2001 only.[9]

Private respondent's Motion for Reconsideration was denied in an Order[10] dated June 28, 2002.

Private respondent filed a Petition for *Certiorari* with prayer for the issuance of a temporary restraining order, with the CA alleging grave abuse of discretion committed by the NLRC.

On February 27, 2003, the CA rendered its assailed Decision granting the petition and reversing the NLRC.

The CA found no indication that petitioner was terminated from his employment, since private respondent had not shown

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[8] *Id*. at 59-61; Penned by Presiding Commissioner Roy V. Señeres and concurred in by Commissioners Vicente S.E. Veloso and Alberto R. Quimpo.

[9] *Id*. at 60-61.

[10] *Id*. at 78-79.

any overt act that she had dismissed petitioner, nor was there any hint that she held a personal grudge against him; that as regards non-payment of compensation, the DOLE Inspection Report stated that "no violation" was committed by private respondent; that absent any showing of dubiety in the veracity of the contents of the affidavits and of the DOLE Inspection Report, the public respondents should have taken them into consideration.

The CA found that petitioner's actions manifested an intention to no longer work in the boutique shop, to wit: (1) he never returned to his work on February 1, 2001 when it was Andrino's turn to take a vacation leave; (2) he never denied that his mother called private respondent on February 8, 2001, asking the latter to just give petitioner capital; (3) instead of praying for his reinstatement, petitioner sought a separation pay; and (4) he did not deny private respondent's allegation that he is now working in another office. The CA held that the rule that abandonment of work is inconsistent with the filing of a complaint for illegal dismissal is not applicable to this case, as such rule applies only when the complainant seeks reinstatement as a relief, and not when separation pay is prayed for as done by petitioner.

Petitioner's Motion for Reconsideration was denied in a Resolution dated April 22, 2003.

Petitioner filed the instant petition on the following grounds:

I

WHETHER OR NOT THE RESPONDENT HAD SUFFICIENTLY PROVED ABANDONMENT ON THE PART OF THE PETITIONER.

II

WHETHER OR NOT THE RESPONDENT WAS ABLE TO OVERCOME THE BURDEN OF PROOF THAT THE TERMINATION OF THE PETITIONER WAS BASED ON LEGAL GROUNDS.

III

WHETHER OR NOT THE REQUIREMENTS OF LAW TO EFFECT A VALID DISMISSAL WERE COMPLIED WITH BY THE RESPONDENT.[11]

The main issue for resolution is factual, *i.e.*, whether or not petitioner abandoned his job.

As a general rule, we do not entertain factual issues. The scope of our review in petitions filed under Rule 45 is limited to errors of law or jurisdiction.[12] We leave the evaluation of facts to the trial and appellate courts which are better equipped for this task.

However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (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) the CA goes beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) 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) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[13]

Considering that the findings of facts and the conclusions of the LA and the NLRC are inconsistent with those of the CA, we find it necessary to evaluate such findings.

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[11] *Id.* at 16.

[12] *NS Transport Services Inc. v. Zeta*, G.R. No. 158499, April 3, 2007, citing *Coca-Cola Bottlers Phils., Inc. v. Daniel*, G.R. No. 156893, June 21, 2005, 460 SCRA 494, 503.

[13] *NS Transport Services Inc. v. Zeta*, *supra* note 12, citing *R & E Transport, Inc. v. Latag*, G.R. No. 155214, February 13, 2004, 422 SCRA 698, 705.

After a careful examination of the records, we find that the CA erred in granting the petition and reversing the decisions of the LA and the NLRC finding that petitioner was illegally dismissed.

We are well-aware that in labor cases, the employer has the burden of proving that the employee was not dismissed or, if dismissed, that the dismissal was not illegal; and failure to discharge the same would mean that the dismissal is not justified and therefore illegal.[14]

The CA gave credence to private respondent's allegation that petitioner was not dismissed, but that it was he who never came back after his one-month vacation leave without pay, thus abandoning his job.

We do not agree.

Jurisprudence holds that for abandonment of work to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship as manifested by some overt acts.[15] Deliberate and unjustified refusal on the part of the employee to go back to his work post and resume his employment must be established. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.[16] And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.[17]

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[14] *Abad v. Roselle Cinema*, G.R. No. 141371, March 24, 2006, 485 SCRA 262, 268.

[15] *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*, 383 Phil. 329, 371-372 (2000), citing *Philippine Advertising Counselors, Inc. v. National Labor Relations Commission*, 331 Phil. 694, 702 (1996); *Balayan Colleges v. National Labor Relations Commission*, 325 Phil. 245, 258 (1996).

[16] *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*, *id*. at 372, citing *Nueva Ecija I Electric Cooperative, Inc. v. Minister of Labor*, G.R. No. 61965, April 3, 1990, 184 SCRA 25, 30.

[17] *Id*.

Petitioner was on a vacation leave without pay for the whole month of January 2001 as a cost-saving measure adopted by private respondent due to reduction in sales. While petitioner was expected to be back on February 1, 2001, the boutique shop was closed on January 22 and reopened only on February 8, 2001. Petitioner indicated his intention to report back to work when he called private respondent to ask when he was to resume his work. Thus, petitioner's absence was not due to his deliberate refusal to continue his employment, but because private respondent temporarily closed the boutique shop in order for her to cut down on electricity and the daily meal and transportation allowances of her sales clerks.

Petitioner was told by private respondent on February 8, 2001 that his services were no longer needed.

We find private respondent's claim that petitioner abandoned his work for the reason that he had been complaining to Amistad - that since he transferred to Caloocan in the middle of 1997, he was having a hard time commuting from Caloocan to Manila back and forth - as pure speculation or mere conjecture. Difficulty in commuting would not necessarily lead a person to simply abandon his job. Notably, it has been shown that petitioner officially started with private respondent in January 1997; and that when he transferred to Caloocan in the middle of 1997, petitioner continued to report for work until he took his forced vacation leave without pay in January 2001.

There is no justification to conclude that petitioner would just abandon his work which gave him a monthly salary of ₱3,200.00, free meals and daily cash allowance of ₱60.00. Moreover, there is no clear showing that petitioner was offered another employment elsewhere with better terms and conditions. Private respondent failed to substantiate her claim that petitioner had another job.

Also, petitioner admits that he stands barely three and one-half feet tall; and he knew that he could not arrogantly abandon his source of income, knowing fully well that he would encounter difficulty in looking for a new job.

Private respondent's claim of abandonment is belied by the fact that four days after petitioner's alleged dismissal on February 8, 2001, he filed a complaint for illegal dismissal with the LA. Such dispatch in protesting his termination belies the claimed abandonment.[18]

We cannot affirm the CA's finding that the call made by petitioner's mother, saying "*bigyan mo na lang ng puhunan si Joel,*" as an indication of petitioner's intention to no longer work in the boutique shop. This circumstance is not sufficient proof of petitioner's clear and deliberate intent to abandon his job, as it does not conclusively establish that petitioner has no more intent to report for work. Abandonment of position is a matter of intention and cannot be lightly inferred, much less legally presumed, from certain equivocal acts;[19] specially so when the call was made not by petitioner, but only by his mother whose real intention in calling private respondent we can only surmise.

We also do not agree with the CA's finding that petitioner's prayer for separation pay is a manifestation of his lack of intention to work.

As held in *Sentinel Security Agency, Inc. v. National Labor Relations Commission*:[20]

However, the Agency claims that the complainants, after being placed off-detail, abandoned their employ. The solicitor general, siding with the Agency and the labor arbiter, contends that while abandonment of employment is inconsistent with the filing of a complaint for illegal dismissal, such rule is not applicable "where [the complainant] expressly rejects this relief and asks for separation pay instead."

The Court disagrees. Abandonment, as a just and valid cause for termination, requires a deliberate and unjustified refusal of an

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[18] *Lagniton, Sr. v. National Labor Relations Commission*, G.R. No. 86339, February 5, 1993, 218 SCRA 456, 459.

[19] See *Shin I Industrial (Phils.) v. National Labor Relations Commission*, G.R. No. 74489, August 3, 1988, 164 SCRA 8, 11, citing *City of Manila v. Subido*, 123 Phil. 1080, 1083 (1966).

[20] 356 Phil. 434 1998.

employee to resume his work, coupled with a clear absence of any intention of returning to his or her work. That complainants did not pray for reinstatement is not sufficient proof of abandonment. A strong indication of the intention of complainants to resume work is their allegation that on several dates they reported to the Agency for reassignment, but were not given any.[21]

Moreover, there are instances in which what is ordered is not reinstatement but the payment of separation pay, such as when the business of the employer has closed,[22] or when the relations between the employer and the employee have been so severely strained that it is not advisable to order reinstatement,[23] or when the employee decides not to be reinstated.[24]

Notably, in his position paper filed with the LA, petitioner stated that it was not in the best interest of the parties that reinstatement be granted and thus prayed for separation pay. The prayer for separation pay cannot be legally regarded as an abandonment since, given the smallness of respondent's staff, petitioner would have found it uncomfortable to continue working under the hostile eyes of the employer who had been forced to reinstate him.[25]

The hostility of private respondent was made manifest when she considered the filing of the case as petitioner's act of exacting

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[21] *Id.* at 444.

[22] *Kingsize Manufacturing Corporation v. National Labor Relations Commission*, G.R. Nos. 110452-54, November 24, 1994, 238 SCRA 349, 357, citing *Callanta v. Carnation Philippines, Inc.*, 229 Phil. 279, 291 (1986); *Pizza Inn v. National Labor Relations Commission*, G.R. No. 74531, June 28, 1988, 162 SCRA 773, 778.

[23] *Kingsize Manufacturing Corporation v. National Labor Relations Commission*, *id.*, citing *Asiaworld Publishing House, Inc. v. Ople*, G.R. No. 56398, July 23, 1987, 152 SCRA 219, 227.

[24] *Kingsize Manufacturing Corporation v. National Labor Relations Commission*, *id.*, citing *Starlite Plastic Industrial Corp. v. National Labor Relations Commission*, G.R. No. 78491, March 16, 1989, 171 SCRA 315, 326.

[25] See *Ranara v. National Labor Relations Commission*, G.R. No. 100969, August 14, 1992, 212 SCRA 631, 635.

money from her. In fact, she branded petitioner as one who was very good at acting, and who had mastered the art of gaining other people's sympathy. The realities of the situation precludes a harmonious relationship, should reinstatement be ordered.

In fine, private respondent failed to establish that there was deliberate and unjustified refusal on petitioner's part to go back to his work; thus, petitioner's dismissal was illegal. He was summarily dismissed when he was simply told by private respondent on February 8, 2001 that his services were no longer needed, without any notice and hearing. Thus, the LA correctly awarded petitioner the payment of backwages and separation pay as modified by the NLRC.

However, the LA's award of 13th month pay in favor of petitioner in the amount of ₱9,565.33, computed from February 12, 1998 to February 8, 2001, needs modification. In the DOLE Inspection Report dated September 10, 1999, Labor Enforcement Officer Miranda found that there was no violation committed by private respondent. This was not refuted by petitioner. However, there is no showing that after September 1999, petitioner received his 13th month pay. Under Presidential Decree No. 851,[26] 13th month pay is given not later than December 24 of every year. Considering that private respondent asserts that she has given petitioner his 13th month pay, she has the bounden duty to prove that fact; however, she failed to do so. The affidavits of Amistad and Andrino stating that they are receiving their bonus equivalent to one month pay before Christmas would not suffice to prove payment of the 13th month pay to petitioner after September 1999, the date of the Inspection Report. Thus, the computation of the yearly 13th month pay should start from 1999.

WHEREFORE, the petition is *GRANTED*. The Decision dated February 27, 2003 and the Resolution dated April 22, 2003 of the Court of Appeals are hereby *REVERSED* and *SET ASIDE*. The Decision dated September 14, 2001 of the Labor

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[26] Requiring all employers to pay their employees a 13th month pay.

is *REINSTATED* with the *MODIFICATION* that the computation of the 13th month pay should start from 1999.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 159882. November 23, 2007]

SPOUSES RUBEN and VIOLETA SAGUAN, *petitioners, vs.* **PHILIPPINE BANK OF COMMUNICATIONS and COURT OF APPEALS (Second Division),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACT NO. 3135 ON WHEN WRIT OF POSSESSION MAY ISSUE. —** A writ of possession is an order enforcing a judgment to allow a person's recovery of possession of real or personal property. An instance when a writ of possession may issue is under Act No. 3135, as amended by Act No. 4118, on extrajudicial foreclosure of real estate mortgage. Sections 6 and 7 provide, to wit: Section 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. Section 7. *Possession during redemption period.* – 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 [the] form of an *ex-parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of 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 each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Number Four hundred and ninety-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. From the foregoing provisions, a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond.

2. ID.; ID.; RULE ELUCIDATED AND APPLIED IN CASE AT BAR.— Within the redemption period the purchaser in a foreclosure sale may apply for a writ of possession by filing for that purpose an *ex-parte* motion under oath, in the corresponding registration or cadastral proceeding in the case of property covered by a Torrens title. Upon the filing of an *ex-parte* motion and the approval of the corresponding bond, the court is expressly directed to issue the order for a writ of possession. On the other hand, after the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale as the mortgagor is now considered to have lost interest over the foreclosed property. Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the

property when no redemption is made. In this regard, the bond is no longer needed. 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 consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function. Effectively, the court cannot exercise its discretion. Therefore, the issuance by the RTC of a writ of possession in favor of the respondent in this case is proper. We have consistently held that the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment. The propriety of the issuance of the writ was heightened in this case where the respondent's right to possession of the properties extended after the expiration of the redemption period, and became absolute upon the petitioners' failure to redeem the mortgaged properties.

3. **ID.; ID.; PROCEEDING IN PETITION FOR WRIT OF POSSESSION IS *EX-PARTE* AND SUMMARY IN NATURE. —** We emphasize 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 need of notice to any person claiming an adverse interest. It is a proceeding wherein relief is granted even 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.

4. **ID.; ID.; SETTING ASIDE OF SALE AND WRIT OF POSSESSION, EXPLAINED. —** Be that as it may, the debtor or mortgagor is not without recourse. Section 8 of Act No. 3135, as amended, provides: Section 8. *Setting aside of sale and writ of possession.* – The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the

sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. Thus, a party may file a petition to set aside the foreclosure sale and to cancel the writ of possession in the same proceedings where the writ of possession was requested.

5. **ID.; ID.; DISPOSITION OF THE EXCESS OR SURPLUS PROCEEDS OF THE FORECLOSURE SALE, EXPLAINED.—** In this case**,** petitioners do not challenge the validity of the foreclosure nor do they wish to set aside the foreclosure sale. It appears that the only remaining bone of contention is the disposition of the excess or surplus proceeds of the foreclosure sale. In short, petitioners do not question the consolidation of ownership in favor of the respondent, but simply demand the payment of the sum of money supposedly still owing them from the latter. Article 427, in relation to Article 428, of the Civil Code provides that ownership may be exercised over things or rights, and grants the owner of property a right of action for recovery against the holder and possessor thereof. We have elucidated on the import of surplus proceeds in the case of *Sulit vs. CA*, *viz.*: In case of a surplus in the purchase price, however, there is jurisprudence to the effect that while the mortgagee ordinarily is liable only for such surplus as actually comes into his hands, but he sells on credit instead of for cash, he must still account for the proceeds as if the price were paid in cash, and in an action against the mortgagee to recover the surplus, the latter cannot raise the defense that no actual cash was received. We cannot simply ignore the importance of surplus proceeds because by their very nature, surplus money arising from a sale of land under a decree of foreclosure stands in the place of the land itself with respect to liens thereon or vested rights therein. They are constructively, at least, real property and belong to the mortgagor or his assigns. Inevitably, the right

of a mortgagor to the surplus proceeds is a substantial right which must prevail over rules of technicality. Surplus money, in case of a foreclosure sale, gains much significance where there are junior encumbrancers on the mortgaged property. Jurisprudence has it that when there are several liens upon the premises, the surplus money must be applied to their discharge in the order of their priority. A junior mortgagee may have his rights protected by an appropriate decree as to the application of the surplus, if there be any, after satisfying the prior mortgage. His lien on the land is transferred to the surplus fund. And a senior mortgagee, realizing more than the amount of his debt on a foreclosure sale, is regarded as a trustee for the benefit of junior encumbrancers.

6. **ID.; ID.; ID.; CASE AT BAR. —** Given the foregoing pronouncement in *Sulit,* we cannot countenance respondent's cavalier attitude towards petitioners' right to the surplus proceeds. To begin with, the foreclosure of petitioners' properties was meant to answer only the obligation secured by the mortgage. Article 2126 of the Civil Code unequivocally states: Art. 2126. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted. We need not expound on the obvious. Simply put, even if petitioners have remaining obligations with respondent, these obligations, as conceded by respondent itself, were not collateralized by the foreclosed properties. Furthermore, under Section 1 of Act No. 3135 as amended, the special power of attorney authorizing the extrajudicial foreclosure of the real estate mortgage must be either (1) inserted or stated in the mortgage deed itself; or (2) the authority is attached thereto. Thus, petitioners' supposed remaining obligations which were not secured by the mortgage cannot be made subject, or even susceptible, to the extrajudicial foreclosure of mortgage. However, petitioners' remedy lies in a separate civil action for collection of a sum of money. We have previously held that where the mortgagee retains 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. In the same case, both parties can establish their respective rights and obligations to one another, after a proper liquidation of

the expenses of the foreclosure sale, and other interests and claims chargeable to the purchase price of the foreclosed property. The court can then determine the proper application of compensation with respect to respondent's claim on petitioners' remaining unsecured obligations. In this regard, respondent is not precluded from itself filing a case to collect on petitioners' remaining debt.

7. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT PRESENT IN CASE AT BAR.—** A special civil action for *certiorari* may be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Ineluctably, the RTC issued the writ of possession in compliance with the express provisions of Act No. 3135. It cannot, therefore, be charged with grave abuse of discretion as there is no showing that, in the exercise of its judgment, it acted in a capricious, whimsical, arbitrary or despotic manner tantamount to lack of jurisdiction. Absent grave abuse of discretion, petitioners should have filed an ordinary appeal instead of a petition for *certiorari*. The soundness of the order granting the writ of possession is a matter of judgment with respect to which the remedy of the party aggrieved is ordinary appeal. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." Errors of judgment are correctible by appeal, while those of jurisdiction are reviewable by *certiorari*.

APPEARANCES OF COUNSEL

The Law Firm of Rodolfo Ta-Asan for petitioners.
Paulito R. Suaybaguio for private respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision[2] dated January 24, 2003 and of the Resolution[3] dated August 21, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 71775. The Decision affirmed the Orders[4] of the Regional Trial Court (RTC) of Branch 31, Tagum City, Davao: (1) dated November 5, 2001 admitting respondent Philippine Bank of Communications' Exhibits "A" to "P"; (2) dated March 19, 2002 denying petitioners', spouses Ruben and Violeta Saguan's, Motion to Present Evidence, and granting private respondent's petition for issuance of a writ of possession; and (3) dated May 6, 2002 denying petitioners' Motion for Reconsideration of the second order.

The facts, as found by the CA, are not in dispute:

[Petitioners] spouses Ruben Saguan and Violeta Saguan obtained a loan of ₱3 Million from [respondent] Philippine Bank of Communications. To secure the obligation, they mortgaged five parcels of land covered by TCT Nos. 24274, 38894, 37455, 66339 and 19365, all of the Register of Deeds of the Province of Davao, and improvements therein.

Because [petitioners] defaulted in the payment of their mortgage indebtedness, [respondent] extra-judicially foreclosed the mortgage. In the auction sale on 05 January 1998, [respondent] was the only and highest bidder for ₱6,008,026.74. Sheriff's certificate of sale dated 12 January 1998 was executed and annotated at the back of [petitioners'] titles on 18 February 1998. As [petitioners] failed to redeem the properties within the one-year period ending on 18 February 1999, TCT Nos. T-154065, T-154066, T-154067, T-154068 and T-154069 were issued in the name of [respondent] in lieu of the

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[1] *Rollo*, pp. 3-14.

[2] Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Teodoro P. Regino and Mariano C. del Castillo, concurring; *id.* at 15-19.

[3] *Id.* at 20.

[4] Penned by Judge Erasto D. Salcedo

old ones. Thus, [respondent] consolidated ownership of the properties in its favor. Since the parcels of land were in physical possession of [petitioners] and other persons [co-petitioners in the petition before the CA], [respondent], after due demand, filed a petition for writ of possession with Branch 31, Regional Trial Court, Tagum City. x x x.[5]

Petitioners filed an Opposition[6] to the petition for writ of possession to which respondent filed a Comment.[7] Petitioners likewise filed a Reply[8] to the Comment.

In their Opposition and Reply, petitioners argued that a writ of possession should not issue considering respondent's failure to return the excess or surplus proceeds[9] of the extrajudicial foreclosure sale based on our ruling in *Sulit v. Court of Appeals.*[10] In refutation, respondent points to petitioners' remaining unsecured obligations with the former to which the excess or surplus proceeds were applied.

After the hearing on respondent's evidence, the RTC issued two (2) separate orders requiring respondent to file a Formal Offer of Evidence. Respondent failed to comply with the aforesaid orders within the time frame prescribed, thus prompting petitioners to file a motion to dismiss grounded on Section 3,[11] Rule 17 of the Rules of Court.

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[5] *Rollo*, p. 16.

[6] *Id*. at 44-48.

[7] *Id*. at 129-132.

[8] *Id*. at 67-68.

[9] Petitioners' loan obligation is ₱4,498,390.20 inclusive of interests, while the mortgaged properties were sold to respondent for ₱6,008,026.74 resulting in a surplus of ₱1,509,636.20.

[10] G.R. No. 119247, February, 17, 1997, 268 SCRA 441.

[11] Sec. 3. *Dismissal due to fault of plaintiff.*— If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant, or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counter-claim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

Thereafter, respondent belatedly filed its Formal Offer of Evidence. Consequently, the RTC issued the first assailed Order[12] admitting respondent's offer of exhibits thereby rendering petitioners' motion to dismiss moot and academic. The RTC then issued the Order[13] denying petitioners' Motion to Present Evidence and granted the petition for writ of possession. The last Order[14] of the RTC denied petitioners' Motion for Reconsideration.

Upon petition for *certiorari* and *mandamus*, the CA rejected petitioners' allegations of grave abuse of discretion in the lower court's issuance of the foregoing Orders. The CA affirmed respondent's entitlement to a writ of possession as a matter of right, the latter having consolidated its ownership over the parcels of land upon expiration of the redemption period. It emphasized that the issue on the failure to return the excess or surplus proceeds of the auction sale had been squarely met by the respondent, and therefore, the case was distinguishable from *Sulit v. Court of Appeals*. In all, the CA upheld the general rule that the issuance of a writ of possession to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function of the court.

Hence, this recourse.

In this appeal, the issues for our resolution are:

1. Whether the RTC should have issued a writ of possession considering respondent's failure to remit the excess or surplus proceeds of the extrajudicial foreclosure sale.
2. Corollary thereto, whether respondent may unilaterally apply the excess or surplus proceeds of the extrajudicial foreclosure sale to petitioner's remaining unsecured obligations.
3. Whether the RTC should have granted petitioners' motion to dismiss the petition for writ of possession based on respondent's

[12] Dated November 5, 2001, *rollo*, p. 87.

[13] Dated March 19, 2002, *id*. at 88.

[14] Dated May 6, 2002, *id*. at 89-90.

failure to comply with the RTC's Orders on the filing of a formal offer of evidence.

A writ of possession is an order enforcing a judgment to allow a person's recovery of possession of real or personal property. An instance when a writ of possession may issue is under Act No. 3135,[15] as amended by Act No. 4118, on extrajudicial foreclosure of real estate mortgage.[16] Sections 6 and 7 provide, to wit:

Section 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.

Section 7. *Possession during redemption period.* – 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 [the] form of an *ex-parte* motion in the registration or cadastral proceedings

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[15] Entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed To Real Estate Mortgages."

[16] Other instances when a writ of possession may issue include: (1) land registration proceedings under Section 17 of Act 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; and (3) execution sales (last paragraph of Section 33, Rule 39 of the Rules of Court). (*Spouses Oliveros v. Metropolitan Bank and Trust Company, Inc.*, G.R. No. 165963, September 3, 2007; *Philippine National Bank v. Sanao Marketing Corporation*, G.R. No. 153951, July 29, 2005, 465 SCRA 287, 299-300)

if the property is registered, or in special proceedings in case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of 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 each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Number Four hundred and ninety-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.

From the foregoing provisions, a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond.[17]

Within the redemption period the purchaser in a foreclosure sale may apply for a writ of possession by filing for that purpose an *ex-parte* motion under oath, in the corresponding registration or cadastral proceeding in the case of property covered by a Torrens title. Upon the filing of an *ex-parte* motion and the approval of the corresponding bond, the court is expressly directed to issue the order for a writ of possession.[18]

On the other hand, after the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale as the mortgagor is now considered to have lost interest over the foreclosed property.[19] Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made.[20] In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name

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[17] *Philippine National Bank v. Sanao Marketing Corporation and Trust Company, id.* at 300.

[18] *Id.* at 301; *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 767-768.

[19] *Yulienco v. Court of Appeals*, 441 Phil. 397, 406 (2002).

[20] *Samson v. Rivera*, *supra* note 18, at 771.

and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function.[21] Effectively, the court cannot exercise its discretion.

Therefore, the issuance by the RTC of a writ of possession in favor of the respondent in this case is proper. We have consistently held that the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment.[22] The propriety of the issuance of the writ was heightened in this case where the respondent's right to possession of the properties extended after the expiration of the redemption period, and became absolute upon the petitioners' failure to redeem the mortgaged properties.

Notwithstanding the foregoing, the petitioners insist that respondent's failure to return the excess or surplus proceeds of the extrajudicial foreclosure sale converted the issuance of a writ of possession from a ministerial to a discretionary function of the trial court pursuant to our holding in *Sulit v. Court of Appeals*.[23]

We are not persuaded.

A careful reading of *Sulit* will readily show that it was decided under a different factual milieu. In *Sulit*, the plea for a writ of possession was made during the redemption period and title to the property had not, as yet, been consolidated in favor of the purchaser in the foreclosure sale. In stark contrast, the herein

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[21] *De Vera v. Agloro,* G.R. No. 155673, January 14, 2005, 448 SCRA 203, 213-314.

[22] *Spouses Oliveros v. Metrobank and Trust Company, Inc.*, *supra* note 16; *Samson v. Rivera*, *supra* note 18, at 768; *China Banking Corporation v. Ordinario*, 447 Phil. 557, 562 (2003); *Spouses Ong v. Court of Appeals*, 388 Phil. 857, 864 (2000).

[23] *Supra* note 10.

petitioners failed to exercise their right of redemption within the one-year reglementary period provided under Section 6 of Act No. 3135, as amended, and ownership over the properties was consolidated in, and corresponding titles issued in favor of, the respondent.

We emphasize 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 need of notice to any person claiming an adverse interest. It is a proceeding wherein relief is granted even without giving the person against whom the relief is sought an opportunity to be heard.[24] 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.

Be that as it may, the debtor or mortgagor is not without recourse. Section 8 of Act No. 3135, as amended, provides:

> Section 8. *Setting aside of sale and writ of possession.* – The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

Thus, a party may file a petition to set aside the foreclosure sale and to cancel the writ of possession in the same proceedings where the writ of possession was requested. However, in this

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[24] *Spouses Oliveros v. Metrobank and Trust Company, Inc.*, *supra* note 16; *Santiago v. Merchants Rural Bank of Talavera, Inc.*, G.R. No. 147820, March 18, 2005, 453 SCRA 756, 763-764.

case, petitioners do not challenge the validity of the foreclosure nor do they wish to set aside the foreclosure sale. It appears that the only remaining bone of contention is the disposition of the excess or surplus proceeds of the foreclosure sale. In short, petitioners do not question the consolidation of ownership in favor of the respondent, but simply demand the payment of the sum of money supposedly still owing them from the latter.

Article 427,[25] in relation to Article 428,[26] of the Civil Code provides that ownership may be exercised over things or rights, and grants the owner of property a right of action for recovery against the holder and possessor thereof.

Thus, even as we rule that the writ of possession was properly issued in favor of respondent as a consequence of its confirmed ownership, we are not unmindful of the fact that the issue of the excess or surplus proceeds of the foreclosure sale remains unsettled.

Respondent's stance, as sustained by the CA, is that petitioners have remaining unsecured obligations with respondent and the excess or surplus proceeds of the foreclosure sale were validly, albeit unilaterally, applied thereto.

This argument is unacceptable.

We have elucidated on the import of surplus proceeds in the case of *Sulit*, *viz.*:

> In case of a surplus in the purchase price, however, there is jurisprudence to the effect that while the mortgagee ordinarily is liable only for such surplus as actually comes into his hands, but he sells on credit instead of for cash, he must still account for the proceeds as if the price were paid in cash, and in an action against the mortgagee to recover the surplus, the latter cannot raise the defense that no actual cash was received.

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[25] Art. 427. Ownership may be exercised over things or rights.

[26] Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

We cannot simply ignore the importance of surplus proceeds because by their very nature, surplus money arising from a sale of land under a decree of foreclosure stands in the place of the land itself with respect to liens thereon or vested rights therein. They are constructively, at least, real property and belong to the mortgagor or his assigns. Inevitably, the right of a mortgagor to the surplus proceeds is a substantial right which must prevail over rules of technicality.

Surplus money, in case of a foreclosure sale, gains much significance where there are junior encumbrancers on the mortgaged property. Jurisprudence has it that when there are several liens upon the premises, the surplus money must be applied to their discharge in the order of their priority. A junior mortgagee may have his rights protected by an appropriate decree as to the application of the surplus, if there be any, after satisfying the prior mortgage. His lien on the land is transferred to the surplus fund. And a senior mortgagee, realizing more than the amount of his debt on a foreclosure sale, is regarded as a trustee for the benefit of junior encumbrancers.[27]

Given the foregoing pronouncement in *Sulit,* we cannot countenance respondent's cavalier attitude towards petitioners' right to the surplus proceeds. To begin with, the foreclosure of petitioners' properties was meant to answer only the obligation secured by the mortgage. Article 2126 of the Civil Code unequivocally states:

Art. 2126. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.

We need not expound on the obvious. Simply put, even if petitioners have remaining obligations with respondent, these obligations, as conceded by respondent itself, were not collateralized by the foreclosed properties.

Furthermore, under Section 1[28] of Act No. 3135 as amended, the special power of attorney authorizing the extrajudicial

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[27] *Supra* note 10, at 455-456.

[28] SECTION 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of

foreclosure of the real estate mortgage must be either (1) inserted or stated in the mortgage deed itself; or (2) the authority is attached thereto. Thus, petitioners' supposed remaining obligations which were not secured by the mortgage cannot be made subject, or even susceptible, to the extrajudicial foreclosure of mortgage.

However, petitioners' remedy lies in a separate civil action for collection of a sum of money.[29] We have previously held that where the mortgagee retains 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.[30] In the same case, both parties can establish their respective rights and obligations to one another, after a proper liquidation of the expenses of the foreclosure sale, and other interests and claims chargeable to the purchase price of the foreclosed property. The court can then determine the proper application of compensation with respect to respondent's claim on petitioners' remaining unsecured obligations.[31] In this regard, respondent is not precluded from itself filing a case to collect on petitioners' remaining debt.

Anent the third issue, we agree with the CA that there was no grave abuse of discretion in the trial court's liberality in giving ample time and opportunity for respondent to complete the presentation of its evidence. It was a liberality that carried no taint of partiality. Despite the *ex-parte* nature of the proceedings, the RTC also allowed petitioners to file pleadings to oppose the petition for the issuance of the writ of possession.

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the following election shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

[29] Petitioners' cause of action prescribes in ten (10) years from the time of the auction sale in January 5, 1998 when the excess or surplus proceeds thereof should have been returned to them. See Article 1144 of the Civil Code.

[30] *Sulit v. Court of Appeals*, *supra* note 10, at 457, citing *Kleinman v. Neubert*, 172 NW 315.

[31] Compensation is a mode of extinguishing obligations. See Articles 1278 and 1279 of the Civil Code.

Clearly, petitioners were not denied due process, and the trial judge acted accordingly in admitting respondent's uncontroverted evidence.

Finally, we note petitioners' incorrect remedy of *certiorari* before the CA, which the latter and both parties have apparently overlooked. A special civil action for *certiorari* may be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[32]

Ineluctably, the RTC issued the writ of possession in compliance with the express provisions of Act No. 3135. It cannot, therefore, be charged with grave abuse of discretion as there is no showing that, in the exercise of its judgment, it acted in a capricious, whimsical, arbitrary or despotic manner tantamount to lack of jurisdiction. Absent grave abuse of discretion, petitioners should have filed an ordinary appeal instead of a petition for *certiorari*. The soundness of the order granting the writ of possession is a matter of judgment with respect to which the remedy of the party aggrieved is ordinary appeal. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." Errors of judgment are correctible by appeal, while those of jurisdiction are reviewable by *certiorari*.[33]

Nonetheless, we have allowed this procedural lapse to pass without incident, and have resolved the issues raised.

WHEREFORE, the Petition is *DENIED*. The writ of possession in favor of respondent Philippine Bank of Communications is hereby *AFFIRMED* without prejudice to petitioners' separate remedy for recovery of the excess or surplus

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[32] RULES OF COURT, Rule 65, Sec. 1.

[33] *Philippine National Bank v. Sanao Marketing Corporation*, *supra* note 17, at 306; *Samson v. Rivera*, *supra* note 18, at 770.

proceeds of the extrajudicial foreclosure sale. Costs against the petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 162874. November 23, 2007]

LUCIO S. COLLADO, *petitioner, vs.* **HEIRS OF ALEJANDRO TRIUNFANTE, SR., represented by ALEJANDRO TRIUNFANTE, JR.,** *respondents.*

SYLLABUS

REMEDIAL LAW; COURTS; JURISDICTION; COURT WHICH RENDERED JUDGMENT HAS CONTROL OVER THE PROCESSES OF EXECUTION; INDEPENDENT ACTION FOR DAMAGES BASED ON THE IMPLEMENTATION OF WRIT OF EXECUTION IN CASE AT BAR, NOT PROPER. — An independent action for damages based on the implementation of a writ of execution cannot be sustained. The court which rendered the judgment has control over the processes of execution. The power carries with it the right to determine every question of fact and law which may be involved in the execution. Thus, the MTC which issued the Decision in the forcible entry case retains general jurisdiction over matters arising from the execution of the said Decision. If the officers who executed the writ of execution committed any irregularity or exceeded their authority in the enforcement of the writ, the proper recourse of Collado would have been to file a motion with or an application for relief from the same court which issued the Decision, not from any other court. It should also be borne in mind that the action for damages arose from a lawful order

of a competent court which had become final and executory. The writ of execution and the writ of demolitions issued by the MTC to enforce its Decision in the forcible entry case are proper in the ordinary course of law. Collado cannot claim that, not being a party to the action in the forcible entry case, his rights should not be prejudiced by the Decision therein. As adjudged by the RTC and sustained by the CA, Collado bought the property while it was still under litigation. He is the successor-in-interest of one of the real parties in the ejectment case. He acquired only the interest and stepped into the shoes of his predecessor who was a party. As such, he is bound by the ruling therein. The damages sustained by Collado as a result of the enforcement of the writ of execution should have been raised as a claim in an appeal from the Decision of the MTC.

APPEARANCES OF COUNSEL

Cayosa Fernan-Cayosa Law Offices for petitioner.
Jesus John B. Garma for respondents.

D E C I S I O N

NACHURA, *J*.:

Before the Court is a petition for review on *certiorari* of the Decision dated January 21, 2003 and the Resolution dated October 27, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 68541.

On July 15, 1998, the heirs of Alejandro Triunfante, Sr. (The Triunfantes) filed a case for forcible entry and damages with application for a writ of preliminary mandatory injunction and temporary restraining order against Guillermo Telan and Bruno Telan (The Telans) before the Municipal Trial Court (MTC), Branch 2, Tuguegarao, Cagayan. The case was docketed as Civil Case No. 2011. The Triunfantes sought to recover material possession of Cadastral Lot No. 3192-A, consisting of 7,852.50 square meters, located at Capatan, Tuguegarao, Cagayan.

The Triunfantes claimed that their father Alejandro Triunfante, Sr. (Alejandro) is the owner of the subject land, having acquired the same by virtue of a Deed of Absolute Sale of Unregistered

Land executed on January 30, 1946; that from the date of sale, Alejandro and his family cultivated the land, introduced improvements thereon and their possession of the land was continuous and peaceful; that in May 1998, the Telans, through force and intimidation, illegally entered the subject property, prohibited the Triunfantes from cultivating the same, constructed fences made of barbed wire, and prohibited them and their representatives from entering the property.

The Telans claimed that their father, Pedro, is the owner of the land; that during Pedro's lifetime, he was in open, public, continuous and undisturbed possession of the land until his death in 1992, when his heirs took possession of the land and remained in possession thereof up to the present.

Both contending parties claimed ownership over the land, asserting acquisition through intestate succession.

The MTC made a provisional declaration of the Triunfantes' ownership over the land. On November 26, 1998, the MTC rendered a Decision,[1] the dispositive portion of which reads:

> Wherefore, judgment is hereby rendered as follows:
>
> a) Ordering the defendants and any or all persons claiming right or authority under them to vacate the possession of the subject land;
>
> b) Ordering the defendants to pay jointly and severally the plaintiffs the following:
>
> 1) ₱10,000.00 per cropping season for the use and occupation of the premises commencing the first week of May 1998 until the possession of the land in question is restored to the plaintiffs;
>
> 2) ₱10,000.00 as attorney's fees;
>
> c) Ordering the defendants to pay the costs of this suit.
>
> SO ORDERED.[2]

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[1] Penned by Judge Andres Q. Cipriano; CA *rollo*, pp. 33-41.

[2] *Id*. at 40-41.

For failure of the Telans to file an appeal on time, the MTC Decision became final and executory.[3] On January 6, 2000, the MTC issued a Writ of Execution. However, the judgment was not executed because a certain Lucio Collado (Collado) had built a perimeter fence of concrete hollow blocks on the land.[4] On August 3, 2000, the MTC issued an *Alias* Writ of Execution,[5] directing the Provincial Sheriff, or any of his deputies, to execute the November 26, 1998 MTC Decision.

On October 18, 2000, the Triunfantes filed a Motion for the Issuance of a Writ of Demolition for Collado's failure to comply with the MTC Decision. On December 5, 2000, the MTC issued a Writ of Demolition,[6] commanding the Sheriff of Cagayan, or any of his deputies, to demolish the improvements erected on the land.

On April 3, 2001, Collado filed a civil case for damages with prayer for issuance of writ of preliminary mandatory injunction against the Triunfantes and the Office of the *Ex-Officio* Sheriff, through Sheriffs Cipriano Verbo, Jr. and Silvino Malana, Jr. The case was docketed as Civil Case No. 5818 before the Regional Trial Court (RTC), Branch 3, Tuguegarao City. Collado claims that his property right was violated when the Triunfantes and the Sheriffs, with threat, violence and intimidation, entered the enclosed premises of the property.[7] Collado asserts that he is the absolute owner and actual occupant of the land by virtue of a Deed of Absolute Sale executed between him and the Telans on June 19, 1998, involving 5,000 square meters of the disputed property, and he bought the other 2,000 square meters from Restituto Allam, who acquired the same from the heirs of Pedro Telan by way of waiver of rights on January 11, 2000.[8] He maintains that although the property is still unregistered, he has

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[3] *Rollo*, p. 237.

[4] Records, pp. 41-42.

[5] Penned by Presiding Judge Pablo M. Agustin; *id.* at 38-40.

[6] *Id.* at 43.

[7] Records, pp. 1- 7.

[8] *Rollo*, p. 15.

been in open, public, notorious, uninterrupted and continuous possession of the property in the concept of an owner through his predecessor-in-interest for a period of not less than sixty (60) years and up to the present.[9]

On June 25, 2001, the RTC issued an Order[10] dismissing the case with prejudice. The RTC declared that Collado violated the rule on non-forum shopping when he filed the case for damages. It was proven that there was a pending administrative protest before the Department of Environment and Natural Resources (DENR) involving the same parties, same subject matter, same issues, and the final outcome of the said administrative case is definitive of the outcome of the case for damages. The RTC further ruled that:

> This Court could not give credence to plaintiff Collado's arguments through his counsel that "There was a willful and unlawful invasion of plaintiff's property" on March 22, 2001. As gleaned from the records, the property herein was executed by a lawful order of the Municipal Trial Court including a lawful "Writ of Demolition." There was an implementation of a lawful Court Order where the strong arm of the law has to take its course. Otherwise, a contempt Order can be issued. If the plaintiff herein was not a party as alleged, then he can be considered as a "successor-in-interest" of the real parties to the civil cases at the Municipal Trial Court, being a buyer of said property under litigation.
>
> If there are no identities of causes of action in these cases pending, then the plaintiff must consider the primordial aim why these cases were filed one over another (sic). Is it not to gain and recover the same property from the defendants? If so, then all these cases have the same cause of action, to recover real property.[11]

Collado filed a Motion for Reconsideration of the aforesaid Decision. On September 28, 2001, the RTC issued an Order[12] denying the same.

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[9] *Supra* note 5.

[10] Penned by Judge Loreto Cloribel-Purunganan; records, pp. 91-93.

[11] *Id.* at 93.

[12] Records, pp. 149-151.

Aggrieved, Collado filed a petition for *certiorari* before the Court of Appeals (CA) contending the following:

a) The action for damages under Civil Case No. 5818 is entirely independent, separate and distinct from Civil Case No. 2001 which is an action for forcible entry. Hence, the principles of *litis pendencia*, *res judicata* and forum shopping are not applicable;[13]

b) There is no need for exhaustion of administrative remedies since the issues involved in the Protest before the DENR and the civil case for damages in the RTC are entirely separate and distinct;[14]

c) The forcible entry case did not resolve the issue of ownership;[15] and

d) The acts complained of in the case for damages before the RTC are wrongful, even though made pursuant to a court order.[16]

On January 21, 2003, the CA rendered a Decision[17] in favor of the Triunfantes. The CA declared that the RTC did not commit grave abuse of discretion in dismissing the civil case for damages, *viz.*:

> Under Section 19, Rule 70 of the 1997 Rules on Civil Procedure, "(i)f judgment is rendered against the defendant, *execution shall issue immediately*, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff x x x. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. x x x."

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[13] CA *Rollo*, p. 9.

[14] *Id*. at 14.

[15] *Id*.

[16] *Id*. at 15.

[17] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Bienvenido L. Reyes and Danilo B. Pine, concurring; *rollo*, pp. 14-20.

To stay the immediate execution of judgment in ejectment proceedings, the above-quoted provision require that the defendant:

1. perfect his appeal,
2. file a supersedeas bond, and
3. periodically deposit the rentals falling due during the pendency of the appeal.

The original defendants in Civil Case No. 2011, the predecessors-in-interest of petitioner, did nothing of the above. Since immediate execution shall issue so long as the above requirements are not complied with, the execution being a mandatory and ministerial duty of the court, the more should the judgment be executed should the same become final and executory. A writ of execution and later, a demolition order, were issued by the court. The judgment of the Municipal Court in an ejectment case is *res judicata* as to the issue of possession *de facto*. The possession and ownership of a parcel of land may be held by different persons. The winning party is entitled to the execution of the Municipal Court's final judgment as to possession. The officer charged with the execution of judgment in the absence of restraining order is enjoined to act with considerable dispatch so as not to unduly delay the administration of justice. The party which prevails after going through the full course of litigation is entitled to a writ of execution and to the energetic service and enforcement thereof upon the losing party. The acts complained of which transpired on 22 March 2001 were merely in pursuance of a lawful order of the court. Petitioner cannot claim exception thereto. *A judgment of eviction can be executed against a third party who has derived his right of possession of the premises from the defendant*, particularly when such right was acquired only after the filing of the ejectment suit.

In the instant case, 5,000 square meters of the disputed lot were acquired from the heirs of Pedro S. Telan on 19 June 1998, and 2,000 square meters from Restituto Allam on 26 January 2000, both by way of absolute sale. While the first acquisition was made barely a month before the complaint for ejectment was filed before Branch 02, MTC of Tuguegarao City, the latter acquisition was made after the Decision in Civil Case No. 2011 was rendered and the corresponding writ of execution therefore, issued. Moreover, the Sheriff's Report anent the execution of the order was dated 06 April 2001, made after the case before the court *a quo* was filed on 03 April 2001. A case in which an execution has been issued is thus

regarded as still pending so that all proceedings on the execution are proceedings in the suit. There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution. *The jurisdiction to correct errors and mistakes in the execution properly belongs to the court which issued the execution.* The Court should first be given the opportunity to correct the errors of its ministerial officers and to control its own process. This Court is thus of the considered opinion that the action for damages by petitioner should have been filed before Branch 02, MTC of Tuguegarao City, and not before the court *a quo*. This being the case, the court *a quo* has no jurisdiction over the case filed before it.[18]

The CA further elucidated that:

In the case below, the eviction of petitioner as the vendee of the original defendants was pursuant to the fact that he derived his possession of the premises from them and because the judgment of the MTC in the ejectment case is *res judicata* as to the issue of possession *de facto*. There arises therefore the malady that though the issue of ownership may have been only provisionally determined before the inferior court, its judgment as to possession *de facto* became final and is *res judicata* due to the failure of the original defendants to perfect their appeal on time or to pursue other remedies to recover the same. An independent complaint for damages, actual, punitive, exemplary and moral, being consequent to the execution of the judgment in Civil Case No. 2011 should therefore be threshed out before the court which ordered the execution of the judgment, the appeal therefrom having been foreclosed and the petition for *certiorari* therefore having been futile. An action against the plaintiffs would lie for the recovery of ownership thereof or for the quieting of title. However, the issue of damages arising out of the implementation of the order of execution and demolition remains within the jurisdiction of Branch 02, MTC of Tuguegarao City.[19]

The Triunfantes filed a Motion for Reconsideration because the *fallo* of the CA Decision conflicts with the *racio* in the

[18] *Id*. at 16-18.

[19] *Id*. at 19-20.

body of the Decision.[20] On October 27, 2003, the CA granted the motion of the Triunfantes and, accordingly, amended the dispositive portion of the Decision dated January 21, 2003, *viz.*:

> Foregoing premises considered, the instant petition is hereby **DENIED**. Branch 3, RTC of Tuguegarao City is hereby declared without jurisdiction over Civil Case No. 5818.
>
> SO ORDERED.

On March 15, 2004, Collado filed the present petition for review on *certiorari* giving these lone assignment of error:

> WHETHER OR NOT A SEPARATE AND INDEPENDENT ACTION FOR DAMAGES ARISING OUT OF THE IMPLEMENTATION OF A WRIT OF EXECUTION IN AN EJECTMENT CASE IS NOT COGNIZABLE BY THE REGIONAL TRIAL COURT.[21]

The petition is bereft of merit. An independent action for damages based on the implementation of a writ of execution cannot be sustained.

The court which rendered the judgment has control over the processes of execution. The power carries with it the right to determine every question of fact and law which may be involved in the execution.[22] Thus, the MTC which issued the Decision in the forcible entry case retains general jurisdiction over matters arising from the execution of the said Decision. If the officers who executed the writ of execution committed any irregularity or exceeded their authority in the enforcement of the writ, the

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[20] The *fallo* of the CA Decision reads:

Foregoing premises considered, the instant petition is hereby **GRANTED.** Branch 02, MTC of Tuguegarao City is hereby declared without jurisdiction over Civil Case No. 5818.

SO ORDERED.

[21] *Rollo*, p. 6.

[22] *Balais v. Velasco*, 322 Phil. 790, 806 (1996); *Darwin v. Tokonaga*, G.R. No. 54177, May 27, 1991, 197 SCRA 442, 450; *Paper Industries Corporation of the Philippines v. Intermediate Appellate Court,* No. 71365, June 18, 1987, 151 SCRA 161, 167.

proper recourse of Collado would have been to file a motion with or an application for relief from the same court which issued the Decision, not from any other court.

It should also be borne in mind that the action for damages arose from a lawful order of a competent court which had become final and executory. The writ of execution and the writ of demolitions issued by the MTC to enforce its Decision in the forcible entry case are proper in the ordinary course of law. Collado cannot claim that, not being a party to the action in the forcible entry case, his rights should not be prejudiced by the Decision therein. As adjudged by the RTC and sustained by the CA, Collado bought the property while it was still under litigation. He is the successor-in-interest of one of the real parties in the ejectment case. He acquired only the interest and stepped into the shoes of his predecessor who was a party. As such, he is bound by the ruling therein.

The damages sustained by Collado as a result of the enforcement of the writ of execution should have been raised as a claim in an appeal from the Decision of the MTC. However, due to inadvertence, his predecessor-in-interest filed a belated appeal which was properly denied.

A perusal of the allegations of Collado in the complaint for damages with the RTC reveals that what he wanted was for the RTC to nullify the Decision of the MTC and declare him as the owner of the property. Since his aim is to recover possession and ultimately ownership of the property, Collado should have filed the appropriate remedy under the law for the recovery of ownership of real property. The MTC ruled only on the issue of ownership in order to ascertain the issue of possession and its ruling is only provisional as to the issue of ownership. Collado's action for damages is inappropriate, because the basis for the suit is his alleged ownership of the property. That issue should first be resolved before a claim for damages can be sustained.

WHEREFORE, in view of the foregoing, the instant petition is *DENIED* for lack of merit. Costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 163340. November 23, 2007]

HERMENEGILDA DE LA CRUZ LOYOLA, *petitioner, vs.* **ANASTACIO MENDOZA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SECOND MOTION FOR RECONSIDERATION, NOT ALLOWED; FILING THEREOF WILL NOT AFFECT PERIOD TO APPEAL. —** Section 5, Rule 37 of the Rules of Court is explicit that a second motion for reconsideration shall not be allowed. Its filing in the trial court did not toll the running of respondent's period to appeal which began to run from January 4, 2001, when respondent received notice of the trial court's Order of November 29, 2000, denying his first motion for reconsideration. Since respondent had only until January 19, 2001 to appeal, his Notice of Appeal, filed on March 12, 2001, or 67 days after receiving notice of the order of denial, should have been denied for being late.

2. **ID.; ID.; APPEAL; PURELY STATUTORY PRIVILEGE; FAILURE TO INTERPOSE A TIMELY APPEAL RENDERS THE ASSAILED DECISION FINAL AND EXECUTORY AND DEPRIVES HIGHER COURT OF JURISDICTION TO ALTER THE FINAL JUDGMENT OR ENTERTAIN THE APPEAL. —** The right to appeal is neither a natural right nor a part of due process. It is merely a purely statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right to appeal must comply with the requirements of the Rules.

Perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional. Failure to interpose a timely appeal renders the assailed decision final and executory, and deprives a higher court of jurisdiction to alter the final judgment or to entertain the appeal. Not even this Court has jurisdiction to review, directly or indirectly, a final and executory decision of the lower court.

3. **ID.; ID.; ID.; ID.; ID.; LIBERAL APPLICATION OF THE LAW, NOT PROPER IN THE CASE AT BAR. —** It may well be pointed out that this Court has in very rare and exceptional cases condoned late filing of notices of appeal to prevent the commission of a grave injustice. However, the trial court's decision is clearly in accord with justice. A careful review of the records reveals to us that petitioner has shown that she acquired ownership of the subject land by acquisitive prescription before respondent obtained OCT No. 213 through fraud. Thus, there exists no meritorious reason to relax the application of the rules on perfection of appeals.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Gregorio P. Subong, Jr. for respondent.

D E C I S I O N

QUISUMBING, *J.*:

Before us is an appeal from the Decision[1] and Resolution[2] dated October 21, 2003 and May 3, 2004, respectively, of the Court of Appeals in CA-G.R. CV No. 70229. The Court of Appeals had reversed the Decision[3] dated August 17, 2000 of the Regional Trial Court (RTC), Branch 69, Pasig City, in Civil Case No. 66016 annulling Original Certificate of Title (OCT) No. 213.

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[1] *Rollo*, pp. 139-146. Penned by Associate Justice Marina L. Buzon, with Associate Justices Sergio L. Pestaño and Jose C. Mendoza concurring.

[2] *Id.* at 168-170.

[3] Records, pp. 185-193. Penned by Pairing Judge Pablito M. Rojas.

The facts are as follows:

On May 11, 1984, respondent Anastacio Mendoza was issued, by virtue of a free patent, OCT No. 213 over a 1,668-square meter parcel of land located in Sta. Ana, Taguig by the Register of Deeds for Metro Manila D-IV.[4]

On September 1, 1995, petitioner Hermenegilda de la Cruz Loyola, who was in possession of the land, filed with the Department of Environment and Natural Resources (DENR) a complaint[5] for annulment and/or reconveyance of respondent's OCT No. 213 on the ground that respondent obtained said title through fraud.

The DENR found that petitioner and her predecessors-in-interest had been in possession of the subject land since 1948 or more than 30 years at the time OCT No. 213 was issued in 1984. The DENR concluded that fraud attended the issuance of OCT No. 213; hence, it issued an Order[6] dated September 19, 1996 to the Office of the Solicitor General (OSG) to file on behalf of petitioner a petition for the cancellation of OCT No. 213.

The OSG, however, advised petitioner to file the case herself.

On December 2, 1996, petitioner filed with the RTC of Pasig City a complaint for annulment of OCT No. 213 with damages.[7]

Petitioner alleged that the land was originally part of a 4,060-sq. m. land owned by her grandfather by affinity, Julio Pili, who was issued on August 31, 1948 Tax Declaration No. 518[8] by the Provincial Assessor of Rizal.

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[4] *Id*. at 127.

[5] *Id*. at 135-139.

[6] *Id*. at 21-22.

[7] *Id*. at 1-7.

[8] *Id*. at 119.

In 1950, Julio transferred 2,030 square meters to her father, Francisco de la Cruz, who was issued Tax Declaration No. 6941[9] on October 4, 1950 and Tax Declaration No. 2008[10] on September 30, 1965. Francisco remained in possession of the land from 1950 until around 1976, when he gave possession to Victoriano Cruz and Trinidad Espiritu to whom he had mortgaged the land. The two mortgagees remained on the lot until 1995 when petitioner redeemed it.

Petitioner also alleged that she later discovered that on January 2, 1976, unknown to her father and the two mortgagees, the land had been transferred to Juana de la Cruz *Vda. De* Mendoza. Juana was issued Tax Declaration No. 13912[11] on the same date and then the next day entered into a simulated sale of the land with her son, respondent Anastacio Mendoza. A year later, respondent obtained the assailed OCT in his favor. Petitioner alleged that she demanded from respondent the cancellation of the title and surrender of the land, but to no avail.

Petitioner averred that OCT No. 213 was obtained through fraud since neither Juana nor Anastacio had ever been in possession of the property and no notice of the free patent application, which respondent filed in 1977, was ever sent to Francisco. Petitioner added that there was likewise no document evidencing the transfer of the property from Francisco to Juana, who were not related to each other.

In his Answer,[12] respondent made a general denial of the material averments of the complaint, but argued that petitioner had no legal personality to file the complaint that should have been filed by the OSG; that OCT No. 213 is now incontestable; and that petitioner's cause of action, if any, had already prescribed.

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[9] *Id*. at 9.

[10] *Id*. at 120.

[11] *Id*. at 121.

[12] *Id*. at 25-28.

Petitioner testified on the material averments in her complaint.[13] Atty. John Emmanuel Felipe Madamba[14] from the OSG testified that petitioner had to file the case herself since the land had already become private land by virtue of acquisitive prescription. He added that the OSG's nonparticipation was warranted under the proposed DENR *Guidelines in the Evaluation of Cases for Cancellation and Reversion*.

Respondent, for his part, presented only the contested OCT.

On August 17, 2000, the trial court ruled that petitioner had acquired ownership of the subject land by acquisitive prescription and that respondent obtained OCT No. 213 through fraud. The trial court held:

WHEREFORE, premises considered, judgment is hereby rendered declaring the nullity of the Free Patent issued in the name of Anastacio Mendoza, known as OCT No. 213, and requiring the DENR/Register of Deeds of Taguig, to issue another title in the name of the [petitioner] Hermenegilda de la Cruz Loyola, after payment of the prescribed fees. [Respondent] is further ordered to pay to the [petitioner] attorney's fee in the amount of Php50,000.00 and the costs.

SO ORDERED.[15]

Respondent received a copy of the trial court's decision on October 26, 2000. On November 6, 2000, respondent filed a Motion to Declare "Decision" to be "Null and Void" and Motion for Reconsideration[16] contending that (1) the pairing judge was without authority to decide the case on the merits and that (2) the trial court's decision was not based on the evidence presented in the trial court and therefore should be reconsidered. Respondent, however, failed to point out specifically the findings or conclusions of the decision which he alleged were not supported by the evidence or contrary to law.

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[13] TSN, September 4, 1997, pp. 1-23.

[14] TSN, March 5, 1998, pp. 1-7.

[15] Records, p. 193.

[16] *Id*. at 195-196.

Petitioner opposed the motion on the ground that it was *pro forma* and without merit. Petitioner also pointed out that Supreme Court Circular No. 19-98[17] dated February 18, 1998, explicitly authorized the pairing judge to act not only on incidental or interlocutory matters and those urgent matters requiring immediate action on cases pertaining to the paired court, but also on all other matters therein.[18]

On November 29, 2000, the trial court denied the motion for lack of merit.[19]

Respondent received a copy of the trial court's denial on January 4, 2001. He filed a second motion for reconsideration on January 16, 2001, on the same grounds. Again, he did not specify which portions of the decision were supposedly unsupported by evidence or contrary to law. Said motion was likewise denied.[20]

Aggrieved, respondent filed a notice of appeal on March 12, 2001.[21]

On appeal, the Court of Appeals reversed the trial court's decision and dismissed the complaint for annulment of OCT No. 213. Petitioner's motion for reconsideration was likewise denied. Hence, this petition.

Petitioner raises now the following as issues:

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE PASIG CITY REGIONAL TRIAL COURT, BRANCH 69.

II.

WHETHER THE PETITIONER AND HER PREDECESSORS-IN-INTEREST WERE THE TRUE AND RIGHTFUL OWNERS OF THE SUBJECT PROPERTY.

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[17] EXPANDED AUTHORITY OF PAIRING COURTS.

[18] Records, p. 199.

[19] *Id*. at 200.

[20] *Id*. at 200-202, 206.

[21] *Id*. at 209.

III.

WHETHER THE DOCUMENTARY EVIDENCE PRESENTED BY THE PETITIONER IS INSUFFICIENT TO WARRANT A BELIEF THAT SHE IS ENTITLED TO RECONVEYANCE OF THE SUBJECT PARCEL OF LAND.

IV.

WHETHER THERE WAS IRREGULARITY IN THE APPLICATION AND SUBSEQUENT GRANT OF FREE PATENT TO THE PRIVATE RESPONDENT.

V.

WHETHER THE CAUSE OF ACTION OF THE PETITIONER HAD ALREADY PRESCRIBED.[22]

The principal issue in this case is whether the appellate court committed reversible error in setting aside the trial court's decision and holding that petitioner is not entitled to reconveyance of the subject land covered by OCT No. 213.

Petitioner argues that the Court of Appeals failed to consider (1) that the land had been in the possession of petitioner and her predecessors-in-interest since the 1930s and therefore had become private land *ipso jure* before OCT No. 213 was issued, and (2) that the DENR had already found that the transfer of the property from Francisco de la Cruz to Juana de la Cruz *Vda. De* Mendoza was attended by fraud and misrepresentation. She likewise argues that respondent never acquired any right or title to the land under the free patent issued to him because the land covered therein was already private property and no longer part of the disposable land of the public domain at the time the free patent was issued. Respondent was also guilty of fraud. He misrepresented in his application for free patent that copies of the notice of survey were personally received by the owners of the adjoining lots who have been long dead and that the land was part of the public domain although it was not. Hence, according to petitioner, the free patent, as well as OCT No. 213, was void *ab initio* and never became indefeasible.

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[22] *Rollo*, p. 18.

The action to annul OCT No. 213 therefore also never prescribes.[23]

Respondent, for his part, insists that petitioner had no cause of action against him. He argues that a suit for annulment of title is in the nature of an action for reversion of title and could only be filed by the Solicitor General, not by petitioner herself. Also, all available causes of action had already prescribed since petitioner filed her complaint more than 12 years after the issuance of the title. Respondent adds that petitioner has not been able to overturn the presumption of validity of his title.[24]

After carefully considering the records of this case, including the submissions of the parties, we find reason to grant the petition not upon a review on the merits, but principally because the appellate court clearly erred in taking cognizance of the appeal over which it had no jurisdiction because the respondent's notice of appeal was patently filed late.

Section 5,[25] Rule 37 of the Rules of Court is explicit that a second motion for reconsideration shall not be allowed.[26] Its filing in the trial court did not toll the running of respondent's period to appeal which began to run from January 4, 2001, when respondent received notice of the trial court's Order of November 29, 2000, denying his first motion for reconsideration.[27]

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[23] *Id.* at 215, 218-223.

[24] *Id.* at 239-242.

[25] **SEC. 5.** *Second motion for new trial.*— A motion for new trial shall include all grounds then available and those not so included shall be deemed waived. A second motion for new trial, based on a ground not existing nor available when the first motion was made, may be filed within the time herein provided excluding the time during which the first motion had been pending.

No party shall be allowed a second motion for reconsideration of a judgment or final order. (Emphasis supplied.)

[26] *Obando v. Court of Appeals*, G.R. No. 139760, October 5, 2001, 366 SCRA 673, 677.

[27] Records, p. 201.

Since respondent had only until January 19, 2001 to appeal,[28] his Notice of Appeal, filed on March 12, 2001, or 67 days after receiving notice of the order of denial, should have been denied for being late.

The right to appeal is neither a natural right nor a part of due process. It is merely a purely statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. A party who seeks to avail of the right to appeal must comply with the requirements of the Rules.[29] Perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional. Failure to interpose a timely appeal renders the assailed decision final and executory, and deprives a higher court of jurisdiction to alter the final judgment or to entertain the appeal.[30] Not even this Court has jurisdiction to review, directly or indirectly, a final and executory decision of the lower court. Clearly, therefore, the Court of Appeals acted without jurisdiction when it took cognizance of respondent's appeal and modified the trial court's final and executory decision.

It may well be pointed out that this Court has in very rare and exceptional cases condoned late filing of notices of appeal to prevent the commission of a grave injustice.[31] However, the trial court's decision is clearly in accord with justice. A careful review of the records reveals to us that petitioner has shown that she acquired ownership of the subject land by

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[28] *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005, 469 SCRA 633, 639; *Sps. De Los Santos v. Vda. De Mangubat, et al.*, G.R. No. 149508, October 10, 2007, pp. 9-12.

[29] *Id.* at 638.

[30] *Foster-Gallego v. Galang*, G.R. No. 130228, July 27, 2004, 435 SCRA 275, 287; *Zacate v. Commission on Elections,* G.R. No. 144678, March 1, 2001, 353 SCRA 441, 449; *Barangay 24 of Legazpi City v. Imperial*, G.R. No. 140321, August 24, 2000, 338 SCRA 694, 702.

[31] See *Ramos v. Bagasao*, No. 51552, February 28, 1980, 96 SCRA 395, 397; *Republic v. Court of Appeals*, Nos. L-31303-04, May 31, 1978, 83 SCRA 453, 474-475; *Olacao v. National Labor Relations Commission*, G.R. No. 81390, August 29, 1989, 177 SCRA 38, 49.

acquisitive prescription before respondent obtained OCT No. 213 through fraud. Thus, there exists no meritorious reason to relax the application of the rules on perfection of appeals.

WHEREFORE, the instant petition is *GRANTED*. The Decision and Resolution dated October 21, 2003 and May 3, 2004, respectively, of the Court of Appeals in CA-G.R. CV No. 70229 are *SET ASIDE.* The Decision dated August 17, 2000 of the Regional Trial Court, Branch 69, Pasig City, in Civil Case No. 66016 is *REINSTATED*. No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 163757. November 23, 2007]

GORDOLAND DEVELOPMENT CORP., *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; NON-FORUM SHOPPING; VERIFICATION; WHERE DEFECT IN VERIFICATION WAS LATER RATIFIED, THE SAME IS ALLOWED AS OBJECTIVES OF THE LAW NOT CIRCUMVENTED. —** This Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is a condition affecting the form of the pleading; non-compliance with this requirement does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the

imagination or a matter of speculation, and that the pleading is filed in good faith. Further, the purpose of the aforesaid certification is to prohibit and penalize the evils of forum-shopping. Considering that later on Atty. Paderanga's authority to sign the verification and certificate of non-forum shopping was ratified by the board, there is no circumvention of the aforestated objectives.

2. **ID.; ID.; APPEALS; QUESTION OF FACT, NOT APPRECIATED; EXCEPTIONS. —** We now go to the second issue. At the outset we note that this issue involves a question of fact. As a general rule, this Court does not resolve questions of fact in a petition for review under Rule 45 of the 1997 Rules of Civil Procedure. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact 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 petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

3. **CIVIL LAW; LAND TITLES; IMPERFECT TITLE; ADVERSE POSSESSION; APPLICATION TO ALIENABLE AND DISPOSABLE AGRICULTURAL LANDS MUST FIRST BE SO CLASSIFIED AS SUCH BY THE GOVERNMENT. —** It must be stressed that incontrovertible evidence must be presented to establish that the land subject of the application is alienable and disposable. In view of the lack of sufficient evidence showing that the subject lots were already classified as alienable and disposable lands of the government, and when they were so classified, there is no reference point for counting adverse

possession for purposes of an imperfect title. The Government must first declare the land to be alienable and disposable agricultural land before the year of entry, cultivation, and exclusive and adverse possession can be counted for purposes of an imperfect title.

APPEARANCES OF COUNSEL

Hernandez Grimares & Custodio Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

QUISUMBING, *J.*:

The instant petition assails the Decision[1] dated January 13, 2003 and the Resolution[2] dated May 20, 2004 of the Court of Appeals in CA-G.R. CV No. 62545 which reversed and set aside the Decision[3] dated January 16, 1998 of the Regional Trial Court (RTC), Branch 55, Mandaue City and denied the corresponding motion for reconsideration, respectively.

Petitioner is engaged in the business of real property development. On November 18, 1996, it filed with the RTC, Branch 55, Mandaue City, an application docketed as LRC Case No. N-547[4] for original registration of title over eight parcels of land totaling 86,298 square meters located in different *barangays* within the Municipality of Lilo-an, Cebu.

Petitioner avers it obtained title over said parcels in 1995 by virtue of several deeds of sale and assignments of appurtenant rights from the alleged owner-possessors whom petitioner claims had been in open, continuous, exclusive, and notorious possession and occupation as would entitle them to acquire title by acquisitive

[1] *Rollo*, pp. 25-42. Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Romeo A. Brawner and Danilo B. Pine concurring.

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

[3] *Id*. at 60-69. Penned by Judge Ulric R. Cañete.

[4] Records, pp. 1-6.

prescription, under Commonwealth Act No. 141,[5] or the Public Land Act, in relation to Republic Act No. 496[6] and Presidential Decree No. 1529.[7]

The petitioner presented (1) testimonies of its predecessors-in-interest with respect to the eight parcels of land and (2) documentary exhibits; among them: tax declarations, certifications from the Register of Deeds that there are no subsisting titles over the subject properties, and certifications from the Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources, declaring that there are no subsisting public land applications with respect to the same.

After submitting its formal offer of exhibits and resting its case, the petitioner filed a Manifestation[8] dated November 14, 1997 with an attached photocopy of a Certification[9] dated January 10, 1996 from the Cebu CENRO declaring that,

> …per projection and ground verification…a tract of land **with list of lot numbers attached herewith** containing an area of ONE HUNDRED THIRTY-EIGHT POINT FOUR SIX FIVE SEVEN (138.4657) hectares, more or less, situated in the Barangay at Sta. Cruz, San Vicente and Lataban Lilo[-]an, Cebu. As shown and described in the Sketch Plan at the back hereof…The same was found to be:
>
> A. Within the Alienable and Disposable Block-1, land classification project no. 29 per LC Map no. 1391 of Lilo[-]an, Cebu. Certified under Forestry Administrative Order No. 4-537 dated July 31, 1940; and
>
> x x x x x x x x x

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[5] AN ACT TO AMEND AND COMPILE THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN.

[6] The Land Registration Act.

[7] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES.

[8] Records, p. 149.

[9] *Id*. at 150.

(signed)	(signed)
EDUARDO M. INTING	ATTY. ROGELIO C. LAGAT
Community Environment and	Provincial Environment and
Natural Resources Officer	Natural Resources Officer

(Emphasis supplied.)

However, the list of lot numbers referred to in the certification was not included in the certification, nor was it attached to the Manifestation. The list was never submitted to the trial court. The petitioner's Manifestation merely informed the court that it had failed to include the said certification in its formal offer of exhibits, and that it was "submitting" the same "in compliance with the requirements of the application." Petitioner did not move to re-open the proceedings to present the certification in evidence, have it authenticated and subjected to cross-examination, or have it marked as an exhibit and formally offered in evidence. The original was never submitted.

The State, through the Director of Lands, entered its formal opposition to the application, asserting that registration should be denied on the following grounds:

1. [T]hat neither the applicant/nor his/her/their predecessors-in-interest have been in open[,] continuous[,] ex[c]lusive[,] and notorious possession and occupation of the land in question since June 12, 1945 or prior thereto…[;]

2. [T]hat the muniment/s of title and/or tax declaration/s and tax payment/s receipt/s of applicant/s if any, attached to or alleged in the application, do/es not constitute competent and sufficient evidence of a bona-fide acquisition of the lands applied for or of his/her/their open, continuous, exclusive[,] and notorious possession and occupation…[;]

3. [T]hat the claim of ownership in fee simple on the basis of Spanish Title or grant can no longer be availed of by the applicant/s who have failed to file an appropriate application for registration within the period of six (6) months from February 16, 1976 as required by Presidential Decree No. 892.[10] From the records, it

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[10] DISCONTINUANCE OF THE SPANISH MORTGAGE SYSTEM OF REGISTRATION AND OF THE USE OF SPANISH TITLES AS EVIDENCE IN LAND REGISTRATION PROCEEDINGS.

appears that the instant application was filed on November 18, 1996[;]

That the applicant is a private corporation disqualified under the [N]ew Philippine Constitution to hold alienable lands of the public domain…

4. [T]hat the parcel/s applied for in/are portions of the public domain belonging to the Republic of the Philippines not subject to private appropriation.[11]

On January 16, 1998, the trial court rendered its decision granting the application, and directed the issuance of the respective decrees of registration for each of the eight parcels of land, all in petitioner's name.

WHEREFORE, premises con[s]idered, judgment is hereby rendered ordering the issuance of title to the lands designated as follows:

[1.] Lot No. 4221 described in the Technical [D]escription (Exhibit "L"), situated at San Vicente, Lilo-an, Cebu[,] containing an area of Ten Thousand Two Hundred [F]orty[-][E]ight (10,248) square meters, more or less;

2. Lot No. 4222 described in the Technical Description (Exhibit "T"), situated at Lataban, Lilo-an, Cebu[,] containing an area of Two Thousand [F]our [H]undred [T]wenty-[O]ne square meters (2,421), more or less;

3. Lot No. 4242 described in the Technical Description (Exhibit "AA"), situated at San Vicente, Lilo-an, Cebu, containing an area of Three Thousand Four Hundred Twenty-Eight (3,428) square meters, more or less;

4. Lot No. 7250 described in the Technical Description (Exhibit "MM"), situated at Lataban, Lilo-an, Cebu, containing an area of Forty-Six Thousand Four Hundred Eighty-Seven (46,487) square meters, more or less;

5. Lot No. 7252 described in the Technical Description (Exhibit "XX"), situated at Lataban, Lilo-an, Cebu, containing an area of Seven Thousand Nine Hundred Thirty-Two (7,932) square meters, more or less;

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[11] Records, pp. 113-114.

6. Lot No. 7260 described in the Technical Description (Exhibit "QQQ"), situated at Lataban, Lilo-an, Cebu, containing an area of Two Thousand Nine Hundred Twenty (2,920) square meters, more or less;

7. Lot No. 7264 described in the Technical Description (Exhibit "CCC"), situated at Lataban, Lilo-an, Cebu, containing an area of Two Thousand Seven Hundred Eighty-Seven (2,787) square meters, more or less;

8. Lot No. 7269 described in the Technical Description (Exhibit "III"), situated at Barangay Lataban, Lilo-an, Cebu, containing an area of Nine Thousand Nine Hundred Seventy-Eight (9,978) square meters, more or less;

All in [f]avor and in the name of Gordoland Development Corporation, a corporation duly organized and existing under and by virtue of Philippine Laws with address at Suite 801, Ermita Center Building, Roxas Blvd., Manila.

Upon finality of this decision, let the corresponding decree of registration be issued in favor of applicants in accordance with Section 39, P.D. 1529.

SO ORDERED.[12]

The State filed its notice of appeal.

Meanwhile, on February 23, 1998, the trial court received a Report[13] from the Land Registration Authority (LRA), Office of the Director, Department on Registration, which declared that LRA was not in a position to verify whether or not the subject lands were covered by land patents, or within the area classified as alienable and disposable. It recommended that the Land Management Bureau (LMB) in Manila, the CENRO and the Forest Management Bureau (FMB) in Cebu be ordered to determine and make a finding if the lots were alienable and disposable.

Thereafter, the trial court, acting upon the LRA report, directed the LMB, Cebu CENRO and FMB to report on the true status

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[12] *Rollo*, pp. 68-69.

[13] Records, p. 400.

of the lands.[14] It did not, however, recall or suspend its judgment in the main.

On appeal, the Court of Appeals reversed the trial court's decision, upon the following grounds:

WHEREFORE, finding merit to the appeal of [respondent] Republic of the Philippines, the Decision rendered by the Regional Trial Court of Mandaue City, Branch 55 dated January 16, 1998 is hereby REVERSED and SET ASIDE.

No pronouncement as to costs.

SO ORDERED.[15]

The petitioner moved for reconsideration, but the same was denied. Hence, the instant petition, raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECLARING THAT THE APPLICATION FOR LAND REGISTRATION AND THE CERTIFICATION OF NON-FORUM SHOPPING WERE DEFECTIVE FOR LACK OF AUTHORITY FROM THE CORPORATION'S BOARD OF DIRECTORS.

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER FAILED TO PROVE THAT THE SUBJECT PROPERTIES WERE ALIENABLE AND DISPOSABLE PUBLIC LAND.

III.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER AND ITS PREDECESSOR[S]-IN-INTEREST FAILED TO COMPLY WITH THE 30-YEAR POSSESSION REQUIRED BY LAW.[16]

Stated simply, the petitioner raises the following issues, to wit: (1) whether or not its petition for registration is defective;

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[14] *Id.* at 401.

[15] *Rollo*, p. 41.

[16] *Id.* at 184.

(2) whether or not the subject parcels of land are alienable and disposable; and (3) whether or not petitioner's predecessors-in-interest were in open, continuous, exclusive and notorious possession of the properties for a period of at least 30 years.

Petitioner contends that its petition for registration is not defective because the Rules of Court is not applicable in land registration cases,[17] the parcels of land are alienable and disposable as can be readily gleaned from the annexes to its application,[18] and it presented more than enough documentary and testimonial evidence to show possession of the subject parcels of land in the nature and duration required by law, even going way back to World War II.[19]

On the other hand, respondent contends that petitioner's petition for registration is defective because Atty. Goering G.C. Paderanga, petitioner's counsel, was not authorized by petitioner's board of directors to file the application and sign the certification on non-forum shopping.[20] Respondent also contends that petitioner failed to prove that the subject lands were alienable and disposable public lands,[21] and to present convincing proof that it and its predecessors-in-interest had been in open, continuous, exclusive and notorious possession of the subject lands in the concept of an owner for more than 30 years.[22]

Anent the first issue, this Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is a condition affecting the form of the pleading; non-compliance with this requirement does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the

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[17] *Id*. at 186.

[18] *Id*. at 190-191.

[19] *Id*. at 194.

[20] *Id*. at 152.

[21] *Id*. at 166.

[22] *Id*. at 171.

product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[23] Further, the purpose of the aforesaid certification is to prohibit and penalize the evils of forum-shopping. Considering that later on Atty. Paderanga's authority to sign the verification and certificate of non-forum shopping was ratified[24] by the board, there is no circumvention of the aforestated objectives.

We now go to the second issue. At the outset we note that this issue involves a question of fact. As a general rule, this Court does not resolve questions of fact in a petition for review under Rule 45 of the 1997 Rules of Civil Procedure. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact 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 petitioners' main and reply briefs are not disputed by the respondents; and

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[23] *Benguet Corporation v. Cordillera Caraballo Mission, Inc*., G.R. No. 155343, September 2, 2005, 469 SCRA 381, 384.

[24] *Rollo*, p. 70.

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[25]

Exception (7) as quoted above is present in this case. In its decision the trial court found that the subject parcels of land were within the alienable and disposable land of the public domain. On the other hand, the Court of Appeals found that petitioner had not been able to prove that the subject parcels of land were indeed alienable and disposable.[26]

A review of the records shows that the conclusions of the Court of Appeals are well-founded. There is no evidence on record showing that the subject lots have already been classified as alienable and disposable.

The CENRO certifications offered in evidence by petitioner, particularly Exhibits "DD", "OO", "ZZ" and "SSS" only similarly, except as to the lot numbers, state:

This is to certify that according to the records available in this office, Lot Nos. 4221, 7264, 7260, 7270 and 4325, Pls-823, Liloan, Cebu are not covered by any subsisting public land application.[27]

There is no mention in any of these certifications that the subject lots are within the alienable and disposable land of the public domain.

The photocopy of a Certification dated January 10, 1996 from the Cebu CENRO, attached to petitioner's Manifestation before the trial court, cannot be given any probative value. As suitably explained by the Court of Appeals:

…What was attached to the Manifestation quoted above is merely a photocopy of the Certification dated January 10, 1996 without the

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[25] *Ontimare, Jr. v. Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265; *Caoili v. Court of Appeals,* G.R. No. 128325, September 14, 1999, 314 SCRA 345, 354, citing *Sta. Maria v. Court of Appeals,* G.R. No. 127549, January 28, 1998, 285 SCRA 351, 357-358.

[26] Court of Appeals Decision, p. 12; *rollo*, p. 36.

[27] Exh. "SSS", records, p. 67.

list of lot numbers attached thereto. It does not appear that said Certification was ever utilized by Gordoland in support of its application, neither was the original copy or certified true copy thereof ever presented nor submitted to the lower court to form part of the records of the case. It was not marked and formally offered in evidence. Evidence not formally offered before the trial court cannot be considered on appeal, for to consider them at such stage will deny the other parties their right to rebut them. *(Ong v. Court of Appeals, 301 SCRA 387 [1997]).* The reason for the rule prohibiting the admission of evidence that has not been formally offered is to afford the other party the chance to object to their admissibility *(Ong Chia v. Republic, 328 SCRA 749 [2000]).*

It is true that the trial court had noted the said Certification in its questioned decision of January 16, 1998. Thus:

> "In resolving the Opposition interposed by the State,…And as certified to by the CENRO, these lots are already within the alienable and disposable land of the public domain and therefore susceptible to private appropriation."…

Verily, the trial court just adopted entirely the statements embodied in the said Certification, a photocopied document, which had not been formally offered in evidence, without inquiring into the supposed attachments thereto, without examining the contents thereof, and without verifying whether such Certification really pertained to the lands in question. The trial court simply could not ascertain such facts, for nowhere in the records can be found the alleged attachments.[28]

It must be stressed that incontrovertible evidence must be presented to establish that the land subject of the application is alienable and disposable.[29]

In view of the lack of sufficient evidence showing that the subject lots were already classified as alienable and disposable lands of the government, and when they were so classified, there is no reference point for counting adverse possession for purposes of an imperfect title. The Government must first declare

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[28] *Rollo*, p. 36.

[29] *Republic v. Enciso,* G.R. No. 160145, November 11, 2005, 474 SCRA 700, 711-712.

the land to be alienable and disposable agricultural land before the year of entry, cultivation, and exclusive and adverse possession can be counted for purposes of an imperfect title.[30] Consequently, there is no point in discussing the third issue on the length of petitioner's possession.

In conclusion, we see no reason to disturb the findings of the Court of Appeals, which we find supported by evidence on record. In our considered view, the Court of Appeals correctly held that:

> The facts and circumstances in the record render untenable that Gordoland had performed all the conditions essential to reinforce its application for registration under the Property Registration Decree.…
>
> The Court is of the opinion, and so finds, that subject Lot No. 4221, Lot No. 4222, Lot No. 4242, Lot No. 7250, Lot No. 7252, Lot No. 7260, Lot No. 7264, and Lot No. 7269 form part of the public domain not registrable in the name of Gordoland. To reiterate, under the Regalian doctrine, all lands belong to the State. Unless alienated in accordance with law, it retains its basic rights over the same as *dominus*….[31]

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Decision and the Resolution dated January 13, 2003 and May 20, 2004, respectively, of the Court of Appeals which reversed and set aside the Decision dated January 16, 1998 of the Regional Trial Court, Branch 55, Mandaue City, are hereby *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[30] See *Del Rosario v. Republic*, G.R. No. 148338, June 6, 2002, 383 SCRA 262, 274; and *Republic v. Court of Appeals*, No. 56948, September 30, 1987, 154 SCRA 476, 482.

[31] *Rollo*, pp. 40-41.

THIRD DIVISION

[G.R. No. 164078. November 23, 2007]

AMA COMPUTER COLLEGE, PARAÑAQUE, and/or AMABLE C. AGUILUZ IX, President, MRS. CELESTE BANSALE, School Director, MS. SOCORRO, MR. PATRICK AZANZA, GRACE BERANIA and MAJAL JACOB, *petitioners, vs.* **ROLANDO A. AUSTRIA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT, NOT PROPER; EXCEPTIONS; CONFLICT IN FACTUAL FINDINGS; CASE AT BAR. —** The first question, *i.e.*, whether respondent is a regular, probationary, or fixed term employee is essentially factual in nature. However, the Court opts to resolve this question due to the far-reaching effects it could bring to the sector of the academe. As an exception to the general rule, we held in *Molina v. Pacific Plans, Inc.*: A disharmony between the factual findings of the Labor Arbiter and the National Labor Relations Commission opens the door to a review thereof by this Court. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness. Moreover, when the findings of the National Labor Relations Commission contradict those of the Labor Arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings. The instant case falls squarely within the aforesaid exception.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; EMPLOYMENT CONTRACT WITH FIXED PERIOD, NOT PROSCRIBED; CASE OF *BRENT SCHOOL, INC. V. ZAMORA, CITED*. —** Article 280 of the Labor Code does not proscribe or prohibit an employment contract with a fixed period. Even if the duties of the employee consist of activities necessary or desirable in the usual business of the employer, the parties are free to agree on a fixed period of time for the performance of such activities. There is nothing

essentially contradictory between a definite period of employment and the nature of the employee's duties. Thus, this Court's ruling in *Brent School, Inc. v. Zamora* is instructive:

The question immediately provoked. . . is whether or not a voluntary agreement on a fixed term or period would be valid where the employee "has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer." The definition seems *non sequitur*. From the premise — that the duties of an employee entail "activities which are usually necessary or desirable in the usual business or trade of the employer" — the conclusion does not necessarily follow that the employer and employee should be forbidden to stipulate any period of time for the performance of those activities. There is nothing essentially contradictory between a definite period of an employment contract and the nature of the employee's duties set down in that contract as being "usually necessary or desirable in the usual business or trade of the employer." The concept of the employee's duties as being "usually necessary or desirable in the usual business or trade of the employer" is not synonymous with or identical to employment with a fixed term. Logically, the decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be "that which must necessarily come, although it may not be known when." Seasonal employment, and employment for a particular project are merely instances of employment in which a period, where not expressly set down, is necessarily implied. x x x Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, **but to which a fixed term is an essential and natural appurtenance:** overseas employment contracts, for one, to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does not appear ever to have been applied, Article 280 of the Labor Code notwithstanding; **also appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices in educational institutions, which**

are by practice or tradition rotated among the faculty members, and where fixed terms are a necessity without which no reasonable rotation would be possible. . . . x x x.

3. ID.; ID.; ID.; ID.; APPLICATION OF *BRENT SCHOOL* DOCTRINE IN CASE AT BAR. — The instant case involves respondent's position as dean, and comes within the purview of the *Brent School* doctrine. *First*. The letter of appointment was clear. Respondent was confirmed as Dean of AMA College, *Parañaque,* effective from April 17, 2000 to September 17, 2000. In numerous cases decided by this Court, we had taken notice, that by way of practice and tradition, the position of dean is normally an employment for a fixed term. Although it does not appear on record–and neither was it alleged by any of the parties–that respondent, other than holding the position of dean, concurrently occupied a teaching position, it can be deduced from the last paragraph of said letter that the respondent shall be considered for a faculty position in the event he gives up his deanship or fails to meet AMA's standards. Such provision reasonably serves the intention set forth in *Brent School* that the deanship may be rotated among the other members of the faculty. *Second*. The fact that respondent did not sign the letter of appointment is of no moment. We held in *Brent School*, to wit: Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. **It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.** Unless, thus, limited in its purview, the law would be made to apply to purposes

other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.

4. **ID.; ID.; ID.; EXPIRATION OF AN EMPLOYMENT CONTRACT WITH A FIXED PERIOD, CONSTRUED; CASE AT BAR. —** A contract of employment for a definite period terminates on its own force at the end of such period. The lack of notice of termination is of no consequence because when the contract specifies the length of its duration, it comes to an end upon the expiration of such period. Thus, the unanimous finding of the Labor Arbiter, the NLRC and the CA that respondent adequately refuted all the charges against him assumes relevance only insofar as respondent's dismissal from the service was effected by petitioners before expiration of the fixed period of employment. True, petitioners erred in dismissing the respondent, acting on the mistaken belief that respondent was liable for the charges leveled against him. But respondent also cannot claim entitlement to any benefit flowing from such employment after September 17, 2000, because the employment, which is the source of the benefits, had, by then, already ceased to exist.

5. **POLITICAL LAW; CONSTITUTIONAL LAW; SOCIAL JUSTICE AND HUMAN RIGHTS; PROTECTION TO LABOR; NOT NECESSARILY OPPRESSION OF EMPLOYERS. —** While this Court adheres to the principle of social justice and protection to labor, the constitutional policy to provide such protection to labor is not meant to be an instrument to oppress employers. The commitment under the fundamental law is that the cause of labor does not prevent us from sustaining the employer when the law is clearly on its side.

APPEARANCES OF COUNSEL

Almazan Veloso Mira & Partners for petitioners.
Samson S. Alcantara for respondent.

DECISION

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated March 29, 2004 which affirmed with modification the Decision[3] of the National Labor Relations Commission (NLRC), dated March 31, 2003.

The Facts

Petitioner AMA Computer College, *Parañaque* (AMA) is an educational institution duly organized under the laws of the Philippines. The rest of the petitioners are principal officers of AMA. Respondent Rolando A. Austria[4] (respondent) was hired by AMA on probationary employment as a college dean on April 24, 2000.[5] On August 22, 2000, respondent's appointment as dean was confirmed by AMA's Officer-in-Charge (OIC), Academic Affairs, in his Memorandum,[6] which reads:

> After a thorough evaluation of the performance of Mr. Rolando Austria as Dean, we are happy to inform you that he is hereby officially confirmed as Dean of AMA College Parañaque effective April 17, 2000 to September 17, 2000.
>
> In view of this, he will be entitled to a transportation allowance of One Thousand Five Hundred Sixty Pesos (₱1,560.00).

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[1] Dated July 8, 2004, *rollo*, pp. 3-25.

[2] Particularly docketed as CA-G.R. SP No. 78455, penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Roberto A. Barrios (deceased) and Fernanda Lampas-Peralta, concurring; *id.* at 27-33.

[3] Particularly docketed as NLRC NCR CA No. 030561-02; *id.* at 57-63.

[4] Also referred to as Rolando S. Austria in a Memorandum dated August 22, 2000; *id.* at 78.

[5] Memorandum dated April 15, 2000; *id.* at 79.

[6] *Supra* note 4.

In the event that Mr. Austria gives up the Dean position or fails to meet the standards of the (sic) based on the evaluation of his immediate superior, he shall be considered for a faculty position and the appointee agrees that he shall lose the transportation allowance he enjoys as Dean and be entitled to his faculty rate.

Sometime in August 2000, respondent was charged with violating AMA's Employees' Conduct and Discipline provided in its Orientation Handbook (Handbook),[7] as follows:

1) leaking of test questions;

2) failure to monitor general requirements vital to the operations of the company; and

3) gross inefficiency.

In a Memorandum[8] dated August 29, 2000, respondent refuted the charges against him. Thereafter, respondent was placed on preventive suspension from September 8, 2000 to October 10, 2000. Notices[9] of Investigation were sent to respondent. Eventually, on September 29, 2000, respondent was informed of his dismissal, to wit:

Dear Mr. Austria[,]

Please be informed that after a careful deliberation on the case filed against you and upon serious consideration of the evidences (sic) presented, the Management has found you guilty of violating the following policies:

A. Loss of trust and confidence by management due to gross inefficiency.

(5.21 Very Serious/Grave Offense)

B. Failure to monitor general requirements vital to the operations of the company.

(5.10 Medium Offense)

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[7] *Rollo*, pp. 105-106.

[8] CA *rollo*, p. 84.

[9] *Rollo*, pp. 108-109.

C. Leaking of test questions.

(4.17 Very Serious/Grave Offense)

This resulted to the loss of trust and confidence in your credibility as a company officer holding a highly sensitive position. In view of this, your services as Dean of AMA Parañaque is hereby terminated effective immediately.

You are hereby instructed to report to the branch HR Personnel for further instructions. Please bear in mind that as a company policy you are required to accomplish your clearance and turn over all documents and responsibilities to the appropriate officers.

You are barred from entering the company premises unless with clearance from the HRD.[10]

On October 27, 2000, respondent filed a Complaint[11] for Illegal Dismissal, Illegal Suspension, Non-Payment of Salary and 13th Month Pay with prayer for Damages and Attorney's Fees against AMA and the rest of the petitioners. Trial on the merits ensued.

The Labor Arbiter's Ruling

In his Decision[12] dated December 6, 2000, the Labor Arbiter held that petitioners accorded respondent due process. The Labor Arbiter however, also held that respondent substantially refuted the charges of gross inefficiency, incompetence, and leaking of test questions filed against him. But since respondent can no longer be reinstated beyond September 17, 2000 as his designation as college dean was only until such date, respondent should instead be paid his compensation and transportation allowance for the period from September 8, 2000 to September 17, 2000, or the salary and benefits withheld prior thereto. Thus:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent AMA Computer College, Parañaque to pay

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[10] Letter addressed to respondent by one Edwin Santos, Senior Manager for Human Resources of AMA; *id*. at 110.

[11] Particularly docketed as NLRC NCR Case No. 30-0-04319-00; records, p. 1.

[12] *Rollo*, pp. 68-73.

complainant's proportionate salary for the period beginning 8 September 2000 to 17 September 2000.

> ₱30,000 x 10/30 days = ₱10,000.00 and his proportionate transportation allowance.
>
> ₱1,560.00 x 10/30 days = ₱520.00 and the salary/benefits withheld prior to 8 September 2000, if any.
>
> All other claims are hereby dismissed for lack of merit.
>
> SO ORDERED.

Aggrieved, respondent appealed the said Decision to the NLRC.[13]

The NLRC's Ruling

On March 31, 2003, the NLRC, in its Decision,[14] found merit in respondent's appeal. The NLRC opined that the petitioners did not contravene respondent's allegation that he had attained regular status after serving the three (3)-month probationary period required under the Handbook.[15] Thus, while the NLRC sustained the Labor Arbiter's finding that petitioners failed to establish the grounds for respondent's dismissal, it held that the Labor Arbiter erred in declaring that respondent's appointment was only from April 24 to September 17, 2000. Accordingly, the NLRC declared that respondent was a regular employee and that he was illegally dismissed. Nevertheless, the NLRC held that reinstatement would not promote industrial harmony; hence, the NLRC disposed of the case in this wise:

> PREMISES CONSIDERED the Decision of December 6, 2000 is **VACATED** and a new one entered declaring complainant illegally dismissed. Respondents are directed to pay complainant separation pay computed at one (1) month per year of service in addition to full backwages from September 29, 2000 until December 6, 2000, or in the amount of one hundred thousand three hundred seventy-eight-pesos & 80/100 (₱100,378.80).

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[13] Dated January 7, 2002; *id.* at 74-77.

[14] *Supra* note 3.

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

SO ORDERED.[16]

Petitioners filed a Motion for Reconsideration[17] assailing respondent's regular status, which the NLRC in a Resolution[18] denied for having been filed out of time and for lack of merit. Respondent also filed a Motion for Partial Reconsideration,[19] which the NLRC, in another Resolution,[20] denied for lack of merit.

Thus, petitioners went to the CA via Petition for *Certiorari*[21] under Rule 65 of the 1997 Rules of Civil Procedure.

The CA's Ruling

On March 29, 2004, the CA held that based on the Handbook and on respondent's appointment, it can be inferred that respondent was a regular employee, and as such, his employment can only be terminated for any of the causes provided under Article 282[22] of the Labor Code and after observance of the requirements of due process. Furthermore, the CA upheld the Labor Arbiter's and the NLRC's similar findings that respondent

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[16] *Id.* at 62.

[17] Dated May 12, 2003; *id.* at 83-89.

[18] Dated May 30, 2003; *id.* at 65-66.

[19] Dated April 29, 2003; *id.* at 90-91.

[20] Dated June 30, 2003, records, pp. 175-176.

[21] Dated August 7, 2003, CA *rollo,* pp. 2-19.

[22] ART. 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

sufficiently rebutted the charges against him and that petitioners failed to prove the grounds for respondent's dismissal. The dispositive portion of the said Decision reads:

> WHEREFORE, premises considered, the petition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. The decision of the NLRC is **AFFIRMED** with **MODIFICATION** as above stated, with regard to the computation of backwages.
>
> SO ORDERED.

Petitioners filed a Motion for Reconsideration[23] of the said Decision, which the CA denied, in its Resolution[24] dated June 11, 2004, for lack of merit.

Hence, this Petition based on the sole ground that the CA committed serious error of law in affirming and then further modifying the erroneous decision of the NLRC declaring that herein respondent was illegally dismissed by AMA.[25]

Petitioners argue that respondent, as college dean, was an academic personnel of AMA under Section 4(m) (4)(c) of the *Manual of Regulations for Private Schools*[26] (*Manual*) and,

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[23] Dated April 19, 2004; *rollo,* pp. 153-161.

[24] *Id.* at 36.

[25] Petitioners' Memorandum dated July 28, 2006, *rollo,* pp. 201-224.

[26] Section 4. *Definition of Terms*. Except as otherwise provided, the terms below shall be construed as follows:

x x x x x x x x x

(m) "Members of the school community" refers to the general membership of every private school established in accordance with law and duly authorized by the Department to operate certain educational programs or courses. The term includes, either singly or collectively, the following:

x x x x x x x x x

(4) "School personnel" means the persons, singly or collectively, working in a private school. They are classified as follows:

x x x x x x x x x

(c) "Academic personnel" includes all school personnel who are formally engaged in actual teaching service or in research assignments, either on full-

as such, his probationary employment is governed by Section 92[27] thereof and not by the Labor Code or AMA's Handbook; that under the circumstances, respondent has not yet attained the status of a regular employee; that respondent's employment was for a fixed term as found by the Labor Arbiter but the same was terminated earlier due to just causes; that the respondent, whether he may be considered as a probationary or a regular employee, was dismissed for just causes; and that the award of backwages in favor of the respondent, up to the finality of the decision, is oppressive to the petitioners, considering the absence of an order of reinstatement and the respondent's fixed period of employment.[28]

On the other hand, respondent counters that both the NLRC and the CA found that respondent was a regular employee and that he was illegally dismissed; that the instant Petition raises questions of fact - such as whether or not respondent is a regular employee and whether or not circumstances existed warranting his dismissal - which can no longer be inquired into by this Court;[29] that petitioners assailed the regular status of the respondent for the first time only before the CA; that they never raised as issue respondent's regular status before the Labor Arbiter and the NLRC because they merely concentrated

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time or part-time basis, as well as those who possess certain prescribed academic functions directly supportive of teaching, such as registrars, librarians, guidance counselors, researchers, and other similar persons. They include school officials responsible for academic matters, and may include other school officials.

x x x x x x x x x

[27] Section 92. *Probationary Period.* Subject in all instances to compliance with Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis.

[28] *Supra* note 25.

[29] Respondent's Comment dated August 9, 2005; *rollo,* pp. 173-178.

on their stand that respondent was lawfully dismissed; that petitioners failed to discharge the burden of proving the existence of a valid ground in dismissing respondent as found by the Labor Arbiter, the NLRC, and the CA; and that the CA's award of backwages from the date of actual dismissal up to the date of the finality of the decision in favor of the respondent is consonant with Article 279[30] of the Labor Code, and hence, valid.[31]

From this exchange of arguments, we glean two ultimate questions that require resolution, *viz.*:

1. What is the nature of respondent's employment?

2. Was he lawfully dismissed?

The first question, *i.e.*, whether respondent is a regular, probationary, or fixed term employee is essentially factual in nature.[32] However, the Court opts to resolve this question due to the far-reaching effects it could bring to the sector of the academe.

As an exception to the general rule, we held in *Molina v. Pacific Plans, Inc.*:[33]

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[30] Article 279. *Security of tenure*. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[31] Respondent's Memorandum dated August 28, 2006; *rollo,* pp. 264-272.

[32] *ABS-CBN Broadcasting Corporation v. Nazareno*, G.R. No. 164156, September 26, 2006, 503 SCRA 204, 225; *Rambuyon v. Fiesta Brands, Inc.*, G.R. No. 157029, December 15, 2005, 478 SCRA 133, 141; and *Benares v. Pancho*, G.R. No. 151827, April 29, 2005, 457 SCRA 652, 662.

[33] G.R. No. 165476, March 10, 2006, 484 SCRA 498, 517, citing *Diamond Motors Corporation v. Court of Appeals,* 417 SCRA 46, 50 (2003).

A disharmony between the factual findings of the Labor Arbiter and the National Labor Relations Commission opens the door to a review thereof by this Court. Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness. Moreover, when the findings of the National Labor Relations Commission contradict those of the Labor Arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.

The instant case falls squarely within the aforesaid exception. The Labor Arbiter held that, while petitioners did not prove the existence of just causes in order to warrant respondent's dismissal, the latter's employment as dean ceased to exist upon expiration of respondent's term of employment on September 17, 2000. In sum, the Labor Arbiter held that the nature of respondent's employment is one for a fixed term. On the other hand, the NLRC and the CA both held that respondent is a regular employee because respondent had fully served the three (3)-month probationary period required in the Handbook, which the petitioners failed to deny or contravene in the proceedings before the Labor Arbiter.

Prior to his dismissal, respondent held the position of college dean. The letter of appointment states that he was officially confirmed as Dean of AMA College, *Parañaque,* effective from April 17, 2000 to September 17, 2000. Petitioners submit that the nature of respondent's employment as dean is one with a fixed term.

We agree.

We held that Article 280 of the Labor Code does not proscribe or prohibit an employment contract with a fixed period. Even if the duties of the employee consist of activities necessary or desirable in the usual business of the employer, the parties are free to agree on a fixed period of time for the performance of such activities. There is nothing essentially contradictory between a definite period of employment and the nature of the employee's duties.[34]

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[34] *St. Theresa's School of Novaliches Foundation v. National Labor Relations Commission*, 351 Phil. 1038, 1043 (1998).

Thus, this Court's ruling in *Brent School, Inc. v. Zamora*[35] is instructive:

> The question immediately provoked. . . is whether or not a voluntary agreement on a fixed term or period would be valid where the employee "has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer." The definition seems *non sequitur*. From the premise — that the duties of an employee entail "activities which are usually necessary or desirable in the usual business or trade of the employer" — the conclusion does not necessarily follow that the employer and employee should be forbidden to stipulate any period of time for the performance of those activities. There is nothing essentially contradictory between a definite period of an employment contract and the nature of the employee's duties set down in that contract as being "usually necessary or desirable in the usual business or trade of the employer." The concept of the employee's duties as being "usually necessary or desirable in the usual business or trade of the employer" is not synonymous with or identical to employment with a fixed term. Logically, the decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be "that which must necessarily come, although it may not be known when." Seasonal employment, and employment for a particular project are merely instances of employment in which a period, where not expressly set down, is necessarily implied.
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> x x x x x x x x x
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> Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, **but to which a fixed term is an essential and natural appurtenance:** overseas employment contracts, for one, to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does

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[35] G.R. No. L-48494, February 5, 1990, 181 SCRA 702, 710 & 714 (Emphasis supplied).

> not appear ever to have been applied, Article 280 of the Labor Code notwithstanding; **also appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices in educational institutions, which are by practice or tradition rotated among the faculty members, and where fixed terms are a necessity without which no reasonable rotation would be possible** . . . .
>
> x x x x x x x x x

The instant case involves respondent's position as dean, and comes within the purview of the *Brent School* doctrine.

First. The letter of appointment was clear. Respondent was confirmed as Dean of AMA College, *Parañaque,* effective from April 17, 2000 to September 17, 2000. In numerous cases decided by this Court, we had taken notice, that by way of practice and tradition, the position of dean is normally an employment for a fixed term.[36] Although it does not appear on record–and neither was it alleged by any of the parties–that respondent, other than holding the position of dean, concurrently occupied a teaching position, it can be deduced from the last paragraph of said letter that the respondent shall be considered for a faculty position in the event he gives up his deanship or fails to meet AMA's standards. Such provision reasonably serves the intention set forth in *Brent School* that the deanship may be rotated among the other members of the faculty.

Second. The fact that respondent did not sign the letter of appointment is of no moment. We held in *Brent School*, to wit:

> Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor

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[36] *Aklan College, Inc. and Msgr. Adolfo P. Depra v. Rodolfo P. Guarino*, G.R. No. 152949, August 14, 2007; *Blancaflor v. National Labor Relations Commission*, G.R. No. 101013, February 2, 1993, 218 SCRA 366; *La Salette of Santiago, Inc. v. National Labor Relations Commission*, G.R. No. 82918, March 11, 1991, 372 SCRA 89; *Escudero v. Office of the President of the Philippines*, G.R. No. 57822, April 26, 1989, 172 SCRA 783, 793; *Sta. Maria v. Lopez*, G.R. No. L-30773, February 18, 1970, 31 SCRA 637, 655.

> Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. **It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter**. Unless, thus, limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.[37]

The fact that respondent voluntarily accepted the employment, assumed the position, and performed the functions of dean is clear indication that he knowingly and voluntarily consented to the terms and conditions of the appointment, including the fixed period of his deanship. Other than the handwritten notes made in the letter of appointment, no evidence was ever presented to show that respondent's consent was vitiated, or that respondent objected to the said appointment or to any of its conditions. Furthermore, in his status as dean, there can be no valid inference that he was shackled by any form of moral dominance exercised by AMA and the rest of the petitioners.

Alternatively, petitioners also claim that respondent did not attain regular status, relying on Section 92 of the *Manual* in connection with Section 4(m) 4(c) thereof which provides for a three (3)-year probationary period for Academic Personnel. Petitioners submit that the position of dean is included in the provision "school officials responsible for academic matters, and may include other school officials." As such, petitioners

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[37] *Supra* note 35, at 716.

aver that the three (3)-month probationary period for officers set forth in the Handbook is not applicable to the case of respondent.

The Handbook merely provides for two classes of employees for purposes of permanency, *i.e.,* Faculty and Non-Academic. However, the same does not specifically classify the position of dean as part of the Faculty or of the Non-Academic personnel. At this juncture, we find solace in the *Manual of Regulations for Private Schools Annotated,*[38] which provides that the college dean is the senior officer responsible for the operation of an academic program, the enforcement of rules and regulations, and the supervision of faculty and student services. We already had occasion to state that the position of dean is primarily academic[39] and, as such, he is considered a managerial employee.[40] Yet, a perusal of the Handbook yields the interpretation that the provision on the permanency of Faculty members applies to teachers only. But the Handbook or school manual must yield to the decree of the *Manual*, the latter having the character of law.[41] The specified probationary periods in Section 92 of the *Manual* are the maximum periods; under certain conditions, regular status may be achieved by the employee in less time.[42] However, under the given circumstances and the fact that the position of dean in this case is for a fixed term, the issue whether the respondent attained a regular status

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[38] Ulpiano P. Sarmiento III, Esq., First Edition, 1995, p. 164, citing Hawes and Hawes, "*The Concise Dictionary of Education,*" 1982 ed., p. 62.

[39] *General Baptist Bible College v. National Labor Relations Commission*, G.R. No. 85534, March 5, 1993, 219 SCRA 549, 557; *Sta. Maria v. Lopez*, *supra* note 36 at 657.

[40] *Cainta Catholic School v. Cainta Catholic School Employees Union (CCSEU)*, G.R. No. 151021, May 4, 2006, 489 SCRA 468, 490; *Cruz v. Medina*, G.R. No. 73053, September 15, 1989, 177 SCRA 565, 571.

[41] *Espiritu Santo Parochial School v. National Labor Relations Commission*, G.R. No. 82325, September 26, 1989, 177 SCRA 802, 807.

[42] *Cagayan Capitol Catholic College v. National Labor Relations Commission*, G.R. Nos. 90010-11, September 14, 1990, 189 SCRA 658, 665.

is not in point. By the same token, the application of the provision in the *Manual* as to the required probationary period is misplaced. It can be well said that a tenured status of employment co-exists and is co-terminous only with the definite term fixed in the contract of employment.

In light of the foregoing disquisition, the resolution of the second question requires full cognizance of respondent's fixed term of employment and all the effects thereof. It is axiomatic that a contract of employment for a definite period terminates on its own force at the end of such period.[43] The lack of notice of termination is of no consequence because when the contract specifies the length of its duration, it comes to an end upon the expiration of such period.[44]

Thus, the unanimous finding of the Labor Arbiter, the NLRC and the CA that respondent adequately refuted all the charges against him assumes relevance only insofar as respondent's dismissal from the service was effected by petitioners before expiration of the fixed period of employment. True, petitioners erred in dismissing the respondent, acting on the mistaken belief that respondent was liable for the charges leveled against him. But respondent also cannot claim entitlement to any benefit flowing from such employment after September 17, 2000, because the employment, which is the source of the benefits, had, by then, already ceased to exist.

Finally, while this Court adheres to the principle of social justice and protection to labor, the constitutional policy to provide such protection to labor is not meant to be an instrument to oppress employers. The commitment under the fundamental law is that the cause of labor does not prevent us from sustaining the employer when the law is clearly on its side.[45]

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[43] *Blancaflor v. National Labor Relations Commission*, *supra* note 36 at 374.

[44] *Pangilinan v. General Milling Corporation*, G.R. No. 149329, July 12, 2004, 434 SCRA 159, 172.

[45] *Salazar v. Philippine Duplicators, Inc.,* G.R. No. 154628, December 6, 2006, 510 SCRA 288, 308.

WHEREFORE, the instant Petition is *GRANTED* and the CA Decision in CA-G.R. SP No. 78455 is *REVERSED* and *SET ASIDE*. The Decision of the Labor Arbiter, dated December 6, 2000, is hereby *REINSTATED*. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 164267. November 23, 2007]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **HEIRS OF BERNARDIN J. ZAMORA,*** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; PERMANENT REHABILITATION RECEIVER; SUSPENSION OF ALL ACTIONS FOR CLAIMS PENDING AGAINST CORPORATION UNDER REHABILITATION; ELUCIDATED.— The Court noted that petitioner had been placed by the Securities and Exchange Commission (SEC) under a Permanent Rehabilitation Receiver. Such being the case, a suspension of all actions for claims against petitioner pending before any court, tribunal or board was, *ipso jure,* in order. The Court likewise took note of the fact that such suspension of actions was observed in some other cases against petitioner. The suspension of all actions for claims against a corporation embraces all phases of the suit,

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* *Rollo*, pp. 691-692. Died on January 9, 2005 due to cardio pulmonary arrest and was substituted by his wife, Marlyn T. Zamora, and children, Moshe Dayan T. Zamora and Jessamyn T. Zamora.

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. Once the process of rehabilitation, however, is completed, this Court will proceed to complete the proceedings on the suspended actions.

2. **ID.; ID.; ID.; ID.; INCLUDES LABOR CLAIMS. —** 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.

APPEARANCES OF COUNSEL

Bienvenido T. Jamoralin, Jr. for petitioner.
Rico and Associates for respondents.

R E S O L U T I O N

QUISUMBING, *J.:*

Before us is a petition for review of the Decision[1] dated April 27, 2004, as well as the Resolution[2] dated June 29, 2004 of the Court of Appeals in CA-G.R. SP No. 56428 dismissing petitioner's appeal from the Decision[3] dated July 26, 1999, of the National Labor Relations Commission (NLRC) which ordered Bernardin J. Zamora's immediate reinstatement to his former position as cargo representative and the payment of his backwages and allowances.

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[1] *Id*. at 11-24. Penned by Associate Justice Roberto A. Barrios, with Associate Justices Sergio L. Pestaño and Vicente Q. Roxas concurring.

[2] *Id*. at 34-35. Penned by Associate Justice Roberto A. Barrios, with Associate Justices Edgardo P. Cruz and Vicente Q. Roxas concurring.

[3] CA *rollo*, pp. 32-55.

Zamora was a cargo representative assigned at the International Cargo Operations - Import Operations Division (ICO-IOD) of petitioner Philippine Airlines, Inc. He alleged that sometime in December 1993, his immediate supervisor, Ricardo D. Abuyuan, instructed him to alter some entries in the Customs Boatnote and Inbound Handling Report to conceal Abuyuan's smuggling and pilferage activities. When he refused to follow this order, Abuyuan concocted charges of insubordination and neglect of customers against him.

On November 6, 1995, Zamora received a Memorandum informing him of his temporary transfer to the Domestic Cargo Operations (DCO) effective November 13, 1995. Zamora refused to follow the directive because: *first*, there was no valid and legal reason for his transfer; *second*, the transfer violated the collective bargaining agreement between the management and the employees union that no employee shall be transferred without just and proper cause; and *third*, the transfer did not comply with the 15-day prior notice rule.

Meantime, Zamora wrote to the management requesting that an investigation be conducted on the smuggling and pilferage activities. He disclosed that he has a telex from Honolulu addressed to Abuyuan to prove Abuyuan's illegal activities.[4] As a result, the management invited Zamora to several conferences to substantiate his allegations. Zamora claimed that during these conferences, he was instructed to continue reporting to the ICO-IOD to observe the activities therein. Even so, his salaries were withheld starting December 15, 1995.

For its part, petitioner Philippine Airlines, Inc. claimed that sometime in October 1995, Zamora had an altercation with Abuyuan to the point of a fistfight. The management requested Zamora to explain in writing the incident. It found his explanation unsatisfactory.[5]

To diffuse the tension between the parties, the management decided to temporarily transfer Zamora to the DCO. It issued

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[4] *Id*. at 143-144, 203.

[5] *Id*. at 140-141.

several directives informing Zamora of his transfer. However, Zamora refused to receive these and continued reporting to the ICO-IOD. Consequently, he was reported absent at the DCO since November 13, 1995. His salaries were subsequently withheld. He also ignored the management's directive requiring him to explain in writing his continued absence.

Meanwhile, the management acted on Zamora's letter exposing the smuggling and pilferage activities. Despite several notices, however, Zamora failed to appear during the conferences.

On February 22, 1996, the management served Zamora a Notice of Administrative Charge for Absence Without Official Leave (AWOL). Then on January 30, 1998, he was informed of his termination due to Insubordination/Neglect of Customer, Disrespect to Authority, and AWOL.

On March 12, 1996, Zamora filed an action for illegal dismissal, unfair labor practice, non-payment of wages, and damages.[6]

On September 28, 1998, the Labor Arbiter dismissed the complaint for lack of merit.[7] He ruled that Zamora's transfer was temporary and intended only to diffuse the tension between Zamora and Abuyuan. He also said that the 15-day prior notice did not apply to Zamora since it is required only in transfers involving change of domicile. He further ruled that Zamora's refusal to report to the DCO was a clear case of insubordination and utter disregard of the management's directive. Thus, the Labor Arbiter ordered Zamora to report to his new assignment at the DCO.[8]

On July 26, 1999, the NLRC reversed the Labor Arbiter's decision and declared Zamora's transfer illegal.[9] It ruled that there was no valid and legal reason for the transfer other than

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[6] *Id*. at 72-73.

[7] *Id*. at 62-70.

[8] *Id*. at 69.

[9] *Supra* note 3.

Zamora's report of the smuggling and pilferage activities. The NLRC disposed as follows:

WHEREFORE, in the light of the foregoing, the instant appeal is hereby GRANTED. The assailed Decision dated September 28, 1998 is hereby ordered SET ASIDE and a new one is hereby entered declaring complainant's transfer at the Domestic Cargo Operations on November 13, 1996 illegal.

Moreover, respondents are hereby ordered to immediately reinstate complainant Bernardin J. Zamora to his former position as Cargo Representative at the Import Operations Division of respondent PAL without loss of seniority rights and other privileges and to pay him salaries and backwages beginning December 15, 1995 until his actual reinstatement, inclusive of allowances and other benefits and increases thereto.

All other reliefs herein sought and prayed for are hereby DENIED for lack of merit.

SO ORDERED.[10]

On appeal, the Court of Appeals affirmed the decision of the NLRC. In the instant petition, petitioner Philippine Airlines, Inc. raises the following issues:

THE PROCEDURAL ISSUES:

I.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THE 26 JULY 1999 NLRC DECISION BECAME FINAL AND EXECUTORY BASED SOLELY ON THE CERTIFICATIONS ISSUED BY THE DEPUTY EXECUTIVE CLERK OF THE NLRC.

II.

WHETHER OR NOT THE NLRC MAY TAKE COGNIZANCE OF A SEASONABLY FILED MOTION FOR RECONSIDERATION FROM A DECISION A COPY OF WHICH WAS PREVIOUSLY STAMPED "MOVED" AND "RETURN TO SENDER" BUT WAS THEREAFTER OFFICIALLY SERVED AND OFFICIALLY RECEIVED BY THE PARTY SEEKING RECONSIDERATION.

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[10] *Id*. at 53-54.

III.

MAY A COUNSEL FOR JUSTIFIABLE REASON DEFER THE FILING OF A NOTICE OF CHANGE OF ADDRESS.

THE SUBSTANTIVE ISSUES[:]

I.

MAY AN EMPLOYER BE REQUIRED TO STATE IN WRITING THE REASON FOR TRANSFERRING AN EMPLOYEE DESPITE THE ABSENCE OF SUCH REQUIREMENT IN THE CBA.

II.

MAY AN EMPLOYER BE REQUIRED TO OBSERVE A 15-DAY PRIOR NOTICE BEFORE EFFECTING AN EMPLOYEE TRANSFER NOTWITHSTANDING THE FACT THAT UNDER THE CBA SAID NOTICE IS REQUIRED ONLY IN CASE THE TRANSFER INVOLVES A CHANGE IN DOMICILE.

III.

MAY AN EMPLOYER SEEKING TO TRANSFER AN EMPLOYEE FOR THE PURPOSE OF DIFFUSING ESCALATING HOSTILITY BETWEEN AN EMPLOYEE AND HIS SUPERVISOR BE REQUIRED TO WAIT FOR FIFTEEN (15) DAYS BEFORE EFFECTING THE EMPLOYEE TRANSFER.

IV.

MAY A COURT VALIDLY ORDER THE REINSTATEMENT OF AN EMPLOYEE AS WELL AS GRANT MONETARY AWARD NOTWITHSTANDING THE ABSENCE OF FACTUAL FINDING AS TO THE LEGALITY OR ILLEGALITY OF THE DISMISSAL IN THE DECISION ITSELF.[11]

Simply, the issues are: (1) whether the decision of the NLRC had become final and executory; and (2) whether Zamora's transfer was legal.

Incidentally, the Court's Third Division rendered a Resolution dated February 6, 2007 in G.R. No. 166996 entitled *Philippine Airlines, Inc., et al. v. Bernardin J. Zamora*. The petition

[11] *Rollo*, pp. 716-717.

stemmed from the same set of facts between substantially the same parties and raised the following issues: (1) whether the Court of Appeals erred in declaring respondent's dismissal illegal and the NLRC decision final and executory; (2) whether the Court of Appeals erred in ordering petitioner to pay respondent separation pay in lieu of reinstatement due to respondent's incarceration; and (3) whether the Court of Appeals erred in ordering respondent to present his monetary claim to petitioner's rehabilitation receiver.[12]

In resolving the petition, the Court noted that petitioner had been placed by the Securities and Exchange Commission (SEC) under a Permanent Rehabilitation Receiver. Such being the case, a suspension of all actions for claims against petitioner pending before any court, tribunal or board was, *ipso jure*, in order. The Court likewise took note of the fact that such suspension of actions was observed in some other cases against petitioner.[13]

We shall defer to these determinations. To reiterate, the suspension of all actions for claims against a corporation embraces all phases of the suit, be it before the trial court or any tribunal or before this Court.[14] 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.[15] Once the process of rehabilitation, however, is completed, this Court will proceed to complete the proceedings on the suspended actions.

Furthermore, the actions that are suspended cover all claims against the corporation whether for damages founded on a breach

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[12] *Philippine Airlines, Inc. v. Zamora*, G.R. No. 166996, February 6, 2007, pp. 13-14.

[13] *Id*. at 18-20.

[14] *Id*. at 20.

[15] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 123238, July 11, 2005 (Resolution).

of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature.[16] No exception in favor of labor claims is mentioned in the law.[17]

More importantly, as the instant case involves essentially the same facts, parties, and issues as G.R. No. 166996 entitled *Philippine Airlines, Inc., et al. v. Bernardin J. Zamora*, we find it unnecessary to make further pronouncements which might otherwise conflict with the disposition made by the Court's Third Division therein.

WHEREFORE, the herein proceedings are *SUSPENDED* until further notice from this Court. Meanwhile, petitioner is urgently *DIRECTED* to update the Court as to the status of the completion of its rehabilitation within a period of fifteen (15) days from notice hereof. No costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[16] *Philippine Airlines, Inc. v. Zamora*, *supra* at 20.

[17] *Rubberworld (Phils.), Inc. v. NLRC*, G.R. No. 126773, April 14, 1999, 305 SCRA 721, 729.

SECOND DIVISION

[G.R. No. 164728. November 23, 2007]

MERCURY DRUG CORPORATION, *petitioner, vs.* **REPUBLIC SURETY AND INSURANCE COMPANY, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT, NOT PROPER; EXCEPTIONS. —** A close scrutiny of the issue will show that what petitioner asks of this Court is to review certain factual questions, which this Court is not empowered to do. This Court's jurisdiction is generally limited to reviewing errors of law that may have been committed by the Court of Appeals. Furthermore, factual findings of the trial court, when adopted and confirmed by the Court of Appeals, become final and conclusive and may not be reviewed on appeal except: (1) when the conclusion is grounded entirely on speculations, surmises or conjectures; (2) when the inference 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 there is no citation of specific evidence on which the factual findings are based; (7) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record; (8) when the findings of the Court of Appeals are contrary to the findings of the trial court; (9) when the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) when the findings of the Court of Appeals are beyond the issues of the case; and (11) when such findings are contrary to the admissions of both parties.

2. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PROPER AS NO FAULT COULD BE ATTRIBUTED TO A PARTY WHO WAS FORCED TO LITIGATE IN CASE AT BAR. —** Mercury had shown no sound and legal basis to stop its payment of rentals to Surety, in light of the express agreement of Mercury in the

contract of lease that the leased premises were in good and tenantable condition. In fact, Mercury even paid rent for the first two years, and complained only after 16 months from the time the contract was entered into on January 27, 1995. Mercury cannot belatedly question the soundness and structural safety of the building 16 months after it had occupied, possessed and used it for that long period of time. Hence, no fraud, deceit nor bad faith could be attributed to respondent Surety in this case and since Surety was forced to litigate its cause, attorney's fees may be awarded to it.

3. **ID.; SPECIAL CONTRACTS; LEASE; RIGHT OF LESSEE TO SUSPEND PAYMENT OF RENT IF LESSOR FAILS TO MAKE NECESSARY REPAIRS ON PROPERTY LEASED; CANNOT BE INVOKED BY LESSEE WHO ASSUMED TO MAKE ALL REPAIRS AT ITS EXPENSE. —** Petitioner Mercury could not invoke Article 1658 of the Civil Code because under the lease contract, Mercury had obligated itself to undertake at its expense all repairs and remodeling as may be required to maintain the premises in good state. Mercury thereafter cannot legally invoke the non-repair by Surety of the premises as a reason not to pay rentals.

4. **REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; ISSUE TO BE RESOLVED INCLUDES ALL OTHER MATTERS PERTINENT TO THE ISSUE; CASE AT BAR. —** Mercury alleges that the trial court deviated from the issue identified during the pre-trial. Recall, however, that the parties entered into an express stipulation that the only issue to be resolved is whether Mercury was justified in suspending the rental payments. This issue is not limited to whether the building is structurally sound, but includes all other matters pertinent to whether Mercury's nonpayment was justified. A pre-trial order is not meant to be a detailed catalogue of each and every issue that is to be or may be taken up during the trial. Issues that are impliedly included therein or may be inferable therefrom by necessary implication are as much integral parts of the pre-trial order as those that are expressly stipulated. In this petition the condition of the building at the time of the contract's perfection was a material information to resolve the issue of Mercury's liability for rentals claimed by Surety.

APPEARANCES OF COUNSEL

Joy Ann Marie S. Nolasco for petitioner.
Zshornack & Zshornack for respondent.

D E C I S I O N

QUISUMBING, *J.:*

This petition for review assails the Decision[1] dated April 21, 2004 of the Court of Appeals in CA-G.R. CV No. 70727, which had affirmed the Decisions dated August 11, 2000[2] and February 27, 2001[3] of the Regional Trial Court (RTC), Branch 23, Manila. Also assailed is the Resolution[4] of the Court of Appeals dated July 14, 2004, which had denied petitioner's motion for reconsideration.

The pertinent facts of the case are as follows:

On January 27, 1995, respondent Republic Surety and Insurance Company, Inc. (hereafter, Surety) leased to petitioner Mercury Drug Corporation (Mercury), for a period of 10 years, the ground floor of Franlour Koh Building located at Padre Faura St., Manila. Mercury acknowledged in the lease contract that the leased premises were in good and tenantable condition on presentation by the Surety of a certification[5] dated September 27, 1994 from Civil and Structural Engineer Serafin S. Policarpio that the building was structurally sound. Several months later, the architectural department of Mercury reported that the building was structurally unsound and posed great risk to the occupants. On May 10, 1996, Mercury informed Surety of these findings.

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[1] *Rollo*, pp. 145-157. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Salvador J. Valdez, Jr. and Rebecca De Guia-Salvador concurring.

[2] *Id*. at 50-56. Penned by Judge Sesinando E. Villon.

[3] *Id*. at 66-68.

[4] *Id*. at 173.

[5] Records, pp. 264-265.

Surety immediately replied that said findings were erroneous. Mercury consulted Civil and Structural Engineer Fernando N. Enriquez, who reported the following:

x x x x x x x x x

III. INSPECTION FINDINGS AT GROUND FLOOR AREAS

a. Hairline cracks on perimeter chb walls[.]

b. Two wooden post[s] were damaged and cannot be subjected to axial load.

c. From ground to second floor level the three wooden posts are infested by termites.

d. Existing steel beam and wooden posts connection was found to be defective and structurally unsafe.

IV. REMEDIAL MEASURES

a. All damaged wooden post and floor beams affected by termites shall be replace[d] with good lumber (*yakal*).

b. The entire structure shall be reinforced by installing structural steel columns and beams.

c. Additional columns shall rest on new foundations.

d. All existing perimeter walls shall be demolished and replaced with new chb walls.

e. Estimated cost to reinforced the existing building shall be as follows: (Excluding cost of Renovation)

x x x x x x x x x

TOTAL COST ₱7,167,000.00[6]

Mercury referred the matter to Engr. Policarpio, who made the following report to the City Engineer's Office:

x x x x x x x x x

[6] *Id*. at 272.

III. INSPECTION FINDINGS AT GROUND FLOOR AREAS

a. Hairline cracks on perimeter CHB walls.

b. Wooden girts were not properly anchored to wooden columns and rested only on the concrete hollow blocks wall.

c. Some wooden posts were hollow caused by termites infection (sic) which will eventually fail due to inadequacy of the column to hold the bending and axial loads.

d. Existing steel beams and wooden posts connection were found to be defective and structurally unsafe, caused by the said termite infection (sic).

e. Wooden floor joist at second floor were not properly spaced, causing the floor to vibrate and sag.

Though the three storey building is newly renovated, the structural condition at the ground floor is posing a great risk on the occupants, neighboring building and to the passers by and not only to human but it is also a fire hazard since the building is made of wood.

In view of the above, I am superseding my first certification dated September 24, 1994 and I am recommending the immediate demolition of the building to avoid the possible collapse of the building and the fire hazard.[7]

On February 21, 1997, Mercury informed Surety of the findings of Engr. Policarpio and that it was suspending payment of the rentals until Surety undertook the necessary structural repairs on the building. In September 1997, Surety repaired and remodeled the ground floor. Thereafter, Mercury asked Surety to secure a certification on the structural integrity of the building from the City Engineer's Office as it could not determine by mere visual inspection whether the repair done was adequate. However, Surety failed to secure the certification so Mercury continued to suspend its rental payments. This prompted Surety to file against Mercury, a Complaint[8] dated September 3, 1998 for a sum of money before the RTC, Branch 23, Manila.

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[7] *Id*. at 268-269.

[8] *Id*. at 1-11.

In its answer, Mercury admitted not paying the rentals but justified it on the ground of the alleged failure of Surety to undertake the necessary repairs and to present a certification from the City Engineer attesting to the structural integrity of the building.

During the pre-trial conference, the parties entered into an express stipulation that the only issue to be resolved was whether Mercury was justified in suspending its rental payments. Trial on the merits ensued.

On August 11, 2000, the trial court found that Surety made the necessary repairs which generally strengthened the building as testified to by Engineer Joseph Reyes, the District Building Inspector in the Office of the Building Official of Manila City. The trial court held that Mercury was obligated to pay the rentals in accordance with the lease contract. The decretal portion of the decision reads:

> WHEREFORE, premises considered judgment is hereby rendered ordering defendant Mercury to pay plaintiff:
>
> a) The sum of [₱]720,000.00 plus interest thereon at the rate of 1% per month from February 1, 1997 until full payment representing rental due for the period covering February 1, 1997 to January 31, 1998;
>
> b) The sum of [₱]900,000.00 plus interest thereon at the rate of 1% per month from February 1, 1998 until full payment representing rental due for the period covering February 1, 1998 to January 31, 1999;
>
> c) The sum of [₱]162,000.00, the amount equivalent to 10% of the rentals to be paid by defendant Mercury which is due the government by way of Expanded Value Added Tax; and
>
> d) The sum of [₱]100,000.00 as attorney's fees.
>
> With cost against defendant Mercury.
>
> SO ORDERED.[9]

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[9] *Rollo*, p. 56.

Mercury moved for reconsideration but it was denied. Subsequently, Surety filed a Supplemental Complaint[10] dated September 15, 2000 alleging that after the filing of the original complaint, rentals for the period February 1, 1999 to January 31, 2001 became due and payable. On February 27, 2001, the trial court rendered a decision on the supplemental complaint, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendant Mercury to pay plaintiff:

a) The sum of ₱900,000.00 plus interest thereon at the rate of 1% per month from February 1, 1999 until full payment representing rental due for the period covering February 1, 1999 to January 31, 2000;

b) The sum of ₱900,000.00 plus interest thereon at the rate of 1% per month from February 1, 2000 until full payment representing rental due for the period covering February 1, 2000 to January 31, 2001; and

c) The further sum of ₱180,000.00, the amount equivalent to 10% of the rentals to be paid by defendant Mercury which is due the government by way of Expanded Value Added Tax.

SO ORDERED.[11]

Mercury elevated the case to the Court of Appeals, which affirmed the decisions of the trial court. The appellate court held that Mercury cannot invoke Article 1658[12] of the Civil Code because under the lease contract, Mercury obligated itself to undertake all repairs and remodeling to maintain the premises in good state. According to the appellate court, there was no showing of fraud on the part of Surety, hence, Mercury cannot renege on its obligations under the contract. The appellate court also upheld the trial court's findings on the structural soundness of the leased premises.

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[10] Records, pp. 346-347.

[11] *Rollo*, p. 68.

[12] Art. 1658. The lessee may suspend the payment of the rent in case the lessor fails to make the necessary repairs or to maintain the lessee in peaceful and adequate enjoyment of the property leased.

Mercury now comes before us raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY MISAPPREHENDED SUBSTANTIAL FACTS IN STATING THAT MERCURY IS ESTOPPED IN ITS ACKNOWLEDGMENT THAT THE LEASED PREMISES IS IN GOOD AND TENANTABLE CONDITION.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN STATING THAT THE LEASE CONTRACT WAS SOLELY PREPARED BY MERCURY.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY DEVIATED FROM THE ISSUE OF THE CASE AND WHIMSICALLY IGNORED THE REPORT OF THE CITY ENGINEER'S OFFICE OF MANILA.

IV.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN STATING THAT THE LEASED PREMISES IS IN GOOD AND TENANTABLE CONDITION.

V.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT CONSIDERING THE SUSPENSION OF PAYMENT OF RENTALS BY MERCURY AS LEGAL AND JUSTIFIED.

VI.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN AWARDING THE [₱]100,000 AS ATTORNEY'S FEES DESPITE THE APPARENT BAD FAITH AND FRAUD EMPLOYED BY SURETY IN FILING THE COMPLAINT.

VII.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE INJUSTICE IN FAVORING SURETY WHICH VIOLATED

THE BUILDING CODE [RATHER] THAN MERCURY WHICH IS SUBSERVIENT TO THE CODE.[13]

The issue raised before us is whether the Court of Appeals committed reversible error in ruling that: (1) Mercury is estopped in questioning the tenantable condition of the leased building; (2) the lease contract was solely prepared by Mercury; (3) the building was in good and tenantable condition; (4) the suspension of the rental payments by Mercury was wrong; (5) Surety violated the Building Code; and (6) attorney's fees are proper.

A close scrutiny of the issue will show that what petitioner asks of this Court is to review certain factual questions, which this Court is not empowered to do. This Court's jurisdiction is generally limited to reviewing errors of law that may have been committed by the Court of Appeals.[14]

Furthermore, factual findings of the trial court, when adopted and confirmed by the Court of Appeals, become final and conclusive and may not be reviewed on appeal except: (1) when the conclusion is grounded entirely on speculations, surmises or conjectures; (2) when the inference 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 there is no citation of specific evidence on which the factual findings are based; (7) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record; (8) when the findings of the Court of Appeals are contrary to the findings of the trial court; (9) when the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) when the findings of the Court of Appeals are beyond the issues of the case; and (11) when such findings are contrary to the admissions of both parties.[15]

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[13] *Rollo*, pp. 15-16.

[14] *Amante v. Serwelas,* G.R. No. 143572, September 30, 2005, 471 SCRA 348, 351.

[15] *Cirelos v. Hernandez*, G.R. No. 146523, June 15, 2006, 490 SCRA 625, 635.

In any event, we have reviewed the records of this case and find no compelling reason to disturb the findings of both the Court of Appeals and the trial court. We agree with the conclusion of the appellate court that Mercury had shown no sound and legal basis to stop its payment of rentals to Surety, in light of the express agreement of Mercury in the contract of lease that the leased premises were in good and tenantable condition. In fact, Mercury even paid rent for the first two years, and complained only after 16 months from the time the contract was entered into on January 27, 1995.[16] Mercury cannot belatedly question the soundness and structural safety of the building 16 months after it had occupied, possessed and used it for that long period of time. Hence, no fraud, deceit nor bad faith could be attributed to respondent Surety in this case and since Surety was forced to litigate its cause, attorney's fees may be awarded to it.

We are in agreement that the Court of Appeals did not err in holding that petitioner Mercury could not invoke Article 1658[17] of the Civil Code because under the lease contract, Mercury had obligated itself to undertake at its expense all repairs and remodeling as may be required to maintain the premises in good state. Mercury thereafter cannot legally invoke the non-repair by Surety of the premises as a reason not to pay rentals.

Finally, we note that Mercury alleges that the trial court deviated from the issue identified during the pre-trial. Recall, however, that the parties entered into an express stipulation that the only issue to be resolved is whether Mercury was justified in suspending the rental payments. This issue is not limited to whether the building is structurally sound, but includes all other matters pertinent to whether Mercury's nonpayment was justified. A pre-trial order is not meant to be a detailed catalogue of each and every issue that is to be or may be taken up during the trial.[18] Issues that are impliedly included therein or may be

[16] *Rollo,* p. 151.

[17] *Supra* note 12.

[18] *Velasco v. Apostol*, G.R. No. L-44588, May 9, 1989, 173 SCRA 228, 232.

inferable therefrom by necessary implication are as much integral parts of the pre-trial order as those that are expressly stipulated.[19] In this petition the condition of the building at the time of the contract's perfection was a material information to resolve the issue of Mercury's liability for rentals claimed by Surety.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision dated April 21, 2004 of the Court of Appeals in CA-G.R. CV No. 70727 is hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 165122. November 23, 2007]

ROWLAND KIM SANTOS, *petitioner, vs.* **PRYCE GASES, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; LEGALITY THEREOF CAN ONLY BE CONTESTED BY REAL PARTY-IN-INTEREST; OFFICER OF A PARTY CORPORATION IS A REAL PARTY-IN-INTEREST IN CASE AT BAR. —** Well-settled is the rule that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties. Petitioner is the real party-in-interest to seek the quashal of the search warrant for the obvious reason that the search warrant, in which petitioner was solely named as

[19] *Id.*

respondent, was directed against the premises and articles over which petitioner had control and supervision. Petitioner was directly prejudiced or injured by the seizure of the gas tanks because petitioner was directly accountable as manager to the purported owner of the seized items. It is noteworthy that at the time of the application for search warrant, respondent recognized the authority of petitioner as manager of Sun Gas, Inc. when the application averred that petitioner had in his possession and control the items subject of the alleged criminal offense. Respondent should not be allowed thereafter to question petitioner's authority to assail the search warrant. Moreover, the search warrant was directed against petitioner for allegedly using Pryce LPG cylinders without the authority of respondent. The Court of Appeals misapplied the ruling in *Stonehill, et al. v. Diokno, et al.* that only a corporation has the exclusive right to question the seizure of items belonging to the corporation on the ground that the latter has a personality distinct from the officers and shareholders of the corporation. Assuming *arguendo* that Sun Gas, Inc. was the owner of the seized items, petitioner, as the manager of Sun Gas, Inc., had the authority to question the seizure of the items belonging to Sun Gas, Inc. Unlike natural persons, corporations may perform physical actions only through properly delegated individuals; namely, their officers and/or agents. As stated above, respondent cannot belatedly question petitioner's authority to act on behalf of Sun Gas, Inc. when it had already acknowledged petitioner's authority at the time of the application of the search warrant.

2. **ID.; ID.; ID.; SEARCH WARRANT; REQUISITES FOR VALIDITY THEREOF. —** Supporting jurisprudence thus outlined the following requisites for a search warrant's validity, the absence of even one will cause its downright nullification: (1) it must be issued upon probable cause; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized.

3. ID.; ID.; ID.; ID.; PROBABLE CAUSE, ELUCIDATED. — Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discrete and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction. The existence depends to a large degree upon the finding or opinion of the judge conducting the examination. However, the findings of the judge should not disregard the facts before him nor run counter to the clear dictates of reason.

4. ID.; ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR. — The application for a search warrant was based on the alleged violation by petitioner of certain provisions of R.A. No. 623, as amended by R.A. No. 5700. Respondent claimed that petitioner was illegally using or distributing its LPG cylinders without its authority. Section 3 of R.A. No. 623, as amended, clearly creates a *prima facie* presumption of the unlawful use of gas cylinders based on two separate acts, namely, the unauthorized use of the cylinder by a person other than the registered manufacturer and the possession thereof by a dealer. The trial court's conclusion that the mere possession by petitioner of the seized gas cylinders was not punishable under Section 2 of R.A. No. 623, as amended, is not correct. The trial court failed to consider that petitioner was not only in possession of the gas cylinders but was also distributing the same, as alleged by PO1 Aldrin Ligan in his answer to the searching questions asked by the trial court. As pointed out by respondent in its petition for *certiorari*, the failure of the CIDG operatives to confiscate articles and materials used in tampering with the Pryce marking and logo did not negate the existence of probable cause. The confluence of these circumstances, namely: the fact of possession and distribution of the gas cylinders and the claim by respondent that it did not authorize petitioner to distribute the same was a sufficient indication that petitioner is probably guilty of the illegal use of the gas cylinders punishable under Section 2 of R.A. No. 623, as amended. More importantly, at the hearing of the application for the search warrant, various

testimonies and documentary evidence based on the surveillance by the CIDG operatives were presented. After hearing the testimonies and examining the documentary evidence, the trial court was convinced that there were good and sufficient reasons for the issuance of the same. Thus, it issued the search warrant.

5. **ID.; ID.; ID.; ID.; DELIVERY OF PROPERTY AND INVENTORY THEREOF TO THE COURT; RETURN AND PROCEEDINGS THEREON; CASE AT BAR.—** The Court of Appeals, however, erred in ordering the return of the seized items to respondent. Section 12, Rule 126 of the Revised Criminal Procedure expressly mandates the delivery of the seized items to the judge who issued the search warrant to be kept *in custodia legis* in anticipation of the criminal proceedings against petitioner. The delivery of the items seized to the court which issued the warrant together with a true and accurate inventory thereof, duly verified under oath, is mandatory in order to preclude the substitution of said items by interested parties. The judge who issued the search warrant is mandated to ensure compliance with the requirements for (1) the issuance of a detailed receipt for the property received, (2) delivery of the seized property to the court, together with (3) a verified true inventory of the items seized. Any violation of the foregoing constitutes contempt of court. The CIDG operatives properly delivered the seized items to the custody of the trial court which issued the search warrant. Thereafter, the trial court ordered their return to petitioner after quashing the search warrant. When the Court of Appeals reversed the trial court's quashal of the search warrant, it erred in ordering the return of the seized items to respondent because it would seem that respondent instituted the special civil action for *certiorari* in order to regain possession of its LPG tanks. This cannot be countenanced. The seized items should remain in the custody of the trial court which issued the search warrant pending the institution of criminal action against petitioner.

6. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY IN ASSAILING QUASHAL OF SEARCH WARRANT. —** The special civil action for *certiorari* was the proper recourse availed by respondent in assailing the quashal of the search warrant. As aforementioned, the trial court's unwarranted reversal of its earlier finding of probable cause constituted grave

abuse of discretion. In any case, the Court had allowed even direct recourse to this Court or to the Court of Appeals via a special civil action for *certiorari* from a trial court's quashal of a search warrant.

APPEARANCES OF COUNSEL

Go and Associates Law Offices for petitioner.
Elmer C. Balbin for respondent.

D E C I S I O N

TINGA, *J*.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision dated 16 January 2004[1] and Resolution dated 26 July 2004 of the Court of Appeals in CA-G.R. SP No. 74563. The decision reversed the twin orders of the Regional Trial Court (RTC) of Iloilo City, Branch 29, quashing the search warrant it issued and ordering the return of liquefied petroleum gas (LPG) cylinders seized from petitioner, whereas the resolution denied petitioner's motion for reconsideration of the said decision.

As culled from the records, the following antecedents appear:

Respondent Pryce Gases, Inc. is a domestic corporation engaged in the manufacture of oxygen, acetylene and other industrial gases as well as in the distribution of LPG products in the Visayas and Mindanao regions. Its branch in Iloilo City has been selling LPG products directly or through various dealers to hospitals, restaurants and other business establishments. The LPG products are contained in 11-kg, 22-kg or 50-kg steel cylinders that are exclusively manufactured for respondent's use. The LPG cylinders are also embossed with the Pryce marking and logo.[2]

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[1] *Rollo,* pp. 44-57. Penned by Court of Appeals Justice Buenaventura J. Guerrero, Chairperson of the Second Division, and concurred in by Justices Andres B. Reyes, Jr. and Regalado E. Maambong.

[2] CA *rollo,* p. 5.

In the beginning of the year 2002, respondent noticed the decline in the return of its LPG cylinders for refilling. Respondent's employees suspected that the LPG cylinders had been removed from market circulation and refilled by respondent's competitors, one of whom was Sun Gas, Inc. Petitioner Rowland Kim Santos is the manager of Sun Gas, Inc.[3]

Arnold T. Figueroa, respondent's sales manager for Panay, sought the assistance of the Criminal Investigation and Detection Group (CIDG) to recover the LPG cylinders allegedly in the possession of Sun Gas, Inc. Acting on Figueroa's complaint, CIDG operatives conducted surveillance on the warehouse of Sun Gas, Inc. located at 130 Timawa Avenue, Molo, Iloilo. The CIDG operatives requested the Bureau of Fire Protection (BFP) to conduct a routine fire inspection at Sun Gas, Inc.'s warehouse with some of the CIDG operatives led by PO2 Vicente D. Demandara, Jr. posing as BFP inspectors. The CIDG operatives entered the warehouse and were able to take photographs of the LPG cylinders.

On 4 June 2002, PO2 Vicente D. Demandara, Jr. applied before the RTC of Iloilo City for a warrant to search the premises described as No. 130, Timawa Avenue, Molo, Iloilo. The application alleged that petitioner was in possession of Pryce LPG tanks, the Pryce logos of some of which were scraped off and replaced with a Sun Gas, Inc. marking, and other materials used in tampering Pryce gas tanks.[4] It also averred that petitioner was illegally distributing Pryce LPG products without the consent of respondent, in violation of Section 2 of Republic Act (R.A.) No. 623,[5] as amended by R.A. No. 5700.[6]

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[3] *Id*.

[4] *Id*. at 6.

[5] Entitled "An Act to Regulate the Use of Duly Stamped or marked Bottles, Boxes, Casks, Kegs, Barrels and Other Similar Containers," effective 5 June 1951.

[6] Entitled "An Act Amending Certain Sections of Republic Act Numbered Six Hundred Twenty-Three as to Include the Contaners of Compressed Gases within the Purview of the said Act," effective 21 June 1969.

After conducting searching questions on witnesses PO1 Aldrin Ligan, a CIDG operative, and Richard Oliveros, an employee of Pryce Gases, Inc., Hon. Rene B. Honrado, the presiding judge of Branch 29, issued the corresponding search warrant. The search warrant authorized the seizure of the following items:

1. Assorted sizes of PRYCE LPG GAS TANKS CYLINDERS in different kilograms.

2. Suspected LPG gas tanks cylinders with printed/mark SUN GAS INC., trademark and embossed Pryce Gas Trademark scrapped off.

3. Other materials used in tampering the PRYCE LPG GAS TANKS cylinders.[7]

On the same day, CIDG agents served the search warrant on petitioner and were able to recover the following items:

- Five Hundred Forty-Four (544) empty 11 Kgs[.] PRYCE LPG tank cylinders;
- Two (2) filled 11 Kgs. PRYCE LPG tank cylinders with seal;
- Seven (7) filled 11 Kgs. Pryce LPG tank cylinders without seal;
- Forty-Four (44) empty 22 Kgs. PRYCE LPG tank cylinders;
- Ten (10) empty 50 Kgs. Pryce LPG tank cylinders; and
- One (1) filled 6 Kgs. PRYCE LPG tank cylinder without seal.[8]

On 7 June 2002, petitioner filed a Motion to Quash[9] the search warrant on the grounds of lack of probable cause as well as deception and fraud employed in obtaining evidence in support of the application therefor, in violation of Article III, Section 2 of the Constitution and Rule 126, Sections 4 and 5 of the Rules of Court. Respondent opposed petitioner's Motion to Quash.

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[7] *Rollo*, p. 66.

[8] *Id.* at 72.

[9] CA *rollo,* pp. 37-51.

On the same day, the CIDG filed a criminal complaint before the Office of the City Prosecutor of Iloilo against petitioner, charging the latter with violation of R.A. No. 623, as amended.

After hearing, the trial court issued an Order[10] dated 16 July 2002, granting petitioner's Motion to Quash. The trial court upheld the validity of the surveillance conducted on petitioner's warehouse in order to obtain evidence to support the application for a search warrant and declared that based on the evidence gathered in support of the application for search warrant, the CIDG was able to establish probable cause that petitioner was tampering with Pryce LPG cylinders and making them appear to be those of Sun Gas, Inc. This conclusion, notwithstanding, the trial court made a turnaround, stating that the probable cause as found by it at the time of the application for search warrant fell short of the requisite probable cause necessary to sustain the validity of the search warrant.

The dispositive portion of the Order reads:

> WHEREFORE, the Motion To Quash is hereby **GRANTED**. PO2 Vicente Dernadara, Jr. and the Criminal Investigation and Detection Group, Region VI are hereby directed to return the "Pryce" LPG cylinders enumerated in Return of Search Warrant Seized by virtue of the invalid Search Warrant No. 02-16 to the Rowland Kim Santos immediately upon receipt of this Order.
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> SO ORDERED.[11]

Respondent filed a manifestation and motion to hold in abeyance the release of the seized items. It also filed a motion for reconsideration[12] of the 16 July 2002 Order but was denied in an Order[13] dated 9 August 2002.

Respondent elevated the matter to the Court of Appeals via a special civil action for *certiorari*,[14] arguing that the trial court

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[10] *Rollo,* pp. 161-165.

[11] *Id.* at 165.

[12] CA *rollo,* pp. 63-73.

[13] *Id.* at 77-80.

[14] *Id.* at 93-116.

committed grave abuse of discretion in quashing the search warrant. The petition essentially questioned the quashal of the search warrant despite a prior finding of probable cause and the failure of petitioner to prove that he bought the seized items from respondent. It also challenged petitioner's personality to file the motion to quash.

On 16 January 2004, the Court of Appeals rendered the assailed Decision,[15] which set aside the two orders of the trial court dated 16 January 2002 and 9 August 2002. The appellate court also ordered the return of the seized items to respondent. Petitioner sought reconsideration but was denied in an order dated 16 July 2004.[16]

Hence, the instant petition for review on *certiorari*, raising the following issues:

I.

WHETHER PETITIONER ROWLAND KIM SANTOS HAS THE LEGAL PERSONALITY TO ASSAIL THE SEARCH WARRANT FOR HE WAS NAMED RESPONDENT THEREIN AND WAS SUBSEQUENTLY CHARGED FOR VIOLATION OF R.A. [No.] 623, AS AMENDED BY R.A. 5700, BEFORE THE OFFICE OF THE CITY PROSECUTOR OF ILOILO IN I.S. NO. 2015-2000 ENTITLED "*PNP-CIDG V. ROWLAND KIM SANTOS*."

II.

WHETHER THE PETITIONER SHOULD RETURN THE SUBJECT PRYCE LPG CYLINDER TO RESPONDENT DESPITE UNCONTROVERTED EVIDENCE THAT THE SAME WERE SOLD BY THE LATTER TO ITS CUSTOMERS.

III.

WHETHER THE PETITION FOR *CERTIORARI* FILED BY RESPONDENT PRYCE WITH THE COURT OF APPEALS SHOULD BE DISMISSED FOR NOT BEING THE PROPER REMEDY TO ASSAIL THE ORDERS OF THE TRIAL COURT.[17]

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[15] *Supra* note 1.

[16] *Supra* note 2.

[17] *Id*. at 21-22.

Briefly, the petition raises the following issues: (1) whether or not petitioner has authority to seek the quashal of the search warrant; (2) who has proper custody of the seized items; and (3) whether or not respondent correctly availed of the special civil action for *certiorari* to assail the quashal of the search warrant.

As to the first issue, the Court of Appeals ruled against petitioner and reversed the trial court's quashal of the search warrant solely on the ground that petitioner, being a mere manager of Sun Gas, Inc., failed to show his authority to act on behalf of the corporation and, therefore, had no legal personality to question the validity of the search warrant. Thus, it concluded that the trial court committed grave abuse of discretion in entertaining and subsequently granting petitioner's motion to quash.

Petitioner takes exception to the Court of Appeals' conclusion, contending that petitioner may assail the questioned search warrant because he was named as respondent in the application for search warrant and in the criminal complaint subsequently filed before the Office of the City Prosecutor of Iloilo.

Well-settled is the rule that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties.[18]

Petitioner is the real party-in-interest to seek the quashal of the search warrant for the obvious reason that the search warrant, in which petitioner was solely named as respondent, was directed against the premises and articles over which petitioner had control and supervision. Petitioner was directly prejudiced or injured by the seizure of the gas tanks because petitioner was directly accountable as manager to the purported owner of the seized items. It is noteworthy that at the time of the application for search warrant, respondent recognized the authority of petitioner as manager of Sun Gas, Inc. when the application averred that petitioner had in his possession and control the items subject of the alleged criminal offense. Respondent should not be allowed

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[18] *Uy v. Bureau of Internal Revenue*, 397 Phil. 892, 924 (2000).

thereafter to question petitioner's authority to assail the search warrant. Moreover, the search warrant was directed against petitioner for allegedly using Pryce LPG cylinders without the authority of respondent.

The Court of Appeals misapplied the ruling in *Stonehill, et al. v. Diokno, et al.*[19] that only a corporation has the exclusive right to question the seizure of items belonging to the corporation on the ground that the latter has a personality distinct from the officers and shareholders of the corporation. Assuming *arguendo* that Sun Gas, Inc. was the owner of the seized items, petitioner, as the manager of Sun Gas, Inc., had the authority to question the seizure of the items belonging to Sun Gas, Inc. Unlike natural persons, corporations may perform physical actions only through properly delegated individuals; namely, their officers and/or agents.[20] As stated above, respondent cannot belatedly question petitioner's authority to act on behalf of Sun Gas, Inc. when it had already acknowledged petitioner's authority at the time of the application of the search warrant.

The resolution of the second issue as to who has legal custody of the seized items depends upon the determination of the existence of probable cause in the issuance of the search warrant. In the questioned Order dated 16 July 2002, the trial court reversed its earlier finding of probable cause on the ground that the failure of the CIDG agents to seize other materials and tools used by petitioner to tamper with the LPG cylinders invalidated the search warrant because "there would be nothing to show or prove that accused had committed the offense."[21] The trial court elaborated that the mere possession of Pryce LPG cylinders seized from petitioner was not illegal *per se*, absent any showing that petitioner illegally used the same without the consent of respondent. Moreover, the trial court concluded that respondent had already parted ownership of its gas cylinders upon their sale to customers

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[19] 126 Phil. 738 (1967).

[20] *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 152392, 26 May 2005, 459 SCRA 147.

[21] *Rollo*, p. 163.

who paid not only for the contents but also for the value of the gas cylinders.

Although respondent advanced several arguments rebutting the aforementioned conclusions in its petition for *certiorari*, the Court of Appeals sidestepped those arguments and reversed the trial court's quashal of the search warrant only on the ground of the lack of legal personality on the part of petitioner to assail the search warrant.

Supporting jurisprudence thus outlined the following requisites for a search warrant's validity, the absence of even one will cause its downright nullification: (1) it must be issued upon probable cause; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized.[22]

The instant controversy pertains only to the existence of probable cause, which the trial court found wanting after evaluating the items seized from petitioner. Petitioner does not dispute that the items seized from him, consisting of Pryce LPG tanks of assorted weights, were particularly enumerated in the search warrant. Petitioner is neither assailing the manner by which the trial court conducted the determination of probable cause.

The trial court retracted its earlier finding of probable cause because the seized items were incomplete or insufficient to charge petitioner with a criminal offense, thus, negating its previous determination of probable cause.

We disagree. In quashing the search warrant, it would appear that the trial court had raised the standard of probable cause to whether there was sufficient cause to hold petitioner for trial. In so doing, the trial court committed grave abuse of discretion.

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[22] *Del Rosario v. People*, 410 Phil. 642, 662 (2001).

Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discrete and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.[23] A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction.[24] The existence depends to a large degree upon the finding or opinion of the judge conducting the examination. However, the findings of the judge should not disregard the facts before him nor run counter to the clear dictates of reason.[25]

The application for a search warrant was based on the alleged violation by petitioner of certain provisions of R.A. No. 623, as amended by R.A. No. 5700. Respondent claimed that petitioner was illegally using or distributing its LPG cylinders without its authority. The amended provisions of R.A. No. 623 state:

Sec. 2. It shall be unlawful for any person, without the written consent of the manufacturer, bottler, or seller, who has successfully registered the marks of ownership in accordance with the provisions of the next preceding section, *to fill* such bottles, boxes, kegs, barrels, steel cylinders, tanks, flasks, accumulators, or other similar containers so marked or stamped, for the purpose of sale, or *to sell, dispose of, buy or traffic in, or wantonly destroy the same*, whether filled or not to use the same for drinking vessels or glasses or drain pipes, foundation pipes, for any other purpose than that registered by the manufacturer, bottler or seller. Any violation of this section shall be punished by a fine of not more than one thousand pesos or imprisonment of not more than one year or both.

Sec. 3. *The use* by any person other than the registered manufacturer, bottler or seller, *without written permission of the*

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[23] *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 903 (1996).

[24] *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, 16 February 2005, 451 SCRA 533, 550.

[25] *La Chemise Lacoste, S.A. v. Hon. Fernandez, etc. et al.*, 214 Phil. 332, 349 (1984).

latter of any such bottler, cask, barrel, keg, box, steel cylinders, tanks, flasks, accumulators, or other similar containers, or *the possession thereof without written permission of the manufacturer*, by any junk dealer or dealer in casks, barrels, kegs, boxes, steel cylinders, tanks, flasks, accumulators, or other similar containers, the same being duly marked or stamped and registered as herein provided, *shall give rise to a prima facie presumption that such use or possession is unlawful*.

Section 3 of R.A. No. 623, as amended, clearly creates a *prima facie* presumption of the unlawful use of gas cylinders based on two separate acts, namely, the unauthorized use of the cylinder by a person other than the registered manufacturer and the possession thereof by a dealer. The trial court's conclusion that the mere possession by petitioner of the seized gas cylinders was not punishable under Section 2 of R.A. No. 623, as amended, is not correct. The trial court failed to consider that petitioner was not only in possession of the gas cylinders but was also distributing the same, as alleged by PO1 Aldrin Ligan in his answer to the searching questions asked by the trial court.[26]

As pointed out by respondent in its petition for *certiorari*, the failure of the CIDG operatives to confiscate articles and materials used in tampering with the Pryce marking and logo did not negate the existence of probable cause. The confluence of these circumstances, namely: the fact of possession and distribution of the gas cylinders and the claim by respondent that it did not authorize petitioner to distribute the same was a sufficient indication that petitioner is probably guilty of the illegal use of the gas cylinders punishable under Section 2 of R.A. No. 623, as amended.

More importantly, at the hearing of the application for the search warrant, various testimonies and documentary evidence based on the surveillance by the CIDG operatives were presented. After hearing the testimonies and examining the documentary evidence, the trial court was convinced that there were good and sufficient reasons for the issuance of the same. Thus, it issued the search warrant. The trial court's unwarranted turnabout

[26] *Rollo*, p. 307.

was brought about by its notion that the seized items were not sufficient to indict petitioner for the crime charged.

In *La Chemise Lacoste, S.A. v. Fernandez*,[27] it was held:

True, the lower court should be given the opportunity to correct its errors, if there be any, but the rectification must, as earlier stated be based on sound and valid grounds. In this case, there was no compelling justification for the about face.

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Moreover, an application for a search warrant is heard *ex-parte*. It is neither a trial nor a part of the trial. Action on these applications must be expedited for time is of the essence. Great reliance has to be accorded by the judge to the testimonies under oath of the complainant and the witnesses.[28]

A word of caution, though. In affirming the sufficiency of probable cause in the issuance of the search warrant, this Court is not preempting the subsequent determination by the investigating prosecutor if there is cause to hold the respondent for trial. After all, the investigating prosecutor is the person tasked to evaluate all the evidence submitted by both parties.

The Court of Appeals, however, erred in ordering the return of the seized items to respondent. Section 4, Rule 126[29] of the Revised Criminal Procedure expressly mandates the delivery of the seized items to the judge who issued the search warrant to be kept *in custodia legis* in anticipation of the criminal proceedings against petitioner. The delivery of the items seized to the court which issued the warrant together with a true and accurate inventory thereof, duly verified under oath, is mandatory in order to preclude the substitution of said items by interested parties. The judge who issued the search warrant is mandated to ensure compliance with the requirements for (1) the issuance

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[27] 214 Phil. 332 (1984).

[28] *Id*. at 350.

[29] Sec. 12. *Delivery of property and inventory thereof to the court; return and proceedings thereon*, - (a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

of a detailed receipt for the property received, (2) delivery of the seized property to the court, together with (3) a verified true inventory of the items seized. Any violation of the foregoing constitutes contempt of court.[30]

The CIDG operatives properly delivered the seized items to the custody of the trial court which issued the search warrant. Thereafter, the trial court ordered their return to petitioner after quashing the search warrant. When the Court of Appeals reversed the trial court's quashal of the search warrant, it erred in ordering the return of the seized items to respondent because it would seem that respondent instituted the special civil action for *certiorari* in order to regain possession of its LPG tanks. This cannot be countenanced. The seized items should remain in the custody of the trial court which issued the search warrant pending the institution of criminal action against petitioner.

Last, the special civil action for *certiorari* was the proper recourse availed by respondent in assailing the quashal of the search warrant. As aforementioned, the trial court's unwarranted reversal of its earlier finding of probable cause constituted grave abuse of discretion. In any case, the Court had allowed even direct recourse to this Court[31] or to the Court of Appeals[32] via a special civil action for *certiorari* from a trial court's quashal of a search warrant.

WHEREFORE, the instant petition is *DENIED* and the Decision of the Court of Appeals in CA-G.R. SP No. 74563 is *AFFIRMED* with the *MODIFICATION* that the seized items should be kept *in custodia legis*. Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

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[30] *People v. Benny Go*, 451 Phil. 885, 912-913 (2003).

[31] See *Columbia Pictures, Inc. v. Flores*, G.R. No. 78631, 29 June 1993, 2223 SCRA 761.

[32] See *Washington Distillers, Inc. v. Court of Appeals*, 329 Phil. 650 (1996), *20th Century 3Fox Film Corporation v. Court of Appeals*, Nos. 76649-51, 19 August 1988, 164 SCRA 655.

SPECIAL THIRD DIVISION

[G.R. No. 166735. November 23, 2007]

SPS. NEREO & NIEVA DELFINO, *petitioners, vs.* **ST. JAMES HOSPITAL, INC., and THE HONORABLE RONALDO ZAMORA, EXECUTIVE SECRETARY, OFFICE OF THE PRESIDENT,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; LEGISLATURE; APPLICABLE LAW IN A CASE IS THE LAW IN FORCE AT THE TIME OF OCCURRENCE OF THE CAUSE OF ACTION; CASE AT BAR. —** [R]espondent's claim that the controversy must now be decided in light of latest Zoning Ordinance passed in 1999 or the Santa Rosa Zoning Ordinance, it must be stressed at this point that the present case arose in 1994 when respondent St. James Hospital, Inc., applied for a permit with the Housing and Land Use Regulatory Board (HLURB) to expand its hospital into a four-storey, forty-bed capacity medical institution, at which time, the zoning ordinance in effect was the 1991 Zoning Ordinance. It is a well-settled rule that the law in force at the time of the occurrence of the cause of action is the applicable law notwithstanding its subsequent amendment or repeal. Hence, in resolving the instant case, the zoning ordinance to be used in interpreting the legality or illegality of said expansion is that which was in full force and effect at the time of the application for expansion which is the 1991 Zoning Ordinance, regardless of its subsequent amendment or repeal by the passage of the 1999 Zoning Ordinance.
2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; POINTS OF LAW RAISED FOR THE FIRST TIME IN MOTION FOR RECONSIDERATION OF THE COURT'S DECISION, NOT APPRECIATED; CASE AT BAR. —** [P]leadings, arguments and evidence were submitted by both parties as regards the provisions of the 1991 Zoning Ordinance only. Apparently, the 1999 Zoning Ordinance was already enacted and in effect by the time the petitioners appealed their case to this Court on 7 February 2005. Petitioners, however, in their appeal,

consistently maintained their argument that the expansion undertaken by the respondent in 1994 violated the 1991 Zoning Ordinance, and respondent likewise limited itself to the defense that it had complied therewith. It bears to emphasize that respondent called the attention of this Court to the enactment of the 1999 Zoning Ordinance and asserted its compliance with this latest zoning ordinance only in its Motion for Reconsideration before this Court. Points of law, theories, issues and arguments not adequately 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 because this would be offensive to the basic rules of fair play, justice and due process. This rule holds even more true when the points of law, theories, issues and arguments are belatedly raised for the first time in the motion for reconsideration of this Court's decision.

APPEARANCES OF COUNSEL

Jose Valentino G. Dave for petitioners.
Rigoroso & Galindez Law Offices for respondents.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Before Us for Resolution is the Motion for Reconsideration of private respondent St. James Hospital, Inc., seeking the reversal of Our Decision dated 5 September 2006. Respondent assails the Decision on the ground that the Court had erroneously interpreted the 1991 Comprehensive Land Use Plan (CLUP) or the Comprehensive Zoning Ordinance of the Municipality of Santa Rosa, Laguna, in ruling that the St. James Hospital is a non-conforming structure under the 1991 Zoning Ordinance and that the expansion of the St. James Hospital into a four-storey, forty-bed capacity medical institution within the Mariquita Pueblo Subdivision is prohibited under the provisions of the 1991 Zoning Ordinance. Moreover, respondent now contends that the case must now be decided in accordance with the latest Zoning Ordinance passed in 1999 or the Santa Rosa Zoning Ordinance

which was only submitted as evidence in the instant Motion for Reconsideration.

Respondent now claims that the legislative history of the 1991 Zoning Ordinance shows that commercial and institutional uses were expressly allowed in Sec. 2, par. 1 of said Ordinance as it retained uses that are commercial and institutional as well as recreational in character and those for the maintenance of ecological balance. Thus, respondent postulates that even if parks, playgrounds and recreation centers which were expressly provided for in the 1981 Zoning Ordinance under letters (h) and (k) were excluded in the enumeration in the 1991 Zoning Ordinance, the same cannot, by any stretch of logic, be interpreted to mean that they are no longer allowed. On the contrary, respondent explains that what appears is the fact that parks, playgrounds, and recreation centers are deemed to have been covered by Sec. 2, par. 1 of the 1991 Zoning Ordinance which speaks of "x x x other spaces designed for recreational pursuit and maintenance of ecological balance x x x." Hence, respondent concludes that the same reading applies in the non-inclusion of the words hospitals, clinics, school, churches and other places of worship, and drugstores which cannot be interpreted to mean that the aforesaid uses are to be deemed non-conforming under the 1991 Zoning Ordinance as these uses are allegedly covered by the clause allowing for institutional and commercial uses.

Arising from this interpretation, respondent maintains that the Court erred in applying Sec. 1 of Article X of the 1991 Zoning Ordinance which pertains only to existing non-conforming uses and buildings, since, according to respondent, the St. James Hospital and its expansion are consistent with the uses allowed under the zoning ordinance.

To address this matter, we deem it necessary to reiterate our discussion in our Decision dated 5 September 2006, wherein we have thoroughly examined the pertinent provisions of the 1981 and 1991 Zoning Ordinances, to wit:

Likewise, **it must be stressed at this juncture that a comprehensive scrutiny of both Ordinances will disclose that the**

uses formerly allowed within a residential zone under the 1981 Zoning Ordinance such as schools, religious facilities and places of worship, and clinics and hospitals have now been transferred to the institutional zone under the 1991 Zoning Ordinance.[1] **This clearly demonstrates the intention of the Sangguniang Bayan to delimit the allowable uses in the residential zone only to those expressly enumerated under Section 2, Article VI of the 1991 Zoning Ordinance, which no longer includes hospitals.**

It is lamentable that both the Office of the President and the Court of Appeals gave undue emphasis to the word "institutional" as mentioned in Section 2, Article VI of the 1991 Zoning Ordinance and even went through great lengths to define said term in order to include hospitals under the ambit of said provision. However, they neglected the fact that under Section 4, Article VI of said Ordinance,[2] there is now another zone, separate and distinct from a residential zone, which is classified as "institutional," wherein health facilities, such as hospitals, are expressly enumerated among those structures allowed within said zone.

Moreover, both the Office of the President and the appellate court failed to consider that any meaning or interpretation to be given to the term "institutional" as used in Section 2, Article VI

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[1] Article VI, Section 4. USE REGULATIONS IN INSTITUTIONAL ZONE – In the Institutional Zone, only the following shall be allowed:

1. Government center to move all national, regional, or local offices in the area;
2. School;
   - 2.1. Public/Private Elementary schools.
   - 2.2. Municipal/*Barangay*/Private high schools
3. Health facilities;
   - 3.1. Emergency hospital
   - 3.2 Health centers
   - 3.3. Multi-purpose clinics
   - 3.4 Day-care centers
4. Religious Facilities such as churches, chapels and other places of worships.
5. Scientific, cultural and academic centers and research facilities. (CA *rollo*, pp. 51 and 54)

[2] *Id*.

must be correspondingly limited by the explicit enumeration of allowable uses contained in the same section. Whatever meaning the legislative body had intended in employing the word "institutional" must be discerned in light of the restrictive enumeration in the said article. Under the legal maxim *expression unius est exclusion alterius*, the express mention of one thing in a law, means the exclusion of others not expressly mentioned.[3] Thus, in interpreting the whole of Section 2, Article VI, it must be understood that in expressly enumerating the allowable uses within a residential zone, those not included in the enumeration are deemed excluded. Hence, since hospitals, among other things, are not among those enumerated as allowable uses within the residential zone, the only inference to be deduced from said exclusion is that said hospitals have been deliberately eliminated from those structures permitted to be constructed within a residential area in Santa Rosa, Laguna.

Furthermore, according to the rule of *casus omissus* in statutory construction, a thing omitted must be considered to have been omitted intentionally. Therefore, **with the omission of the phrase "hospital with not more than ten capacity" in the new Zoning Ordinance, and the corresponding transfer of said allowable usage to another zone classification, the only logical conclusion is that the legislative body had intended that said use be removed from those allowed within a residential zone. Thus, the construction of medical institutions, such as St. James Hospital, within a residential zone is now prohibited under the 1991 Zoning Ordinance.**

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Having concluded that the St. James Hospital is now considered a non-conforming structure under the 1991 Zoning Ordinance, we now come to the issue of the legality of the proposed expansion of said hospital into a four-storey, forty-bed medical institution. We shall decide this said issue in accordance with the provisions of the 1991 Zoning Ordinance relating to non-conforming buildings, the applicable law at the time of the proposal. As stated in Section 1 of Article X of the 1991 Zoning Ordinance:

Section 1. EXISTING NON-CONFORMING USES AND BUILDINGS. The lawful uses of any building, structure or land

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[3] *Republic v. Estenzo*, G.R. No. L-35376, 11 September 1980, 99 SCRA 651.

at the point of adoption or amendment of this Ordinance may be continued, although such does not conform with the provisions of this Ordinance.

1. That **no non-conforming use shall be enlarged or increased or extended to occupy a greater area or land that has already been occupied by such use at the time of the adoption of this Ordinance**, or moved in whole or in part to any other portion of the lot parcel of land where such non-conforming use exist at the time of the adoption of this Ordinance.[4] (Emphasis ours.)

It is clear from the abovequoted provision of the 1991 Zoning Ordinance that the expansion of a non-conforming building is prohibited. Hence, we accordingly resolve that the expansion of the St. James Hospital into a four-storey, forty-bed capacity medical institution within the Mariquita Pueblo Subdivision as prohibited under the provisions of the 1991 Zoning Ordinance.

From our discussion above, it is clear that the position of respondent is erroneous. As stated in our Decision, a comprehensive scrutiny of both zoning ordinances will disclose that the uses formerly allowed within a residential zone under the 1981 Zoning Ordinance such as schools, religious facilities and places of worship, and clinics and hospitals have been transferred to the institutional zone under the 1991 Zoning Ordinance. This clearly indicates that the allowable uses in the residential zone have been delimited only to those expressly enumerated under Section 2, Article VI of the 1991 Zoning Ordinance, which no longer includes hospitals.

With respect to respondent's claim that the controversy must now be decided in light of latest Zoning Ordinance passed in 1999 or the Santa Rosa Zoning Ordinance, it must be stressed at this point that the present case arose in 1994 when respondent St. James Hospital, Inc., applied for a permit with the Housing and Land Use Regulatory Board (HLURB) to expand its hospital into a four-storey, forty-bed capacity medical institution, at which time, the zoning ordinance in effect was the 1991 Zoning Ordinance. It is a well-settled rule that the law in force at the

[4] CA *rollo,* p. 64.

time of the occurrence of the cause of action is the applicable law notwithstanding its subsequent amendment or repeal.[5] Hence, in resolving the instant case, the zoning ordinance to be used in interpreting the legality or illegality of said expansion is that which was in full force and effect at the time of the application for expansion which is the 1991 Zoning Ordinance, regardless of its subsequent amendment or repeal by the passage of the 1999 Zoning Ordinance.

Moreover, pleadings, arguments and evidence were submitted by both parties as regards the provisions of the 1991 Zoning Ordinance only. Apparently, the 1999 Zoning Ordinance was already enacted and in effect by the time the petitioners appealed their case to this Court on 7 February 2005. Petitioners, however, in their appeal, consistently maintained their argument that the expansion undertaken by the respondent in 1994 violated the 1991 Zoning Ordinance, and respondent likewise limited itself to the defense that it had complied therewith. It bears to emphasize that respondent called the attention of this Court to the enactment of the 1999 Zoning Ordinance and asserted its compliance with this latest zoning ordinance only in its Motion for Reconsideration before this Court. Points of law, theories, issues and arguments not adequately 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 because this would be offensive to the basic rules of fair play, justice and due process.[6] This rule holds even more true when the points of law, theories, issues and arguments are belatedly raised for the first time in the motion for reconsideration of this Court's decision.

ACCORDINGLY, the Motion for Reconsideration of respondent St. James Hospital, Inc., is hereby *DENIED*.

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[5] *Benolirao v. Court of Appeals*, G.R. No. 75968, 7 November 1991, 203 SCRA 338, 341, citing *Joint Ministry of Health – MOLE Accreditation Committee for Medical Clinics v. Court of Appeals*, G.R. No. 78254, 25 April 1991, 196 SCRA 263, 268; *Buyco v. Philippine National Bank*, 112 Phil. 588, 592 (1961); *In re Will of Riosa*, 39 Phil. 23, 27 (1918).

[6] *Philippine Airlines, Inc. v. National Labor Relations Commission*, 328 Phil. 814, 823 (1996).

However, this is *WITHOUT PREJUDICE* to respondent St. James Hospital, Inc.'s reapplication for expansion in accordance with the requirements under zoning ordinances now in effect.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 167345. November 23, 2007]

e PACIFIC GLOBAL CONTACT CENTER, INC. and/ or JOSE VICTOR SISON, *petitioners, vs.* **MA. LOURDES CABANSAY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF LABOR TRIBUNALS ARE ACCORDED NOT ONLY RESPECT BUT ALSO FINALITY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.— After a careful review of the records and considering the arguments of the parties, the Court finds the petition impressed with merit. Both the Labor Arbiter and the NLRC were unanimous in their findings that respondent was validly dismissed. In arriving at this conclusion, the LA and the NLRC examined the e-mail correspondence of Ballesteros and the respondent. They found that Ballesteros made a lawful order to postpone the implementation of the new training process, yet respondent incorrigibly refused to heed his instructions and sent an e-mail to him stating that she would go on with its presentation. Such an act of insubordination resulted in the management's loss of trust and confidence in her. This is a finding which the Court does not wish to disturb. Oft-repeated is the rule that appellate courts accord the factual finding of the labor tribunal not only respect but also finality

when supported by substantial evidence, unless there is showing that the labor tribunal arbitrarily disregarded evidence before them or misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated.

2. **ID.; ID.; WEIGHT AND SUFFICIENCY; SUBSTANTIAL EVIDENCE; THE NATIONAL LABOR RELATIONS COMMISSION'S FINDING THAT RESPONDENT WAS VALIDLY DISMISSED IS WARRANTED BY SUBSTANTIAL EVIDENCE.—** Substantial evidence has been defined to be such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and its absence is shown not by stressing that there is contrary evidence on record, direct or circumstantial, for the appellate court cannot substitute its own judgment or criterion for that of the labor tribunal in determining wherein lies the weight of evidence or what evidence is entitled to belief. In the instant case, we find that the labor tribunal did not arbitrarily disregard or misapprehend the evidence. Its finding that respondent was validly dismissed is likewise warranted by substantial evidence. Thus, we agree with petitioner's stance that the findings of the LA, as affirmed by the NLRC, should not have been set aside by the appellate court. Deference to the expertise acquired by the labor tribunal and the limited scope granted in the exercise of *certiorari* jurisdiction restrain any probe into the correctness of the LA's and the NLRC's evaluation of evidence.

3. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; WILLFUL DISOBEDIENCE OR INSUBORDINATION; EMPLOYEE'S ASSAILED CONDUCT MUST HAVE BEEN WILLFUL, CHARACTERIZED BY A WRONGFUL AND PERVERSE ATTITUDE AND THE ORDER VIOLATED MUST HAVE BEEN REASONABLE, LAWFUL, MADE KNOWN TO THE EMPLOYEE AND MUST PERTAIN TO THE DUTIES WHICH HE HAS BEEN ENGAGED TO DISCHARGE.—** Willful disobedience or insubordination necessitates the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge. On the other hand, loss of trust and confidence, to be a valid ground for dismissal, must be

based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not also be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and show that the employee concerned is unfit to continue working for the employer.

4. **ID.; ID.; ID.; ID.; ORDER VIOLATED WAS CLEARLY MADE KNOWN TO RESPONDENT; WILLFULNESS OF HER CONDUCT IS MANIFEST IN HER E-MAIL REPLY, WHICH, AS WRITTEN, IS CHARACTERIZED BY ABJECT AGGRESSIVENESS, ANTAGONISM AND HAS A BEGRUDGING TONE AND IS REPLETE WITH CAPITALIZED WORDS ELICITING HER RESOLVE TO INDEED CONTRAVENE THE DIRECTIVE.—** In the case at bar, the reasonableness and lawfulness of Ballesteros's order is not in question, so is its relation to the duties of respondent. What is disputed herein is rather its clarity. Respondent Cabansay contends that the directive was not *clearly* made known to her: Ballesteros's order was to postpone the *implementation* but not the *presentation* of the new training process/module to the team leaders. Respondent's contention is untenable. It should be noted that what is involved in the directive is the new training process, which logically cannot be implemented without being presented or communicated to the team leaders of the company. Thus, when Ballesteros ordered the cessation of its implementation, there can be no other inference than that he wanted to postpone the presentation of the training process which was then already scheduled. Evident further in Ballesteros's e-mail is that he did not find any changes in the new module; hence, he wanted the implementation thereof to be deferred and instructed respondent to consult with the other managers to gather more input. Be that as it may, respondent cannot belie the fact that she well-understood the directive for her to postpone the presentation of the module, as she

herself acknowledged in her e-mail reply to SVP Ballesteros that she would "discuss the new training process and explain it to them in detail" in the afternoon on that day, thus, she would not postpone the scheduled presentation. There is no doubt, therefore, that the order of Ballesteros was clearly made known to respondent. As to the willfulness of her conduct, the same is manifest in her e-mail reply, which, as it is written, is characterized by abject aggressiveness and antagonism: the e-mail has a begrudging tone and is replete with capitalized words eliciting her resolve to indeed contravene the SVP's directive. Thus, she categorically said, *"This is a very simple presentation and I WILL NOT POSTPONE it today, it's very easy to comprehend and as per YOUR INSTRUCTION we will be implementing it next week, so when should we present this to the TLs? Let's not make SIMPLE THINGS COMPLICATED. I will go on with the presentation this afternoon."*

5. **ID.; ID.; ID.; ID.; BY REFUSING TO POSTPONE THE PRESENTATION AND IMPLEMENTATION OF THE NEW TRAINING PROCESS, RESPONDENT INTENTIONALLY, KNOWINGLY AND PURPOSELY, WITHOUT JUSTIFIABLE CAUSE, BREACHED THE TRUST AND CONFIDENCE REPOSED IN HER BY HER EMPLOYER.—** While respondent Cabansay was a managerial employee, a Senior Training Manager entrusted with the delicate matter of molding the minds and characters of call center agents and team leaders, and clothed with discretion to determine what was in the best interest of the company, her managerial discretion was not without limits. Its parameters were contained the moment her discretion was exercised and then opposed by the immediate superior officer/employer for being against the policies and welfare of the company. Hence, any action in pursuit of the discretion thus opposed ceased to be discretionary and could be considered as willful disobedience. Indeed, by refusing to postpone the presentation and implementation of the new training process, respondent intentionally, knowingly and purposely, without justifiable excuse, breached the trust and confidence reposed in her by her employer. To present and discuss a training module, which is deemed by management as still inadequate in its content, will certainly not only waste the time, effort and energy of the participants in the discussion but will also entail losses on the

part of the company. It is of no moment that the presentation did not push through, and that no actual damage was done by respondent to the company. The mere fact that respondent refused to obey the reasonable and lawful order to defer the presentation and implementation of the module already gave a just cause for petitioners to dismiss her. Verily, had it not been for the timely intervention of the Telesales Senior Manager, under the instructions of the SVP, harm could have been done to company resources.

6. **ID.; ID.; ID.; ID.; EMPLOYERS CANNOT BE EXPECTED TO RETAIN ITS TRUST AND CONFIDENCE IN AND CONTINUE TO EMPLOY A MANAGER WHOSE ATTITUDE IS PERCEIVED TO BE INIMICAL TO THEIR INTERESTS.—** Let it be stressed that insofar as the application of the doctrine of trust and confidence is concerned, jurisprudence has distinguished the treatment of managerial employees or employees occupying positions of trust and confidence from that of rank-and-file personnel. With respect to the latter, loss of trust and confidence as a ground for dismissal requires proof of involvement in the alleged events in question, but as regards managerial employees, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his or her dismissal. For this purpose, there is no need to present proof beyond reasonable doubt. It is sufficient that there is some basis for the loss of trust or that the employer has reasonable ground to believe that the employee is responsible for the misconduct which renders him unworthy of the trust and confidence demanded by his position. Respondent's conduct, in this case, is sufficient basis for the company to lose its trust and confidence in her. Under the circumstances, the company cannot be expected to retain its trust and confidence in and continue to employ a manager whose attitude is perceived to be inimical to its interests. Unlike other just causes for dismissal, trust in an employee, once lost, is difficult, if not impossible to regain.

7. **ID.; ID.; ID.; ID.; REQUIREMENTS OF STATUTORY DUE PROCESS BEFORE THE SERVICES OF AN EMPLOYEE CAN BE VALIDLY TERMINATED; COMPLIED WITH IN CASE AT BAR.—** As to the respondent's argument that petitioners failed to comply with the requirements of statutory due process, we do not agree. Before the services of an employee

can be validly terminated, the employer must furnish him with two written notices: (a) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and, (b) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. In this case, the facts are clear that petitioners, through Ballesteros, informed respondent in the April 6, 2002 memo that the company found her message to be a clear act of insubordination leading to the company's loss of trust and confidence in her as a manager of the training department. In the same memo, petitioners asked her to explain her side in writing. After the respondent submitted her two memoranda-explanations successively on April 8 and 11, 2002, petitioners served her the notice of her termination. Verily, petitioners complied with the requirement of statutory due process in the dismissal of respondent. The fact that the letter of termination or the second notice was received by respondent on April 11, 2002, on the same day she submitted her second explanation, does not put to naught petitioners' observance of the requirement of due process. It has to be noted that from April 8, 2002, when respondent had her chance to explain her side, petitioners were contemplating for several days and presumably were considering her reasons before they finally dismissed her. In any case, the essence of due process is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense.

APPEARANCES OF COUNSEL

Jimenez Gonzales Liwanang Bello Valdez Caluya & Fernandez and *Manuel C. Moyco* for petitioners.

Romeo S. Masangya, Jr. and *Reynaldo M. De Sagum* for respondent.

D E C I S I O N

NACHURA, *J.*:

Established in our labor law jurisprudence is the principle that while compassion and human consideration should guide the disposition of cases involving termination of employment, since it affects one's means of livelihood, it should not be overlooked that the benefits accorded to labor do not include compelling an employer to retain the services of an employee who has been shown to be a gross liability to the employer.[1]

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the January 10, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83248, and the March 7, 2005 Resolution[3] denying the motion for reconsideration thereof.

The facts are undisputed. Respondent Ma. Lourdes Cabansay (Cabansay) was hired as Senior Traning Manager of ePacific Global Contact Center, Inc. with a monthly salary of ₱38,000.00 on April 18, 2001[4] and became a regular employee on August 1, 2001. In March 2002, respondent was tasked to prepare a new training process for the company's Telesales Trainees.[5]

After reviewing the training module prepared by respondent, Mr. Rosendo S. Ballesteros (Ballesteros), the company's Senior Vice President-Business Development Group, found that the same did not contain any changes and that they were not ready

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[1] *Jamer v. National Labor Relations Commission*, 344 Phil. 181, 201 (1997), citing *Worldwide Papermills, Inc. v. National Labor Relations Commission*, 244 SCRA 125, 133 (1995).

[2] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring; CA *rollo*, pp. 107-120.

[3] *Id.* at 136.

[4] *Id.* at 193.

[5] CA *rollo*, p. 4.

to present it.[6] He thus instructed respondent through an electronic mail (e-mail) to postpone the presentation and the implementation of the new training process.[7] Ballesteros further emphasized that the Department needed more time to teach the trainees on how to get leads, focus on developing their telemarketing skills and acquire proper motivation.[8]

In response to Ballesteros's e-mail instructions, Cabansay wrote, also via e-mail, as follows:

From: Miami Cabansay
Sent: Friday, April 05, 2002 7:58 AM
To: Ro Ballesteros; Lorna Garcia – ePacific
Cc: 'Butch Nievera'

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[6] *Rollo*, p. 48.

[7] *Id*. at 48 and 153.

[8] The full text of SVP Ballesteros's e-mail is as follows:

From: Ro Ballesteros
Sent: Thursday, April 04, 2002 9:49 PM
To: Miami Cabansay; Lorna Garcia – ePacific
Cc: Harben "Bing" Del Rosario; "Butch Nievera"
Subject: FW: dlp.new training process presentation.04042002
Importance: High
Sensitivity: Confidential
miami,

i did not see any changes. based on our discussion, we should give more time in (*sic*) teaching cca trainees on how to get leads, focus on developing their telemarketing skill (*sic*) and (*sic*) proper motivation. where are the guide (*sic*) for evaluation criteria for both the TLs and traino? this should be discuss (*sic*) with TL's prior to implementation. you and lorna should agree on this also. (*sic*) as i mentioned to you again today.

i don't think we are ready to present this to all TL. you lorna should have more time to discuss the room training module with you (*sic*). let us put (*sic*) more time and thinking before implementing this. let us move the implementation date. i want to see more details. since we have bing gallano joining the training dept. i suggest you get some inputs from her also.

lorna - i told you to coordinate closely with training dept. let us put (*sic*) some more time in the training course module. we need to have specific guide during the duration of the 10-day ojt period. pls. review the attachment - i dont (*sic*) see any revision/changes.

Ro (*Id*.)

Subject: RE: dlp.new training process presentation.04042002
Importance: High
Sensitivity: Confidential

Ro, the presentation is going to be discussed in detail. As we discussed yesterday i (sic) SPECIFICALLY told you that I WILL DISCUSS the new training process and explain it to them in detail. Didn't you see the last past (sic) of the 5-day classroom training, (sic) the last day includes PROSPECTING, that's where the CCA trainees will be taught how to get leads both local and abroad.

The criteria for the evaluation? It's already done by Richie, we're going to distribute the hard copies and discuss it in DETAIL in this afternoon's briefing.

This is a very simple presentation and I WILL NOT POSTPONE it today, it's very easy to comprehend and as per YOUR INSTRUCTION we will be implementing it next week, so when should we present this to the TLs?

Let's not make SIMPLE THINGS COMPLICATED.

I will go on with the presentation this afternoon.[9]

Adversely reacting to respondent's attitude, Ballesteros sent Cabansay a memo on April 6, 2002, informing the latter that he found her message to be a clear act of insubordination, causing him to lose his trust and confidence in her as Manager of the Training Department.[10] He then asked respondent to explain in writing why she should not be terminated as a consequence of her acts.[11]

Meanwhile, no presentation of the training module was made on April 5, 2002 because the Senior Manager for Telesales, Ms. Lorna Garcia, on instruction of Ballesteros, informed all the participants that the same was postponed because Management was not yet ready to present the module.[12]

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[9] CA *rollo*, p. 36.

[10] *Rollo*, p. 49.

[11] *Id*.

[12] CA r*ollo*, p. 62.

Clarifying that this was merely a case of miscommunication and that she had no intention to disregard the order to postpone the implementation of the new training process, Cabansay submitted two memoranda dated April 8 and 11, 2002.[13]

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[13] *Id*. at 56-57. Respondent Cabansay's explanations read as follows:

MEMO FOR: Rosendo Ballesteros Date: April 8, 2002

MEMO FROM: Maria Lourdes Alciso-Cabansay (sgd.)

SUBJECT: Response to memo re: INSUBORDINATION

This is in response to the memorandum you issued to me on April 6, 2002, regarding Insubordination.

My email (sic) to you on our new training process dated April 5, 2002, is not an act of Insubordination.

In the first place, the presentation to our DLP Team leaders did not push through, as you wanted to happen.

With due respect to you, my response in my email was such because in my best judgment, it would serve the company more.

I fully understood your instructions but it was not my intention to disobey your order. In fact, you did not specifically instruct me not to present to the Team Leaders, rather you merely said "**I don't think we are ready to present this to all TL**." What I recall is your order for me **not to implement the new training process**, which I followed.

It seems that this is just a result of miscommunication between us.

From the foregoing, therefore, I hope you will understand my explanation on this matter.

Rest assured that no similar incident would happen in the future.

Cc: JAS; CBB

MEMO FOR: Rosendo Ballesteros Date: April 11, 2002

MEMO FROM: Maria Lourdes Alciso-Cabansay

SUBJECT: Additional Evidence

This is to further explain why my services with the company should not be terminated.

On April 5, 2002, after I sent my email correspondence to you, I have decided not to continue with the New Training Process presentation to our Team Leaders because there were some suggestions that the Telesales Managers (specifically Lorna Garcia) wanted to include in the Training module.

Lorna and I agreed not to continue with the presentation and coordinate with each other to further improve the training course.

This was not communicated to you because you were on graveyard shift the previous day and when you came in the morning of that day, I was not able to get a chance to update you on the matter.

However, on April 11, 2002, the same day she submitted her second explanation, Cabansay received a memorandum from the HR Department/Office of the President notifying her that she had been terminated from the service effective immediately for having committed an act of insubordination resulting in the management's loss of trust and confidence in her.[14]

Furthermore, my reason for wanting to continue with the presentation was to involve our Team Leaders in the enhancement of our New Training Process. Their inputs are vital and this might help speed up our implementation date.

Clearly, it was not my intention to willfully disregard your order. As I previously mentioned in my first response to you, my email (sic) correspondence was such because all I was thinking of was for the best of the company.

I have been with ePacific for a year and in this short span of time I can truly say that I have contributed a lot.

I practically established and helped my department grow to what it is now. I started with conducting all the training needs of our call center agents. I also did pre (*sic*) and post-training activities such as training needs (sic) analysis, evaluation, grading system, and other clerical work. I did all these week per week for three months.

But despite all these, I still managed to perform other tasks and follow my superiors' orders. Sir Butch and Sir Boyet can attest to this. As an example, sometime September last year, Sir Butch and Sir Boyet assigned me to manage the operations group (Outbound) after our previous Call Center Manager resigned. And in December of the same year, they transferred me back to the Training Department because they trust me with my capabilities in handling this group. To quote Sir Butch's words, my involvement with the Training Department is very crucial because it is the touch base of the people we hire that bring in the revenue to our company.

am also proud to say that I have helped my staff develop their skills thus becoming very good trainers. I have also trained most of our very good performers in our outbound group. In fact, most of them hold supervisory positions already.

Aside from all these, I also believe that I have very good working relationships with all my staff, colleagues and other staff from other departments. To prove this, a lot of them come to me for advice on different work-related issues and some personal concerns as well. Most of the time, they follow my advice and everything works out well. This is proof that they are confident and they trust me.

I hope that with this additional information, I would be able to clarify my side.

Cc: JAS, CBB

[14] *Rollo*, p. 47.

Respondent, thus, filed a case for illegal dismissal docketed as NLRC-NCR-04-02441-02 with the Labor Arbitration Branch of the National Labor Relations Commission (NLRC). In her position paper,[15] she sought, among others, payment of full backwages, separation pay, actual, moral and exemplary damages, cash equivalent of vacation and sick leave, 13th month pay, and attorney's fees.[16]

On September 2, 2002, Labor Arbiter (LA) Madjayran H. Ajan rendered his Decision[17] dismissing the complaint. The Labor Arbiter ruled that reading Cabansay's e-mail message between the lines would clearly show that she willfully disobeyed the order of Ballesteros.[18] The company, thus, was justified in dismissing her on the ground of insubordination resulting in loss of trust and confidence. As to her claim for 13th month pay, as well as for the cash equivalent of her sick and vacation leave, the LA ruled that she impliedly agreed, when she did not object, to the company's submission that the pro-rated equivalent of her 13th month pay was already paid to her and that she did not meet the company's conditions for conversion to cash of her leave credits.[19] The dispositive portion of the LA's Decision reads:

> WHEREFORE, premises all considered, judgment is hereby rendered DISMISSING the complaint for lack of merit. Finding the termination of the complainant valid and legal. (*sic*)
>
> All other claims are Dismissed for lack of merit.
>
> SO ORDERED.[20]

On appeal, the NLRC, in its August 29, 2003 Resolution in NLRC NCR CA No. 033624-02,[21] affirmed the decision of the

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[15] *Id*. at 56-68.

[16] *Id*. at 67.

[17] *Id*. at 95-105.

[18] *Id*. at 102.

[19] *Id*. at 104-105.

[20] *Id*. at 105.

[21] Penned by Commissioner Victoriano R. Calaycay, with Commissioners Raul T. Aquino and Angelita A. Gacutan concurring; CA *rollo*, pp. 20-32.

LA. The Commission ruled that Ballesteros's order to postpone the implementation of the training module was reasonable, lawful, made known to Cabansay and pertained to the duties which she had been engaged to discharge.[22] However, her reply—"xxx I WILL NOT POSTPONE it today xxx Let's not make SIMPLE THINGS COMPLICATED"—was a willful defiance of the lawful order of her superior.[23] Since her position as Senior Training Manager carries with it the highest degree of responsibility in upholding the interest of her employer and in setting a standard of discipline among officers and employees, the company had a valid cause to dismiss Cabansay when she deliberately disobeyed the order of Ballesteros resulting in the latter's loss of trust and confidence in her.[24] The NLRC further ruled that the company sufficiently afforded her due process prior to her dismissal.[25] Consequently, she should not be reinstated to her job or be paid separation pay, backwages, moral and exemplary damages and attorney's fees.[26] The NLRC disposed of the case as follows:

WHEREFORE, premises considered, Complainant's appeal is DISMISSED for lack of merit. The Labor Arbiter's assailed Decision in the above-entitled case is hereby AFFIRMED *en toto*.

SO ORDERED.[27]

When her motion for reconsideration was denied by the NLRC,[28] Cabansay filed a petition for *certiorari* under Rule 65 before the CA docketed as CA-G.R. SP No. 83248.[29]

On January 10, 2005, the appellate court rendered its Decision[30] granting the petition. The CA ruled that Cabansay's termination

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[22] *Id*. at 30.

[23] *Id*. at 30-31.

[24] *Id*. at 31.

[25] *Id*.

[26] *Id*.

[27] *Id*. at 32.

[28] *Id*. at 33-34.

[29] *Id*. at 2-19.

[30] *Supra* note 2.

could be justified neither by insubordination nor loss of trust and confidence. A perusal of the e-mail instructions sent by Ballesteros to her would show that, although the alleged order to postpone the presentation of the training module was reasonable and lawful, it was not clearly made known to her. The phrase *"don't think [we are ready to present this to all TL]"* could not be deemed an order as it merely suggested an opinion.[31] Moreover, the e-mail reply of Cabansay cannot be considered an act of willful defiance or insubordination. The language used was not harsh and no rude remarks or demeaning statements were made. She was only explaining her view on the matter, which could not be considered unlawful considering that she was also a managerial employee clothed with discretionary powers. Clearly, her acts did not constitute the "wrongful and perverse attitude" that otherwise would sanction dismissal. And even if she were guilty of insubordination, such minor infraction should not merit the ultimate and supreme penalty of dismissal.[32] The *fallo* of the CA Decision reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition at bench must be, as it hereby is, GRANTED. The challenged resolutions of the NLRC dated August 29, 2003 and January 19, 2004 are hereby NULLIFIED and SET ASIDE. Petitioner is declared to have been illegally dismissed by private respondent company. Private respondent is hereby ordered to pay petitioner full backwages, separation pay and attorney's fees. To this end, this case is REMANDED to the Labor Arbiter for the computation of the separation pay, backwages and other monetary awards to petitioner. Without special pronouncement as to costs.

SO ORDERED.[33]

Petitioner ePacific duly filed a motion for reconsideration[34] but this was denied by the appellate court in the March 7, 2005 Resolution.[35]

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[31] CA *rollo*, pp. 115-116.

[32] *Id.* at 116.

[33] *Id.* at 120.

[34] *Id.* at 123-126.

[35] *Supra* note 3.

The said denial prompted petitioners to come to us raising the following grounds:

x x x (T)hat there is a *prima facie* evidence of grave abuse of discretion on the part of the Hon. Court of Appeals in finding that the complainant was illegally dismissed on the bases of the evidence presented.

That the Hon. Court of Appeals erred in applying the pertinent laws in the instant case.

The Hon. Court of Appeals had decided a question of substance in the instant case, not theretofore determined by the Hon. Supreme Court and that the Court of Appeals had decided in a way not in accord with law or with applicable decisions of the Supreme Court.

The Hon. Court of Appeals has so far departed from the accepted usual course of judicial proceedings.[36]

The main issue to be resolved in this case is whether or not respondent Cabansay was illegally dismissed.

We have consistently ruled in a plethora of cases that, in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised,[37] except if the factual findings of the appellate court are mistaken, absurd, speculative, conjectural, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the court of origin.[38] As the findings and conclusions of the LA and the NLRC, in this case, starkly conflict with those of the CA, we are constrained to delve into the records and examine the questioned findings.

After a careful review of the records and considering the arguments of the parties, the Court finds the petition impressed with merit.

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[36] CA *rollo*, pp. 8-9.

[37] *Telefunken Semiconductors Employees Union v. Court of Appeals*, 401 Phil. 776, 791 (2000).

[38] *Gau Sheng Phils., Inc. v. Joaquin*, G.R. No. 144665, September 8, 2004, 437 SCRA 608, 616.

Both the Labor Arbiter and the NLRC were unanimous in their findings that respondent was validly dismissed. In arriving at this conclusion, the LA and the NLRC examined the e-mail correspondence of Ballesteros and the respondent. They found that Ballesteros made a lawful order to postpone the implementation of the new training process, yet respondent incorrigibly refused to heed his instructions and sent an e-mail to him stating that she would go on with its presentation. Such an act of insubordination resulted in the management's loss of trust and confidence in her. This is a finding which the Court does not wish to disturb.

Oft-repeated is the rule that appellate courts accord the factual finding of the labor tribunal not only respect but also finality when supported by substantial evidence,[39] unless there is showing that the labor tribunal arbitrarily disregarded evidence before them or misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated.[40] Substantial evidence has been defined to be such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and its absence is shown not by stressing that there is contrary evidence on record, direct or circumstantial, for the appellate court cannot substitute its own judgment or criterion for that of the labor tribunal in determining wherein lies the weight of evidence or what evidence is entitled to belief.[41]

In the instant case, we find that the labor tribunal did not arbitrarily disregard or misapprehend the evidence. Its finding that respondent was validly dismissed is likewise warranted by substantial evidence. Thus, we agree with petitioner's stance

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[39] *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 594.

[40] *Mendoza, Jr. v. San Miguel Foods, Inc.*, G.R. No. 158684, May 16, 2005, 458 SCRA 664, 682-683*; Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering*, 460 Phil. 583, 591 (2003); *University of the Immaculate Concepcion v. U.I.C. Teaching and Non-Teaching Personnel and Employees Union*, 414 Phil. 522, 534 (2001).

[41] *Domasig v. National Labor Relations Commission*, 330 Phil. 518, 524 (1996).

that the findings of the LA, as affirmed by the NLRC, should not have been set aside by the appellate court. Deference to the expertise acquired by the labor tribunal and the limited scope granted in the exercise of *certiorari* jurisdiction restrain any probe into the correctness of the LA's and the NLRC's evaluation of evidence.[42]

The petitioners anchor their termination of respondent's services on Article 282, paragraphs (a) and (c), of the Labor Code, as amended, which provides:

ARTICLE 282. TERMINATION BY EMPLOYER

An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or *willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work*;

x x x x x x x x x

(c) Fraud or *willful breach by the employee of the trust reposed in him by his employer or duly authorized representative*;

Willful disobedience or insubordination necessitates the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[43] On the other hand, loss of trust and confidence, to be a valid ground for dismissal, must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at

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[42] *Aquino v. Court of Appeals*, G.R. No. 149404, September 15, 2006.

[43] *Genuino Ice Company, Inc. v. Magpantay*, G.R. No. 147790, June 27, 2006, 493 SCRA 195, 209.

the mercy of the employer. Loss of confidence must not also be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and show that the employee concerned is unfit to continue working for the employer.[44]

In the case at bar, the reasonableness and lawfulness of Ballesteros's order is not in question, so is its relation to the duties of respondent. What is disputed herein is rather its clarity. Respondent Cabansay contends that the directive was not *clearly* made known to her: Ballesteros's order was to postpone the *implementation* but not the *presentation* of the new training process/module to the team leaders.

Respondent's contention is untenable. It should be noted that what is involved in the directive is the new training process, which logically cannot be implemented without being presented or communicated to the team leaders of the company. Thus, when Ballesteros ordered the cessation of its implementation, there can be no other inference than that he wanted to postpone the presentation of the training process which was then already scheduled. Evident further in Ballesteros's e-mail is that he did not find any changes in the new module; hence, he wanted the implementation thereof to be deferred and instructed respondent to consult with the other managers to gather more input.

Be that as it may, respondent cannot belie the fact that she well-understood the directive for her to postpone the presentation of the module, as she herself acknowledged in her e-mail reply to SVP Ballesteros that she would "discuss the new training process and explain it to them in detail" in the afternoon on that day, thus, she would not postpone the scheduled presentation. There is no doubt, therefore, that the order of Ballesteros was clearly made known to respondent.

As to the willfulness of her conduct, the same is manifest in her e-mail reply, which, as it is written, is characterized by

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[44] *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 760.

abject aggressiveness and antagonism: the e-mail has a begrudging tone and is replete with capitalized words eliciting her resolve to indeed contravene the SVP's directive. Thus, she categorically said, *"This is a very simple presentation and I WILL NOT POSTPONE it today, it's very easy to comprehend and as per YOUR INSTRUCTION we will be implementing it next week, so when should we present this to the TLs? Let's not make SIMPLE THINGS COMPLICATED. I will go on with the presentation this afternoon."*

While respondent Cabansay was a managerial employee, a Senior Training Manager entrusted with the delicate matter of molding the minds and characters of call center agents and team leaders, and clothed with discretion to determine what was in the best interest of the company, her managerial discretion was not without limits. Its parameters were contained the moment her discretion was exercised and then opposed by the immediate superior officer/employer for being against the policies and welfare of the company. Hence, any action in pursuit of the discretion thus opposed ceased to be discretionary and could be considered as willful disobedience.[45]

Indeed, by refusing to postpone the presentation and implementation of the new training process, respondent intentionally, knowingly and purposely, without justifiable excuse, breached the trust and confidence reposed in her by her employer. To present and discuss a training module, which is deemed by management as still inadequate in its content, will certainly not only waste the time, effort and energy of the participants in the discussion but will also entail losses on the part of the company.

It is of no moment that the presentation did not push through, and that no actual damage was done by respondent to the company. The mere fact that respondent refused to obey the reasonable and lawful order to defer the presentation and implementation of the module already gave a just cause for petitioners to dismiss her. Verily, had it not been for the timely intervention of the

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[45] *Magos v. National Labor Relations Commission*, 360 Phil. 670, 677 (1998).

Telesales Senior Manager, under the instructions of the SVP, harm could have been done to company resources.

Let it be stressed that insofar as the application of the doctrine of trust and confidence is concerned, jurisprudence has distinguished the treatment of managerial employees or employees occupying positions of trust and confidence from that of rank-and-file personnel. With respect to the latter, loss of trust and confidence as a ground for dismissal requires proof of involvement in the alleged events in question, but as regards managerial employees, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his or her dismissal.[46] For this purpose, there is no need to present proof beyond reasonable doubt. It is sufficient that there is some basis for the loss of trust or that the employer has reasonable ground to believe that the employee is responsible for the misconduct which renders him unworthy of the trust and confidence demanded by his position.[47] Respondent's conduct, in this case, is sufficient basis for the company to lose its trust and confidence in her. Under the circumstances, the company cannot be expected to retain its trust and confidence in and continue to employ a manager whose attitude is perceived to be inimical to its interests. Unlike other just causes for dismissal, trust in an employee, once lost, is difficult, if not impossible to regain.[48]

As to the respondent's argument that petitioners failed to comply with the requirements of statutory due process, we do not agree. Before the services of an employee can be validly terminated, the employer must furnish him with two written notices: (a) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and,

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[46] *Cruz, Jr. v. Court of Appeals*, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 654.

[47] *Alcazaren v. Univet Agricultural Products, Inc.*, G.R. No. 149628, November 22, 2005, 475 SCRA 636, 653.

[48] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 533.

(b) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[49]

In this case, the facts are clear that petitioners, through Ballesteros, informed respondent in the April 6, 2002 memo that the company found her message to be a clear act of insubordination leading to the company's loss of trust and confidence in her as a manager of the training department. In the same memo, petitioners asked her to explain her side in writing. After the respondent submitted her two memoranda-explanations successively on April 8 and 11, 2002, petitioners served her the notice of her termination. Verily, petitioners complied with the requirement of statutory due process in the dismissal of respondent. The fact that the letter of termination or the second notice was received by respondent on April 11, 2002, on the same day she submitted her second explanation, does not put to naught petitioners' observance of the requirement of due process. It has to be noted that from April 8, 2002, when respondent had her chance to explain her side, petitioners were contemplating for several days and presumably were considering her reasons before they finally dismissed her. In any case, the essence of due process is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense.[50]

IN VIEW OF ALL THE FOREGOING, the petition is *GRANTED*. The January 10, 2005 Decision and the March 7, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 83248 are *REVERSED AND SET ASIDE*. The Decision of the Labor Arbiter, as affirmed by the NLRC, dismissing the respondent's complaint for illegal dismissal is *REINSTATED*.

SO ORDERED.

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

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[49] *Pastor Austria v. National Labor Relations Commission,* 371 Phil. 340, 356-357 (1999).

[50] *Magos v. National Labor Relations Commission*, *supra* note 45, at 678.

EN BANC

[G.R. No. 168780. November 23, 2007]

BACOLOD CITY WATER DISTRICT, *petitioner, vs.* **JUANITO H. BAYONA,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; RIGHTS AND PRIVILEGES; SECURITY OF TENURE; LOCAL WATER DISTRICTS ARE QUASI-PUBLIC CORPORATIONS WHOSE EMPLOYEES BELONG TO THE CIVIL SERVICE AND THE DISMISSAL OF ITS EMPLOYEES IS GOVERNED BY CIVIL SERVICE LAW AND REGULATIONS.—** We emphasize that because of CA-G.R. SP No. 45369, there is already a final decision on the determination of the compulsory retirement age of BACIWA employees and on the nullity of the CBA provision declaring 60 years as the compulsory retirement age for BACIWA employees. Moreover, there are a number of cases promulgated before *Davao City Water District v. Civil Service Commission,* the decision relied upon by BACIWA, that specifically ruled that local water districts are quasi-public corporations whose employees belong to the Civil Service and that the dismissal of employees of local water districts is governed by the Civil Service Law and regulations. Thus, there is no need to decide these matters all over again.

2. **ID.; ID.; ID.; ID.; ID.; RESPONDENT'S REQUEST FOR REINSTATEMENT DEBUNK PETITIONER WATER DISTRICT'S STATEMENT THAT THE FORMER NEVER RAISED THE ISSUE OF REINSTATEMENT IN THE PROCEEDINGS PRIOR TO CSC RESOLUTION NO. 001281; RESPONDENT IS THUS NOT AT FAULT FOR THE FAILURE OF CSC RESOLUTION NOS. 964918 AND 973564 TO SPECIFICALLY ORDER HIS REINSTATEMENT.—** BACIWA questions the appellate court's affirmation of the subsequent corrections in CSC Resolution Nos. 001281 and 002606, and insists that the issues of reinstatement and back salaries have to be relitigated. The

CSC and the appellate court ruled otherwise. We affirm the rulings of the CSC and the appellate court. BACIWA conveniently overlooked Bayona's request for reinstatement in his letter to the CSC dated 4 March 1996: Please allow me therefore to request for a ruling, a resolution, an order or whatever thing that is needed to effect my reinstatement, if such is still necessary. The CSC quoted from Bayona's letter in CSC Resolution No. 964918. Bayona raised the issue of reinstatement before the CSC as early as 4 March 1996. Bayona was still eligible for reinstatement as of this date. Prior to 4 March 1996, Bayona also made a request for reinstatement before BACIWA but did not receive any reply. Bayona's first letter to the CSC, dated 14 August 1995, only asked about the proper compulsory retirement age because he was about to retire from BACIWA. Bayona's requests for reinstatement debunk BACIWA's statement that Bayona never raised the issue of reinstatement in the proceedings prior to CSC Resolution No. 001281. Bayona is thus not at fault for the failure of CSC Resolution Nos. 964918 and 973564 to specifically order his reinstatement.

3. **ID.; ID.; ID.; ID.; ID.; RESPONDENT MUST BE COMPENSATED FOR LOST INCOME ARISING FROM HIS ILLEGAL REMOVAL BY FORCED RETIREMENT; SUBSTANTIAL JUSTICE CANNOT BE SERVED IF THE COURT WILL CONTINUE TO ALLOW PETITIONER TO TREAT RESPONDENT AS RETIRED AT AGE 60 EVEN AFTER THE ANNULMENT OF ITS COLLECTIVE BARGAINING AGREEMENT (CBA) PROVISION MANDATING RETIREMENT AT 60 YEARS.—** BACIWA states that there should be no award of back salaries and other benefits to Bayona. Substantial justice militates against BACIWA's position. Substantial justice cannot be served if we continue to allow BACIWA to treat Bayona as retired at age 60 even after the annulment of its CBA provision mandating retirement at 60 years. When the appellate court in CA-G.R. SP No. 45369 stated that "PD 1146 gives Bayona a right to be compulsorily retired at age 65 and he cannot waive that right because such waiver is contrary to public policy," the appellate court definitely did not bar Bayona's reinstatement and payment of back salaries and other benefits. If at all, this pronouncement supports Bayona's position. The appellate court in CA-G.R.

SP No. 62275 is correct in saying that "as a necessary consequence of his reinstatement to the service, Mr. Bayona must be compensated for [lost] income arising from his illegal removal by forced retirement." The sufficiency and efficacy of a judgment must be tested by its substance rather than its form. In construing a judgment, its legal effects including such effects that necessarily follow because of legal implications, rather than the language used, govern. Also, its meaning, operation, and consequences must be ascertained like any other written instrument. Thus, a judgment rests on the intention of the court as gathered from every part thereof, including the situation to which it applies and the attendant circumstances.

4. **ID.; ID.; ID.; ID.; ID.; THE TRIPARTITE COMMITTEE THAT INCLUDED THE CIVIL SERVICE COMMISSION MERELY AGREED TO CONTINUE THE IMPLEMENTATION OF BENEFITS AND DID NOT PROVIDE THAT THE CBA PROVISIONS THAT VIOLATE LAWS SHOULD REMAIN IN FORCE.—** BACIWA further insists that there should be no award of back salaries and other benefits because of the appellate court's declaration in CA-G.R. SP No. 62275 that "[w]ith the Tripartite Committee (that included the CSC), agreeing to continue the existence of said CBA up to its expiry date, there was no bad faith involved in BACIWA's decision to retire Bayona." BACIWA cannot rely on this declaration. The appellate court's lack of finding of bad faith in BACIWA's forced retirement of Bayona is diametrically opposed to the appellate court's statement two pages after: "With PD 1146 fixing the retirement age at 65 years, the CBA violated this law by lowering the compulsory retirement age at 60 years." The Tripartite Committee merely agreed to continue the implementation of benefits. The Tripartite Committee did not provide that CBA provisions that violate laws should remain in force. Finally, Section 75 of Rule V of the Revised Uniform Rules on Administrative Cases in the Civil Service, Memorandum Circular No. 19, series of 1999, Resolution No. 991936 reads: *Effect of Decision.* — Where the Commission, on appeal, sets aside, modifies or reverses the decision whereby an employee was dropped from the rolls, he shall be reinstated immediately to his former post with payment of back salaries and other money benefits. For

this purpose, dropping from the rolls, being non-disciplinary in nature, shall not result in the forfeiture of benefits. In case of illegal termination, the employee shall be reinstated with payment of back salaries. x x x The Revised Uniform Rules took effect on 14 September 1999. Clearly, when the CSC issued Resolution No. 001281 on 26 May 2000 and awarded Bayona his back salaries and benefits, the Revised Uniform Rules were already in effect.

APPEARANCES OF COUNSEL

Government Corporate Counsel for petitioner.
Allan L. Zamora for respondent.

D E C I S I O N

CARPIO, *J.*:

<u>The Case</u>

This is a petition for review[1] of the Decision[2] promulgated on 28 February 2005 by the Court of Appeals (appellate court) in CA-G.R. SP No. 62275. The appellate court's decision affirmed Civil Service Commission (CSC) Resolution No. 001281[3] dated 26 May 2000 and CSC Resolution No. 002606[4] dated 20 November 2000. The appellate court declared that the CSC did not violate Bacolod City Water District's (BACIWA) right to due process when it failed to notify BACIWA of Juanito H. Bayona's (Bayona) letter requesting reinstatement, back salaries, and other benefits. Moreover, the appellate court affirmed CSC's subsequent declaration that BACIWA should reinstate Bayona and pay his back salaries and other benefits.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 8-20. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Eugenio S. Labitoria and Magdangal M. De Leon, concurring.

[3] *Id*. at 82-85.

[4] *Id*. at 86-91.

The Facts

The appellate court stated the facts as follows:

In the case of *Davao Water District, et al. vs. Civil Service Commission* (CSC), the Supreme Court declared that a water district is a corporation created pursuant to Presidential Decree No. 198, known as the Provincial Water Utilities Act of 1973, as amended. As such, its officers and employees should seek coverage under the Civil Service Law and not the Labor Code. This decision was promulgated on September 13, 1991, and obtained finality on March 12, 1992.

Unaware of said ruling, Bacolod City Water District (BACIWA) and its employees entered into a Collective Bargaining Agreement (CBA) on October 1, 1991, to govern their employer-employee relationship until September 30, 1996. To resolve the conflict on whether or not to apply the jurisprudence mentioned above or the provisions of the CBA, a tripartite committee consisting of the Secretary of Budget and Management, the chairman of the CSC and the administrator of the Local Water Utilities Administration met on September 10, 1993. In the process, said committee issued guidelines and agreed that, "all benefits provided under the duly existing CBAs entered into prior to March 12, 1992, the date of the official entry of judgment of said Supreme Court ruling, shall continue up to the Respective Expiry Dates of the benefits or CBAs, whichever comes earlier."

On May 16, 1994, an employee of BACIWA by the name of Juanito H. Bayona reached the age of sixty (60). He was the manager of the General Services Division and had been with BACIWA for the past thirteen (13) years. Earlier, in a letter addressed to the Civil Service Provincial Office, he sought clarification on the applicable retirement age for the employees of BACIWA. On February 9, 1993, Director Ramon Naces replied that water district employees could retire at age sixty-five because a "retirement plan should be liberally construed and administered in favor of the person intended to be benefited thereby."[5]

Section 2 of Article XVI of the CBA between BACIWA's Union and BACIWA provides:

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[5] *Id*. at 8-10.

The DISTRICT shall have to compulsorily retire any employee when the latter reaches the age of sixty (60) years, unless extended by the Board with the employee's consent when the exigency of his services so require.[6]

Nonetheless, the Board of Directors of BACIWA passed Resolution No. 046, series of 1995 conditionally extending the term of Bayona until 31 December 1995. This extension could be shortened by the implementation of the salary standardization, or by the exercise of the discretion of the Board of Directors.

In a letter dated 14 August 1995, fifteen months after his 60th birthday and four months before the expiry of his extended term, Bayona asked the CSC to determine the compulsory retirement age of BACIWA personnel. Resolution No. 964918, dated 5 August 1996, quoted from Bayona's letter as follows:

With your most kind indulgence, please allow me to elevate to your good office a query regarding the compulsory retirement age of BACIWA personnel, in view of the conflicting provisions of our CBA which provides a compulsory retirement age of 60 yrs. and that of the Civil Service Law which is 65 years.

x x x x x x x x x

While I do not wish to question the opinion given by the Civil Service Commission Regional Office in Iloilo, that Division Managers in BACIWA are placed within the scope of rank and file and should therefore be under the coverage of the existing CBA, yet I am still inclined to believe that even as rank and file employee, we [sic] can also avail of the provision of the CSC on compulsory retirement age of 65, because as a law, it was adopted and made part of our CBA, as provided under Section 6, Art. XXVIII of the said CBA. It is therefore for this reason that lead me to believe that any BACIWA personnel can either avail a compulsory retirement age of 60 or that of 65 years, as both compulsory retirement age likewise embodied in the CBA.[7]

Juliana B. Carbon, BACIWA Officer-in-Charge, informed Bayona on 29 November 1995 that Board Resolution No. III,

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[6] *Id*. at 94.

[7] *Id*. at 92.

series of 1995 amended the date of Bayona's retirement from 31 December 1995 to 30 November 1995. Bayona was then given retirement pay and separated from the service.

On 16 January 1996, Commissioner Thelma P. Gaminde sent the following reply to Bayona's 14 August 1995 letter:

> Please be informed that terms and conditions of employment in government are subject to Civil Service law and rules and regulations and such conditions may not be ignored unless there is an express provision of law granting certain exemptions. Thus, while the CBA may constitute the law between the parties, said terms and conditions should still conform with existing laws on the same subject matter. As applied to your case, the provisions of P.D. 1146 otherwise known as the Revised Government Service Insurance Act of 1977 providing for a compulsory retirement age of sixty-five (65) years with at least fifteen (15) years of service should prevail. This is true with other Civil Service rules providing a similar provision which shall prevail over the terms and conditions of your CBA.[8]

On 4 March 1996, Bayona wrote another letter to the CSC. Now considered retired from service, Bayona informed the CSC about his request to BACIWA for his immediate reinstatement.

> Based on your letter dated January 16, 1996 in response to my request for an official opinion regarding the compulsory retirement age for Bacolod City Water District (BACIWA) personnel, I requested the BACIWA Board and Management for my immediate reinstatement effective December 1, 1995 as I was forced to retire last November 30, 1995 inspite of my request to be allowed to retire on a later date in order to enable me to complete and comply with the minimum requirement of fifteen (15) years of service required under P.D. 1146, not to mention that I am only 61 years old.
>
> x x x x x x x x x
>
> Todate, I have not received a reply to my request for reinstatement. I was verbally informed by the Personnel Officer that maybe the Board and Management of BACIWA will be referring the matter to the Civil Service Commission there in Manila, as they possibly must have considered your response to be only an opinion without any binding effect and as such they may be [sic] would like to seek for

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[8] *Id*. at 93.

an official ruling of the Commission *en banc*. They could have overlooked the request for an official opinion and it follows that your response to me should be considered as official and not only as an ordinary personal opinion.

Please allow me therefore to request for a ruling, a resolution, an order or whatever thing that is needed to effect my reinstatement, if such is still necessary.[9]

In Resolution No. 964918 dated 5 August 1996, the CSC stated that although a contract is the law between the parties, the same must not be contrary to law, morals, good customs, public order, or public policy. The CBA cannot shorten the employees' term of office fixed by law, which is the age of 65 years. Thus, the compulsory retirement age of 65 years as provided in Section 11(b) of Presidential Decree No. 1146 (PD 1146) applies to BACIWA employees. Section 2 of Article XVI of the CBA merely gives the employee an option to retire at the age of 60 years. The dispositive portion of Resolution No. 964918 reads:

WHEREFORE, it is hereby ruled that the compulsory retirement age for personnel of the Bacolod City Water District is sixty-five (65) years with an option to retire earlier at age sixty (60) years.[10]

BACIWA filed a motion for reconsideration. Because there was no mention of Bayona in the dispositive portion of Resolution No. 964918, BACIWA asked whether the CSC's ruling that the compulsory retirement age for BACIWA personnel is 65 years, with an option to retire earlier at 60 years, applies specifically to Bayona, who reached 60 years on 16 May 1994 when the CBA between BACIWA and its union was still existing and yet to expire on 30 September 1996. BACIWA insisted that the compulsory retirement age of BACIWA employees which is 65 years, with an option to retire at age 60, should be made applicable only after 30 September 1996, the expiry of the CBA.

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[9] *Id.* at 93-94.

[10] *Id.* at 95.

In Resolution No. 973564 dated 5 August 1997, the CSC declared that BACIWA's motion for reconsideration was devoid of merit. The CSC ruled that BACIWA's retirement plan, as stated in the CBA, violates PD 1146, an existing law. The CBA cannot shorten the employees' term of office fixed by law. There was still no mention of Bayona in the dispositive portion of Resolution No. 973564, which reads:

WHEREFORE, the instant motion of Bacolod City Water District is hereby denied. Accordingly, the CSC Resolution No. 964918 dated August 5, 1996 stands.[11]

BACIWA filed a petition for review before the appellate court, docketed as CA-G.R. SP No. 45369. In a decision dated 29 March 1999, the appellate court affirmed CSC Resolution Nos. 964918 dated 5 August 1996 and 973564 dated 5 August 1997. In the body of its decision, the appellate court stated that the compulsory retirement age for Bayona is 65 years. Despite this pronouncement, the dispositive portion of the appellate court's decision still made no mention of Bayona's reinstatement. Pertinent portions of the appellate court's decision read:

In the case of public employees like Bayona, there is a law fixing the compulsory retirement age at 65 years which is P.D. 1146 (Revised Government Service Insurance Act of 1977).

In 1977, P.D. 1146 was promulgated decreeing that the compulsory retirement age of officers and members of the civil service is 65 years old. On February 20, 1984, the Supreme Court in *Baguio Water District v. Trajano, 127 SCRA 730* already ruled that a water district is a corporation created pursuant to a special law – P.D. 198, as amended, and as such its officers and employees are covered by the Civil Service Law. This ruling was reiterated in *Hagonoy Water District v. NLRC, 165 SCRA 272* and *Tanja[y] Water District v. Gabaton, 172 SCRA 253*.

Consequently, when the CBA was executed and made effective on October 1, 1991, [BACIWA] and the Union of which respondent Bayona was a member were conclusively presumed to know that: a) respondent Bayona and his co-officers and employees in BACIWA were members of the civil service; and, b) the compulsory retirement

[11] *Id.* at 99.

age of members of the civil service as decreed by law is 65 years old, and yet, the parties stipulated for a lower compulsory retirement age.

The vital issue then is: What is the nature of the law fixing the compulsory retirement age of members of the civil service at 65 years? This Court holds that [the] law, PD 1146, is mandatory in character and tenor. The fixing of compulsory retirement age for public officers and employees is certainly most impressed with public interest for the age at which a public employee is retired affects his physical, mental, emotional, and financial well-being. The state as *parens patriae* fixed the compulsory retirement age of members of its personnel to ensure their welfare as well as the good of the State. The chosen age is based upon vital considerations like, among others, the general physical and mental health of the employee, his productivity or creativity; economic benefit to the employee and the financial constraints of the government agency concerned. It is clear to this Court that the fixing of the compulsory retirement age at 65 is a public policy.

Can the statutorily fixed compulsory retirement age be lowered by a CBA between the union of employees belonging to the civil service and the government-owned and controlled corporation? Negative is the answer.

x x x x x x x x x

[T]his Court holds that the CBA lowering the compulsory retirement age of the officers and employees of BACIWA from the statutorily fixed 65 years is null and void because: a) PD 1146 gives Bayona a right to be compulsorily retired at age 65 and he cannot waive that right because such waiver is contrary to public policy; and, b) it is a fundamental principle that an existing law is in legal contemplation a part of a contract so that PD 1146 is a part of the CBA, hence the latter violated the law by lowering the compulsory retirement age fixed by PD 1146.

x x x x x x x x x

This Court, therefore, finds no reversible error in the appealed decision.

WHEREFORE, for lack of merit, the appeal is DISMISSED and the appealed Decision is AFFIRMED.[12]

[12] *Id*. at 114-117.

Bayona still was not reinstated. In view of the rulings in CSC Resolution Nos. 964918 and 973564 and in CA-G.R. SP No. 45369, Bayona, in a letter dated 6 May 1999, again requested the CSC for an order specifically declaring his reinstatement and payment of back salaries and other benefits from 1 January 1996 up to 16 May 1999.

The Ruling of the CSC

In Resolution No. 001281 dated 26 May 2000, the CSC admitted that Bayona's reinstatement and payment of back salaries and other benefits were never mentioned in the dispositive portions of CSC Resolution Nos. 964918 and 973564. The CSC then declared that when it issued these resolutions, it was with the purpose of determining the legal right of Bayona to his position as Manager of BACIWA's General Services Division from 16 May 1994 up to 16 May 1999.

Pertinent portions of CSC Resolution No. 001281 read:

> Pertinent to the discussion is the ruling of the High Court in the Case of *Castelo v. Court of Appeals, 244 SCRA 180, dated May 22 1995,* which reads, as follows:
>
>> "The established doctrine is that when the dispositive portion of a judgment, which has become final and executory, contains a clerical error or an ambiguity arising from an inadvertent omission, such error or ambiguity may be clarified by reference to the body of the decision itself."
>
> In the instant case, it was Bayona who requested the Commission to render an opinion regarding the validity of Section 2, Article XVI of then [sic] CBA. Hence, when the Commission rendered its decisions in CSC Resolution Nos. 96-4918 and 97-3564, it was with the purpose of determining the legal right of Bayona to his position as Manager of the General Service[s] Division of BACIWA for the period of May 16, 1994 (date of 60th birthday) up to May 16, 1999 (date of 65th birthday).
>
> Moreover, the body of the decision of the Court of Appeals categorically mentioned the following, to wit:
>
> "In the case of public employees like Bayona, there is a law fixing the compulsory retirement age at 65 years which is P.D. 1146 (Revised Government Service Insurance Act of 1977)."

Bayona turned sixty-five (65) years old on May 16, 1999, which is the compulsory retirement age under Section 11 (b) of P.D. 1146. Were it not for the invalidated provision in the CBA providing for a compulsory retirement age of 60, Bayona should have continued to render government service until May 16, 1999. Therefore, he should be paid the amount corresponding to his salaries and other benefits for the period January 1, 1996 to May 16, 1999.

WHEREFORE, the Commission hereby rules that Juanito H. Bayona be paid his back salaries and other benefits covering the period January 1, 1996 to May 16, 1999.[13]

BACIWA moved for the reconsideration of CSC Resolution No. 001281. BACIWA asked whether Bayona should be reinstated to his former position and be paid his back salaries and other benefits. BACIWA also stated that the CSC failed to observe due process when it issued CSC Resolution No. 001281 without furnishing copies to the Office of the Government Corporate Counsel and to BACIWA. For his part, Bayona moved to correct the period within which he is entitled to back salaries and other benefits. In BACIWA Board Resolution No. III, series of 1995, BACIWA extended Bayona's term only up to 30 November 1995. Bayona was thus separated from service effective 1 December 1995.

In Resolution No. 002606 dated 20 November 2000, the CSC denied BACIWA's motion for reconsideration and merely corrected the starting date for determining Bayona's back salaries. The CSC ordered BACIWA to pay Bayona's back salaries and other benefits from 1 December 1995 to 16 May 1999. The dispositive portion of CSC Resolution No. 002606 reads:

WHEREFORE, the motion for reconsideration of Bacolod City Water District is hereby denied for lack of merit. Accordingly, BACIWA is directed to pay the back salaries and other benefits of Juanito H. Bayona from December 1, 1995 to May 16, 1999. CSC Resolution No. 00-1281 dated May 26, 2000 is thus modified.[14]

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[13] *Id*. at 85.

[14] *Id*. at 91.

BACIWA again filed a petition for review before the appellate court, docketed as CA-G.R. SP No. 62275, questioning the award to Bayona. BACIWA sought to set aside or modify CSC Resolution Nos. 001281 and 002606. BACIWA also prayed for the issuance of a temporary restraining order and/or writ of preliminary injunction against the CSC's enforcement of the resolutions.

The Ruling of the Appellate Court

On 8 August 2002, the appellate court issued a writ of preliminary injunction after BACIWA filed a ₱100,000 bond. The appellate court also ordered the CSC to desist from implementing its resolutions during the pendency of the case before the appellate court, or until the issuance of an order to the contrary.

On 28 February 2005, the appellate court affirmed CSC Resolution Nos. 001281 and 002606 and denied BACIWA's petition. The appellate court stated that BACIWA's motion for reconsideration cured the perceived irregularity of lack of notice from the CSC regarding Bayona's request for reinstatement and payment of back salaries and benefits. Furthermore, the omission of the claim for reinstatement and back salaries in CSC Resolution Nos. 964918 and 973564 should not be construed as a bar to award what is a necessary consequence of Bayona's illegal removal. The appellate court also affirmed Bayona's reinstatement and payment of his back salaries and benefits. Finally, the appellate court stated that the issues raised by BACIWA had already been discussed and passed upon in the appellate court's previous decision in CA-G.R. SP No. 45369.

The appellate court ruled thus:

> WHEREFORE, the petition is DENIED. Civil Service Commission Resolution Nos. 00-1281 and 00-2606 are AFFIRMED. The writ of preliminary injunction previously issued is QUASHED and declared of no further effect.
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> SO ORDERED.[15]

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[15] *Id*. at 19-20.

BACIWA filed a motion for reconsideration, which the appellate court denied. The appellate court stated that the grounds raised in BACIWA's motion had already been thoroughly discussed in the appellate court's decision.

The Issues

BACIWA now questions the award of Bayona's back salaries and other benefits primarily because of the omission of such award in CSC Resolution Nos. 964918 and 973564, the subsequent correction in CSC Resolution Nos. 001281 and 002606, and the affirmation of the correction in CA G.R. SP No. 62275. Moreover, BACIWA insists that this Court rule on the propriety of the award of Bayona's back salaries and other benefits because BACIWA terminated Bayona's services in good faith.

The Ruling of the Court

The petition has no merit.

Payment of Back Salaries and Other Benefits As A Matter of Course

As a preliminary note, we emphasize that because of CA-G.R. SP No. 45369, there is already a final decision on the determination of the compulsory retirement age of BACIWA employees and on the nullity of the CBA provision declaring 60 years as the compulsory retirement age for BACIWA employees. Moreover, there are a number of cases[16] promulgated before *Davao City Water District v. Civil Service Commission,*[17] the decision relied upon by BACIWA, that specifically ruled that local water districts are quasi-public corporations whose employees belong to the Civil Service and that the dismissal of employees of local water districts is governed by the Civil Service Law and regulations. Thus, there is no need to decide these matters all over again.

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[16] *Tanjay Water District v. Gabaton*, G.R. Nos. 63742 and 84300, 17 April 1989, 172 SCRA 253; *Hagonoy Water District v. NLRC*, No. 81490, 31 August 1988, 165 SCRA 272; *Baguio Water District v. Trajano*, 212 Phil. 674 (1984).

[17] G.R. Nos. 95237-38, 13 September 1991, 201 SCRA 593.

BACIWA questions the appellate court's affirmation of the subsequent corrections in CSC Resolution Nos. 001281 and 002606, and insists that the issues of reinstatement and back salaries have to be relitigated. The CSC and the appellate court ruled otherwise. We affirm the rulings of the CSC and the appellate court.

BACIWA conveniently overlooked Bayona's request for reinstatement in his letter to the CSC dated 4 March 1996:

> Please allow me therefore to request for a ruling, a resolution, an order or whatever thing that is needed to effect my reinstatement, if such is still necessary.[18]

The CSC quoted from Bayona's letter in CSC Resolution No. 964918. Bayona raised the issue of reinstatement before the CSC as early as 4 March 1996. Bayona was still eligible for reinstatement as of this date. Prior to 4 March 1996, Bayona also made a request for reinstatement before BACIWA but did not receive any reply.[19] Bayona's first letter to the CSC, dated 14 August 1995, only asked about the proper compulsory retirement age because he was about to retire from BACIWA.

Bayona's requests for reinstatement debunk BACIWA's statement that Bayona never raised the issue of reinstatement in the proceedings prior to CSC Resolution No. 001281. Bayona is thus not at fault for the failure of CSC Resolution Nos. 964918 and 973564 to specifically order his reinstatement.

We treat Bayona's 6 May 1999 letter to the CSC as a motion for clarification of the rulings in CSC Resolution Nos. 964918 and 973564. We now clarify what the appellate court affirmed. What is involved in the present case is not a clerical error (as typified by an error in arithmetical computation) or a correction of an erroneous judgment or dispositive portion of a judgment. In the present case, there is an inadvertent omission on the part of the rulings in CSC Resolution Nos. 964918 and 973564

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[18] *Rollo*, p. 94.

[19] *Id.* at 93.

and in CA-G.R. SP No. 45369 to provide a translation of the rulings into operational or behavioral terms.[20]

BACIWA states that there should be no award of back salaries and other benefits to Bayona. Substantial justice militates against BACIWA's position. Substantial justice cannot be served if we continue to allow BACIWA to treat Bayona as retired at age 60 even after the annulment of its CBA provision mandating retirement at 60 years. When the appellate court in CA-G.R. SP No. 45369 stated that "PD 1146 gives Bayona a right to be compulsorily retired at age 65 and he cannot waive that right because such waiver is contrary to public policy,"[21] the appellate court definitely did not bar Bayona's reinstatement and payment of back salaries and other benefits. If at all, this pronouncement supports Bayona's position. The appellate court in CA-G.R. SP No. 62275 is correct in saying that "as a necessary consequence of his reinstatement to the service, Mr. Bayona must be compensated for [lost] income arising from his illegal removal by forced retirement."[22]

> The sufficiency and efficacy of a judgment must be tested by its substance rather than its form. In construing a judgment, its legal effects including such effects that necessarily follow because of legal implications, rather than the language used, govern. Also, its meaning, operation, and consequences must be ascertained like any other written instrument. Thus, a judgment rests on the intention of the court as gathered from every part thereof, including the situation to which it applies and the attendant circumstances.[23]

BACIWA further insists that there should be no award of back salaries and other benefits because of the appellate court's declaration in CA-G.R. SP No. 62275 that "[w]ith the Tripartite Committee (that included the CSC), agreeing to continue the existence of said CBA up to its expiry date, there was no bad

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[20] See *Republic Surety and Insurance Co. v. Intermediate Appellate Court*, Nos. 71131-32, 27 July 1987, 152 SCRA 309.

[21] *Rollo*, p. 116.

[22] *Id*. at 14.

[23] *Padua v. Robles*, 160 Phil. 1159, 1165 (1975).

faith involved in BACIWA's decision to retire Bayona."[24] BACIWA cannot rely on this declaration.

The appellate court's lack of finding of bad faith in BACIWA's forced retirement of Bayona is diametrically opposed to the appellate court's statement two pages after: "With PD 1146 fixing the retirement age at 65 years, the CBA violated this law by lowering the compulsory retirement age at 60 years." The Tripartite Committee merely agreed to continue the implementation of benefits. The Tripartite Committee did not provide that CBA provisions that violate laws should remain in force.

Finally, Section 75 of Rule V of the Revised Uniform Rules on Administrative Cases in the Civil Service, Memorandum Circular No. 19, series of 1999, Resolution No. 991936 reads:

> *Effect of Decision.* — Where the Commission, on appeal, sets aside, modifies or reverses the decision whereby an employee was dropped from the rolls, he shall be reinstated immediately to his former post with payment of back salaries and other money benefits. For this purpose, dropping from the rolls, being non-disciplinary in nature, shall not result in the forfeiture of benefits.
>
> In case of illegal termination, the employee shall be reinstated with payment of back salaries. x x x

The Revised Uniform Rules took effect on 14 September 1999. Clearly, when the CSC issued Resolution No. 001281 on 26 May 2000 and awarded Bayona his back salaries and benefits, the Revised Uniform Rules were already in effect.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 28 February 2005 of the Court of Appeals in CA-G.R. SP No. 62275 affirming Civil Service Commission Resolution Nos. 001281 and 002606. We *ORDER* the Bacolod City Water District to pay the back salaries and benefits of Juanito H. Bayona from 1 December 1995 to 16 May 1999.

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[24] *Rollo*, p. 15.

SO ORDERED.

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

Corona, J., on official leave.

THIRD DIVISION

[G.R. No. 169982. November 23, 2007]

SALVADOR A. PLEYTO, *petitioner, vs.* **PHILIPPINE NATIONAL POLICE CRIMINAL INVESTIGATION AND DETECTION GROUP (PNP-CIDG),** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEALS FROM QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS; THE COURT OF APPEALS COMMITTED AN ERROR IN ADMITTING THE COMMENT AND MEMORANDUM OF THE OFFICE OF THE OMBUDSMAN IN CA-G.R. NO. SP NO. 87086; THE ONLY PARTIES IN AN APPEAL UNDER RULE 43 OF THE RULES OF COURT ARE THE APPELLANT AS PETITIONER AND THE APPELLEE AS RESPONDENT; THE COURT OR ADMINISTRATIVE AGENCY WHICH RENDERED THE JUDGMENT IS NOT A PARTY IN SAID APPEAL.—** After a review of both positions on the matter of the intervention of the Office of the Ombudsman in the proceedings before the Court of Appeals, this Court rules in favor of petitioner. The Court of Appeals indeed committed an error in admitting the Comment and Memorandum of the Office of the Ombudsman in CA-G.R. SP No. 87086. *Fabian v. Hon. Desierto* already settled that appeals in administrative disciplinary cases from the Office of the Ombudsman should be brought first to the Court of Appeals *via* a verified Petition

for Review under Rule 43 of the Rules of Court. Rule 43 of the Rules of Court, together with Supreme Court Administrative Circular No. 1-95, governs appeals to the Court of Appeals from judgments or final orders of quasi-judicial agencies. In specifying the contents of such a Petition for Review, both Rule 43 of the Rules of Court and Administrative Circular No. 1-95 require the full names of the parties to the case ***without impleading the lower courts or agencies as petitioners or respondents***. The only parties in an appeal are the appellant as petitioner and the appellee as respondent. The court, or in this case, the administrative agency which rendered the judgment appealed from, is not a party in said appeal. This is not a case wherein the petitioner improperly impleaded the Office of the Ombudsman in his Petition for Review in CA-G.R. SP No. 87086. In fact, the petitioner adhered to Rule 43 of the Rules of Court and Administrative Circular No. 1-95, by naming as respondent only the PNP-CIDG, the original complainant against him. It is the Office of the Ombudsman who actively sought to intervene in CA-G.R. SP No. 87086.

2. ID.; ID.; ID.; *RAISON D'ETRE* OF THE RULE; THE COURT OR QUASI-JUDICIAL AGENCY MUST BE DETACHED AND IMPARTIAL NOT ONLY WHEN HEARING AND RESOLVING THE CASE BEFORE IT, BUT EVEN WHEN ITS JUDGMENT IS BROUGHT ON APPEAL BEFORE A HIGHER COURT.— It is a well-known doctrine that a judge should detach himself from cases where his decision is appealed to a higher court for review. The *raison d'etre* for such doctrine is the fact that a judge is not an active combatant in such proceeding and must leave the opposing parties to contend their individual positions and the appellate court to decide the issues without his active participation. When a judge actively participates in the appeal of his judgment, he, in a way, ceases to be judicial and has become adversarial instead. The court or the quasi-judicial agency must be detached and impartial, not only when hearing and resolving the case before it, but even when its judgment is brought on appeal before a higher court. The judge of a court or the officer of a quasi-judicial agency must keep in mind that he is an adjudicator who must settle the controversies between parties in accordance with the evidence and the applicable laws, regulations, and/or jurisprudence. His judgment should already clearly and completely state his findings of fact and law. There

must be no more need for him to justify further his judgment when it is appealed before appellate courts. When the court judge or the quasi-judicial officer intervenes as a party in the appealed case, he inevitably forsakes his detachment and impartiality, and his interest in the case becomes personal since his objective now is no longer only to settle the controversy between the original parties (which he had already accomplished by rendering his judgment), but more significantly, to refute the appellant's assignment of errors, defend his judgment, and prevent it from being overturned on appeal.

3. ID.; ID.; ID.; THE RELIANCE OF THE OFFICE OF THE OMBUDSMAN ON THE COURT'S PRONOUNCEMENT IN *DACOYCOY* AND *GARCIA* ARE MISPLACED.— The reliance of the Office of the Ombudsman on this Court's pronouncements in *Dacoycoy* and *Garcia* cases are misplaced. The issue in the landmark case *Dacoycoy*, was the right of the Civil Service Commission (CSC) to file an appeal with this Court from the decision of the Court of Appeals exonerating the civil service officer Dacoycoy from the administrative charges against him. According to Section 39 of the Civil Service Law, appeals, where allowable, shall be made by the party adversely affected by the decision within 15 days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within 15 days. Previous decisions of this Court ruled that the "party adversely affected" in Section 39 of the Civil Service Law, refers solely to the public officer or employee who was administratively disciplined and, hence, an appeal may be availed of only in a case where the respondent is found guilty. The similar issue arose in *Garcia*. In said case, the Philippine National Bank (PNB) imposed upon its employee Garcia the penalty of forced resignation for gross neglect of duty. On appeal, the CSC exonerated Garcia from the administrative charges against him. In accordance with its ruling in *Dacoycoy*, this Court affirmed the standing of the PNB to appeal to the Court of Appeals the CSC resolution exonerating Garcia. After all, PNB was the aggrieved party which complained of Garcia's acts of dishonesty. Should Garcia be finally exonerated, it might then be incumbent upon PNB to take him back into its fold. PNB should therefore be allowed to appeal a decision that, in its view, hampered its right to select honest

and trustworthy employees, so that it can protect and preserve its name as a premier banking institution in the country.

4. **ID.; ID.; ID.; THE OFFICE OF THE OMBUDSMAN CANNOT USE *DACOYCOY* AND *GARCIA* TO SUPPORT ITS INTERVENTION; REASONS.—** Having established the foregoing, the Office of the Ombudsman cannot use *Dacoycoy* and *Garcia* to support its intervention in the appellate court proceedings for the following reasons: *First,* petitioner was not exonerated from the administrative charges against him, and was in fact dismissed for grave misconduct and dishonesty by the Office of the Ombudsman in its decision in the administrative case, OMB-C-A-03-0347-I. Thus, it was petitioner who appealed to the Court of Appeals being, unquestionably, the party aggrieved by the judgment on appeal. *Second*, the issue herein is the right of the Office of the Ombudsman to intervene in the appeal of its decision, not its right to appeal. Its decision has not even been reversed yet so no question has arisen as to the standing of the Office of the Ombudsman to appeal from the reversal of its judgment. The Office of the Ombudsman only wishes to intervene in CA-G.R. SP No. 87086 to make sure that its decision dismissing petitioner from service is upheld by the appellate court. *And third*, *Dacoycoy* and *Garcia* should be read together with *Mathay, Jr. v. Court of Appeals* and *National Appellate Board of the National Police Commission v. Mamauag,* in which this Court qualified and clarified the exercise of the right of a government agency to actively participate in the appeal of decisions in administrative cases.

5. **ID.; ID.; ID.; AS THE DISCIPLINING AUTHORITY OR TRIBUNAL WHICH HEARD THE CASE, AND IMPOSED THE PENALTY, THE OFFICE OF THE OMBUDSMAN MUST REMAIN PARTIAL AND DETACHED.—** Should the Office of the Ombudsman insist on its right to intervene based on *Dacoycoy* and *Garcia*, then its exercise of such right should likewise be qualified according to *Mathay* and *Mamauag*. As the disciplining authority or tribunal which heard the case and imposed the penalty, it must remain partial and detached. It must be mindful of its role as an adjudicator, not an advocate. It should just have allowed the government agency prosecuting the administrative charges against petitioner, namely, the PNP-CIDG, appropriately represented by the OSG, to participate in CA-G.R. SP No. 87086. Not being an appropriate party to

intervene in CA-G.R. SP No. 87086, any participation of the Office of the Ombudsman therein, more particularly, through its Comment, Memorandum, and other pleadings, should not have been considered by the Court of Appeals. Not even the adoption by the OSG of the Comment of the Office of the Ombudsman as its Memorandum can cure the defect of such Comment which was filed by a non-party to the case. To rule otherwise would be to condone the wrongful intervention of the Office of the Ombudsman in the appellate court proceedings and to allow a circumvention of a fundamental rule of procedure, for it would still afford the Office of the Ombudsman the opportunity to effectively present its position and arguments in the case despite its absence of interest or personality therein, a dangerous precedent indeed.

6. **ID.; ID.; ID.; WHILE THE COURT IN SOME INSTANCES ALLOWS A RELAXATION IN THE APPLICATION OF THE RULES, IT WAS NEVER INTENDED TO FORGE A BASTION FOR ERRING APPLICANTS TO VIOLATE THE RULES WITH IMPUNITY; LIBERALITY IN THE INTERPRETATION AND APPLICATION OF THE RULES APPLIES ONLY IN PROPER CASES AND UNDER JUSTIFIABLE CAUSES AND CIRCUMSTANCES.—** Intervention of the Office of the Ombudsman cannot be allowed on liberality. Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harping on the policy of liberal construction. Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.

7. **ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; SUBSTANTIAL EVIDENCE; COURTS MAY NOT BE BOUND BY THE FINDINGS OF FACT OF ADMINISTRATIVE AGENCY WHEN**

THE PRECISE ISSUE IN THE CASE ON APPEAL IS WHETHER THERE IS SUBSTANTIAL EVIDENCE SUPPORTING THE FINDINGS OF THE ADMINISTRATIVE AGENCY; CASE AT BAR.— While it is an established rule in administrative law that the courts of justice should respect the findings of fact of said administrative agencies, the same is not absolute and there are recognized exceptions thereto. Courts may not be bound by the findings of fact of an administrative agency when there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial; when there is a clear showing that the administrative agency acted arbitrarily or with grave abuse of discretion or in a capricious and whimsical manner, such that its action may amount to an excess or lack of jurisdiction; or when the precise issue in the case on appeal is whether there is substantial evidence supporting the findings of the administrative agency. The last exception exists in this case and compels this Court to review the findings of fact of the Office of the Ombudsman, as affirmed by the Court of Appeals.

8. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GROSS MISCONDUCT AND DISHONESTY FOR AMASSING WEALTH GROSSLY DISPROPORTIONATE TO LAWFUL INCOME; THE COURT IS NOT CONVINCED THAT THE UNEXPLAINED RISE IN PETITIONER'S NET WORTH IS *PRIMA FACIE* EVIDENCE OF ILL-GOTTEN WEALTH.—** It is worthy to note that in its Decision, dated 27 May 2004, in OMB-C-A-03-0347-I, the Office of the Ombudsman determined the value of the real properties in the names of petitioner and his wife to be ₱16,686,643.20, based on the 2003 adjusted market value of said real properties as assessed by the local assessor. While it may be conceded that the adjusted market value of the real properties is true and correct, such valuation bears no significance to the issue in this case, namely, whether petitioner and his wife had the financial capacity to acquire the real properties. To answer this question, the ***relevant valuation would be the acquisition cost of the real properties vis-à-vis, the financial capacity of the petitioner and his wife at the time of their acquisition. Any appreciation (or depreciation) in the value of the real properties after their acquisition until present has no bearing herein.*** To address this apparent *faux pas*, the Office of the Ombudsman, in its Order, dated 12 October

2004, prepared a table, this time, using the acquisition costs of petitioner's real and personal properties as declared in his SALNs, to determine his net worth, which is then compared to his annual salary from 1992 to 2002. This table was meant to illustrate that it was impossible for petitioner to have acquired the real properties considering his annual salary. Based on the said table, the Court of Appeals agreed with the Office of the Ombudsman that the progressive, albeit unexplained rise in petitioner's net worth, is *prima facie* evidence of ill-gotten wealth.

9. ID.; ID.; ID.; ID.; THE PRESUMPTION IN SECTION 2 OF REPUBLIC ACT NO. 1379 (AN ACT DECLARING FORFEITURE IN FAVOR OF THE STATE ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED) IS MERELY *PRIMA FACIE* AND MAY STILL BE OVERCOME BY EVIDENCE TO THE CONTRARY.— The Court of Appeals applies against the petitioner the *prima facie* presumption laid down in Section 2 of Republic Act No. 1379 (An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee And Providing for the Proceedings Therefor), which reads: Sec. 2. *Filing of petition*. – Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be ***presumed prima facie to have been unlawfully acquired***. x x x A *prima facie* presumption, also referred to as disputable, rebuttable or *juris tantum*, is satisfactory if uncontradicted, but may be contradicted and overcome by other evidence. The presumption in Section 2 of Republic Act No. 1379 is merely *prima facie* and may still be overcome by evidence to the contrary. In fact, Section 5 of the same statute requires the court, before which the petition for forfeiture is filed, to set public hearings during which the public officer or employee may be given ample opportunity to explain to the satisfaction of the court how he had acquired the property in question. Similarly, the public officer or employee administratively charged before the Office of the Ombudsman, such as petitioner herein, must be given sufficient opportunity to present evidence to rebut the *prima facie* presumption applied against him: that his properties were illegally acquired.

10. **ID.; ID.; ID.; ID.; THE TABLE PREPARED BY THE OFFICE OF THE OMBUDSMAN MAY BE EFFECTIVE ONLY AS AN INITIAL EVALUATION TOOL, MEANT TO RAISE WARNING BELLS AS TO POSSIBLE UNLAWFUL ACCUMULATION OF WEALTH BY PUBLIC OFFICER OR EMPLOYEE, BUT IT IS FAR FROM BEING CONCLUSIVE PROOF OF THE SAME.—** After a cursory look at the table, it would be easy to conclude that petitioner's annual salary cannot support his yearly increase in net worth, thus, giving rise to the *prima facie* presumption that petitioner's properties, specifically the real properties, were acquired unlawfully. Nonetheless, this Court finds that the table prepared by the Office of the Ombudsman, using what the petitioner referred to as the "net-worth-to-income-discrepancy analysis," may be effective only as an initial evaluation tool, meant to raise warning bells as to possible unlawful accumulation of wealth by a public officer or employee, but it is far from being conclusive proof of the same. While the variations in net worth from year to year may be readily apparent by mere comparison, the reasons therefor may not be so easily discerned. An increase in net worth in the succeeding year may not always be due to the acquisition of more properties by purchase. Many factors may account for the increase in net worth, such as the reduction or payment of liabilities in the succeeding year resulting in an increase in net worth even though the assets remain constant; or a donation or inheritance which may significantly increase the assets without any or with very minimal corresponding liability. Hence, "net-worth-to-income-discrepancy analysis" may seem deceptively simple, but it is, in fact, more complex, and prudence must be exercised in drawing conclusions therefrom.

11. **ID.; ID.; ID.; ID.; THE SUPPORTING DOCUMENTS FOR THE TRANSACTIONS BY WHICH PETITIONER AND HIS WIFE ACQUIRED THEIR REAL PROPERTIES APPEAR TO BE IN ORDER ON THEIR FACE; THE PNP-CIDG, THE OFFICE OF THE OMBUDSMAN AND THE COURT OF APPEALS, HOWEVER, DID NOT CHALLENGE THE VALIDITY AND AUTHENTICITY OF THE DOCUMENTARY EVIDENCES, THEY, INSTEAD, FOCUSED ON QUESTIONING THE FINANCIAL CAPACITY OF PETITIONER AND HIS WIFE TO ACQUIRE THE REAL PROPERTIES.—** Petitioner's table comprehensively presents his and his wife's real properties, the names of the

previous owners, the cost, year and mode of their acquisitions, and the supporting evidence. It reveals that the petitioner and his wife acquired their real properties in a span of 22 years, from 1977 to 1999. A number of the real properties were acquired before 1992, the year from which the Office of the Ombudsman began his "net-worth-to-income-discrepancy analysis." Petitioner and his wife acquired the real properties by four modes: (1) purchase by installment; (2) inheritance; (3) *dacion en pago*, by which the defaulting debtor settles his outstanding account with petitioner's wife with property; and (4) foreclosure of mortgage. The last two modes of acquisition, *dacion en pago* and foreclosure of mortgage, are exercised in the regular conduct of the lending business of petitioner's wife. Irrefragably, these are legitimate modes of acquiring properties. ***On their face, the supporting documents for the transactions by which petitioner and his wife acquired their real properties appear to be in order. Notably, the PNP-CIDG, the Office of the Ombudsman, and the Court of Appeals did not challenge the validity or authenticity of any of these documentary evidences. They, instead, focused on questioning the financial capacity of petitioner and his wife to acquire all these real properties.***

12. **ID.; ID.; ID.; ID.; THE COURT FINDS IT ARBITRARY FOR THE APPELLATE COURT TO SIMPLY BRUSH ASIDE PETITIONER'S EVIDENCE JUST BECAUSE IT WAS NOT PRESENTED IN THE FORM THAT IT EXPECTED.—** It is worthy to note that the Office of the Ombudsman, in preparing the table in its 12 October 2004 Order, used petitioner's ***gross annual salary*** for comparison with his annual net worth. Thus, it is only understandable that, in challenging the said table, petitioner "touted" his wife's gross annual business income, which he urged should be combined with his gross annual salary. Also considering that the information the Court of Appeals was looking for could actually be deduced and computed from the income tax returns and financial statements already submitted by petitioner, this Court finds it arbitrary for the appellate court to simply brush aside petitioner's evidence just because it was not presented in the form that it expected. Bearing in mind the significance and impact on the case of petitioner's evidence, it deserves a closer and more thorough review.

13. **ID.; ID.; ID.; ID.; IT IS UNDENIABLE THAT PETITIONER HAD OTHER INCOME APART FROM HIS SALARY AND HIS WIFE IS ALSO EARNING SUBSTANTIAL INCOME FROM HER BUSINESSES; THE *PRIMA FACIE* PRESUMPTION OF UNLAWFUL ACQUISITION WOULD ARISE ONLY WHEN THE AMOUNT OF PROPERTY IS *MANIFESTLY* OUT OF PROPORTION TO THE SALARY OF THE PUBLIC OFFICER OR EMPLOYEE *AND TO HIS OTHER LAWFUL INCOME AND THE INCOME FROM LEGITIMATELY ACQUIRED PROPERTY*.—** In his Motion for Reconsideration with the Court of Appeals, petitioner directly addressed the afore-quoted observation of the appellate court by presenting a table in which taxes and expenses were already deducted from his wife's business income. The figures in the business income column were derived from the income statements of Miguela Pleyto, annexed to her income tax returns, which were prepared by a certified public accountant and submitted to the Bureau of Internal Revenue. The business income figures are already net of business expenses and provisions for income taxes, but include the amounts of depreciation of buildings, equipment, and furniture/fixtures. Based on the foregoing table, the increase in petitioner's net worth from 1992 to 2002 (₱5,060,328.75) no longer appears to be grossly disproportionate to his and his wife's combined income for the same period (₱7,404,446.81). At this point, it is undeniable that petitioner had other sources of income apart from his salary. His wife was also earning substantial income from her businesses. According to Section 2 of Republic Act No. 1379, the *prima facie* presumption of unlawful acquisition would arise only when the amount of property is ***manifestly*** out of proportion to the salary of the public officer or employee ***and to his other lawful income and the income from legitimately acquired property*****.**

14. **ID.; ID.; ID.; ID.; FREQUENCY OF FOREIGN TRAVEL, BY ITSELF, IS NOT PROOF OF UNEXPLAINED WEALTH OF A PUBLIC OFFICER OR EMPLOYEE; IT MUST BE ESTABLISHED THAT THE TRIPS ABROAD ARE BEYOND HIS FINANCIAL CAPACITY, TAKING INTO ACCOUNT HIS SALARY AND OTHER LAWFUL SOURCES OF INCOME.—** While 26 foreign trips may indeed seem excessive, it should be kept in mind that these were taken by two individuals in a span of 9 years. Frequency of foreign travel, by itself, is not

proof of unexplained wealth of a public officer or employee. More importantly, it must be established that the trips abroad are beyond his financial capacity, taking into account his salary and his other lawful sources of income. The travel records from the BID could only establish the details on the trips taken by petitioner and his wife, specifically, the dates of departure and arrival, the destination, and the frequency thereof. Even these details were at times incomplete or contradictory. Take for example the travel information of petitioner, with several missing entries on the dates of departure and arrival and destination. As for the travel information of petitioner's wife, it failed to identify her destination for her trip on 12 to 29 July 1996. The travel information also states that petitioner's wife was in Singapore from 5 to 10 October 1999, yet, in the immediately succeeding entry, it provides that she was in San Francisco, United States of America (USA) from 5 to 14 October 1999. Also according to the travel information, petitioner's wife left for Bangkok, Thailand on 10 May 2002 and returned to the country on 22 April 2002. It appears to this Court that complete reliance was made on the travel records provided by the BID. No further effort was exerted to complete the travel information of petitioner and his wife and clarify or reconcile confusing entries.

15. **ID.; ID.; ID.; ID.; THE FIGURE OF ₱100,000.00 FIXED BY THE INVESTIGATING OFFICERS AS COST FOR EACH FOREIGN TRAVEL IS RANDOM AND ARBITRARY; WITHOUT A REASONABLE ESTIMATION OF THE COST OF FOREIGN TRAVELS OF PETITIONER AND HIS WIFE, THERE IS NO WAY TO DETERMINE WHETHER THEY WERE WITHIN THEIR LAWFUL MEANS.—** It is a long jump to conclude just from the BID travel records that the foreign travels taken by petitioner and his wife were beyond their financial capacity. As this Court has already found, petitioner had other sources of lawful income apart from his salary as a public official. His wife was also earning substantial income from her businesses. Now the question is, whether the petitioner and his wife could afford all their trips abroad considering their combined income. Obviously, before this question can be answered, the cost of the trips must be initially determined. The investigating officers of the PNP-CIDG estimated the cost of each trip to be ₱100,000.00, an estimation subsequently adopted by the Office of the Ombudsman and the Court of

Appeals. This Court, though, cannot simply affirm such estimation. Other than the USA (wherein Los Angeles, San Francisco, and Honolulu are located), petitioner and his wife only traveled to cities in East and Southeast Asia (namely, Taipei, Seoul, Hongkong, Tokyo, Kuala Lumpur, and Bangkok). The costs of the trips to the USA and to the neighboring Asian countries cannot be the same; the latter would undeniably be cheaper. The investigating officers, in fixing the amount of all the foreign trips at ₱100,000.00 each, offered no explanation or substantiation for the same. With utter lack of basis, the figure of ₱100,000.00 as cost for each foreign travel is random and arbitrary and, thus, unacceptable to this Court. Without a reasonable estimation of the costs of the foreign travels of petitioner and his wife, there is no way to determine whether these were within their lawful income.

16. **ID.; ID.; ID.; ID.; CONSIDERING THE CIRCUMSTANCES IN CASE AT BAR, THE PRESUMPTION OF SECTION 2 OF REPUBLIC ACT NO. 1379 CANNOT BE AUTOMATICALLY EXTENDED TO THE PROPERTIES THAT ARE REGISTERED IN THE NAMES OF PETITIONER'S CHILDREN; PETITIONER'S CHILDREN ARE ALL GROWN UP AND ARE ENGAGED IN BUSINESSES AND/OR GAINFULLY EMPLOYED AND THE ALLEGED REAL PROPERTIES ARE REGISTERED AND DULY COVERED BY CERTIFICATES OF TITLE IN THEIR NAMES.—** Petitioner's children are all grown up with the youngest, at the time the case was pending before the Office of the Ombudsman, being 27 years old. Russel and Mary Grace Pleyto, the two older children, are engaged in businesses, while Salvador Pleyto, Jr., is gainfully employed in his mother's businesses. Some real properties are registered and duly covered by certificates of title in their names. Given these circumstances, the presumption in Section 2 of Republic Act No. 1379, cannot be automatically extended to the properties that are registered in the names of petitioner's children. The burden is upon the PNP-CIDG, as the complainant against petitioner, to establish that these properties are actually owned by petitioner by proving first that his children had no financial means to acquire the said properties. Fundamental is the rule that the burden of evidence lies with the person who asserts an affirmative allegation. Unfortunately, the PNP-CIDG miserably failed in this regard.

17. ID.; ID.; ID.; ID.; THE USE OF THE WORD "IMMEDIATELY DEDUCED" IS VERY REVEALING AND OF THE ATTITUDE AND APPROACH TAKEN BY THE INVESTIGATING OFFICERS BY JUMPING INTO A CONCLUSION WITHOUT REFERENCE TO AND PRESENTATION OF THE EVIDENCE IN SUPPORT THEREOF.— Without presenting any supporting evidence, the investigating officers of the PNP-CIDG alleged in their Joint Affidavit that "it can be immediately deduced that the real properties, ***both the houses and lots***, registered in the names of their three (3) children, namely: ***Russel Pleyto, Mary Grace Pleyto and Salvador Juan Pleyto, Jr.***, are [petitioner's] ***unexplained*** wealth, since all of them have no substantial income to show that they have the capacity to lawfully acquire the same." The use of the words "immediately deduced" is very revealing of the attitude and approach taken by the investigating officers in this case, again, jumping to a conclusion without reference to and presentation of the evidence in support thereof. The same can also be said of the foreign travels of Russel Pleyto and Salvador Pleyto, Jr., which, without any explanation or basis whatsoever, were included in the computation of travel expenses charged against petitioner. It is thus surprising that the Office of the Ombudsman affirmed the bare allegations of the investigating officers of the PNP-CIDG, by ruling that: [T]he following real properties registered in the name of respondent Pleyto's three (3) children, are actually the [petitioner]'s unexplainable wealth, since all of them have no substantial income to show that they have lawfully acquired the same, x x x. x x x x The annexes submitted do not show substantial net disposable income earned by them. With respect to Salvador, Jr., no income tax return was submitted. Further, there was no credible explanation for the sizeable start-up capitals for their alleged businesses. No proof was submitted as to the alleged donation of ₱200,000.00 from the parents of respondent Russel Pleyto's wife. As to the alleged donation of ₱60,000.00, it admittedly came from respondent's Salvador and Miguela Pleyto. This Court cannot sustain such finding.

18. ID.; ID.; ID.; ID.; CERTIFICATES OF TITLE ARE THE BEST PROOF OF OWNERSHIP THAT MAY ONLY BE REBUTTED BY COMPETENT EVIDENCE ON THE CONTRARY; MERE ALLEGATION THAT THE PROPERTIES COVERED BY THE

TRANSFER CERTIFICATE OF TITLES (TCTs) ARE ACTUALLY OWNED BY SOMEONE ELSE IS INSUFFICIENT.— Although strictly, the burden of evidence had not shifted to petitioner, he still endeavored to elucidate on how his children legitimately acquired their respective properties. To substantiate his foregoing assertions, petitioner presented the TCTs in his children's names, deeds of sale executed by the previous owners to his children, his children's income tax returns and financial statements, business registrations, and bank documents on loans and credit lines. Certificates of title are the best proof of ownership that may only be rebutted by competent evidence to the contrary. In this case, the TCTs are in the names of petitioner's children. Indubitably, mere allegation that the properties covered by the TCTs are actually owned by someone else is insufficient.

19. ID.; ID.; ID.; ID.; DESPITE THE TOTAL ABSENCE OF EVIDENCE ON THE PART OF THE PNP-CIDG REGARDING THE PROPERTIES AND SOURCES OF INCOME OF PETITIONER'S CHILDREN, THE OFFICE OF THE OMBUDSMAN HASTILY DISMISSED THE VALUE OF PETITIONER'S EVIDENCE.— Faced with overwhelming evidence that petitioner's two older children, Russel and Mary Grace Pleyto, had their own businesses from which they derived substantial income, the Office of the Ombudsman changed the direction of its attack by questioning their source of capital. This is plainly a different theory from the one originally presented in the PNP-CIDG complaint that petitioner's children could not have acquired their properties because they had no substantial income of their own. No longer is it just a question of ownership of the properties in the children's names, but it is now extended to the ownership of the children's businesses. Just the same, the assertion that petitioner's children could not have established and maintained their own businesses must be supported by evidence, of which none was submitted herein. As a final note on this matter, the charges that petitioner is the true owner of the properties registered in his children's names and that he spent for their foreign travels must be proven by the PNP-CIDG as the complainant in the administrative case, before the burden of evidence shifts to the petitioner to prove the contrary. The PNP-CIDG cannot just make bare allegations, with tremendous implications and damaging effects, then leave

it to the public official charged to successfully and effectively defend himself with controverting evidence. Such is what has happened in this case. Worse, despite the total absence of evidence on the part of the PNP-CIDG regarding the properties and sources of income of petitioner's children, the Office of the Ombudsman hastily dismissed the value of petitioner's evidence.

20. ID.; ID.; ID.; ID.; INTENT TO COMMIT A WRONG IS AN IMPORTANT ELEMENT IN GRAVE MISCONDUCT AND DISHONESTY; PETITIONER'S CANDID ADMISSION OF HIS SHORTCOMINGS IN PROPERLY AND COMPLETELY FILLING OUT HIS STATEMENTS OF ASSETS, LIABILITIES AND NET WORTH (SALN), HIS ENDEAVOR TO CLARIFY THE ENTRIES THEREIN AND PROVIDE ALL OTHER NECESSARY INFORMATION AND HIS SUBMISSION OF SUPPORTING DOCUMENTS AS TO THE ACQUISITION OF THE REAL PROPERTIES IN HIS AND HIS WIFE'S NAMES, NEGATE ANY INTENTION TO CONCEAL HIS PROPERTIES.— Petitioner is charged with gross misconduct and dishonesty for failing to comply with Section 7 of the Anti-Graft and Corrupt Practices Act, and Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees, requiring the submission of a statement of assets and liabilities by a public officer or employee. As for gross misconduct, the adjective is "gross" or serious, important, weighty, momentous, and not trifling; while the noun is "misconduct," defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The word "misconduct" implies a wrongful intention and not a mere error of judgment. For gross misconduct to exist, there must be reliable evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules. And as for dishonesty, it is committed by intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion. Dishonesty is understood to imply a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity. Clear from the foregoing legal definitions of gross misconduct and dishonesty is that intention is an important

element in both. Petitioner's candid admission of his shortcomings in properly and completely filling out his SALN, his endeavor to clarify the entries therein and provide all other necessary information, and his submission of supporting documents as to the acquisition of the real properties in his and his wife's names, negate any intention on his part to conceal his properties. Furthermore, in view of this Court's findings that these properties were lawfully acquired, there is simply no justification for petitioner to hide them. Missing the essential element of intent to commit a wrong, this Court cannot declare petitioner guilty of gross misconduct and dishonesty.

21. **ID.; ID.; ID.; ID.; PETITIONER IS GUILTY OF NEGLIGENCE FOR HAVING FAILED TO ASCERTAIN THAT HIS SALN WAS ACCOMPLISHED PROPERLY, ACCURATELY, AND IN MORE DETAIL; AN ACT DONE IN GOOD FAITH, WHICH CONSTITUTES ONLY AN ERROR OF JUDGMENT AND FOR NO ULTERIOR MOTIVES AND/OR PURPOSES, DOES NOT QUALIFY AS GROSS MISCONDUCT, AND IS MERELY SIMPLE NEGLIGENCE.—** Neither can petitioner's failure to answer the question, "Do you have any business interest and other financial connections including those of your spouse and unmarried children living in your house hold?" be tantamount to gross misconduct or dishonesty. On the front page of petitioner's 2002 SALN, it is already clearly stated that his wife is a businesswoman, and it can be logically deduced that she had business interests. Such a statement of his wife's occupation would be inconsistent with the intention to conceal his and his wife's business interests. That petitioner and/or his wife had business interests is thus readily apparent on the face of the SALN; it is just that the missing particulars may be subject of an inquiry or investigation. An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, does not qualify as gross misconduct, and is merely simple negligence. ***Thus, at most, petitioner is guilty of negligence for having failed to ascertain that his SALN was accomplished properly, accurately, and in more detail.*** Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there

is gross negligence when a breach of duty is flagrant and palpable. Both Section 7 of the Anti-Graft and Corrupt Practices Act and Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees require the accomplishment and submission of a true, detailed and sworn statement of assets and liabilities. Petitioner was negligent for failing to comply with his duty to provide a detailed list of his assets and business interests in his SALN. He was also negligent in relying on the family bookkeeper/accountant to fill out his SALN and in signing the same without checking or verifying the entries therein. Petitioner's negligence, though, is only simple and not gross, in the absence of bad faith or the intent to mislead or deceive on his part, and in consideration of the fact that his SALNs actually disclose the full extent of his assets and the fact that he and his wife had other business interests.

22. ID.; ID.; ID.; ID.; A FINDING THAT A PUBLIC OFFICER OR EMPLOYEE IS ADMINISTRATIVELY LIABLE FOR GROSS MISCONDUCT AND DISHONESTY MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE AND NOT BY DISPUTABLE OF REBUTTABLE PRESUMPTION; CASE AT BAR.— Gross misconduct and dishonesty are serious charges which warrant the removal or dismissal from service of the erring public officer or employee, together with the accessory penalties, such as cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in government service. Hence, a finding that a public officer or employee is administratively liable for such charges must be supported by substantial evidence. The quantum of evidence required in administrative cases is substantial evidence. The landmark case *Ang Tibay v. Court of Industrial Relations* laid down the guidelines for quasi-judicial administrative proceedings. In the Petition at bar, great, if not absolute, reliance was made by the Office of the Ombudsman on the Complaint of the PNP-CIDG and the attached Joint Affidavit of its investigating officers. Although certain pieces of documentary evidence were also attached to the said Complaint, such as TCTs and tax declarations of the real properties in the names of petitioner, his wife, and his children, and the travel information provided by the BID, these mostly prove facts which were not denied by petitioner, but for which he had credible explanation or qualification. These pieces of evidence may have been sufficient

to give rise to a *prima facie* presumption of unlawfully acquired wealth against petitioner; however, such a presumption is disputable or rebuttable. ***When petitioner presented evidence in support of his defense, the Office of the Ombudsman proceeded to question and challenge and, ultimately, disregard in totality petitioner's evidence, despite the fact that the PNP-CIDG no longer presented any evidence to controvert the same.***

23. ID.; ID.; ID.; ID.; NO MATTER HOW NOBLE THE INTENTIONS OF THE PNP-CIDG AND THE OFFICE OF THE OMBUDSMAN ARE IN PURSING THE ADMINISTRATIVE CASE AGAINST PETITIONER, IT WILL DO THEM TO REMEMBER THAT GOOD INTENTIONS DO NOT WIN CASES BUT EVIDENCE DOES.— Each party in an administrative case must prove his affirmative allegation with substantial evidence – the complainant has to prove the affirmative allegations in his complaint, and the respondent has to prove the affirmative allegations in his affirmative defenses and counterclaims. In this case, contrary to the findings of the Office of the Ombudsman and the Court of Appeals, this Court pronounces that substantial evidence sways in favor of the petitioner and against complainant PNP-CIDG. While this Court commends the efforts of the PNP-CIDG and the Office of the Ombudsman to hold accountable public officers and employees with unexplained wealth and unlawfully acquired properties, it cannot countenance unsubstantiated charges against a hapless public official just to send a message that the government is serious in its campaign against graft and corruption. ***No matter how noble the intentions of the PNP-CIDG and the Office of the Ombudsman are in pursuing this administrative case against petitioner, it will do them well to remember that good intentions do not win cases; evidence does.***

24. ID.; ID.; ID.; ID.; WHETHER OR NOT PETITIONER'S SALN WAS ACTUALLY REVIEWED BY HIS HEAD OFFICE IS IRRELEVANT AND CANNOT BAR THE OFFICE OF THE OMBUDSMAN FROM CONDUCTING AN INVESTIGATION OF PETITIONER FOR VIOLATION OF THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES AND THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, UPON FILING OF THE COMPLAINT BY THE PNP-CIDG.— Petitioner argues that he

should have been given the opportunity to correct his obviously incomplete and/or not properly filed SALN in accordance with the afore-quoted review and compliance procedure. This Court is unconvinced. From a reading of the provision in question, it is apparent that it primarily imposes upon the heads of offices the duty to review the SALNs of their subordinates. If a head of office finds that the SALN of a certain subordinate is incomplete or not in the proper form, then the head of office must inform the subordinate concerned and direct him to take corrective action. Unquestionably, it is an internal procedure limited within the office concerned. It does not even provide for instances when a complainant, not the head of office, may question the SALN of a public officer or employee. Such a procedure does not find application in the Petition at bar, because petitioner's SALN was not being reviewed or questioned by his head of office, but by the Office of the Ombudsman. Whether or not petitioner's SALN was actually reviewed by his head of office is irrelevant and cannot bar the Office of the Ombudsman from conducting an investigation of petitioner for violation of Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees, as well as Section 7 of the Anti-Graft and Corrupt Practices Act, upon the filing of a Complaint by the PNP-CIDG.

25. ID.; ID.; ID.; ID.; ALTHOUGH IN AN ADMINISTRATIVE CASE BEFORE THE OMBUDSMAN, THE PUBLIC OFFICER OR EMPLOYEE IS NO LONGER AFFORDED THE OPPORTUNITY FOR CORRECTIVE ACTION ON HIS SALN, HE IS STILL ALLOWED TO FILE COUNTER-AFFIDAVITS AND OTHER EVIDENCE IN HIS DEFENSE.— The Office of the Ombudsman can review the SALN of a public officer or employee if a complaint is filed against the latter, separate and independent of the review of the SALN by the public officer or employee's head of office. In the event that a complaint is filed against a public officer or employee concerning his SALN, the Office of the Ombudsman shall be obliged to comply, not with the review procedure for heads of office in the Code of Conduct and Ethical Standards for Public Officials and Employees, but with the procedure for administrative complaints as laid out in Rule III of the Rules of Procedure of the Office of the Ombudsman. Although in an administrative case before the Office of the Ombudsman, the public officer or employee

is no longer afforded the opportunity for corrective action on his SALN, he is still allowed to file counter-affidavits and other evidence in his defense.

APPEARANCES OF COUNSEL

LIBRA Law for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the dismissal from service of petitioner Salvador A. Pleyto after being found guilty of grave misconduct and dishonesty by the Office of the Ombudsman in its Decision,[2] dated 27 May 2004, in OMB-C-A-03-0347-I, affirmed by the Court of Appeals in its Decision,[3] dated 20 July 2005, in CA-G.R. SP No. 87086.

The present Petition stems from a Complaint,[4] dated 28 July 2003, filed by respondent Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG), through its Director, Eduardo S. Matillano, with the Office of the Ombudsman, which charges petitioner and the rest of his family as follows:

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[1] *Rollo*, pp. 2-82.

[2] Penned by the Ombudsman Investigating Panel composed of Special Prosecutor Officer III (Chairman) Orlando I. Ines, Graft Investigation and Prosecution Officer II (Member) Ma. Isabel A. Alcantara, Graft Investigation and Prosecution Officer II (Member) Evangeline Y. Grafil, and Special Prosecution Officer III (Member) Roberto T. Agagon; reviewed by Preliminary Investigation and Administrative Adjudication Bureau (PIAB) Director Jose T. de Jesus, Jr., with the recommending approval of Assistant Ombudsman Pelagio S. Apostol, and approved by Tanodbayan (Ombudsman) Simeon V. Marcelo, *id.* at 603-624.

[3] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Marina L. Buzon and Santiago Javier Ranada, concurring, *id.* at 86-96.

[4] *Id.* at 102-107.

The undersigned Director of the PNP Criminal Investigation and Detection Group is hereby filing complaints for ***Violation of RA 1379 (An Act Declaring Forfeiture in favor of the State any property found to have been unlawfully acquired by any public officer)*** in relation to ***Section 8, RA 3019 (Anti-Graft and Corrupt Practices Act, as amended, Section 8(a) of RA 6713, (Code of Ethical Standard for Public official and employee)*** and ***Section 7 of RA 3019 (Statement of Assets and Liabilities)*** and for violation of ***Article 171 para 4, RPC (Perjury/Falsification of Public Official Documents)*** against the following:

1. *USEC SALVADOR A. PLEYTO- #1 May Street, Congressional Village, Quezon City;*
2. *MIGUELA PLEYTO (Wife)- # 1 May Street, Congressional Village, Quezon City;*
3. *SALVADOR G. PLEYTO, JR.,- # 1 May Street, Congressional Village, Quezon City;*
4. *MARY GRACE PLETYO- # 1 May Street, Congressional Village, Quezon City;* and
5. *RUSSEL PLEYTO- 64 P. Santiago Street, Sta. Maria, Bulacan.*[5]

The said Complaint was based on the investigation/inquiry on the alleged lavish lifestyle and nefarious activities of certain personnel of the Department of Public Works and Highways (DPWH) conducted by a team, composed of Atty. Virgilio T. Pablico (Atty. Pablico) and Crime Investigator II Dominador D. Ellazar, Jr. (Investigator Ellazar, Jr.) of the PNP-CIDG, together with investigating officers from other government agencies. Petitioner, then serving as a DPWH Undersecretary, was one of the subjects of the investigating team since he reportedly amassed unexplained wealth. Investigating officers, Atty. Pablico and Investigator Ellazar, Jr., executed a Joint Affidavit,[6] essentially stating that: (1) petitioner and the rest of his family accumulated numerous real properties in Bulacan, other than their newly renovated residence in Quezon City; (2)

[5] *Id*. at 102.

[6] *Id*. at 108-114.

petitioner did not honestly fill out his Statements of Assets and Liabilities and Networth (SALNs) for the years 2001 and 2002 for he failed to declare therein all of his and his wife's real and personal properties, the true value thereof, and their business interests; (3) petitioner and his family also took frequent foreign trips from 1993 to 2002; and (4) the properties and foreign trips of petitioner and his family are grossly disproportionate to petitioner's income.

The Investigating Panel from the Preliminary Investigation and Administrative Adjudication Bureau A (PIAB-A) of the Office of the Ombudsman, tasked to evaluate the Complaint against petitioner and his family, issued a Report on 9 September 2003, recommending that the said Complaint be docketed as separate administrative and criminal cases. Pursuant thereto, the administrative complaint was docketed as ***OMB-C-A-03-0347-1***, while the criminal complaint was docketed as ***OMB-C-C-03-05130-1***. It is the administrative complaint, OMB-C-A-03-0347-1, for grave misconduct and dishonesty, which presently concerns this Court.[7]

In its initial evaluation of the "numerous pieces of evidence" which were attached to the Complaint, the Office of the Ombudsman, in its Order, dated 25 September 2003,[8] found that the evidence warranted the preventive suspension of petitioner for six months without pay pending the conduct of the administrative proceedings against him. The said Preventive Suspension Order shall be deemed immediately effective and executory. The petitioner filed with the Court of Appeals CA-G.R. SP No. 79516, a Petition for *Certiorari* under Rule 65 of the Rules of Court, praying for the nullification of the Preventive Suspension Order issued by the Office of the Ombudsman. However, the said Preventive Suspension Order

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[7] In OMB-C-C-03-05130-1, the Ombudsman, in its Resolution, dated 14 April 2004, found petitioner liable for violation of Section 7 of Republic Act No. 3019, Republic Act No. 1379 (Forfeiture of Ill-Gotten Wealth), and perjury.

[8] Penned by Tanodbayan (Ombudsman) Simeon V. Marcelo. *Rollo*, pp. 115-125.

had already lapsed even before the Court of Appeals could resolve the Petition in CA-G.R. SP No. 79516, thus, rendering the same moot and academic.

In the meantime, petitioner, his wife, and his children filed their respective Counter-Affidavits and Supplemental Affidavits before the Office of the Ombudsman, presenting the following defenses: (1) petitioner admits ownership of the real properties identified in the Complaint but alleges that they were acquired by way of foreclosure or *dacion en pago* in the course of his wife's lending business in Sta. Maria, Bulacan; (2) petitioner is not solely dependent on his salary since his wife has been operating several businesses in Bulacan, including lending, piggery, and pawnshop, for the last 25 years; (3) his children are not financially dependent on petitioner and his wife, but are full-fledged entrepreneurs and professionals; and (4) the computation of their travel expenses is exaggerated and inaccurate since most of petitioner's trips were sponsored by foreign and local organizations, his wife's trips were promotional travel packages to Asian destinations, and his children's trips were at their own expense.

On 28 June 2004, the Office of the Ombudsman promulgated its Decision[9] in OMB-C-A-03-0347-I, dismissing petitioner from service. The dispositive portion of said Decision reads –

WHEREFORE, premises considered, respondent **SALVADOR A. PLEYTO**, is hereby found guilty of GRAVE MISCONDUCT and DISHONESTY and is meted the penalty of **DISMISSAL FROM THE SERVICE** with cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service.

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[9] Penned by the Ombudsman Investigating Panel composed of Special Prosecutor Officer III (Chairman) Orlando I. Ines, Graft Investigation and Prosecution Officer II (Member) Ma. Isabel A. Alcantara, Graft Investigation and Prosecution Officer II (Member) Evangeline Y. Grafil, and Special Prosecution Officer III (Member) Roberto T. Agagon; reviewed by Preliminary Investigation and Administrative Adjudication Bureau (PIAB) A Director Jose T. de Jesus, Jr. with the recommending approval of Assistant Ombudsman Pelagio S. Apostol and approved by Tanodbayan (Ombudsman) Simeon V. Marcelo. *Id.* at 603-624.

The Honorable Secretary, Department of Public Works and Highways, Port Area, Manila, is hereby directed to implement this Order immediately upon receipt hereof and to promptly inform this Office of compliance therewith.[10]

Petitioner's Motion for Reconsideration was denied by the Office of the Ombudsman in an Order[11] dated 12 October 2004.

Petitioner then assailed before the Court of Appeals the Decision, dated 28 June 2004, and Order, dated 12 October 2004, of the Office of the Ombudsman in OMB-C-A-03-0347-I by filing a Petition for Review under Rule 43 of the Rules of Court with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction, docketed as CA-G.R. SP No. 87086. Petitioner prayed to the appellate court that:

1. Upon filing of the petition, a **Temporary Restraining Order and/or Writ of Preliminary Injunction be immediately issued** directing the Office of the Ombudsman, its officials and agents, or persons acting for and on it [*sic*] behalf, including the Secretary of the Department of Public Works and Highways from implementing the assailed Decision of the Ombudsman dated 28 June 2004 and its Order dated 12 October 2004.

2. After hearing on the merits, that judgment be rendered nullifying the assailed Decision of the Ombudsman dated June 28, 2004 and Order dated October 12, 2004 in OMB-C-A-03-0347-I.

Other relief and remedies just and equitable under the premises are likewise prayed for.[12]

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[10] *Id*. at 622.

[11] Penned by the Ombudsman Investigating Panel composed of Special Prosecutor Officer III (Chairman) Orlando I. Ines, Graft Investigation and Prosecution Officer II (Member) Ma. Isabel A. Alcantara, Graft Investigation and Prosecution Officer II (Member) Evangeline Y. Grafil, and Special Prosecution Officer III (Member) Roberto T. Agagon with the recommending approval of Preliminary Investigation and Administrative Adjudication Bureau (PIAB) A Director Jose T. de Jesus, Jr., reviewed by Assistant Ombudsman Pelagio S. Apostol and approved by Tanodbayan (Ombudsman) Simeon V. Marcelo. *Id*. at 625-637.

[12] *Id*. at 713-714.

On 5 November 2004, the Court of Appeals issued a Temporary Restraining Order against the implementation of the assailed Decision of the Office of the Ombudsman dismissing petitioner from service and directed the PNP-CIDG, the named respondent in petitioner's Petition for Review, to file its Comment thereto.

The Office of the Solicitor General (OSG), on behalf of the PNP-CIDG, requested an extension of 30 days, or until 28 December 2004, within which to file its Comment on the Petition.

However, even before the OSG could file its Comment, the Office of the Ombudsman filed its own Comment (with Motions to Intervene; Admit Comment; and Recall Temporary Restraining Order) on 29 December 2004. It sought leave from the Court of Appeals to adduce pertinent facts and arguments to show that it acted with due process and impartiality, and relied only on the evidence on record in adjudging petitioner guilty of grave misconduct and dishonesty. The Office of the Ombudsman insisted that it has been shown by overwhelming evidence, as well as by petitioner's own admissions in his counter-affidavit and other pleadings before the Office of the Ombudsman and his Petition before the Court of Appeals, that petitioner committed gross dishonesty for amassing wealth grossly disproportionate to his known lawful income, and refusing to fully declare many of his other properties. Hence, the Office of the Ombudsman submits that the administrative penalty of dismissal from the service imposed on petitioner stands on solid legal and factual grounds, which should be accorded weight and respect, if not finality, by the appellate court.

Petitioner promptly filed a Reply *Ad Cautelam* (To Ombudsman's Comment) with Supplemental Plea. In addition to opposing the intervention of the Office of the Ombudsman in CA-G.R. SP No. 87086, petitioner also addressed the arguments presented by the Office of the Ombudsman in its Comment on the propriety of his dismissal from service. He avers that he has adequately controverted by clear and convincing evidence the unsubstantiated charges against him. Petitioner thus pleads

anew for the immediate and urgent grant of his prayer for a writ of preliminary injunction to enjoin the execution of the order of dismissal of the Office of the Ombudsman.

On 26 January 2005, the Court of Appeals issued a Resolution admitting the Comment of the Office of the Ombudsman, again directing the OSG to file its Comment on the Petition on behalf of PNP-CIDG, and submitting for resolution petitioner's application for the issuance of a writ of preliminary injunction. The OSG, representing the PNP-CIDG, eventually filed its Comment on 31 January 2005.

Finding that the execution of the judgment of dismissal from service of petitioner pending his appeal thereof would possibly work injustice to petitioner, or tend to render the judgment on his appeal ineffectual, the Court of Appeals issued a Resolution[13] on 1 March 2005 granting the writ of preliminary injunction, thus, ordering the Office of the Ombudsman and all persons action on its behalf from implementing its assailed Decision, dated 28 June 2004, and Order, dated 12 October 2004, pending final determination of CA-G.R. SP No. 87086. The appellate court further directed the parties to submit their memoranda.

Petitioner and the Office of the Ombudsman filed their respective Memoranda, while the OSG manifested that it was adopting its Comment and the Comment of the Office of the Ombudsman on the Petition as its Memorandum.

On 20 July 2005, the Court of Appeals promulgated its Decision in CA-G.R. SP No. 87086, dismissing the Petition and affirming the dismissal from the service of petitioner as adjudged by the Office of the Ombudsman. It summed up its findings thus:

> To repeat, the administrative liabilities of the petitioner proven by substantial evidence is his failure to file a truthful and accurate SALN and possession of assets manifestly out of proportion of (*sic*) his legitimate income. Either one is legal basis for dismissal or removal

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[13] Penned by Associate Justice Mario L. Guariña III with Associate Justices Marina L. Buzon and Santiago Javier Ranada, concurring. *Id*. at 890-891.

from office. As a final recourse, the petitioner asks for the chance to correct his SALN before he should be held administratively liable. The Ombudsman ripostes that this would be a mockery of the law, saying that the SALN is not a *misdeclare-first-and correct-if-caught* instrument, but a full and solemn recording under oath of al (*sic*) the items required to be reported. *Ipse dixit.*

IN VIEW OF THE FOREGOING, the decision appealed from is AFFIRMED, and the petition DISMISSED. The writ of preliminary injunction is LIFTED.[14]

The Court of Appeals, in a Resolution,[15] dated 4 October 2005, found that the arguments raised in petitioner's Motion for Reconsideration had already been discussed and passed upon in its Decision, dated 20 July 2005, and there was no cogent reason to warrant reconsideration, much less, a reversal of the appellate court's original findings. Hence, petitioner's Motion for Reconsideration was denied.

Petitioner now comes before this Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision, dated 20 July 2005, and Resolution, dated 4 October 2005, of the Court of Appeals, based on the following grounds:

a) The Court of Appeals committed grave error in law in allowing the active intervention of the Ombudsman in the review proceedings and invoking its arguments raised on appeal in the resolution of the case.[16]

b) The Court of Appeals gravely erred in adopting *in toto* the appealed judgment of the Ombudsman, the finding being inconsistent with the evidence on record and the burden of proof required by law being higher than mere substantial evidence as the penalty involves dismissal from service.[17]

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[14] *Id.* at 95.

[15] Penned by Associate Justice Mario L. Guariña III with Associate Justices Marina L. Buzon and Santiago Javier Ranada concurring. *Id.* at 98.

[16] *Id.* at 28-29.

[17] *Id.* at 35.

c) The Court of Appeals committed grave error in law in declaring that petitioner's resort to the Compliance and Review Procedure under Sec. 10 of R.A. 6713 is completely unavailing.[18]

Pursuant to a Resolution issued by this Court on 26 June 2006, a temporary restraining order was issued in the following tenor:

NOW, THEREFORE, you (the Court of Appeals, the Office of the Ombudsman and the Secretary of the Department of Public Works and Highways), your officers, agents, representatives, and/or persons acting upon your orders or, in your place or stead, are hereby ***ENJOINED, ORDERED, COMMANDED*** and ***DIRECTED*** to desist from implementing the assailed decision and order dated June 28, 2004 and October 12, 2004, respectively, of the Office of the Ombudsman in OMB-C-A-03-0347-I entitled *"Philippine National Police-Criminal Investigation and Detection Group vs. Salvador A. Pleyto"* dismissing herein petitioner from the service, as affirmed in the decision and resolution dated July 20, 2005 and October 4, 2005, respectively, of the Court of Appeals in CA-G.R. SP No. 87086 entitled *"Salvador A. Pleyto vs. Philippine National Police-Criminal Investigation and Detection Group."*[19]

Having established the facts leading to the Petition at bar, this Court shall now proceed to review petitioner's assigned errors one at a time.

I.

Petitioner raises before this Court his continued objection to the intervention of the Office of the Ombudsman in the proceedings before the Court of Appeals. It should be recalled that the Office of the Ombudsman, although not named as a respondent in CA-G.R. SP No. 87086, filed its Comment and Memorandum therein, which were admitted by the Court of Appeals.

The Office of the Ombudsman moved to intervene in the Court of Appeals proceedings in representation of the State's

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[18] *Id.* at 69.

[19] *Id.* at 1191-1193.

interests. As a competent disciplining body, it asserts its rights to defend its own findings of fact and law relative to the imposition of its decisions and ensure that its judgments in administrative disciplinary cases be upheld by the appellate court, consistent with the doctrine laid down by this Court in *Civil Service Commission v. Dacoycoy*[20] and *Philippine National Bank v. Garcia*.[21] As the agency which rendered the assailed Decision, it is best equipped with the knowledge of the facts, laws and circumstances that led to the finding of guilt against petitioner.

Petitioner opposed from the very beginning the intervention of the Office of the Ombudsman in the appellate court proceedings. He pointed out to the Court of Appeals that only the PNP-CIDG was named as a respondent in his Petition for Review, and the Office of the Ombudsman was not impleaded because Section 6, Rule 43 of the Rules of Court expressly mandates that the court or agency which rendered the assailed decision should not be impleaded in the petition. He argued that the non-inclusion of the court or tribunal as respondent in cases elevated on appeal is founded on the doctrine that the court is not a combatant in the appeal proceedings. He called attention to previous rulings of this Court admonishing judges to maintain a posture of detachment in cases where their decisions are elevated on appeal or review.

Petitioner, in the instant Petition, presents the same arguments in support of his first assignment of error. It is noted that the OSG, representing the PNP-CIDG, in its Comment and Memorandum before this Court, did not address the issue on the intervention of the Office of the Ombudsman in CA-G.R. SP No. 87086, focusing solely on the issue on the propriety of the dismissal from service of petitioner.

After a review of both positions on the matter of the intervention of the Office of the Ombudsman in the proceedings before the Court of Appeals, this Court rules in favor of petitioner. The Court of Appeals indeed committed an error in admitting the

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[20] 366 Phil. 86 (1999).

[21] 437 Phil. 289 (2002).

Comment and Memorandum of the Office of the Ombudsman in CA-G.R. SP No. 87086.

Fabian v. Hon. Desierto[22] already settled that appeals in administrative disciplinary cases from the Office of the Ombudsman should be brought first to the Court of Appeals *via* a verified Petition for Review under Rule 43 of the Rules of Court. Rule 43 of the Rules of Court, together with Supreme Court Administrative Circular No. 1-95, governs appeals to the Court of Appeals from judgments or final orders of quasi-judicial agencies. In specifying the contents of such a Petition for Review, both Rule 43 of the Rules of Court[23] and Administrative Circular No. 1-95[24] require the full names of the parties to the case ***without impleading the lower courts or agencies as petitioners or respondents***. The only parties in an appeal are the appellant as petitioner and the appellee as respondent. The court, or in this case, the administrative agency which rendered the judgment appealed from, is not a party in said appeal.[25]

This is not a case wherein the petitioner improperly impleaded the Office of the Ombudsman in his Petition for Review in CA-G.R. SP No. 87086. In fact, the petitioner adhered to Rule 43 of the Rules of Court and Administrative Circular No. 1-95, by naming as respondent only the PNP-CIDG, the original complainant against him. It is the Office of the Ombudsman who actively sought to intervene in CA-G.R. SP No. 87086.

It is a well-known doctrine that a judge should detach himself from cases where his decision is appealed to a higher court for review. The *raison d'etre* for such doctrine is the fact that

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[22] 356 Phil. 787, 804-805 (1998).

[23] Section 6(a).

[24] Paragraph 6(a).

[25] It is in the special civil action for *certiorari* under Section 5, of Rule 65 of the Rules of Court, where the court or judge is required to be joined as party defendant or respondent. (See *Metropolitan Waterworks and Sewerage System v. Court of Appeals*, 227 Phil. 585, 588 (1986); and *Philippine Global Communications, Inc. v. Relova*, 229 Phil. 388, 390 (1986).

a judge is not an active combatant in such proceeding and must leave the opposing parties to contend their individual positions and the appellate court to decide the issues without his active participation. When a judge actively participates in the appeal of his judgment, he, in a way, ceases to be judicial and has become adversarial instead.[26]

The court or the quasi-judicial agency must be detached and impartial, not only when hearing and resolving the case before it, but even when its judgment is brought on appeal before a higher court. The judge of a court or the officer of a quasi-judicial agency must keep in mind that he is an adjudicator who must settle the controversies between parties in accordance with the evidence and the applicable laws, regulations, and/or jurisprudence. His judgment should already clearly and completely state his findings of fact and law. There must be no more need for him to justify further his judgment when it is appealed before appellate courts. When the court judge or the quasi-judicial officer intervenes as a party in the appealed case, he inevitably forsakes his detachment and impartiality, and his interest in the case becomes personal since his objective now is no longer only to settle the controversy between the original parties (which he had already accomplished by rendering his judgment), but more significantly, to refute the appellant's assignment of errors, defend his judgment, and prevent it from being overturned on appeal.

The reliance of the Office of the Ombudsman on this Court's pronouncements in *Dacoycoy* and *Garcia* cases are misplaced.

The issue in the landmark case *Dacoycoy*, was the right of the Civil Service Commission (CSC) to file an appeal with this Court from the decision of the Court of Appeals exonerating the civil service officer Dacoycoy from the administrative charges against him. According to Section 39 of the Civil Service Law, appeals, where allowable, shall be made by the party adversely

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[26] *Calderon v. Solicitor General*, G.R. Nos. 103752-53, 25 November 1992, 215 SCRA 876, 881.

affected by the decision within 15 days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within 15 days. Previous decisions of this Court ruled that the "party adversely affected" in Section 39 of the Civil Service Law, refers solely to the public officer or employee who was administratively disciplined and, hence, an appeal may be availed of only in a case where the respondent is found guilty. It is within the foregoing context that this Court ruled on *Dacoycoy* in the following manner:

> Subsequently, the Court of Appeals reversed the decision of the Civil Service Commission and held respondent not guilty of nepotism. Who now may appeal the decision of the Court of Appeals to the Supreme Court? Certainly not the respondent, who was declared not guilty of the charge. Nor the complainant George P. Suan, who was merely a witness for the government. Consequently, the Civil Service Commission has become the party adversely affected by such ruling, which seriously prejudices the civil service system. Hence, as an aggrieved party, it may appeal the decision of the Court of Appeals to the Supreme Court. By this ruling, we now expressly abandon and overrule extant jurisprudence that "the phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office" and not included are "cases where the penalty imposed is suspension for not more then thirty (30) days or fine in an amount not exceeding thirty days salary" or "when the respondent is exonerated of the charges, there is no occasion for appeal." In other words, we overrule prior decisions holding that the Civil Service Law "does not contemplate a review of decisions exonerating officers or employees from administrative charges" enunciated in *Paredes v. Civil Service Commission*; *Mendez v. Civil Service Commission*; *Magpale v. Civil Service Commission*; *Navarro v. Civil Service Commission and Export Processing Zone Authority* and more recently *Del Castillo v. Civil Service Commission*.[27]

The similar issue arose in *Garcia*. In said case, the Philippine National Bank (PNB) imposed upon its employee Garcia the penalty of forced resignation for gross neglect of duty. On

[27] *Civil Service Commission v. Dacoycoy*, *supra* note 20 at 104-105.

appeal, the CSC exonerated Garcia from the administrative charges against him. In accordance with its ruling in *Dacoycoy*, this Court affirmed the standing of the PNB to appeal to the Court of Appeals the CSC resolution exonerating Garcia. After all, PNB was the aggrieved party which complained of Garcia's acts of dishonesty. Should Garcia be finally exonerated, it might then be incumbent upon PNB to take him back into its fold. PNB should therefore be allowed to appeal a decision that, in its view, hampered its right to select honest and trustworthy employees, so that it can protect and preserve its name as a premier banking institution in the country.

Having established the foregoing, the Office of the Ombudsman cannot use *Dacoycoy* and *Garcia* to support its intervention in the appellate court proceedings for the following reasons:

First, petitioner was not exonerated from the administrative charges against him, and was in fact dismissed for grave misconduct and dishonesty by the Office of the Ombudsman in its decision in the administrative case, OMB-C-A-03-0347-I. Thus, it was petitioner who appealed to the Court of Appeals being, unquestionably, the party aggrieved by the judgment on appeal.

Second, the issue herein is the right of the Office of the Ombudsman to intervene in the appeal of its decision, not its right to appeal. Its decision has not even been reversed yet so no question has arisen as to the standing of the Office of the Ombudsman to appeal from the reversal of its judgment. The Office of the Ombudsman only wishes to intervene in CA-G.R. SP No. 87086 to make sure that its decision dismissing petitioner from service is upheld by the appellate court.

And third, *Dacoycoy* and *Garcia* should be read together with *Mathay, Jr. v. Court of Appeals*[28] and *National Appellate Board of the National Police Commission v. Mamauag,*[29] in

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[28] 378 Phil. 466 (1999).

[29] G.R. No. 149999, 12 August 2005, 466 SCRA 624.

which this Court qualified and clarified the exercise of the right of a government agency to actively participate in the appeal of decisions in administrative cases. In *Mamauag*, this Court ruled:

> RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 of RA 6975 authorize "either party" to appeal in the instances that the law allows appeal. One party is the PNP member-respondent when the disciplining authority imposes the penalty of demotion or dismissal from the service. The other party is the government when the disciplining authority imposes the penalty of demotion but the government believes that dismissal from the service is the proper penalty.
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> However, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. Thus, in ***Mathay, Jr. v. Court of Appeals***, decided after ***Dacoycoy***, the Court declared:
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> > To be sure, when the resolutions of the Civil Service Commission were brought before the Court of Appeals, the Civil Service Commission was included only as a nominal party. As a quasi-judicial body, the Civil Service Commission can be likened to a judge who should "detach himself from cases where his decision is appealed to a higher court for review."
> >
> > In instituting G.R. No. 126354, the Civil Service Commission dangerously departed from its role as adjudicator and became an advocate. Its mandated function is to "hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and agencies," not to litigate.[30]

Should the Office of the Ombudsman insist on its right to intervene based on *Dacoycoy* and *Garcia*, then its exercise of such

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[30] *Id.* at 641-642.

right should likewise be qualified according to *Mathay* and *Mamauag*. As the disciplining authority or tribunal which heard the case and imposed the penalty, it must remain partial and detached. It must be mindful of its role as an adjudicator, not an advocate. It should just have allowed the government agency prosecuting the administrative charges against petitioner, namely, the PNP-CIDG, appropriately represented by the OSG, to participate in CA-G.R. SP No. 87086.

Not being an appropriate party to intervene in CA-G.R. SP No. 87086, any participation of the Office of the Ombudsman therein, more particularly, through its Comment, Memorandum, and other pleadings, should not have been considered by the Court of Appeals. Not even the adoption by the OSG of the Comment of the Office of the Ombudsman as its Memorandum can cure the defect of such Comment which was filed by a non-party to the case. To rule otherwise would be to condone the wrongful intervention of the Office of the Ombudsman in the appellate court proceedings and to allow a circumvention of a fundamental rule of procedure, for it would still afford the Office of the Ombudsman the opportunity to effectively present its position and arguments in the case despite its absence of interest or personality therein, a dangerous precedent indeed.

Intervention of the Office of the Ombudsman cannot be allowed on liberality. Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harping on the policy of liberal construction.[31] Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and

[31] *Clavecilla v. Quitain,* G.R. No. 147989, 20 February 2006, 482 SCRA 623, 631.

circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[32]

II.

This Court now proceeds to petitioner's second assignment of error in which he alleges that the judgment against him was grossly inconsistent with the evidence on record and the burden of proof required by law. Undoubtedly, petitioner is requesting that this Court consider and weigh again the evidence presented before the Office of the Ombudsman, as well as the Court of Appeals, and make its own findings of fact.

While it is an established rule in administrative law that the courts of justice should respect the findings of fact of said administrative agencies, the same is not absolute and there are recognized exceptions thereto. Courts may not be bound by the findings of fact of an administrative agency when there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial;[33] when there is a clear showing that the administrative agency acted arbitrarily or with grave abuse of discretion or in a capricious and whimsical manner, such that its action may amount to an excess or lack of jurisdiction;[34] or when the precise issue in the case on appeal is whether there is substantial evidence supporting the findings of the administrative agency.[35] The last exception exists in this case and compels this Court to review the findings of fact of the Office of the Ombudsman, as affirmed by the Court of Appeals.

There are two principal findings against petitioner as a result of the proceedings below: (1) petitioner failed to satisfactorily

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[32] *Garbo v. Court of Appeals*, 327 Phil. 780, 784 (1996).

[33] *Blue Bar Coconut Philippines v. Tantuico, Jr.*, G.R. No. L-47051, 29 July 1988, 163 SCRA 716, 729.

[34] *Ganitano v. Secretary of Agriculture & Natural Resources*, 123 Phil. 354, 357 (1966).

[35] *Gravador v. Mamigo,* 127 Phil. 136, 142 (1967).

prove that his acquisition of properties, as well as his foreign travels, were within his lawful income; and (2) petitioner willfully concealed and misdeclared his assets in his 2001 and 2002 Statement of Assets, Liabilities and Net Worth (SALN). It was on the basis thereof that petitioner was found guilty of gross misconduct and dishonesty by both the Office of the Ombudsman and the Court of Appeals.

The Complaint of the PNP-CIDG and the attached Joint Affidavit of its investigating officers identified the following properties in the name of petitioner and his wife:

a) One residential house and lot in Quezon City;

b) Poblacion, Sta. Maria, Bulacan:

- Three residential lots measuring 998, 998 and 359 sq. m.;
- One residential house built on a lot measuring 356 sq. m.;

c) Pulong Buhangin, Sta. Maria, Bulacan:

- Two commercial lots measuring 462 and 898 sq. m.;
- Two residential lots measuring 143 and 152 sq. m.;
- Four agricultural lots measuring 6,597; 1,000; 3,000; and 746 sq. m.

d) Caypombo, Sta. Maria, Bulacan:

- Eight residential lots each measuring 340 sq. m.;
- Four agricultural lots two of which measuring 140 sq. m. each and the other two measuring 450 sq. m. each.; and

e) Three residential lots measuring 50, 500, and 600 sq. m., in Catmon, Sta. Maria, Bulacan.[36]

The same Complaint and Joint Affidavit also attributed to petitioner ownership of the following properties registered in the names of his children who were alleged to have no substantial income to acquire the same:

a) One residential house built on a lot measuring 632 sq. m. in the name of Russel Pleyto;

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[36] *Rollo,* pp. 102-114.

b) One residential lot measuring 113 sq. m. in the name of Russel Pleyto, married to Shirley Pleyto;

c) One commercial building on three commercial lots in the name of Mary Grace Pleyto;

d) One residential lot measuring 244 sq. m. in the name of Salvador Pleyto, Jr.; and

e) One residential lot measuring 138 sq. m. in the name of Mary Grace Pleyto.[37]

All these properties are worth ₱16,686,643.20, based on their 2003 adjusted market value as determined by the local assessor, way over the total value of real properties declared by petitioner in his 2001 and 2002 SALNs, *i.e.*, ₱5,956,400.00 and ₱9,384,090.25, respectively.

In support of its foregoing allegations, the PNP-CIDG submitted the transfer certificates of title (TCTs), tax declarations, and pictures of the real properties in the names of the petitioner, his wife and children. It also presented copies of petitioner's 2001 and 2002 SALNs so that the list of real properties and their values declared therein may be compared with the actual list of real properties and their values as uncovered by the PNP-CIDG in its investigation.

Petitioner does not deny ownership of the real properties in his and his wife's names. What he contests with regard to the said real properties are the findings that these were beyond his and his wife's financial capacity to acquire and, thus, deemed to have been acquired illegally. Petitioner and his wife submitted their respective Counter-Affidavits, attaching thereto certificates of business registration, income tax returns, audited balance sheets, deeds of sale, and bank promissory notes, all meant to establish how petitioner and his wife acquired the said real properties.

It is worthy to note that in its Decision, dated 27 May 2004, in OMB-C-A-03-0347-I, the Office of the Ombudsman determined the value of the real properties in the names of

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[37] *Id*.

petitioner and his wife to be ₱16,686,643.20, based on the 2003 adjusted market value of said real properties as assessed by the local assessor. While it may be conceded that the adjusted market value of the real properties is true and correct, such valuation bears no significance to the issue in this case, namely, whether petitioner and his wife had the financial capacity to acquire the real properties. To answer this question, the ***relevant valuation would be the acquisition cost of the real properties vis-à-vis, the financial capacity of the petitioner and his wife at the time of their acquisition. Any appreciation (or depreciation) in the value of the real properties after their acquisition until present has no bearing herein***.

To address this apparent *faux pas*, the Office of the Ombudsman, in its Order, dated 12 October 2004, prepared a table,[38] this time, using the acquisition costs of petitioner's real and personal properties as declared in his SALNs, to determine his net worth, which is then compared to his annual salary from 1992 to 2002, to wit:

SUMMARY OF SALNs AND ANNUAL SALARY OF UNDERSECRETARY PLEYTO

YEAR	REAL PROPERTIES	PERSONAL PROPERTIES	LIABILITIES	NETWORTH	INC./(DEC) OF NETWORTH OVER PREVIOUS YEAR	ANNUAL SALARY
1992	₱1,004,100.00	₱1,316,791.00	₱1,425,000.00	₱895,891.00		₱136,620.00
1993	1,314,400.00	1,210,900.00	1,045,000.00	1,480,300.00	₱584,409.00	166,980.00
1994	1,314,100.00	1,558,287.00	1,080,000.00	1,792,387.00	312,087.00	190,560.00
1995	2,064,100.00	1,714,677.30	1,780,000.00	1,998,777.30	206,390.30	202,560.00
1996	3,456,400.00	2,303,544.60	3,507,000.00	2,252,944.60	254,167.30	217,716.00
1997	3,526,400.00	2,884,066.00	3,800,000.00	2,610,466.00	357,521.40	239,472.00
1998	4,526,400.00	3,352,294.50	4,595,200.00	3,283,494.50	673,028.50	259,404.00
1999	4,526,400.00	4,105,107.50	4,340,142.80	4,291,364.70	1,007,870.20	265,896.00
2000	5,826,400.00	3,854,407.20	5,293,830.50	4,386,976.70	95,612.00	292,488.00
2001	5,956,400.00	4,029,641.40	5,401,488.80	4,584,552.60	197,575.90	314,784.00
2002	9,384,090.25	7,400,695.70	10,828,566.20	5,956,219.75	1,371,667.15	319,380.00

[38] *Id*. at 632.

This table was meant to illustrate that it was impossible for petitioner to have acquired the real properties considering his annual salary. Based on the said table, the Court of Appeals agreed with the Office of the Ombudsman that the progressive, albeit unexplained rise in petitioner's net worth, is *prima facie* evidence of ill-gotten wealth.

This Court is not convinced.

The Court of Appeals applies against the petitioner the *prima facie* presumption laid down in Section 2 of Republic Act No. 1379 (An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee And Providing for the Proceedings Therefor), which reads:

> Sec. 2. *Filing of petition*. – Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be ***presumed prima facie to have been unlawfully acquired***. x x x (Emphasis supplied.)

A *prima facie* presumption, also referred to as disputable, rebuttable or *juris tantum*,[39] is satisfactory if uncontradicted, but may be contradicted and overcome by other evidence.[40] The presumption in Section 2 of Republic Act No. 1379 is merely *prima facie* and may still be overcome by evidence to the contrary. In fact, Section 5 of the same statute requires the court, before which the petition for forfeiture is filed, to set public hearings during which the public officer or employee may be given ample opportunity to explain to the satisfaction of the court how he had acquired the property in question. Similarly, the public officer or employee administratively

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[39] Florenz D. Regalado, *REMEDIAL LAW COMPENDIUM,* Vol. II (7th Revised edition), p. 636.

[40] Section 3, Rule 131 of the Rules of Court.

charged before the Office of the Ombudsman, such as petitioner herein, must be given sufficient opportunity to present evidence to rebut the *prima facie* presumption applied against him: that his properties were illegally acquired.

Indeed, after a cursory look at the table, it would be easy to conclude that petitioner's annual salary cannot support his yearly increase in net worth, thus, giving rise to the *prima facie* presumption that petitioner's properties, specifically the real properties, were acquired unlawfully.

Nonetheless, this Court finds that the table prepared by the Office of the Ombudsman, using what the petitioner referred to as the "net-worth-to-income-discrepancy analysis," may be effective only as an initial evaluation tool, meant to raise warning bells as to possible unlawful accumulation of wealth by a public officer or employee, but it is far from being conclusive proof of the same. While the variations in net worth from year to year may be readily apparent by mere comparison, the reasons therefor may not be so easily discerned. An increase in net worth in the succeeding year may not always be due to the acquisition of more properties by purchase. Many factors may account for the increase in net worth, such as the reduction or payment of liabilities in the succeeding year resulting in an increase in net worth even though the assets remain constant; or a donation or inheritance which may significantly increase the assets without any or with very minimal corresponding liability. Hence, "net-worth-to-income-discrepancy analysis" may seem deceptively simple, but it is, in fact, more complex, and prudence must be exercised in drawing conclusions therefrom.

To rebut the supposed *prima facie* presumption against him, petitioner submitted evidence to explain the circumstances surrounding the acquisition of each of the real properties in his and his wife's names, and to show that his and his wife's combined incomes were sufficient for them to acquire said real properties.

In his Petition before this Court, petitioner presented his own table[41] summarizing the properties he and his wife acquired and the evidence they submitted in support thereof. Said table is reproduced below:

PROPERTY	AREA (in square meters)	YEAR OF ACQUI-SITION	PURCHASE PRICE (In Pesos)	MODE OF ACQUI-SITION	PREVIOUS OWNER	SUPPORTING EVIDENCE
1. Residential Lot Quezon City	385.4	1977	69,372.00	Purchase-through installment	Urban Estates, Incorporated	Contract to Sell attached as Annex "12" of Salvador Pleyto's Counter-Affidavit (Annex "H" of the Petition)
2. Residential Lot Caypombo, Sta. Maria	340	1979	1,500.00	Purchase	Anacoreta Reyes	STANDARD DEED OF SALE FORM used by Mrs. Pleyto in her lending business in cases where the defaulting debtor opts to settle the unpaid account with property. Attached as Annexes "2" and "47" to "48" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
3. Residential Lot Caypombo, Sta. Maria	340	1979	1,500.00	Purchase	Anacoreta Reyes	-do- Attached as Annexes "2" and "47" to "48" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)

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

4. Residential Lot Caypombo, Sta. Maria	340	1979	1,500.00	Purchase	Anacoreta Reyes	-do- Attached as Annexes "2" and "47" to "48" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
5. Residential Lot Caypombo, Sta. Maria	340	1979	1,500.00	Purchase	Anacoreta Reyes	-do- Attached as Annexes "2" and "47" to "48" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
6. Residential Lot Caypombo, Sta. Maria	340	1979	2,000.00	Purchase	Anacoreta Reyes	-do- Attached as Annexes "2" and "47" to "48" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
7. Residential Lot Caypombo, Sta. Maria	340	1979	2,000.00	Purchase	Anacoreta Reyes	-do- Attached as Annexes "2" and "47" to "48" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
8. Residential Lot Caypombo, Sta. Maria	340	1980	2,000.00	Purchase	Anacoreta Reyes	-do-

						Attached as Annexes "2" and "47" to "48" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
9. Residential Lot Caypombo, Sta. Maria	340	1980	2,000.00	Purchase	Magno and Azucena Reyes	-do- Attached as Annex "49" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
10. Residential Lot Poblacion, Sta. Maria	998	1987 (The TCT was issued in 1991 under TCT No. 141909)	—	Inheritance	Candido Guballa and Maria Diaz	-do- <u>Extra-Judicial Partition and Subdivision Plan</u> Attached as Annexes "30-31" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
11. Residential Lot Poblacion, Sta. Maria	998	1987 (The TCT was issued in 1991 under TCT No. 141909)	—	Inheritance	Candido Guballa and Maria Diaz	-do- <u>Extra-Judicial Partition and Subdivision Plan</u> Attached as Annexes "30-31" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)

12. Residential Lot Poblacion, Sta. Maria	356	1988	40,000.00	Purchase	Thelma Cruz Celestino	STANDARD DEED OF SALE FORM used by Mrs. Pleyto in her lending business in cases where the defaulting debtor opts to settle the unpaid account with property. Attached as Annexes "34" of Miguela Pleyto's [*sic*] Supplemental Counter-Affidavit (Annex "I" of the Petition)
13. Residential Lot Poblacion, Sta. Maria	359	1995	251,3000.00	Purchase	Dionisio Buenaventura	-do- Attached as Annexes "32" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
14. Agricultural Lot Pulong Buhangin, Sta. Maria	1,000	1996	60,000.00	Purchase	Anita Caidoy	-do- Attached as Annexes "44" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
15. Residential Lot Pulong Buhangin, Sta. Maria	152	1996	40,000.00	Purchase	Ramon and Elizabeth Hambre	-do- Attached as Annex "42" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)

16. Commercial Lot Pulong Buhangin, Sta. Maria	462	1997	138,600.00	Purchase	Marie Concepcion J. Nicolas	-do- Attached as Annex "38" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
17. Commercial Lot Pulong Buhangin, Sta. Maria	898	1997	120,000.00	Purchase	Ma. Concepcion Nicolas and Madonna Nicolas	-do- Attached as Annex "40" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
18. Agricultural Lot Pulong Buhangin, Sta. Maria	6,587	1998	500,000.00	Purchase	Reynaldo Evangelista	-do- Attached as Annex "43" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
19. Residential Lot Catmon, Sta. Maria	100	1998	500,000.00	Purchase	Rosita Resurreccion	-do- Annex "50" of Miguela Pleyto's Supplemental Counter-Affidavit (attached as Annex "I" of the Petition)
20. Residential Lot Catmon, Sta. Maria	500	1998	200,000.00	Purchase	Macaria and Herminigildo Ramos	-do- Attached as Annex "51" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
21. Residential Lot Catmon, Sta. Maria	600	1998	300,000.00	Purchase	Zosima and Teotimo dela Cruz	-do- Attached as Annex "52" of Miguela Pleyto's Supplemental

						Counter-Affidavit (Annex "I" of the Petition)
22. Residential Lot Pulong Buhangin, Sta. Maria	143	1999	42,900.00	Purchase	Lorenzo Gonzales and Remedios Gonzales	-do- Attached as Annex "41" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
23. Agricultural Lot Pulong Buhangin, Sta. Maria	3,000	1999	153,909.30	Foreclosure/ Dacion	Eliseo Hermogenes	<u>Real Estate Mortgage</u> Attached as Annexes "45" and "46" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)
24. Agricultural Lot Pulong Buhangin, Sta. Maria	746	1999	38,272.00	Purchase	Eliseo Hermogenes	<u>STANDARD DEED OF SALE FORM</u> used by Mrs. Pleyto in her lending business in cases where the defaulting debtor opts to settle the unpaid account with property. Attached as Annex "46" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)

In addition to the foregoing 24 lots identified by the PNP-CIDG in its Complaint, petitioner voluntarily disclosed two more lots in his and his wife's names in Caysio, Sta. Maria, Bulacan, which they acquired through foreclosure in 2002.

Petitioner's table comprehensively presents his and his wife's real properties, the names of the previous owners, the cost, year and mode of their acquisitions, and the supporting evidence. It reveals that the petitioner and his wife acquired their real properties in a span of 22 years, from 1977 to 1999. A number

of the real properties were acquired before 1992, the year from which the Office of the Ombudsman began his "net-worth-to-income-discrepancy analysis." Petitioner and his wife acquired the real properties by four modes: (1) purchase by installment; (2) inheritance; (3) *dacion en pago*, by which the defaulting debtor settles his outstanding account with petitioner's wife with property; and (4) foreclosure of mortgage. The last two modes of acquisition, *dacion en pago* and foreclosure of mortgage, are exercised in the regular conduct of the lending business of petitioner's wife. Irrefragably, these are legitimate modes of acquiring properties. ***On their face, the supporting documents for the transactions by which petitioner and his wife acquired their real properties appear to be in order. Notably, the PNP-CIDG, the Office of the Ombudsman, and the Court of Appeals did not challenge the validity or authenticity of any of these documentary evidences. They, instead, focused on questioning the financial capacity of petitioner and his wife to acquire all these real properties.***

Petitioner asserts that, other than his salary as a government employee, he and his wife had other sources of income which enabled them to acquire real properties. Petitioner's wife, Miguela Pleyto, has been a successful businesswoman since 1976, operating several businesses, particularly, a piggery and poultry farm, a pawnshop, and a lending investor business. To prove that these are legitimate businesses, petitioner submitted registration papers and certifications from the Department of Trade and Industry.[42] Also to establish the profits from these businesses, petitioner presented the income tax returns and financial statements of his wife's businesses.[43] Moreover, petitioner annexed to his Counter-Affidavit a schedule of loans availed of by petitioner and his wife from different banks from 1979 to 2002, secured by real estate mortgages[44] constituted on their existing real properties and annotated on the appropriate TCTs.

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[42] Records, pp. 213-220.

[43] *Id*. at 221-243.

[44] *Id*. at 244-245.

As petitioner explained, the properties were accumulated over the last two decades. Most of the properties are integral to his wife's piggery and lending business. Twelve of the properties he and his wife acquired, including four structures, were devoted to the piggery, while the others were used as collaterals for short-term loans, the proceeds of which were used by his wife in her lending business and which, in turn, enabled her to acquire more properties when defaulting borrowers settled their obligations through *dacion en pago* or foreclosure of mortgages.

The Court of Appeals, however, rejected petitioner's allegations and evidence of other legitimate sources of income, for the following reasons:

> Logic will dictate that the whole divide between assets and income may be closed by evidence that the wife was herself earning enough to account for the acquisition of properties. The spirited position taken by the petitioner on this point, however, did not wash with the Ombudsman. The reason seems to be that he was trying to tout his wife's gross income as proof of her capacity when he should prove her disposable income after deducting her taxes and expenses. The Ombudsman insisted on this approach after realizing that the petitioner and his family had indulged in rather heavy spending. x x x The argument meets with the concurrence of the Solicitor General. He says in his comments, that the gross income of the wife from her business should not be made a barometer of her financial capacity, but to be believable, she should specify her available income after deducting all expenses and taxes, a procedure she did not follow.[45]

It is worthy to note that the Office of the Ombudsman, in preparing the table in its 12 October 2004 Order, used petitioner's ***gross annual salary*** for comparison with his annual net worth. Thus, it is only understandable that, in challenging the said table, petitioner "touted" his wife's gross annual business income, which he urged should be combined with his gross annual salary. Also considering that the information the Court of Appeals was looking for could actually be deduced and computed from the income tax returns and financial statements already submitted

[45] *Rollo,* p. 94.

by petitioner, this Court finds it arbitrary for the appellate court to simply brush aside petitioner's evidence just because it was not presented in the form that it expected. Bearing in mind the significance and impact on the case of petitioner's evidence, it deserves a closer and more thorough review.

Furthermore, in his Motion for Reconsideration with the Court of Appeals, petitioner directly addressed the afore-quoted observation of the appellate court by presenting the following table[46] in which taxes and expenses were already deducted from his wife's business income:

DATE	YEARLY INCREASE/ DECREASE IN NETWORTH	SALARY INCOME	BUSINESS INCOME Income from Business + Depreciation Cost)	TOTAL INCOME (Salary Income Business Income
1992	-	136,620.00	180,438.50	317,058.50
1993	584,409.00	166,980.00	181,703.00	348,683.00
1994	312,087.00	190,560.00	242,817.60	433,377.60
1995	206,390.30	202,560.00	240,917.62	443,477.62
1996	254,167.30	217,716.00	333,908.96	551,624.96
1997	357,521.40	239,472.00	489,023.46	728,495.46
1998	673,028.50	259,404.00	485,105.79	744,509.79
1999	1,007,870.20	265,896.00	507,845.21	773,741.21
2000	95,612.00	292,488.00	570,280.67	862,768.67
2001	197,575.90	314,784.00	596,980.95	911,764.95
2002	1,371,667.15	319,380.00	969,565.05	1,288,945.05
TOTAL	**5,060,328.75**	**2,605,860.00**	**4,798,586.81**	**7,404,446.81**

The figures in the business income column were derived from the income statements of Miguela Pleyto, annexed to her income tax returns, which were prepared by a certified public accountant and submitted to the Bureau of Internal Revenue. The business income figures are already net of business expenses and

[46] *Id*. at 906.

provisions for income taxes, but include the amounts of depreciation[47] of buildings, equipment, and furniture/fixtures. Based on the foregoing table, the increase in petitioner's net worth from 1992 to 2002 (₱5,060,328.75) no longer appears to be grossly disproportionate to his and his wife's combined income for the same period (₱7,404,446.81).

At this point, it is undeniable that petitioner had other sources of income apart from his salary. His wife was also earning substantial income from her businesses. According to Section 2 of Republic Act No. 1379, the *prima facie* presumption of unlawful acquisition would arise only when the amount of property is ***manifestly*** out of proportion to the salary of the public officer or employee ***and to his other lawful income and the income from legitimately acquired property***.

Other than the real properties, both the Office of the Ombudsman and the Court of Appeals deemed the numerous foreign travels of petitioner, his wife, and his children as proof of petitioner's unexplained wealth, relying on the following attestations[48] of the investigating officers of the PNP-CIDG:

> 10. Our verification with the Bureau of Immigration and Deportation on the travels abroad made by Mr. Pleyto (and his son Salvador Juan Jr.) for the duration of his stint as a DPWH official revealed that since 1995, Mr. Pleyto had made ***seventeen (17)*** travels abroad. Our cross-checking with the declared official travels abroad of Mr. Pleyto, as appearing in his Personal Data Sheet, revealed that he had made a total of ***nine (9) unofficial*** travels abroad. BID records also show that in his two (2) trips abroad, he brought along his son Salvador Juan Pleyto, Jr. that is, when he went on the REAAA council meeting in Kuala Lumpur in October 1999 and when he went to the US also in October 2000 on an ***unofficial trip*** (***Annexes "81"*** and ***"82"***); His wife Miguela had seventeen (17) travels abroad (***Annex "83"***) while his other son, Russel had six (6) travels abroad (***Annex "84"***).

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[47] Depreciation is a reasonable allowance for deterioration of property arising out of its use or employment in business or trade. It is allowed as a deduction for income tax purposes only, but it is not actually paid out. (*See* Section 34(F) of the National Internal Revenue Code, as amended.)

[48] Records, pp. 11-12.

11. We have estimated that the sum total of the expenses incurred by Mr. Salvador A. Pleyto for the travels abroad by him, his wife and children, at ₱100,000.00 per travel amounted to ***THREE MILLION SEVEN HUNDRED THOUSAND PESOS*** (***₱3,700,000.00***), broken down as follows:

Salvador A. Pleyto – 9 travels	-	₱900,000.00
Miguela G. Pleyto – 17 travels	-	1,700,000.00
Russel G. Pleyto – 6 travels	-	600,000. 00
Salvador G. Pleyto Jr., – 5 travels	-	500,000.00
TOTAL	**:**	₱3,700,000.00

While the investigating officers of the PNP-CIDG also referred to the trips abroad taken by petitioner's children, this Court shall discuss first only the foreign travels of petitioner and his wife. The foreign travels, as well as the real properties of their children, shall be the subject of a separate and later discussion.

After going through the records, the only evidence presented by the PNP-CIDG as regards the foreign travels of petitioner and his family are the travel records[49] provided by the Bureau of Immigration and Deportation (BID), from which the following information were derived:

TRAVEL INFORMATION OF SALVADOR A. PLEYTO

Full Name	:	Salvador Pleyto *y* Aquino
DOB	:	March 22, 1942
Nationality	:	Filipino
Passport No.	:	K862613/CC272892
Address	:	No. 1 May Street, Congressional Village, Quezon City

Departure Date	**Destination**	**Arrival Date**
-	Tapei	April 22, 1995
October 25, 1995	Seoul	November 06, 1995
May 17, 1996	Hongkong	May 19, 1996
June 15, 1997	Tokyo	July 04, 1997
October 01, 1997	Honolulu	October 17, 1997
October 07, 1998	USA	October 10, 1998

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[49] *Id*. at 129-130.

March 27, 1999	Los Angeles	April 06, 1999
May 07, 1999	Hongkong	May 09, 1999
October 02, 1999	Kuala Lumpur	October 10, 1999
March 27, 2000	Hongkong	May 02, 2000
September 03, 2000	USA	October 01, 2000
October 24, 2000	USA	-
March 20, 2001	USA	May 01, 2001
April 18, 2002	-	April 22, 2002
May 10, 2002	USA	-
October 02, 2002	-	October 08, 2002
May 18, 2003	-	June 25, 2003
Total No. of Travels Abroad:		Seventeen (17)

TRAVEL INFORMATION OF MIGUELA PLEYTO

Full Name	:	Miguela Pleyto *y* Guballa
DOB	:	March 28, 1940
Nationality	:	Filipino
Passport No.	:	K850031/CC264659/JJ329075
Address	:	No. 1 May Street, Congressional Village, Quezon City

Departure Date	**Destination**	**Arrival Date**
October 25, 1995	Seoul/Korea	November 06, 1995
May 17, 1996	Hongkong	May 19, 1996
July 12, 1996	-	July 29, 1996
October 01, 1997	Honolulu	October 17, 1997
May 19, 1998	Los Angeles	May 27, 1998
October 07, 1998	USA	October 10, 1998
March 27, 1999	Los Angeles	April 06, 1999
May 07, 1999	Hongkong	May 09, 1999
October 05, 1999	Singapore	October 10, 1999
October 05, 1999	San Francisco	October 14, 1999
July 14, 2000	Bangkok	July 19, 2000
October 29, 2000	Hongkong	November 06, 2000
April 20, 2001	USA	July 22, 2001
April 18, 2002	Los Angeles	May 01, 2001
May 10, 2002	Bangkok	April 22, 2002
September 30, 2002	Bangkok	October 08, 2002
May 18, 2003	Bangkok	May 25, 2003
Total No. of Travels Abroad:		Seventeen (17)

From 1995 to 2003, petitioner traveled abroad 17 times; 8 trips were found by the investigating officers to be official and only 9 were unofficial. Their summary, though, failed to indicate which of petitioner's trips were official and which were unofficial. It would appear that only the 9 unofficial foreign trips are being charged against petitioner. For the same period, petitioner's wife also took 17 trips abroad.

Petitioner offered the following explanation for his and his wife's foreign travels:

- As to petitioner Pleyto, his alleged travel expense of Php 900 thousand is unfounded. His (9) "unofficial" travels ("official time but with no cost to the government") were all shouldered by sponsoring organizations such as the Road Engineering Association of Asia and Australia (REEAA) and the American Society of Civil Engineers, Philippine Chapter, where he has served as President. The sponsorship includes travel and accommodation and sometimes even one (1) companion. These facts have not been disputed on record. (In fact, for this year, petitioner Pleyto was again a beneficiary of sponsorship travel extended by REEA (sic) where he continues to serve as President.)
- As to Mrs. Pleyto, her alleged travel expense of Php 1.7 M (at Php 100,000 per travel) is bloated and unsubstantiated. To begin with, the number of travels appears to be inaccurate as previously explained. Besides, the estimated expense of Php 100,000 per travel is grossly exaggerated as most of the travels were to Asian destinations. As shown by evidence, the travel package (fare and accommodation) only averages from Php 15,000 to Php 25,000 which contention has not been disputed by contrary evidence. Besides, Mrs. Pleyto, who is already in her senior years and with no more children to support, is entitled to enjoy the comforts of travel.[50]

While 26 foreign trips[51] may indeed seem excessive, it should be kept in mind that these were taken by two individuals in a

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[50] *Rollo*, p. 56.

[51] The 9 unofficial foreign trips taken by petitioner, plus the 17 foreign trips taken by his wife.

span of 9 years. Frequency of foreign travel, by itself, is not proof of unexplained wealth of a public officer or employee. More importantly, it must be established that the trips abroad are beyond his financial capacity, taking into account his salary and his other lawful sources of income.

The travel records from the BID could only establish the details on the trips taken by petitioner and his wife, specifically, the dates of departure and arrival, the destination, and the frequency thereof. Even these details were at times incomplete or contradictory. Take for example the travel information of petitioner, with several missing entries on the dates of departure and arrival and destination. As for the travel information of petitioner's wife, it failed to identify her destination for her trip on 12 to 29 July 1996. The travel information also states that petitioner's wife was in Singapore from 5 to 10 October 1999, yet, in the immediately succeeding entry, it provides that she was in San Francisco, United States of America (USA) from 5 to 14 October 1999. Also according to the travel information, petitioner's wife left for Bangkok, Thailand on 10 May 2002 and returned to the country on 22 April 2002. It appears to this Court that complete reliance was made on the travel records provided by the BID. No further effort was exerted to complete the travel information of petitioner and his wife and clarify or reconcile confusing entries.

It is a long jump to conclude just from the BID travel records that the foreign travels taken by petitioner and his wife were beyond their financial capacity. As this Court has already found, petitioner had other sources of lawful income apart from his salary as a public official. His wife was also earning substantial income from her businesses. Now the question is, whether the petitioner and his wife could afford all their trips abroad considering their combined income.

Obviously, before this question can be answered, the cost of the trips must be initially determined. The investigating officers of the PNP-CIDG estimated the cost of each trip to be ₱100,000.00, an estimation subsequently adopted by the Office

of the Ombudsman and the Court of Appeals. This Court, though, cannot simply affirm such estimation.

Other than the USA (wherein Los Angeles, San Francisco, and Honolulu are located), petitioner and his wife only traveled to cities in East and Southeast Asia (namely, Taipei, Seoul, Hongkong, Tokyo, Kuala Lumpur, and Bangkok). The costs of the trips to the USA and to the neighboring Asian countries cannot be the same; the latter would undeniably be cheaper. The investigating officers, in fixing the amount of all the foreign trips at ₱100,000.00 each, offered no explanation or substantiation for the same. With utter lack of basis, the figure of ₱100,000.00 as cost for each foreign travel is random and arbitrary and, thus, unacceptable to this Court. Without a reasonable estimation of the costs of the foreign travels of petitioner and his wife, there is no way to determine whether these were within their lawful income.

This Court finds equally baseless the conclusion that petitioner's children are without substantial income of their own, hence, their properties and foreign travels should be attributed to petitioner and considered as additional evidence of his unexplained wealth.

Petitioner's children are all grown up with the youngest, at the time the case was pending before the Office of the Ombudsman, being 27 years old. Russel and Mary Grace Pleyto, the two older children, are engaged in businesses, while Salvador Pleyto, Jr., is gainfully employed in his mother's businesses. The following real properties are registered and duly covered by certificates of title in their names:

a) Russel Pleyto – (2 properties)

1. one residential house and lot measuring 632 sq. m. in Poblacion, Sta. Maria, Bulacan;
2. one (1) residential lot measuring 113 sq. m. in Pulong Buhangin, Sta. Maria, Bulacan;

b) Mary Grace Pleyto – (2 properties)

1. one (1) residential lot measuring 138 sq. m. in Pulong Buhangin, Bulacan;

2. one (1) commercial lot measuring 133 sq. m., broken down into three lots at 41, 59, and 43 sq. m., in Poblacion, Sta. Maria, Bulacan; and

c) Salvador, Jr. – (1 property)

1. one (1) residential lot measuring 244 sq. m. in Pulong Buhangin, Sta. Maria, Bulacan.[52]

Given these circumstances, the presumption in Section 2 of Republic Act No. 1379, cannot be automatically extended to the properties that are registered in the names of petitioner's children. The burden is upon the PNP-CIDG, as the complainant against petitioner, to establish that these properties are actually owned by petitioner by proving first that his children had no financial means to acquire the said properties. Fundamental is the rule that the burden of evidence lies with the person who asserts an affirmative allegation.[53] Unfortunately, the PNP-CIDG miserably failed in this regard.

Without presenting any supporting evidence, the investigating officers of the PNP-CIDG alleged in their Joint Affidavit that "it can be immediately deduced that the real properties, ***both the houses and lots***, registered in the names of their three (3) children, namely: ***Russel Pleyto, Mary Grace Pleyto and Salvador Juan Pleyto, Jr.***, are [petitioner's] ***unexplained*** wealth, since all of them have no substantial income to show that they have the capacity to lawfully acquire the same."[54] The use of the words "immediately deduced" is very revealing of the attitude and approach taken by the investigating officers in this case, again, jumping to a conclusion without reference to and presentation of the evidence in support thereof. The same can also be said of the foreign travels of Russel Pleyto and Salvador Pleyto, Jr., which, without any explanation or

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[52] *Rollo,* p. 13.

[53] *Aklan Electric Cooperative, Inc. v. National Labor Relations Commission*, 380 Phil. 225, 245 (2000); *Philippine Fruit & Vegetable Industries, Inc. v. National Labor Relations Commission*, 369 Phil. 929, 938 (1999).

[54] Records, p. 10.

basis whatsoever, were included in the computation of travel expenses charged against petitioner.

It is thus surprising that the Office of the Ombudsman affirmed the bare allegations of the investigating officers of the PNP-CIDG, by ruling that:

[T]he following real properties registered in the name of respondent Pleyto's three (3) children, are actually the [petitioner]'s unexplainable wealth, since all of them have no substantial income to show that they have lawfully acquired the same, x x x.

x x x x x x x x x

The annexes submitted do not show substantial net disposable income earned by them. With respect to Salvador, Jr., no income tax return was submitted. Further, there was no credible explanation for the sizeable start-up capitals for their alleged businesses. No proof was submitted as to the alleged donation of ₱200,000.00 from the parents of respondent Russel Pleyto's wife. As to the alleged donation of ₱60,000.00, it admittedly came from respondent's Salvador and Miguela Pleyto.[55]

This Court cannot sustain such finding.

Although strictly, the burden of evidence had not shifted to petitioner, he still endeavored to elucidate on how his children legitimately acquired their respective properties, to wit:

As to Russel G. Pleyto, the following facts and explanations are uncontroverted by any contrary evidence –

- Since 1991 or for over ten years, Russel and his wife, Shirley Yap, daughter of established businessman in Bulacan, have been engaged in businesses in Sta. Maria, starting with grocery and garments which they built from a meager capital of Php60,000.00 extended by Mr. and Mrs. Pleyto by way of a deed of donation during their marriage as well as Php200,000.00 from Shirley's parents. They also obtained financial accommodations and stocks for their grocery and garments from Shirley's family who are also engaged in the same line of business.

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[55] *Rollo,* pp. 619-620.

- Their financial capacity is shown by documentary evidence such as business permits/licenses of their business enterprises; financial statements and income tax returns from 1998 to 2002, showing gross sales/receipts from grocery and video sales rentals amounting to ₱7,271,137; various credit lines extended to Shirley Yap-Pleyto in the grocery business.
- In the course of their business, Russel and Shirley Yap-Pleyto were able to acquire two (2) properties: the *first* refers to their residential house and lot in Poblacion, Sta. Maria, which was acquired six years after their marriage; the *second* refers to a small parcel of land consisting of 113 sq. meters in the interior side of Pulong Buhangin. Since both of them are engaged in gainful business, there is no way they cannot acquired (*sic*) the subject properties.

As to **Mary Grace G. Pleyto**, the following explanations and evidence are uncontroverted by any contrary evidence –

- Mary Grace has been an entrepreneur since 1995, starting off with small laundry business and branching to water refilling and video sales. While she obtained her course from UP, she learned the ropes of entrepreneurship from her own mother. And if she has received any assistance in her business, it was also from her mother, and not from any imputed "unexplained wealth" of her father. Like her mother, she also made use of banks to support her business requirements.
- From 1997 to 2001, she was able to acquire the commercial property in Sta. Maria measuring 143 sq. meters, broken down into three (3) lots at **<u>41 sq. meters</u>**, **<u>59 sq. meters</u>**, and **43 sq. meters**. This property was broken down into three lots because she acquired it portion by portion and in a span of four years. In addition, she also acquired a residential lot in the interior side of Pulong Buhangin measuring only 138 sq. meteres (TCT No. 397717[M]).
- When she purchased her first two properties valued at Php131,600, her BIR records and financial statements for the preceding years (1995-1996) already reflect an income of Php531,930, which is more than enough to cover the purchase. As proof of her financial capacity, she has been extended loans by Metrobank using as collateral the same property she acquired. Based on her income tax return and loan documents,

there is no reason why she cannot acquire the two (2) properties owned and registered in her name.

As to **Salvador G. Pleyto, Jr.**, the following explanations and evidence are uncontroverted by any contrary evidence –

- Salvador Jr., a La Salle graduate in B.S. Management, has been gainfully employed since 1998 in her mother's business, managing R.S. Pawnshop and R.S. Lending Investor. Based on his income tax returns for the years 1999 to 2002 (*sic*), his earnings amounted to ₱186,520.
- In 2001, he was able acquire a property in the interior side of Pulong Buhangin, Sta. Maria for only ₱20,000 as evidenced by the purchase document.
- Considering his reported income in the preceding years (1999 to 2000) as reflected in his BIR tax records, there is no reason why he could not have acquired the subject property for Php20,000.[56]

To substantiate his goregoing assertions, petitioner presented the TCTs in his children's names, deeds of sale executed by the previous owners to his children, his children's income tax returns and financial statements, business registrations, and bank documents on loans and credit lines.[57]

Certificates of title are the best proof of ownership[58] that may only be rebutted by competent evidence to the contrary. In this case, the TCTs are in the names of petitioner's children. Indubitably, mere allegation that the properties covered by the TCTs are actually owned by someone else is insufficient.

The Office of the Ombudsman disparaged the other documentary evidence submitted by petitioner because they "do not show substantial net disposable income earned" by petitioner's children. To the contrary, the petitioner presented his children's income tax returns and financial statements that state their gross income, as well as expenses, taxes, and any

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[56] *Id*. at 47-50.

[57] *Id*. at 368-319, 409-417, 577-601.

[58] *Heirs of Velasquez v. Court of Appeals,* 382 Phil. 438, 458 (2000).

other deductible liabilities, from which the children's respective net incomes may be determined. Moreover, it is futile for the Office of the Ombudsman to require the petitioner to present the net disposable income of his children when the PNP-CIDG failed to establish the acquisition costs of these properties. What the investigating officers of the PNP-CIDG stated in their Joint-Affidavit were the adjusted market values of the children's properties. As this Court has ruled, financial capacity shall be adjudged *vis-à-vis* the cost of the properties at the time of acquisition. The subsequent increase (or decrease) in the value of the properties is irrelevant. Without the acquisition costs of the properties, there are no figures that may be measured against the earning capacity of petitioner's children at the time they acquired their properties.

Furthermore, faced with overwhelming evidence that petitioner's two older children, Russel and Mary Grace Pleyto, had their own businesses from which they derived substantial income, the Office of the Ombudsman changed the direction of its attack by questioning their source of capital. This is plainly a different theory from the one originally presented in the PNP-CIDG complaint that petitioner's children could not have acquired their properties because they had no substantial income of their own. No longer is it just a question of ownership of the properties in the children's names, but it is now extended to the ownership of the children's businesses. Just the same, the assertion that petitioner's children could not have established and maintained their own businesses must be supported by evidence, of which none was submitted herein.

As a final note on this matter, the charges that petitioner is the true owner of the properties registered in his children's names and that he spent for their foreign travels must be proven by the PNP-CIDG as the complainant in the administrative case, before the burden of evidence shifts to the petitioner to prove the contrary. The PNP-CIDG cannot just make bare allegations, with tremendous implications and damaging effects, then leave it to the public official charged to successfully and effectively defend himself with controverting evidence. Such

is what has happened in this case. Worse, despite the total absence of evidence on the part of the PNP-CIDG regarding the properties and sources of income of petitioner's children, the Office of the Ombudsman hastily dismissed the value of petitioner's evidence.

The last administrative charge against petitioner is that he failed to declare all his assets in the SALN, of which the Office of the Ombudsman and the Court of Appeals found petitioner guilty. The Court of Appeals made the following findings on this point:

> *Second*, failing to declare all his assets in the SALN. A treasure trove of properties admitted by the petitioner to be owned by him and his wife could not be accounted for in the SALN. The non-declaration of his numerous acquisitions was thus willful. The Ombudsman senses that the unexplained rise in the reported net worth of the petitioner would be more astronomical if he were forthright in his declarations.
>
> x x x x x x x x x
>
> The Ombudsman has found that there are, indeed, properties not reported in the SALN. The laundry list of undeclared assets include properties acquired in 1979, 1980, 1982, 1988, 1993, 1995, 1996, 1997 and 1999. While the petitioner's wife claims to be extensively engaged in business, the SALN also did not report the nature and other particulars of these concerns. She signed the 2001 SALN without answering the question: Do you have any business interest and other financial connections including those of your spouse x x x?
>
> It is clear that the SALN does not reflect a true and accurate record of the assets of the petitioner in violation of the Anti-Graft and Corrupt Practices Act. The addition of the acquisition costs of the unreported assets to the net worth, moreover, will increase it. As dramatized by the Ombudsman's table, the increase in the net worth could not be explained by the petitioner's salary alone and, hence should be treated as unexplained wealth.[59]

Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, requires that a public officer file

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[59] *Rollo,* pp. 91-94.

his statement of assets and liabilities under the following circumstances:

SEC. 7. *Statement of Assets and Liabilities*. – Every public officer, within thirty days after assuming office and, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of Head of Department or Chief of an independent office, with the Office of the President, a true, detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided*, That public officers assuming office less than two months before the end of the calendar year, may file their first statement or before the fifteenth day of April following the close said calendar year.

A similar requirement is provided in Section 8 of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, which reads:

SEC. 8. *Statements and Disclosure*. – Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statement of Assets and Liabilities and Financial Disclosure. – All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

(a) real property, its improvements, acquisition costs, assessed value and current fair market value;

(b) personal property and acquisition cost;

(c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;

(d) liabilities; and

(e) all business interests and financial connections.

The documents must be filed:

(a) within thirty (30) days after assumption of office;

(b) on or before April 30, of every year thereafter; and

(c) within thirty (30) days after separation from service.

All public officials and employees required under this section to file the aforestated documents shall also execute within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible the year when they first assumed any office in the government.

It is undisputed that petitioner has been religiously filing his SALN every year while he was in government service. The allegation of gross misconduct and dishonesty against him is rooted in his purported failure to declare all his assets and business interests in his SALNs.

Petitioner's 2002 SALN declared only 13 properties with a total acquisition cost of ₱9,384,090.25. Petitioner though admitted in the course of these proceedings that he and his wife owned 28 of the 33 real properties identified by the PNP-CIDG, with the clarification that four of those are mere improvements consisting of piggery structures. Hence, petitioner professes ownership by him and his wife of 24 lots, plus the improvements found thereon. He further volunteers the information that he and his wife acquired two more additional properties in Caysio, Sta. Maria, Bulacan, in 2002, thus, bringing the total number of his and his wife's real property acquisition to 26.

Petitioner denies he was being dishonest or that he had the deliberate intent to conceal his wealth in his 2002 SALN, although

he acknowledges that he failed to pay attention to the details therein. His SALNs are prepared by a family bookkeeper/ accountant. Also, his wife has been running their financial affairs, including property acquisitions which form part and parcel of her lending business. Thus, as he was not directly involved in the various transactions relating to the lending business, petitioner failed to keep track of the real property acquisitions by reason thereof.

Consequently, petitioner's SALN was not filed in proper form, containing several inaccurate information, such as discrepancies in the year and mode of acquisition of the declared properties, and imprecise descriptions of the said properties since some of the properties were not broken down to their individual titles and, instead, treated as one entry since they are contiguous to one another and to fit all the information in the limited number of spaces provided in the printed SALN form. And these inaccuracies are repeated year after year, since the common practice is copying the entries in the immediately preceding year and just adding any subsequent acquisitions.

In his 2004 SALN,[60] petitioner took pains to rectify the inaccuracies in his previous SALN and declared his real properties as follows:

Kind	Location	Year	Mode of Acquisition	Acquisition Cost (Land, Bldg., Improvement, *etc.*)
1 H & L	Quezon City	197[7]	Purchase	2,630,000.00
1 H & L	Caypombo, Bulacan	1980	Purchase	
1 Lot	- do -	1982	- do -	
1 Lot	- do -		- do -	
1 Lot	- do -		- do -	
1 Lot	- do -		- do -	
1 Lot	- do -		- do -	190,000.00
1 Lot	- do -		- do -	
1 Lot	- do -		- do -	

[60] *Id.* at 940-941.

1 Lot (impv't)	- do -	1979	- do -	
1 Lot (impv't)	- do -		- do -	
1 Lot (impv't)	- do -	1979	- do -	
1 Lot (impv't)	- do -		- do -	
1 H & L	Poblacion, Bulacan	1988	Purchase	
1 Lot	- do -	1987	Inheritance	
1 Lot	- do -	1991	- do -	
1 Lot	- do -	1993	- do -	1,937,700.00
1 Lot	- do -	1995	Purchase/ Foreclosure	
1 Lot	P. Buhangin, Bulacan	1996	Purchase/ Foreclosure	
1 Lot	- do -	1996	- do -	
1 H & L	- do -	1997	- do -	
1 Lot	- do -	1998	- do -	
1 Lot	- do -	1999	- do -	
1 Lot	- do -	1999	- do -	1,898,700.00
1 Lot	- do -	1999	- do -	
1 Lot	- do -	1999	- do -	
1 Lot	Catmon, Bulacan	1998	Purchase/ Foreclosure	
1 Lot	- do -		- do -	1,300,000.00
1 Lot	- do -		- do -	
2 Lots w/ imprv't	Caysio, Sta. Maria, Bulacan	2002	Purchase/ Foreclosure	1,427,690.25
1 Lot	P. Buhangin, Bulacan	2003	Purchase/ Foreclosure	100,000.00
		TOTAL COST		₱9,484,090.25

Except for the lot in Pulong Buhangin, Bulacan, which was purchased only in 2003, the afore-quoted declaration of petitioner's real properties in his 2004 SALN tallies with that in his 2002 SALN. Disregarding the most recent acquisition, the longer and more detailed list of real properties in the 2004 SALN has the same total acquisition cost as the 13 entries in the 2002 SALN, *i.e.*, ₱9,384,090.25. As additional proof that his 2002

SALN actually includes all his real properties, petitioner points out that the total acquisition cost thereof, ***P9,384,090.25**,* is not so far off their 2003 adjusted market value (excluding the real properties in the names of petitioner's children) of ***P14,002,109.20*** as determined by the PNP-CIDG; the difference can be accounted for by the increase in the value of the real properties through the years.

In contrast, according to the investigating officers of the PNP-CIDG, "[s]ince Mr. Pleyto did not specify in his SALs the exact location of the real properties he and his own wife own, it would not be too easy for the investigators to ascertain which specifically of these numerous real estate properties acquired by the spouses were or were not declared in his latest statement of assets."[61] Hence, there is no categorical finding by the investigating officers that certain properties were intentionally excluded or concealed by petitioner from his 2002 SALN.

Much of the difficulty in reconciling the list of real properties in the names of petitioner and his wife *vis-à-vis* the entries in petitioner's 2002 SALN is due to the inaccuracies in the latter as previously discussed. Without considering the elucidation offered by petitioner and refusing to concede that inaccuracies were committed in the preparation of the 2002 SALN, the Office of the Ombudsman could not reconcile any of the real properties admittedly owned by petitioner and his wife with the real properties declared in the 2002 SALN. This includes petitioner's residence in Quezon City, which evidence shows he and his wife acquired in 1977, but was erroneously reported in his 2002 SALN to have been acquired in 1975. Following the ratiocination of the Office of the Ombudsman, then it would appear that petitioner completely falsified his declaration of real properties in his 2002 SALN. However, it must be pointed out that petitioner was originally accused of and found guilty by the Office of the Ombudsman and the Court of Appeals of the relatively less serious charge of excluding or concealing some of his properties.

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[61] Record, p. 10.

Petitioner is charged with gross misconduct and dishonesty for failing to comply with Section 7 of the Anti-Graft and Corrupt Practices Act, and Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees, requiring the submission of a statement of assets and liabilities by a public officer or employee.

As for gross misconduct, the adjective is "gross" or serious, important, weighty, momentous, and not trifling; while the noun is "misconduct," defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The word "misconduct" implies a wrongful intention and not a mere error of judgment. For gross misconduct to exist, there must be reliable evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules.[62]

And as for dishonesty, it is committed by intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion. Dishonesty is understood to imply a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity.[63]

Clear from the foregoing legal definitions of gross misconduct and dishonesty is that intention is an important element in both. Petitioner's candid admission of his shortcomings in properly and completely filling out his SALN, his endeavor to clarify the entries therein and provide all other necessary information, and his submission of supporting documents as to the acquisition of the real properties in his and his wife's names, negate any intention on his part to conceal his properties. Furthermore, in view of this Court's findings that these properties were lawfully acquired, there is simply no justification for petitioner to hide them. Missing the essential element of intent to commit a wrong,

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[62] *In re Impeachment of Judge Horilleno*, 43 Phil. 212, 214 (1922).

[63] *Brucal v. Desierto*, G.R. No. 152188, 8 July 2005, 463 SCRA 151, 165.

this Court cannot declare petitioner guilty of gross misconduct and dishonesty.

Neither can petitioner's failure to answer the question, "Do you have any business interest and other financial connections including those of your spouse and unmarried children living in your house hold?" be tantamount to gross misconduct or dishonesty. On the front page of petitioner's 2002 SALN, it is already clearly stated that his wife is a businesswoman, and it can be logically deduced that she had business interests. Such a statement of his wife's occupation would be inconsistent with the intention to conceal his and his wife's business interests. That petitioner and/or his wife had business interests is thus readily apparent on the face of the SALN; it is just that the missing particulars may be subject of an inquiry or investigation.

An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, does not qualify as gross misconduct, and is merely simple negligence.[64] ***Thus, at most, petitioner is guilty of negligence for having failed to ascertain that his SALN was accomplished properly, accurately, and in more detail.***

Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place.[65] In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable.[66] Both Section 7 of the Anti-Graft and Corrupt Practices Act and Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees require the accomplishment and submission of a true, detailed and sworn statement of assets and liabilities. Petitioner was negligent for failing to comply with his duty to provide a detailed list of his assets and business

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[64] *Camus v. Civil Service Board of Appeals,* 112 Phil. 301, 306 (1961).

[65] Article 1173, Civil Code.

[66] *Juan v. Arias*, A.M. No. P-310, 23 August 1976, 72 SCRA 404, 410.

interests in his SALN. He was also negligent in relying on the family bookkeeper/accountant to fill out his SALN and in signing the same without checking or verifying the entries therein. Petitioner's negligence, though, is only simple and not gross, in the absence of bad faith or the intent to mislead or deceive on his part, and in consideration of the fact that his SALNs actually disclose the full extent of his assets and the fact that he and his wife had other business interests.

Gross misconduct and dishonesty are serious charges which warrant the removal or dismissal from service of the erring public officer or employee, together with the accessory penalties, such as cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in government service. Hence, a finding that a public officer or employee is administratively liable for such charges must be supported by substantial evidence.

The quantum of evidence required in administrative cases is substantial evidence. The landmark case *Ang Tibay v. Court of Industrial Relations*[67] laid down the guidelines for quasi-judicial administrative proceedings, including the following:

> (4) Not only must there be some evidence to support a finding or conclusion (*City of Manila vs. Agustin*, G. R. No. L-45844, promulgated November 29, 1937, XXXVI 0.G. 1335), but the evidence must be "substantial." (*Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board*, 301 U. S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) ***"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."*** (*Appalachian Electric Power v. National Labor Relations Board*, 4 Cir., 93 F. 2d 985, 989; *National Labor Relations Board v. Thompson Products,* 6 Cir., 97 F. 2d 13, 15; *Ballston-Stillwater Knitting Co. v. National Labor Relations Board*, 2 Cir., 98 F. 2d 758, 760.) * * * The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter

[67] 69 Phil. 635, 642-644 (1940).

which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. (*Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; *Interstate Commerce Commission v. Louisville & Nashville R. Co*., 227 U. S. 88, 93, 33 S. Ct. 185, 187, 57 Law. ed. 431; *United States v. Abilene & Southern Ry. Co*., 265 U. S. 274, 288, 44 S. Ct. 565, 569, 68 Law. ed. 1016; *Tagg Bros. & Moorhead v. United States,* 280 U. S. 420, 442, 50 S. Ct. 220, 225, 74 Law. ed. 624.) ***But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.*** (*Consolidated Edison Co. v. National Labor Relations Board*, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.) "

(5) ***The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.*** (*Interstate Commence Commission vs. L. & N. R. Co.*, 227 U. S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) x x x. (Emphasis supplied.)

In the Petition at bar, great, if not absolute, reliance was made by the Office of the Ombudsman on the Complaint of the PNP-CIDG and the attached Joint Affidavit of its investigating officers. Although certain pieces of documentary evidence were also attached to the said Complaint, such as TCTs and tax declarations of the real properties in the names of petitioner, his wife, and his children, and the travel information provided by the BID, these mostly prove facts which were not denied by petitioner, but for which he had credible explanation or qualification. These pieces of evidence may have been sufficient to give rise to a *prima facie* presumption of unlawfully acquired wealth against petitioner; however, such a presumption is

disputable or rebuttable. ***When petitioner presented evidence in support of his defense, the Office of the Ombudsman proceeded to question and challenge and, ultimately, disregard in totality petitioner's evidence, despite the fact that the PNP-CIDG no longer presented any evidence to controvert the same.***

Each party in an administrative case must prove his affirmative allegation with substantial evidence – the complainant has to prove the affirmative allegations in his complaint, and the respondent has to prove the affirmative allegations in his affirmative defenses and counterclaims.[68] In this case, contrary to the findings of the Office of the Ombudsman and the Court of Appeals, this Court pronounces that substantial evidence sways in favor of the petitioner and against complainant PNP-CIDG.

While this Court commends the efforts of the PNP-CIDG and the Office of the Ombudsman to hold accountable public officers and employees with unexplained wealth and unlawfully acquired properties, it cannot countenance unsubstantiated charges against a hapless public official just to send a message that the government is serious in its campaign against graft and corruption. ***No matter how noble the intentions of the PNP-CIDG and the Office of the Ombudsman are in pursuing this administrative case against petitioner, it will do them well to remember that good intentions do not win cases; evidence does.***

III.

Petitioner's third assignment of error concerns the review and compliance procedure provided in Section 10 of the Code of Conduct and Ethical Standards for Public Officials and Employees, reproduced in full below:

SEC. 10. *Review and Compliance Procedure.* – (a) The designated Committees of both Houses of the Congress shall establish procedures

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[68] *Aklan Electric Cooperative v. National Labor Relations Commission*, *supra* note 53 at 245; *Philippine Fruit & Vegetable Industries, Inc. v. National Labor Relations Commission*, *supra* note 53 at 938.

for the review of statements to determine whether said statements have been submitted on time, are complete and are in proper form. In the event a determination is made that a statement is not so filed, the appropriate Committee shall so inform the reporting individual and direct him to take the necessary corrective action.

(b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of the Congress shall base the power, within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.

(c) The heads of other offices shall perform the duties stated in subsections (a) and (b) hereof insofar as their respective offices are concerned, subject to the approval of the Secretary of Justice, in the case of the Executive Department and the Chief Justice of the Supreme Court, in the case of the Judicial Department.

Petitioner argues that he should have been given the opportunity to correct his obviously incomplete and/or not properly filed SALN in accordance with the afore-quoted review and compliance procedure. This Court is unconvinced.

From a reading of the provision in question, it is apparent that it primarily imposes upon the heads of offices the duty to review the SALNs of their subordinates. If a head of office finds that the SALN of a certain subordinate is incomplete or not in the proper form, then the head of office must inform the subordinate concerned and direct him to take corrective action. Unquestionably, it is an internal procedure limited within the office concerned. It does not even provide for instances when a complainant, not the head of office, may question the SALN of a public officer or employee.

Such a procedure does not find application in the Petition at bar, because petitioner's SALN was not being reviewed or questioned by his head of office, but by the Office of the

Ombudsman. Whether or not petitioner's SALN was actually reviewed by his head of office is irrelevant and cannot bar the Office of the Ombudsman from conducting an investigation of petitioner for violation of Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees, as well as Section 7 of the Anti-Graft and Corrupt Practices Act, upon the filing of a Complaint by the PNP-CIDG.

The mandate of the Office of the Ombudsman is expressed in Section 12, Article XI of the Constitution, in this wise:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Section 13 thereof, vests in the Office of the Ombudsman the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient;

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned and controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent and correct any abuse or impropriety in the performance of duties;

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence;

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency; and

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

The authority of the Ombudsman to conduct administrative investigations is beyond cavil. Republic Act No. 6770, otherwise known as The Ombudsman Act of 1989, intended to bestow on the Office of the Ombudsman full administrative disciplinary authority. The provisions of The Ombudsman Act of 1989 cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.[69]

Given its mandate, the Office of the Ombudsman can review the SALN of a public officer or employee if a complaint is filed against the latter, separate and independent of the review of the SALN by the public officer or employee's head of office. In the event that a complaint is filed against a public officer or employee concerning his SALN, the Office of the Ombudsman shall be obliged to comply, not with the review procedure for heads of office in the Code of Conduct and

[69] *Office of the Ombudsman v. Court of Appeals,* G.R. No. 160675, 16 June 2006, 491 SCRA 92, 116.

Ethical Standards for Public Officials and Employees, but with the procedure for administrative complaints as laid out in Rule III of the Rules of Procedure of the Office of the Ombudsman. Although in an administrative case before the Office of the Ombudsman, the public officer or employee is no longer afforded the opportunity for corrective action on his SALN, he is still allowed to file counter-affidavits and other evidence in his defense.[70]

In sum, this Court finds substantial evidence that petitioner and his wife have lawful sources of income other than petitioner's salary as a government official that enabled them to acquire several real properties in their names and travel abroad. It also rules that while petitioner may be guilty of negligence in accomplishing his SALN, he did not commit gross misconduct or dishonesty, for there is no substantial evidence of his intent to deceive the authorities and conceal his other sources of income or any of the real properties in his and his wife's names. Hence, the imposition of the penalty of removal or dismissal from public service and all other accessory penalties on petitioner is indeed too harsh. Nevertheless, petitioner failed to pay attention to the details and proper form of his SALN, resulting in the imprecision of the property descriptions and inaccuracy of certain information, for which suspension from office for a period of six months, without pay, would have been appropriate penalty.[71]

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[70] SEC. 5. Administrative Adjudication; How Conducted. – (a) If the complaint is docketed as an administrative case, the respondent shall be furnished with a copy of the affidavits and other evidences submitted by the complainant, and shall be ordered to file his counter-affidavits and other evidences in support of his defense, within ten (10) days from receipt thereof, together with proof of service of the same on the complainant who may file reply affidavits within ten (10) days from receipt of the counter-affidavits of the respondent.

[71] This Court, in *Cavite Crusade for Good Government v. Judge Cajigal,* 422 Phil. 1 (2001), found Judge Cajigal guilty of violation of Section 7, Republic Act No. 3019, and Section 8, Republic Act No. 6713 for failing to file his Statements of Assets and Liablities. However, considering his record in the judiciary and the fact that the Statements of Assets and Liabilities were later filed, this Court suspended him from office for a period of six months, without pay, ordered him to pay a fine in the amount of

However, this Court takes judicial notice that petitioner's birth date is on 22 March 1942, and that he had reached the compulsory retirement age of 65 for public officials on 22 March 2007, while the present Petition was still pending. The reversal by this Court of the judgment of dismissal rendered against petitioner also consequently lifts the accessory penalties imposed upon him, including the forfeiture of his retirement benefits. Therefore, petitioner is entitled to his retirement benefits, having served the government since 1966, or for a span of 41 years. And since petitioner is already compulsorily retired, he can no longer serve his suspension; yet, this Court can still order, in lieu of such penalty, the forfeiture of the amount equivalent to petitioner's salary for six months from his retirement benefits.

WHEREFORE, premises considered, the instant Petition for Review is hereby *GRANTED*. The Decision, dated 20 July 2005, and Resolution, dated 4 October 2005, of the Court of Appeals in CA-G.R. SP No. 87086, which affirmed the Decision, dated 28 June 2004, and Order, dated 12 October 2004, of the Office of the Ombudsman in OMB-C-A-03-0347-I, dismissing petitioner Salvador A. Pleyto from service for grave misconduct and dishonesty, are *REVERSED* and *SET ASIDE*. Petitioner Salvador A. Pleyto is found *GUILTY* of *NEGLIGENCE* in accomplishing his Statement of Assets and Liabilities for the year 2002, and as penalty therefor, it is *ORDERED* that the amount equivalent to his salary for six (6) months be forfeited from his retirement benefits.

SO ORDERED.

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

Corona, J., on official leave.

Twenty Thousand Pesos (₱20,000.00), with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

THIRD DIVISION

[G.R. No. 170172. November 23, 2007]

ARLYN* **PINEDA,** *petitioner, vs.* **JULIE C. ARCALAS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF APPEAL; NON-FILING OF APPELLANT'S BRIEF IS ONE OF THE EXPLICITLY RECOGNIZED GROUNDS OF DISMISSAL OF APPEALS UNDER SECTION 1 OF RULE 50 OF THE RULES OF COURT.—** The Court of Appeals properly dismissed the case for Pineda's failure to file an appellant's brief. This is in accordance with Section 7 of Rule 44 of the Rules of Court, which imposes upon the appellant the duty to file an appellant's brief in ordinary appealed cases before the Court of Appeals. In special cases appealed to the Court of Appeals, such as *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus* cases, a memorandum of appeal must be filed in place of an appellant's brief as provided in Section 10 of Rule 44 of the Rules of Court. Non-filing of an appellant's brief or a memorandum of appeal is one of the explicitly recognized grounds of dismissal of the appeal in Section 1 of Rule 50 of the Rules of Court. This Court provided the rationale for requiring an appellant's brief in *Enriquez v. Court of Appeals*: [T]he appellant's brief is mandatory for the assignment of errors is vital to the decision of the appeal on the merits. This is because on appeal only errors specifically assigned and properly argued in the brief or memorandum will be considered, except those affecting jurisdiction over the subject matter as well as plain and clerical errors. Otherwise stated, an appellate court has no power to resolve an unassigned error, which does not affect the court's jurisdiction over the subject matter, save for a plain or clerical error. Thus, in *Casim v. Flordeliza*, this Court affirmed the dismissal of an appeal, even when the filing of an appellant's brief was merely attended by delay and fell short of some of the requirements of the

* Spelled as "Analyn" in some records.

Rules of Court. The Court, in *Gonzales v. Gonzales*, reiterated that it is obligatory on the part of the appellant to submit or file a memorandum of appeal, and that failing such duty, the Rules of Court unmistakably command the dismissal of the appeal.

2. **ID.; ID.; ID.; NO PROPER JUSTIFICATION WAS PROVIDED BY PETITIONER FOR HER FAILURE TO FILE APPELLANT'S BRIEF; AN APPEALING PARTY MUST STRICTLY COMPLY WITH THE RULES OF COURT SINCE THE RIGHT TO APPEAL IS PURELY A STATUTORY RIGHT.—** In this case, Pineda did not even provide a proper justification for her failure to file her appellant's brief. It was merely alleged in her Motion for Reconsideration that her counsel overlooked the period within which to file the appellant's brief. Although Pineda filed no less than two motions for reconsideration, Pineda had not, at any time, made any attempt to file her appellant's brief. Nor did she supply any convincing argument to establish her right to the subject property for which she seeks vindication. Thus, this Court cannot reverse or fault the appellate court for duly acting in faithful compliance with the rules of procedure and established jurisprudence that it has been mandated to observe, nor turn a blind eye and tolerate the transgressions of these rules and doctrines. An appealing party must strictly comply with the requisites laid down in the Rules of Court since the right to appeal is a purely statutory right.

3. **ID.; ID.; ID.; NO BASIS FOR LENIENT APPLICATION OF PROCEDURAL RULES IN CASE AT BAR; TO DO SO WOULD RESULT IN A MANIFEST INJUSTICE AND ABUSE OF COURT PROCESSES.—** Even when this Court recognized the importance of deciding cases on the merits to better serve the ends of justice, it has stressed that the liberality in the application of rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice. The Court eyes with disfavor the unjustified delay in the termination of cases; once a judgment has become final, the winning party must not be deprived of the fruits of the verdict, through a mere subterfuge. The time spent by the judiciary, more so of this Court, in taking cognizance and resolving cases is not limitless and cannot be wasted on cases devoid of any right calling for

vindication and are merely reprehensible efforts to evade the operation of a decision that is final and executory. In the present case, there is a clear intent on the part of Pineda to delay the termination of the case, thereby depriving Arcalas of the fruits of a just verdict. The Quezon City RTC already quashed Pineda's third party claim over the subject property, yet she filed another adverse claim before the Office of the Register of Deeds of Laguna based on the same allegations and arguments previously settled by the Quezon City RTC. Arcalas, thus, had to file another case to cause the cancellation of Pineda's notice of adverse claim on TCT No. T-52319 before the Laguna RTC. After the Laguna RTC gave due course to Arcalas's petition, Pineda filed a dilatory appeal before the Court of Appeals, where she merely let the period for the filing of the appellant's brief lapse without exerting any effort to file one. The two motions for reconsideration and even the petition before this Court fail to present new issues. They raised the very same issues which had been consistently resolved by both the Quezon City RTC and the Laguna RTC in favor of Arcalas, upholding the superiority of her lien over that of Pineda's unregistered sale. Considering all these circumstances, there is no basis for the lenient application of procedural rules in this case; otherwise, it would result in a manifest injustice and the abuse of court processes.

4. ID.; ID.; ID.; RULE THAT NEGLIGENCE OF COUNSEL BINDS THE CLIENT IS APPLICABLE IN CASE AT BAR.— As a rule, the negligence or mistake of counsel binds the client. The only exception to this rule is when the counsel's negligence is so gross that a party is deprived of due process and, thus, loses life, honor or property on mere technicalities. The exception cannot apply to the present case, where Pineda is merely repeating arguments that were already heard and decided upon by courts of proper jurisdiction, and the absolute lack of merit of the petition is at once obvious.

5. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE; INSOFAR AS THIRD PERSONS ARE CONCERNED, WHAT VALIDLY TRANSFERS OR CONVEYS A PERSON'S INTEREST IN REAL PROPERTY IS THE REGISTRATION OF THE DEED; AS THE DEED OF SALE IN CASE AT BAR IS UNRECORDED, IT OPERATES ONLY AS A CONTRACT

BETWEEN THE PARTIES TO THE DEED.— Pineda avers that she is not a party to Civil Case No. Q-96-27884, heard before the Quezon City RTC, and that the levy on the *alias* writ of execution issued in Civil Case No. Q-96-27884 cannot affect her purchase of subject property. Such position runs contrary to law and jurisprudence. Sections 51 and 52 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, provide before a purchaser of land causes the registration of the transfer of the subject property in her favor, third persons, such as Arcalas, cannot be bound thereby. Insofar as third persons are concerned, what validly transfers or conveys a person's interest in real property is the registration of the deed. As the deed of sale was unrecorded, it operates merely as a contract between the parties, namely Victoria Tolentino as seller and Pineda as buyer, which may be enforceable against Victoria Tolentino through a separate and independent action. On the other hand, Arcalas's lien was registered and annotated at the back of the title of the subject property and accordingly amounted to a constructive notice thereof to all persons, whether or not party to the original case filed before the Quezon City RTC.

6. **ID.; ID.; ID.; A LEVY ON EXECUTION DULY REGISTERED TAKES PREFERENCE OVER PRIOR UNREGISTERED SALE; A REGISTERED LIEN IS ENTITLED TO PREFERENTIAL CONSIDERATION.—** The doctrine is well settled that a levy on execution duly registered takes preference over a prior unregistered sale. A registered lien is entitled to preferential consideration. In *Valdevieso v. Damalerio*, the Court held that a registered writ of attachment was a superior lien over that on an unregistered deed of sale and explained the reason therefor: This is so because an attachment is a proceeding in *rem*. It is against the particular property, enforceable against the whole world. The attaching creditor acquires a specific lien on the attached property which nothing can subsequently destroy except the very dissolution of the attachment or levy itself. Such a proceeding, in effect, means that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The lien continues until the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law. Thus,

in the registry, the attachment in favor of respondent appeared in the nature of a real lien when petitioner had his purchase recorded. The effect of the notation of said lien was to subject and subordinate the right of petitioner, as purchaser, to the lien. Petitioner acquired ownership of the land only from the date of the recording of his title in the register, and the right of ownership which he inscribed was not absolute but a limited right, subject to a prior registered lien of respondent, a right which is preferred and superior to that of petitioner.

7. **ID.; ID.; ID.; MERE POSSESSION OF THE SUBJECT PROPERTY BY PETITIONER, ABSENT ANY PROOF THAT RESPONDENT HAD KNOWLEDGE OF HER POSSESSION AND ADVERSE ClAIM OF OWNERSHIP, CANNOT BE CONSIDERED AS EQUIVALENT TO REGISTRATION.—** Pineda also contends that her possession of the subject property cures the defect caused by her failure to register the subject property in her name. This contention is inaccurate as well as inapplicable. True, that notwithstanding the preference given to a registered lien, this Court has made an exception in a case where a party has actual knowledge of the claimant's actual, open, and notorious possession of the disputed property at the time the levy or attachment was registered. In such situations, the actual notice and knowledge of a prior unregistered interest, not the mere possession of the disputed property, was held to be equivalent to registration. Lamentably, in this case, Pineda did not even allege, much less prove, that Arcalas had actual knowledge of her claim of ownership and possession of the property at the time the levy was registered. The records fail to show that Arcalas knew of Pineda's claim of ownership and possession prior to Pineda's filing of her third party claim before the Quezon City RTC. Hence, the mere possession of the subject property by Pineda, absent any proof that Arcalas had knowledge of her possession and adverse claim of ownership of the subject property, cannot be considered as equivalent to registration.

APPEARANCES OF COUNSEL

De Leon & De Leon Law Office for petitioner.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, assailing the Resolution[1] dated 25 January 2005, rendered by the Court of Appeals in C.A. G.R. CV No. 82872, dismissing the appeal filed by petitioner Arlyn Pineda (Pineda) for failure to file her appellant's brief. Under the assailed Resolution, the Order[2] promulgated by Branch 27 of the Regional Trial Court of Santa Cruz, Laguna (Laguna RTC), on 2 February 2004, granting the petition of respondent Julie Arcalas (Arcalas) for the cancellation of the Affidavit of Adverse Claim annotated at the back of Transfer Certificate of Title (TCT) No. T-52319 under Entry No. 324094, became final.

The subject property consists of three parcels of land, which are described as Lot No. 3762-D with an area of 42,958 square meters, Lot No. 3762-E with an area of 4,436 square meters, and Lot No. 3762-F with an area of 2,606 square meters, the total area of which consists of 50,000 square meters. These three lots are portions of Lot No. 3762, registered in the name of Spouses Mauro Lateo and Encarnacion Evangelista (spouses Lateo) under TCT No. T-52319, with a total area of 74,708 square meters, located at Barrios Duhat and Labuin, Santa Cruz, Laguna. A certain Victoria Tolentino bought the said property from the Spouses Lateo. Sometime later, Civil Case No. Q-96-27884, for Sum of Money, was instituted by Arcalas against Victoria Tolentino. This case stemmed from an indebtedness evidenced by a promissory note and four post-dated checks later dishonored, which Victoria Tolentino owed Arcalas.[3]

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Salvador J. Valdez, Jr., and Vicente Q. Roxas, concurring. *Rollo*, pp. 9-10.

[2] *Id*. at 114-116.

[3] Records, pp. 100-101.

On 9 September 1997, Branch 93 of the Quezon City RTC, rendered judgment in favor of Arcalas and against Victoria Tolentino.[4]

On 15 December 1997, Pineda bought the subject property from Victoria L. Tolentino.[5] Pineda alleged that upon payment of the purchase price, she took possession of the subject property by allowing a tenant, Rodrigo Bautista to cultivate the same. However, Pineda failed to register the subject property under her name.[6]

To execute the judgment, the Quezon City RTC levied upon the subject property and the Notice of Levy on *Alias* Writ of Execution dated 12 January 1999 was annotated as Entry No. 315074, in relation to Entry No. 319362, at the back of TCT No. T-52319.[7]

Asserting ownership of the subject property, Pineda filed with the Deputy Sheriff of the Quezon City RTC an Affidavit of Title and Third Party Claim. Arcalas filed a motion to set aside Pineda's Affidavit of Title and Third Party Claim, which on 3 November 1999, the Quezon City RTC granted, to wit:

> [Arcalas] showed that her levies on the properties were duly registered while the alleged Deed of Absolute Sale between the defendant Victoria L. Tolentino and Analyn G. Pineda was not. The levies being superior to the sale claimed by Ms. Pineda, the court rules to quash and set aside her Affidavit of Title and Third Party Claim.
>
> ACCORDINGLY, the motion is granted. The Affidavit of Title and Third-Party Claim is set aside to allow completion of execution proceedings.[8]

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[4] *Id.* at 104-108.

[5] *Rollo,* pp. 37-40.

[6] Records, p.114.

[7] *Rollo*, pp. 34-36.

[8] Records, p. 12.

On 2 February 2000, after the finality[9] of the Order of the Quezon City RTC quashing Pineda's third-party claim, Pineda filed with the Office of the Register of Deeds of Laguna another Affidavit of Third Party Claim and caused the inscription of a notice of adverse claim at the back of TCT No. T-52319 under Entry No. 324094.[10]

On 3 February 2000, Arcalas and Leonardo Byron P. Perez, Jr. purchased Lot No. 3762 at an auction sale conducted by the Deputy Sheriff of Quezon City. The sale was evidenced by a Sheriff's Certificate of Sale issued on the same day and registered as Entry No. 324225 at the back of TCT No. T-52319.[11]

Arcalas then filed an action for the cancellation of the entry of Pineda's adverse claim before the Laguna RTC. The Laguna RTC ordered the cancellation of the Notice of Adverse Claim annotated as Entry No. 324094 at the back of TCT No. 52319 on the ground of *res judicata*:

> The court order emanating from Branch 91 of the Regional Trial Court of Quezon City having become final and executory and no relief therefrom having been filed by [Pineda], the said order granting the [Arcalas's] "Motion to Set Aside Affidavit of Title and 3rd Party Claim" should be given due course and the corresponding annotation at the back of TCT No. T-52319 as Entry No. 324094 dated February 2, 2000 should be expunged accordingly.[12]

Pineda appealed the Order of the Laguna RTC before the Court of Appeals under Rule 44 of the Rules of Court. In a Resolution dated 25 January 2005,[13] the appellate court dismissed

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[9] *Rollo,* p. 115. It was stated in the Order of the Laguna RTC, dated 2 February 2004 that the Order of the Quezon City RTC had already attained finality when Pineda's Affidavit of Third Party Claim was filed with the Register of Deeds of Laguna. Such findings have remained uncontroverted by Pineda.

[10] *Rollo*, pp. 36 and 115.

[11] Records, pp. 9-10.

[12] *Rollo,* p. 116.

[13] *Id.* at 9-10.

the appeal and considered it abandoned when Pineda failed to file her appellant's brief.

Pineda filed a Motion for Reconsideration, wherein it was plainly stated that Pineda's counsel overlooked the period within which he should file the appellant's brief.[14] The said motion was denied in a Resolution dated 26 May 2005. Pineda filed a Second Motion for Reconsideration, which was denied on 7 October 2005.[15] No appellant's brief was attached to either motion for reconsideration.

Hence, the present Petition raising the following issues:[16]

I.

WHETHER THE LEVY ON *ALIAS* WRIT OF EXECUTION ISSUED BY THE REGIONAL TRIAL COURT OF QUEZON CITY IN CIVIL CASE NO. Q-96-27884 MAY EXEMPT THE PORTION BOUGHT BY [PINEDA] FROM VICTORIA TOLENTINO; [and]

II.

WHETHER THE POSSESSION OF [PINEDA] OF THE 5 HECTARES PORTION OF LOT 3762 IS ALREADY EQUIVALENT TO A TITLE DESPITE THE ABSENCE OF REGISTRATION.

This petition must be dismissed.

The Court of Appeals properly dismissed the case for Pineda's failure to file an appellant's brief. This is in accordance with Section 7 of Rule 44 of the Rules of Court, which imposes upon the appellant the duty to file an appellant's brief in ordinary appealed cases before the Court of Appeals, thus:

Section 7. Appellant's brief.—It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

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[14] *Id*. at 22-23.

[15] *Id*. at 18-19.

[16] *Id*. at 194.

In special cases appealed to the Court of Appeals, such as *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus* cases, a memorandum of appeal must be filed in place of an appellant's brief as provided in Section 10 of Rule 44 of the Rules of Court

Section 10. Time of filing memoranda in special cases.—In *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus* cases, the parties shall file, in lieu of briefs, their respective memoranda within a non-extendible period of thirty (30) days from receipt of the notice issued by the clerk that all the evidence, oral and documentary, is already attached to the record.

The failure of the appellant to file his memorandum within the period therefor may be a ground for dismissal of the appeal.

Non-filing of an appellant's brief or a memorandum of appeal is one of the explicitly recognized grounds of dismissal of the appeal in Section 1 of Rule 50 of the Rules of Court:

Section 1. *Grounds for dismissal of appeal*. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

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(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

This Court provided the rationale for requiring an appellant's brief in *Enriquez v. Court of Appeals:*[17]

[T]he appellant's brief is mandatory for the assignment of errors is vital to the decision of the appeal on the merits. This is because on appeal only errors specifically assigned and properly argued in the brief or memorandum will be considered, except those affecting jurisdiction over the subject matter as well as plain and clerical errors. Otherwise stated, an appellate court has no power to resolve an unassigned error, which does not affect the court's jurisdiction over the subject matter, save for a plain or clerical error.

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[17] 444 Phil. 419, 429 (2003).

Thus, in *Casim v. Flordeliza*,[18] this Court affirmed the dismissal of an appeal, even when the filing of an appellant's brief was merely attended by delay and fell short of some of the requirements of the Rules of Court. The Court, in *Gonzales v. Gonzales*,[19] reiterated that it is obligatory on the part of the appellant to submit or file a memorandum of appeal, and that failing such duty, the Rules of Court unmistakably command the dismissal of the appeal.

In this case, Pineda did not even provide a proper justification for her failure to file her appellant's brief. It was merely alleged in her Motion for Reconsideration that her counsel overlooked the period within which to file the appellant's brief. Although Pineda filed no less than two motions for reconsideration, Pineda had not, at any time, made any attempt to file her appellant's brief. Nor did she supply any convincing argument to establish her right to the subject property for which she seeks vindication.

Thus, this Court cannot reverse or fault the appellate court for duly acting in faithful compliance with the rules of procedure and established jurisprudence that it has been mandated to observe, nor turn a blind eye and tolerate the transgressions of these rules and doctrines.[20] An appealing party must strictly comply with the requisites laid down in the Rules of Court since the right to appeal is a purely statutory right.[21]

Even when this Court recognized the importance of deciding cases on the merits to better serve the ends of justice, it has stressed that the liberality in the application of rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice.[22] The Court eyes with disfavor the unjustified delay in the termination of cases; once a judgment has become final, the winning party must not be deprived of the fruits of the verdict,

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[18] 425 Phil. 210 (2002).

[19] G.R. No. 151376, 22 February 2006, 483 SCRA 57, 68.

[20] *Casim v. Flordeliza*, *supra* note 18 at 219.

[21] *Enriquez v. Court of Appeals*, *supra* note 17 at 249.

[22] *El Reyno Homes, Inc. v. Ong*, 445 Phil. 610, 618 (2003).

through a mere subterfuge. The time spent by the judiciary, more so of this Court, in taking cognizance and resolving cases is not limitless and cannot be wasted on cases devoid of any right calling for vindication and are merely reprehensible efforts to evade the operation of a decision that is final and executory.[23]

In the present case, there is a clear intent on the part of Pineda to delay the termination of the case, thereby depriving Arcalas of the fruits of a just verdict. The Quezon City RTC already quashed Pineda's third party claim over the subject property, yet she filed another adverse claim before the Office of the Register of Deeds of Laguna based on the same allegations and arguments previously settled by the Quezon City RTC. Arcalas, thus, had to file another case to cause the cancellation of Pineda's notice of adverse claim on TCT No. T-52319 before the Laguna RTC. After the Laguna RTC gave due course to Arcalas's petition, Pineda filed a dilatory appeal before the Court of Appeals, where she merely let the period for the filing of the appellant's brief lapse without exerting any effort to file one. The two motions for reconsideration and even the petition before this Court fail to present new issues. They raised the very same issues which had been consistently resolved by both the Quezon City RTC and the Laguna RTC in favor of Arcalas, upholding the superiority of her lien over that of Pineda's unregistered sale. Considering all these circumstances, there is no basis for the lenient application of procedural rules in this case; otherwise, it would result in a manifest injustice and the abuse of court processes.

As a rule, the negligence or mistake of counsel binds the client.[24] The only exception to this rule is when the counsel's negligence is so gross that a party is deprived of due process and, thus, loses life, honor or property on mere technicalities.[25] The exception cannot apply to the present case, where Pineda

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[23] *Gonzales v. Gonzales, supra* note 19 at 70-71.

[24] *Five Star Bus Co., Inc. v. Court of Appeals*, 328 Phil. 426, 434 (1996) and *Dela Cruz v. Sison*, G.R. No. 142464, 26 September 2005, 471 SCRA 35, 42-43.

[25] *Ramos v. Atty. Dajoyag, Jr.*, 428 Phil. 267, 280 and *Dela Cruz v. Sison*, *id*.

is merely repeating arguments that were already heard and decided upon by courts of proper jurisdiction, and the absolute lack of merit of the petition is at once obvious.

Pineda avers that she is not a party to Civil Case No. Q-96-27884, heard before the Quezon City RTC, and that the levy on the *alias* writ of execution issued in Civil Case No. Q-96-27884 cannot affect her purchase of subject property. Such position runs contrary to law and jurisprudence.

Sections 51 and 52 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, provide that:

> Section 51. *Conveyance and other dealings by registered owner.*—An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. **But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.**
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> **The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned**, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or the city where the land lies. (Emphasis provided.)
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> Section 52. *Constructive notice upon registration.*—Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be **constructive notice to all persons** from the time of such registering, filing or entering. (Emphasis provided.)

It is clear from these provisions that before a purchaser of land causes the registration of the transfer of the subject property in her favor, third persons, such as Arcalas, cannot be bound thereby. Insofar as third persons are concerned, what validly transfers or conveys a person's interest in real property is the

registration of the deed. As the deed of sale was unrecorded, it operates merely as a contract between the parties, namely Victoria Tolentino as seller and Pineda as buyer, which may be enforceable against Victoria Tolentino through a separate and independent action. On the other hand, Arcalas's lien was registered and annotated at the back of the title of the subject property and accordingly amounted to a constructive notice thereof to all persons, whether or not party to the original case filed before the Quezon City RTC.

The doctrine is well settled that a levy on execution duly registered takes preference over a prior unregistered sale.[26] A registered lien is entitled to preferential consideration.[27] In *Valdevieso v. Damalerio*,[28] the Court held that a registered writ of attachment was a superior lien over that on an unregistered deed of sale and explained the reason therefor:

> This is so because an attachment is a proceeding in *rem*. It is against the particular property, enforceable against the whole world. The attaching creditor acquires a specific lien on the attached property which nothing can subsequently destroy except the very dissolution of the attachment or levy itself. Such a proceeding, in effect, means that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The lien continues until the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law.
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> Thus, in the registry, the attachment in favor of respondent appeared in the nature of a real lien when petitioner had his purchase recorded. The effect of the notation of said lien was to subject and subordinate the right of petitioner, as purchaser, to the lien. Petitioner acquired ownership of the land only from the date of the recording of his title in the register, and the right of ownership which he inscribed was not absolute but a limited right, subject to a prior registered lien of respondent, a right which is preferred and superior to that of petitioner.

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[26] *Defensor v. Brillo*, 98 Phil. 427, 429 (1956); *Capistrano v. Philippine National Bank*, 101 Phil. 1117, 1120 (1957); and *Du v. Stronghold Insurance Co., Inc.*, G.R. No. 156580, 14 June 2004, 432 SCRA 43, 48.

[27] *Philippine National Bank v. Javellana*, 92 Phil. 525, 530 (1953); and *Lavides v. Pre*, 419 Phil. 665, 672 (2001).

[28] G.R. No. 133303, 17 February 2005, 451 SCRA 664, 671.

Pineda also contends that her possession of the subject property cures the defect caused by her failure to register the subject property in her name. This contention is inaccurate as well as inapplicable.

True, that notwithstanding the preference given to a registered lien, this Court has made an exception in a case where a party has actual knowledge of the claimant's actual, open, and notorious possession of the disputed property at the time the levy or attachment was registered. In such situations, the actual notice and knowledge of a prior unregistered interest, not the mere possession of the disputed property, was held to be equivalent to registration.[29]

Lamentably, in this case, Pineda did not even allege, much less prove, that Arcalas had actual knowledge of her claim of ownership and possession of the property at the time the levy was registered. The records fail to show that Arcalas knew of Pineda's claim of ownership and possession prior to Pineda's filing of her third party claim before the Quezon City RTC. Hence, the mere possession of the subject property by Pineda, absent any proof that Arcalas had knowledge of her possession and adverse claim of ownership of the subject property, cannot be considered as equivalent to registration.

IN VIEW OF THE FOREGOING, the instant Petition is *DISMISSED* and the assailed Decision of the Court of Appeals in C.A. G.R. CV No. 82872, promulgated on 25 January 2005, is *AFFIRMED*. The Order of Branch 27 of the Regional Trial Court of Sta. Cruz, Laguna, directing the Register of Deeds of Laguna to cancel the Notice of Adverse Claim inscribed at the back of TCT No. T-52319 as Entry No. 324094 is *SUSTAINED*. No costs.

SO ORDERED.

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

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[29] *Fernandez v. Court of Appeals*, G.R. No. 83141, 21 September 1990, 189 SCRA 780, 789.

SECOND DIVISION

[G.R. No. 170180. November 23, 2007]

ARSENIO VERGARA VALDEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; NO CIRCUMSTANCE OBTAINING IN CASE AT BAR TO JUSTIFY A WARRANTLESS ARREST; THAT PETITIONER PURPORTEDLY ATTEMPTED TO RUN AWAY AS THE *TANOD* APPROACHED HIM IS IRRELEVANT AND CANNOT BY ITSELF BE CONSTRUED AS ADEQUATE TO CHARGE THE *TANOD* WITH PERSONAL KNOWLEDGE THAT PETITIONER HAS JUST ENGAGED IN, WAS ACTUALLY ENGAGING IN OR WAS ATTEMPTING TO ENGAGE IN A CRIMINAL ACTIVITY.—** Section 5, Rule 113 of the Rules on Criminal Procedure provides the only occasions on which a person may be arrested without a warrant. It is obvious that based on the testimonies of the arresting *barangay tanod*, not one of these circumstances was obtaining at the time petitioner was arrested. By their own admission, petitioner was not committing an offense at the time he alighted from the bus, nor did he appear to be then committing an offense. The *tanod* did not have probable cause either to justify petitioner's warrantless arrest. For the exception in Section 5(a), Rule 113 to operate, this Court has ruled that two (2) elements must be present: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. Here, petitioner's act of looking around after getting off the bus was but natural as he was finding his way to his destination. That he purportedly attempted to run away as the *tanod* approached him is irrelevant and cannot by itself be construed as adequate to charge the *tanod* with personal knowledge that petitioner had just engaged in, was actually engaging in or was attempting to engage in criminal activity. More importantly, petitioner testified that he did not

run away but in fact spoke with the *barangay tanod* when they approached him.

2. **ID.; ID.; ID.; FLIGHT *PER SE* IS NOT SYNONYMOUS WITH GUILT AND MUST NOT ALWAYS BE ATTRIBUTED TO ONE'S CONSCIOUSNESS OF GUILT.—** Even taking the prosecution's version generally as the truth, in line with our assumption from the start, the conclusion will not be any different. It is not unreasonable to expect that petitioner, walking the street at night, after being closely observed and then later tailed by three unknown persons, would attempt to flee at their approach. Flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. Of persuasion was the Michigan Supreme Court when it ruled in *People v. Shabaz* that "[f]light alone is not a reliable indicator of guilt without other circumstances because flight alone is inherently ambiguous." Alone, and under the circumstances of this case, petitioner's flight lends itself just as easily to an innocent explanation as it does to a nefarious one.

3. **ID.; ID.; ID.; THE SUPPOSED ACTS OF PETITIONER, EVEN ASSUMING THAT THEY APPEARED DUBIOUS, CANNOT BE VIEWED AS SUFFICIENT TO INCITE SUSPICION OF CRIMINAL ACTIVITY ENOUGH TO VALIDATE HIS WARRANTLESS ARREST.—** We pointed out in *People v. Tudtud*, "[t]he phrase 'in his presence' therein, connot[es] penal knowledge on the part of the arresting officer. The right of the accused to be secure against any unreasonable searches on and seizure of his own body and any deprivation of his liberty being a most basic and fundamental one, the statute or rule that allows exception to the requirement of a warrant of arrest is strictly construed. Its application cannot be extended beyond the cases specifically provided by law." Indeed, the supposed acts of petitioner, even assuming that they appeared dubious, cannot be viewed as sufficient to incite suspicion of criminal activity enough to validate his warrantless arrest. If at all, the search most permissible for the *tanod* to conduct under the prevailing backdrop of the case was a stop-and-frisk to allay any suspicion they have been harboring based on petitioner's behavior. However, a stop-and-frisk situation, following *Terry v. Ohio*, must precede a warrantless arrest, be limited to the person's outer clothing, and should be grounded

upon a genuine reason, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him.

4. **ID.; ID.; ID.; IT CANNOT BE REASONABLY ARGUED THAT THE WARRANTLESS SEARCH CONDUCTED ON PETITIONER WAS INCIDENTAL TO A LAWFUL ARREST BECAUSE WHEN PETITIONER WAS ARRESTED WITHOUT A WARRANT, HE WAS NEITHER CAUGHT IN *FLAGRANTE DELICTO* COMMITTING A CRIME NOR WAS THE ARREST EFFECTED IN HOT PURSUIT.—** Petitioner's waiver of his right to question his arrest notwithstanding, the marijuana leaves allegedly taken during the search cannot be admitted in evidence against him as they were seized during a warrantless search which was not lawful. As we pronounced in *People v. Bacla-an* — **A waiver of an illegal warrantless arrest does not also mean a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.** The following searches and seizures are deemed permissible by jurisprudence: (1) search of moving vehicles (2) seizure in plain view (3) customs searches (4) waiver or consent searches (5) stop and frisk situations (Terry Search) and (6) search incidental to a lawful arrest. The last includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the Rules of Court recognize permissible warrantless arrests, to wit: (1) arrests in *flagrante delicto*, (2) arrests effected in hot pursuit, and, (3) arrests of escaped prisoners. When petitioner was arrested without a warrant, he was neither caught in *flagrante delicto* committing a crime nor was the arrest effected in hot pursuit. Verily, it cannot therefore be reasonably argued that the warrantless search conducted on petitioner was incidental to a lawful arrest.

5. **ID.; ID.; ID.; PETITIONER'S LACK OF OBJECTION TO THE SEARCH AND SEIZURE IS NOT TANTAMOUNT TO A WAIVER OF HIS CONSTITUTIONAL RIGHT OR A VOLUNTARY SUBMISSION TO THE WARRANTLESS SEARCH AND SEIZURE; THE IMPLIED ACQUIESCENCE CAN BE TAKEN AS A MERE PASSIVE CONFORMITY GIVEN UNDER COERCIVE OR INTIMIDATING CIRCUMSTANCE AND IS CONSIDERED NO CONSENT AT ALL WITHIN THE CONTEMPLATION OF THE**

CONSTITUTIONAL GUARANTEE.— In the case at bar, following the theory of the prosecution— albeit based on conflicting testimonies on when petitioner's bag was actually opened, it is apparent that petitioner was already under the coercive control of the public officials who had custody of him when the search of his bag was demanded. Moreover, the prosecution failed to prove any specific statement as to how the consent was asked and how it was given, nor the specific words spoken by petitioner indicating his alleged "consent." Even granting that petitioner admitted to opening his bag when Ordoño asked to see its contents, his implied acquiescence, if at all, could not have been more than mere passive conformity given under coercive or intimidating circumstances and hence, is considered no consent at all within the contemplation of the constitutional guarantee. As a result, petitioner's lack of objection to the search and seizure is not tantamount to a waiver of his constitutional right or a voluntary submission to the warrantless search and seizure.

6. **CRIMINAL LAW; DANGEROUS DRUGS ACTS; THERE CAN BE NO CRIME OF ILLEGAL POSSESSION OF A PROHIBITED DRUG WHEN NAGGING DOUBTS PERSIST ON WHETHER THE ITEM CONFISCATED WAS THE SAME SPECIMEN SUBMITTED AND ESTABLISHED TO BE THE PROHIBITED DRUG.—** The inadmissibility in evidence of the seized marijuana leaves for being the fruit of an unlawful search is not the lone cause that militates against the case of the prosecution. We likewise find that it has failed to convincingly establish the identity of the marijuana leaves purportedly taken from petitioner's bag. In all prosecutions for violation of the Dangerous Drugs Act, the following elements must concur: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs, it being the very *corpus delicti* of the crime. In a line of cases, we have ruled as fatal to the prosecution's case its failure to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused. There can be no crime of illegal possession of a prohibited drug when nagging doubts persist on whether the item confiscated was the same specimen examined and established to be the prohibited drug.

7. **ID.; ID.; THE PROSECUTION NEGLECTED TO ESTABLISH THE CRUCIAL LINK IN THE CHAIN OF CUSTODY OF THE SEIZED MARIJUANA LEAVES FROM THE TIME THEY WERE FIRST ALLEGEDLY DISCOVERED UNTIL THEY WERE BROUGHT FOR EXAMINATION BY THE FORENSIC CHEMIST.—** In the case at bar, after the arrest of petitioner by the *barangay tanod,* the records only show that he was taken to the house of the *barangay* captain and thereafter to the police station. The Joint Affidavit executed by the *tanod* merely states that they confiscated the marijuana leaves which they brought to the police station together with petitioner. Likewise, the Receipt issued by the Aringay Police Station merely acknowledged receipt of the suspected drugs supposedly confiscated from petitioner. Not only did the three *tanod* contradict each other on the matter of when petitioner's bag was opened, they also gave conflicting testimony on who actually opened the same. The prosecution, despite these material inconsistencies, neglected to explain the discrepancies. Even more damning to its cause was the admission by Laya, the forensic chemist, that he did not know how the specimen was taken from petitioner, how it reached the police authorities or whose marking was on the cellophane wrapping of the marijuana. The non-presentation, without justifiable reason, of the police officers who conducted the inquest proceedings and marked the seized drugs, if such was the case, is fatal to the case. Plainly, the prosecution neglected to establish the crucial link in the chain of custody of the seized marijuana leaves from the time they were first allegedly discovered until they were brought for examination by Laya.

8. **ID.; ID.; THE GUARANTEE OF THE INTEGRITY OF THE EVIDENCE TO BE USED AGAINST AN ACCUSED GOES TO THE VERY HEART OF HIS FUNDAMENTAL RIGHT; EACH PERSON WHO TAKES POSSESSION OF THE SPECIMEN IS DUTY-BOUND TO DETAIL HOW IT WAS CARED FOR, SAFEGUARDED AND PRESERVED WHILE IN HIS OR HER CONTROL TO PREVENT ALTERATION OR REPLACEMENT WHILE IN CUSTODY.—** The Court of Appeals found as irrelevant the failure of the prosecution to establish the chain of custody over the seized marijuana as such "[f]inds prominence only when the existence of the seized prohibited drug is denied." We cannot agree. To buttress its

ratiocination, the appellate court narrowed on petitioner's testimony that the marijuana was taken from his bag, without taking the statement in full context. Contrary to the Court of Appeals' findings, although petitioner testified that the marijuana was taken from his bag, he consistently denied ownership thereof. Furthermore, it defies logic to require a denial of ownership of the seized drugs before the principle of chain of custody comes into play. The onus of proving culpability in criminal indictment falls upon the State. In conjunction with this, law enforcers and public officers alike have the corollary duty to preserve the chain of custody over the seized drugs. The chain of evidence is constructed by proper exhibit handling, storage, labeling and recording, and must exist from the time the evidence is found until the time it is offered in evidence. Each person who takes possession of the specimen is duty-bound to detail how it was cared for, safeguarded and preserved while in his or her control to prevent alteration or replacement while in custody. This guarantee of the integrity of the evidence to be used against an accused goes to the very heart of his fundamental rights.

9. **REMEDIAL LAW; EVIDENCE; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY CANNOT BY ITSELF OVERCOME THE PRESUMPTION OF INNOCENCE NOR CONSTITUTE PROOF BEYOND REASONABLE DOUBT.—** The presumption of regularity in the performance of official duty invoked by the prosecution and relied upon by the courts *a quo* cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt. Among the constitutional rights enjoyed by an accused, the most primordial yet often disregarded is the presumption of innocence. This elementary principle accords every accused the right to be presumed innocent until the contrary is proven beyond reasonable doubt. Thus, the burden of proving the guilt of the accused rests upon the prosecution. Concededly, the evidence of the defense is weak and uncorroborated. Nevertheless, this "[c]annot be used to advance the cause of the prosecution as its evidence must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense." Moreover, where the circumstances are shown to yield two or more inferences, one inconsistent with the presumption of innocence and the other compatible

with the finding of guilt, the court must acquit the accused for the reason that the evidence does not satisfy the test of moral certainty and is inadequate to support a judgment of conviction.

10\. **ID.; ID.; THE TOTALITY OF THE EVIDENCE PRESENTED UTTERLY FAILS TO OVERCOME THE PRESUMPTION OF INNOCENCE WHICH PETITIONER ENJOYS.—** Drug addiction has been invariably denounced as "an especially vicious crime," and "one of the most pernicious evils that has ever crept into our society," for those who become addicted to it "not only slide into the ranks of the living dead, what is worse, they become a grave menace to the safety of law-abiding members of society," whereas "peddlers of drugs are actually agents of destruction." Indeed, the havoc created by the ruinous effects of prohibited drugs on the moral fiber of society cannot be underscored enough. However, in the rightfully vigorous campaign of the government to eradicate the hazards of drug use and drug trafficking, it cannot be permitted to run roughshod over an accused's right to be presumed innocent until proven to the contrary and neither can it shirk from its corollary obligation to establish such guilt beyond reasonable doubt. In this case, the totality of the evidence presented utterly fails to overcome the presumption of innocence which petitioner enjoys. The failure of the prosecution to prove all the elements of the offense beyond reasonable doubt must perforce result in petitioner's exoneration from criminal liability.

11\. **ID.; ID.; COURTS SHOULD EXERCISE THE HIGHEST DEGREE OF DILIGENCE AND PRUDENCE IN DELIBERATING UPON THE GUILT OF ACCUSED PERSONS BROUGHT BEFORE THEM; POLICE OFFICERS AND PUBLIC OFFICIALS ALIKE ARE ADMONISHED TO PERFORM THEIR MANDATED DUTIES WITH COMMITMENT TO THE HIGHEST DEGREE OF DILIGENCE, RIGHTEOUSNESS AND RESPECT FOR LAW.—** A final word. We find it fitting to take this occasion to remind the courts to exercise the highest degree of diligence and prudence in deliberating upon the guilt of accused persons brought before them, especially in light of the fundamental rights at stake. Here, we note that the courts *a quo* neglected to give more serious consideration to certain material issues in the determination of the merits of the case. We are not oblivious to the fact that in some instances, law enforcers resort to the practice of planting evidence to extract information or

even harass civilians. Accordingly, courts are duty-bound to be "[e]xtra vigilant in trying drug cases lest an innocent person be made to suffer the unusually severe penalties for drug offenses." In the same vein, let this serve as an admonition to police officers and public officials alike to perform their mandated duties with commitment to the highest degree of diligence, righteousness and respect for the law.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TINGA, *J.*:

The sacred right against an arrest, search or seizure without valid warrant is not only ancient. It is also zealously safeguarded. The Constitution guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.[1] Any evidence obtained in violation of said right shall be inadmissible for any purpose in any proceeding. Indeed, while the power to search and seize may at times be necessary to the public welfare, still it must be exercised and the law implemented without contravening the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.[2]

On appeal is the Decision[3] of the Court of Appeals dated 28 July 2005, affirming the Judgment[4] of the Regional Trial Court (RTC), Branch 31, Agoo, La Union dated 31 March 2004 finding petitioner Arsenio Vergara Valdez guilty beyond reasonable

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[1] 1987 CONST., Art. III, Sec. 2.

[2] *People v. Aruta*, 351 Phil. 868 (1998).

[3] *Rollo*, pp. 76-89. Penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa.

[4] *Id*. at pp. 28-45. Penned by Executive Judge Clifton U. Ganaya.

doubt of violating Section 11 of Republic Act No. 9165 (R.A. No. 9165)[5] and sentencing him to suffer the penalty of imprisonment ranging from eight (8) years and one (1) day of *prision mayor* medium as minimum to fifteen (15) years of *reclusion temporal* medium as maximum and ordering him to pay a fine of ₱350,000.00.[6]

I.

On 26 June 2003, petitioner was charged with violation of Section 11, par. 2(2) of R.A. No. 9165 in an Information[7] which reads:

That on or about the 17th day of March 2003, in the Municipality of Aringay, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody dried marijuana leaves wrapped in a cellophane and newspaper page, weighing more or less twenty-five (25) grams, without first securing the necessary permit, license or prescription from the proper government agency.

CONTRARY TO LAW.[8]

On arraignment, petitioner pleaded not guilty. Thereafter, trial on the merits ensued with the prosecution presenting the three (3) *barangay tanods* of San Benito Norte, Aringay, La Union namely, Rogelio Bautista (Bautista), Nestor Aratas (Aratas) and Eduardo Ordoño (Ordoño), who arrested petitioner.

Bautista testified that at around 8:00 to 8:30 p.m. of 17 March 2003, he was conducting the routine patrol along the National Highway in Barangay San Benito Norte, Aringay, La Union together with Aratas and Ordoño when they noticed petitioner, lugging a bag, alight from a mini-bus. The *tanods* observed

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[5] Entitled Dangerous Drugs Act of 2002.

[6] *Id.* at 44-45.

[7] Records, p. 1.

[8] *Id.*

that petitioner, who appeared suspicious to them, seemed to be looking for something. They thus approached him but the latter purportedly attempted to run away. They chased him, put him under arrest and thereafter brought him to the house of Barangay Captain Orencio Mercado (Mercado) where he, as averred by Bautista, was ordered by Mercado to open his bag. Petitioner's bag allegedly contained a pair of denim pants, eighteen pieces of eggplant and dried marijuana leaves wrapped in newspaper and cellophane. It was then that petitioner was taken to the police station for further investigation.[9]

Aratas and Ordoño corroborated Bautista's testimony on most material points. On cross-examination, however, Aratas admitted that he himself brought out the contents of petitioner's bag before petitioner was taken to the house of Mercado.[10] Nonetheless, he claimed that at Mercado's house, it was petitioner himself who brought out the contents of his bag upon orders from Mercado. For his part, Ordoño testified that it was he who was ordered by Mercado to open petitioner's bag and that it was then that they saw the purported contents thereof.[11]

The prosecution likewise presented Police Inspector Valeriano Laya II (Laya), the forensic chemist who conducted the examination of the marijuana allegedly confiscated from petitioner. Laya maintained that the specimen submitted to him for analysis, a sachet of the substance weighing 23.10 grams and contained in a plastic bag, tested positive of marijuana. He disclosed on cross-examination, however, that he had knowledge neither of how the marijuana was taken from petitioner nor of how the said substance reached the police officers. Moreover, he could not identify whose marking was on the inside of the cellophane wrapping the marijuana leaves.[12]

The charges were denied by petitioner. As the defense's sole witness, he testified that at around 8:30 p.m. on 17 March

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[9] TSN, 24 February 2004, pp. 3-5, 7, 11-12. See also Records, p. 2.

[10] TSN, 3 March 2004, p. 11.

[11] *Id*. at 16.

[12] TSN, 16 March 2004, pp. 4-7.

2003, he arrived in Aringay from his place in Curro-oy, Santol, La Union. After alighting from the bus, petitioner claimed that he went to the house of a friend to drink water and then proceeded to walk to his brother's house. As he was walking, prosecution witness Ordoño, a cousin of his brother's wife, allegedly approached him and asked where he was going. Petitioner replied that he was going to his brother's house. Ordoño then purportedly requested to see the contents of his bag and appellant acceded. It was at this point that Bautista and Aratas joined them. After inspecting all the contents of his bag, petitioner testified that he was restrained by the *tanod* and taken to the house of Mercado. It was Aratas who carried the bag until they reached their destination.[13]

Petitioner maintained that at Mercado's house, his bag was opened by the *tanod* and Mercado himself. They took out an item wrapped in newspaper, which later turned out to be marijuana leaves. Petitioner denied ownership thereof. He claimed to have been threatened with imprisonment by his arrestors if he did not give the prohibited drugs to someone from the east in order for them to apprehend such person. As petitioner declined, he was brought to the police station and charged with the instant offense. Although petitioner divulged that it was he who opened and took out the contents of his bag at his friend's house, he averred that it was one of the *tanod* who did so at Mercado's house and that it was only there that they saw the marijuana for the first time.[14]

Finding that the prosecution had proven petitioner's guilt beyond reasonable doubt, the RTC rendered judgment against him and sentenced him to suffer indeterminate imprisonment ranging from eight (8) years and one (1) day of *prision mayor* medium as minimum to fifteen (15) years of *reclusion temporal* medium as maximum and ordered him to pay a fine of ₱350,000.00.[15]

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[13] TSN, 17 March 2004, pp. 3-9.

[14] *Id.* at 10-12, 16-17.

[15] *Rollo,* pp. 44-45.

Aggrieved, petitioner appealed the decision of the RTC to the Court of Appeals. On 28 July 2005, the appellate court affirmed the challenged decision. The Court of Appeals, finding no cogent reason to overturn the presumption of regularity in favor of the *barangay tanod* in the absence of evidence of ill-motive on their part, agreed with the trial court that there was probable cause to arrest petitioner. It observed further:

> That the prosecution failed to establish the chain of custody of the seized marijuana is of no moment. Such circumstance finds prominence only when the existence of the seized prohibited drugs is denied. In this case, accused-appellant himself testified that the marijuana wrapped in a newspaper was taken from his bag. The *corpus delicti* of the crime, *i.e.*[,] the existence of the marijuana and his possession thereof, was amply proven by accused-appellant Valdez's own testimony.[16]

In this appeal, petitioner prays for his acquittal and asserts that his guilt of the crime charged had not been proven beyond reasonable doubt. He argues, albeit for the first time on appeal, that the warrantless arrest effected against him by the *barangay tanod* was unlawful and that the warrantless search of his bag that followed was likewise contrary to law. Consequently, he maintains, the marijuana leaves purportedly seized from him are inadmissible in evidence for being the fruit of a poisonous tree.

Well-settled is the rule that the findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect and weight, in the absence of any clear showing that some facts and circumstances of weight or substance which could have affected the result of the case have been overlooked, misunderstood or misapplied.[17]

After meticulous examination of the records and evidence on hand, however, the Court finds and so holds that a reversal of the decision *a quo* under review is in order.

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[16] *Id.* at 87.

[17] *People v. Bacla-an*, 445 Phil. 729, 746 (2003), citing *People v. Mendoza*, 327 SCRA 695 (2000). See also *People v. Sevilla*, 394 Phil. 125 (2000).

II.

At the outset, we observe that nowhere in the records can we find any objection by petitioner to the irregularity of his arrest before his arraignment. Considering this and his active participation in the trial of the case, jurisprudence dictates that petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest. The legality of an arrest affects only the jurisdiction of the court over his person.[18] Petitioner's warrantless arrest therefore cannot, in itself, be the basis of his acquittal.

However, to determine the admissibility of the seized drugs in evidence, it is indispensable to ascertain whether or not the search which yielded the alleged contraband was lawful. The search, conducted as it was without a warrant, is justified only if it were incidental to a lawful arrest.[19] Evaluating the evidence on record in its totality, as earlier intimated, the reasonable conclusion is that the arrest of petitioner without a warrant is not lawful as well.

Petitioner maintains, in a nutshell, that after he was approached by the *tanod* and asked to show the contents of his bag, he was simply herded without explanation and taken to the house of the *barangay* captain. On their way there, it was Aratas who carried his bag. He denies ownership over the contraband allegedly found in his bag and asserts that he saw it for the first time at the *barangay* captain's house.

Even casting aside petitioner's version and basing the resolution of this case on the general thrust of the prosecution evidence, the unlawfulness of petitioner's arrest stands out just the same.

Section 5, Rule 113 of the Rules on Criminal Procedure provides the only occasions on which a person may be arrested without a warrant, to wit:

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[18] See *People v. Bacla-an,* 445 Phil. 445 Phil. 729, 748 (2003) citing *People v. Lagarto*, 326 SCRA 693 (2000) and *People v. Nitcha*, 240 SCRA 283 (1995). See also *People v. Kimura*, G.R. No. 130805, 27 April 2004, 428 SCRA 51.

[19] *People v. Sarap*, 447 Phil. 642 (2003).

Section 5. *Arrest without warrant; when lawful*.—A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

x x x x x x x x x

It is obvious that based on the testimonies of the arresting *barangay tanod*, not one of these circumstances was obtaining at the time petitioner was arrested. By their own admission, petitioner was not committing an offense at the time he alighted from the bus, nor did he appear to be then committing an offense.[20] The *tanod* did not have probable cause either to justify petitioner's warrantless arrest.

For the exception in Section 5(a), Rule 113 to operate, this Court has ruled that two (2) elements must be present: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[21] Here, petitioner's act of looking around after getting off the bus was but natural as he was finding his way to his destination. That he purportedly attempted to run away as the *tanod* approached him is irrelevant and cannot by itself be construed as adequate to charge the *tanod* with personal knowledge that petitioner had just engaged

[20] TSN, 24 February 2004, p. 11; TSN, 3 March 2004, pp. 9, 19.

[21] *People v. Tudtud*, 458 Phil. 752, 775 (2003), citing *People v. Chua*, G.R. Nos. 136066-67, 4 February 2003, 396 SCRA 657.

in, was actually engaging in or was attempting to engage in criminal activity. More importantly, petitioner testified that he did not run away but in fact spoke with the *barangay tanod* when they approached him.

Even taking the prosecution's version generally as the truth, in line with our assumption from the start, the conclusion will not be any different. It is not unreasonable to expect that petitioner, walking the street at night, after being closely observed and then later tailed by three unknown persons, would attempt to flee at their approach. Flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt.[22] Of persuasion was the Michigan Supreme Court when it ruled in *People v. Shabaz*[23] that "[f]light alone is not a reliable indicator of guilt without other circumstances because flight alone is inherently ambiguous." Alone, and under the circumstances of this case, petitioner's flight lends itself just as easily to an innocent explanation as it does to a nefarious one.

Moreover, as we pointed out in *People v. Tudtud*,[24] "[t]he phrase 'in his presence' therein, connot[es] penal knowledge on the part of the arresting officer. The right of the accused to be secure against any unreasonable searches on and seizure of his own body and any deprivation of his liberty being a most basic and fundamental one, the statute or rule that allows exception to the requirement of a warrant of arrest is strictly construed. Its application cannot be extended beyond the cases specifically provided by law."[25]

Indeed, the supposed acts of petitioner, even assuming that they appeared dubious, cannot be viewed as sufficient to incite suspicion of criminal activity enough to validate his warrantless arrest.[26] If at all, the search most permissible for the *tanod*

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[22] *People v. Lopez*, 371 Phil. 852, 862 (1999), citing *People v. Bawar*, 262 SCRA 325.

[23] 424 Mich. 42, 378 N.W.2d 451 (1985).

[24] 458 Phil. 752 (2003).

[25] *Id*. at 777.

[26] See *People v. Mengote*, G.R. No. 87059, 22 June 1992, 210 SCRA 174.

to conduct under the prevailing backdrop of the case was a stop-and-frisk to allay any suspicion they have been harboring based on petitioner's behavior. However, a stop-and-frisk situation, following *Terry v. Ohio*,[27] must precede a warrantless arrest, be limited to the person's outer clothing, and should be grounded upon a genuine reason, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him.[28]

Accordingly, petitioner's waiver of his right to question his arrest notwithstanding, the marijuana leaves allegedly taken during the search cannot be admitted in evidence against him as they were seized during a warrantless search which was not lawful.[29] As we pronounced in *People v. Bacla-an* —

> **A waiver of an illegal warrantless arrest does not also mean a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.** The following searches and seizures are deemed permissible by jurisprudence: (1) search of moving vehicles (2) seizure in plain view (3) customs searches (4) waiver or consent searches (5) stop and frisk situations (Terry Search) and (6) search incidental to a lawful arrest. The last includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the Rules of Court recognize permissible warrantless arrests, to wit: (1) arrests in *flagrante delicto*, (2) arrests effected in hot pursuit, and, (3) arrests of escaped prisoners.[30]

When petitioner was arrested without a warrant, he was neither caught in *flagrante delicto* committing a crime nor was the arrest effected in hot pursuit. Verily, it cannot therefore be reasonably argued that the warrantless search conducted on petitioner was incidental to a lawful arrest.

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[27] 392 U.S. 1, 20 L. Ed. 2nd 889 [1968].

[28] See *People v. Chua*, 444 Phil. 757 (2003).

[29] See *People v. Bacla-an*, *supra* note 16, citing *People v. Chua Ho San*, 308 SCRA 42 (1999).

[30] *Id.* at 748-749.

In its Comment, the Office of the Solicitor General posits that apart from the warrantless search being incidental to his lawful arrest, petitioner had consented to the search. We are not convinced. As we explained in *Caballes v. Court of Appeals*[31] —

> Doubtless, the constitutional immunity against unreasonable searches and seizures is a personal right which may be waived. **The consent must be voluntary in order to validate an otherwise illegal detention and search, *i.e.*, the consent is unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion.** Hence, consent to a search is not to be lightly inferred, but must be shown by clear and convincing evidence. The question whether a consent to a search was in fact voluntary is a question of fact to be determined from the totality of all the circumstances. Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether he was in a public or secluded location; (3) whether he objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence will be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting. It is the State which has the burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given.[32]

In the case at bar, following the theory of the prosecution—albeit based on conflicting testimonies on when petitioner's bag was actually opened, it is apparent that petitioner was already under the coercive control of the public officials who had custody of him when the search of his bag was demanded. Moreover, the prosecution failed to prove any specific statement as to how the consent was asked and how it was given, nor the specific words spoken by petitioner indicating his alleged "consent." Even granting that petitioner admitted to opening his bag when Ordoño asked to see its contents, his implied

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[31] 424 Phil. 263 (2002).

[32] *Id*. at 286.

acquiescence, if at all, could not have been more than mere passive conformity given under coercive or intimidating circumstances and hence, is considered no consent at all within the contemplation of the constitutional guarantee.[33] As a result, petitioner's lack of objection to the search and seizure is not tantamount to a waiver of his constitutional right or a voluntary submission to the warrantless search and seizure.[34]

III.

Notably, the inadmissibility in evidence of the seized marijuana leaves for being the fruit of an unlawful search is not the lone cause that militates against the case of the prosecution. We likewise find that it has failed to convincingly establish the identity of the marijuana leaves purportedly taken from petitioner's bag.

In all prosecutions for violation of the Dangerous Drugs Act, the following elements must concur: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence.[35] The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs, it being the very *corpus delicti* of the crime.[36]

In a line of cases, we have ruled as fatal to the prosecution's case its failure to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused.[37]

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[33] *People v. Tudtud*, 458 Phil. 752, 788 (2003), citing *People v. Compacion*, 414 Phil. 68 (2001).

[34] *Id*.

[35] *People v. Hajili*, 447 Phil. 283, 295 (2003).

[36] *People v. Almeida*, 463 Phil. 637, 648 (2003), citing *People v. Mendiola*, 235 SCRA 116 (1994). See also *People v. Kimura*, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 61, citing *People v. Mendiola*, *supra*, *People v. Macuto*, 176 SCRA 762 (1989), *People v. Vocente*, 188 SCRA 100 (1990) and *People v. Mariano*, 191 SCRA 136 (1990).

[37] See *People v. Mapa*, G.R. No. 91014, 31 March 1993, 220 SCRA 670 (1993), *People v. Dismuke*, G.R. No. 108453, 11 July 1994, 234 SCRA 51, *People v. Casimiro*, 383 SCRA 400 (2002), *People v. Pedronan*, 452 Phil. 226 (2003), *People v. Kimura*, G.R. No. 130805, 27 April 2004, 428 SCRA 51, *People v. Ong*, G.R. No. 137348, 21 June 2004, 432 SCRA 470.

There can be no crime of illegal possession of a prohibited drug when nagging doubts persist on whether the item confiscated was the same specimen examined and established to be the prohibited drug.[38] As we discussed in *People v. Orteza,*[39] where we deemed the prosecution to have failed in establishing all the elements necessary for conviction of appellant for illegal sale of *shabu* –

> First, there appears nothing in the record showing that police officers complied with the proper procedure in the custody of seized drugs as specified in *People v. Lim, i.e.,* any apprehending team having initial control of said drugs and/or paraphernalia should, immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with the requirement raises doubt whether what was submitted for laboratory examination and presented in court was actually recovered from appellant. It negates the presumption that official duties have been regularly performed by the police officers.
>
> In *People v. Laxa*, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the *corpus delicti.*
>
> The Court made a similar ruling in *People v. Kimura*, where the Narcom operatives failed to place markings on the seized marijuana at the time the accused was arrested and to observe the procedure and take custody of the drug.
>
> More recently, in *Zarraga v. People*, the Court held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the *corpus delicti*. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the *shabu.*

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[38] See *People v. Ong*, *supra* at 488.

[39] G.R. No. 173051, 31 July 2007.

In the case at bar, after the arrest of petitioner by the *barangay tanod,* the records only show that he was taken to the house of the *barangay* captain and thereafter to the police station. The Joint Affidavit[40] executed by the *tanod* merely states that they confiscated the marijuana leaves which they brought to the police station together with petitioner. Likewise, the Receipt[41] issued by the Aringay Police Station merely acknowledged receipt of the suspected drugs supposedly confiscated from petitioner.

Not only did the three *tanod* contradict each other on the matter of when petitioner's bag was opened, they also gave conflicting testimony on who actually opened the same. The prosecution, despite these material inconsistencies, neglected to explain the discrepancies. Even more damning to its cause was the admission by Laya, the forensic chemist, that he did not know how the specimen was taken from petitioner, how it reached the police authorities or whose marking was on the cellophane wrapping of the marijuana. The non-presentation, without justifiable reason, of the police officers who conducted the inquest proceedings and marked the seized drugs, if such was the case, is fatal to the case. Plainly, the prosecution neglected to establish the crucial link in the chain of custody of the seized marijuana leaves from the time they were first allegedly discovered until they were brought for examination by Laya.

The Court of Appeals found as irrelevant the failure of the prosecution to establish the chain of custody over the seized marijuana as such "[f]inds prominence only when the existence of the seized prohibited drug is denied."[42] We cannot agree.

To buttress its ratiocination, the appellate court narrowed on petitioner's testimony that the marijuana was taken from his bag, without taking the statement in full context.[43] Contrary to the Court of Appeals' findings, although petitioner testified that the marijuana was taken from his bag, he consistently denied

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[40] Records, p. 2.

[41] *Id.* at 5.

[42] *Rollo,* p. 87.

[43] *Id.*

ownership thereof.[44] Furthermore, it defies logic to require a denial of ownership of the seized drugs before the principle of chain of custody comes into play.

The onus of proving culpability in criminal indictment falls upon the State. In conjunction with this, law enforcers and public officers alike have the corollary duty to preserve the chain of custody over the seized drugs. The chain of evidence is constructed by proper exhibit handling, storage, labeling and recording, and must exist from the time the evidence is found until the time it is offered in evidence. Each person who takes possession of the specimen is duty-bound to detail how it was cared for, safeguarded and preserved while in his or her control to prevent alteration or replacement while in custody. This guarantee of the integrity of the evidence to be used against an accused goes to the very heart of his fundamental rights.

The presumption of regularity in the performance of official duty invoked by the prosecution and relied upon by the courts *a quo* cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt.[45] Among the constitutional rights enjoyed by an accused, the most primordial yet often disregarded is the presumption of innocence. This elementary principle accords every accused the right to be presumed innocent until the contrary is proven beyond reasonable doubt. Thus, the burden of proving the guilt of the accused rests upon the prosecution.

Concededly, the evidence of the defense is weak and uncorroborated. Nevertheless, this "[c]annot be used to advance the cause of the prosecution as its evidence must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense."[46] Moreover, where the

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[44] TSN, 17 March 2004, pp. 11-13.

[45] *People v. Sevilla*, 394 Phil. 125, 158 (2000), citing *People v. Pagaura*, 267 SCRA 17 (1997), *People v. De los Santos*, 314 SCRA 303 (1999).

[46] *People v. Santos*, G.R. No. 175593, 17 October 2007, citing *People v. Samson*, 421 Phil. 104 (2001).

circumstances are shown to yield two or more inferences, one inconsistent with the presumption of innocence and the other compatible with the finding of guilt, the court must acquit the accused for the reason that the evidence does not satisfy the test of moral certainty and is inadequate to support a judgment of conviction.[47]

Drug addiction has been invariably denounced as "an especially vicious crime,"[48] and "one of the most pernicious evils that has ever crept into our society,"[49] for those who become addicted to it "not only slide into the ranks of the living dead, what is worse, they become a grave menace to the safety of law-abiding members of society,"[50] whereas "peddlers of drugs are actually agents of destruction."[51] Indeed, the havoc created by the ruinous effects of prohibited drugs on the moral fiber of society cannot be underscored enough. However, in the rightfully vigorous campaign of the government to eradicate the hazards of drug use and drug trafficking, it cannot be permitted to run roughshod over an accused's right to be presumed innocent until proven to the contrary and neither can it shirk from its corollary obligation to establish such guilt beyond reasonable doubt.

In this case, the totality of the evidence presented utterly fails to overcome the presumption of innocence which petitioner enjoys. The failure of the prosecution to prove all the elements of the offense beyond reasonable doubt must perforce result in petitioner's exoneration from criminal liability.

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[47] *People v. Sapal*, 385 Phil. 109, 126 (2000), citing *People v. Delos Santos*, G.R. No. 126998, 14 September 1999 and *People v. Fider*, 223 SCRA 117 (1993).

[48] *Office of the Court Administrator v. Librado,* 329 Phil. 432, 435 (1996), citing *People v. Nario*, 224 SCRA 647 (1993).

[49] *Id*. citing *People v. Policarpio*, 158 SCRA 85 (1988).

[50] *Id*. at 436, citing *People v. Bati*, 189 SCRA 95 (1990), citing *People v. Lamug*, 172 SCRA 349 (1989).

[51] *Id*. citing *People v. Policarpio*, *supra*.

IV.

A final word. We find it fitting to take this occasion to remind the courts to exercise the highest degree of diligence and prudence in deliberating upon the guilt of accused persons brought before them, especially in light of the fundamental rights at stake. Here, we note that the courts *a quo* neglected to give more serious consideration to certain material issues in the determination of the merits of the case. We are not oblivious to the fact that in some instances, law enforcers resort to the practice of planting evidence to extract information or even harass civilians. Accordingly, courts are duty-bound to be "[e]xtra vigilant in trying drug cases lest an innocent person be made to suffer the unusually severe penalties for drug offenses."[52] In the same vein, let this serve as an admonition to police officers and public officials alike to perform their mandated duties with commitment to the highest degree of diligence, righteousness and respect for the law.

WHEREFORE, the assailed Decision is *REVERSED* and *SET ASIDE*. Petitioner Arsenio Vergara Valdez is *ACQUITTED* on reasonable doubt. The Director of the Bureau of Corrections is directed to cause the immediate release of petitioner, unless the latter is being lawfully held for another cause; and to inform the Court of the date of his release, or the reasons for his continued confinement, within ten (10) days from notice. No costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

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[52] *People v. Sevilla*, 394 Phil. 125, 159 (2000), citing *People v. Pagaura supra*. See also *People v. Sapal*, *supra*.

THIRD DIVISION

[G.R. No. 170606. November 23, 2007]

LCK INDUSTRIES INC., CHIKO LIM and ELIZABETH T. LIM, *petitioners, vs.* **PLANTERS DEVELOPMENT BANK,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; PURPOSE.—** The conduct of pre-trial in civil actions has been mandatory as early as 1 January 1964 upon the effectivity of the Revised Rules of Court. Pre-trial is a procedural device intended to clarify and limit the basic issues between the parties and to take the trial of cases out of the realm of surprise and maneuvering. Pre-trial is an answer to the clarion call for the speedy disposition of cases. Hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century, pre-trial is a device intended to clarify and limit the basic issues between the parties. It thus paves the way for a less cluttered trial and resolution of the case. Pre-trial seeks to achieve the following: (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution; (b) The simplification of the issues; (c) The necessity or desirability of amendments to the pleadings; (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof; (e) The limitation of the number of witnesses; (f) The advisability of a preliminary reference of issues to a commissioner; (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist; (h) The advisability or necessity of suspending the proceedings; and (i) Such other matters as may aid in the prompt disposition of the action. The purpose of entering into a stipulation of facts is to expedite trial and to relieve the parties and the court as well of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry. Its main objective is to simplify, abbreviate and expedite the trial, or totally dispense with it. The parties themselves or their representative with

written authority from them are required to attend in order to arrive at a possible amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents. All of the matters taken up during the pre-trial, including the stipulation of facts and the admissions made by the parties, are required to be recorded in a pre-trial order.

2. ID.; ID.; ID.; AS A GENERAL RULE, THE PARTIES IN A PRE-TRIAL SHOULD DISCLOSE ALL THE ISSUES OF FACT AND LAW THEY INTEND TO RAISE AT THE TRIAL; IF THE ISSUES, HOWEVER, ARE IMPLIEDLY INCLUDED THEREIN OR MAY BE INFERABLE THEREFROM BY NECESSARY IMPLICATION TO INTEGRAL PARTS OF THE PRE-TRIAL ORDER AS MUCH AS THOSE THAT ARE EXPRESSLY STIPULATED, THE GENERAL RULE WILL NOT APPLY.— Generally, pre-trial is primarily intended to make certain that all issues necessary to the disposition of a case are properly raised. Thus, to obviate the element of surprise, parties are expected to disclose at the pre-trial conference all issues of law and fact they intend to raise at the trial. However, in cases in which the issue may involve privileged or impeaching matters, or if the issues are impliedly included therein or may be inferable therefrom by necessary implication to be integral parts of the pre-trial order as much as those that are expressly stipulated, the general rule will not apply. Thus, in *Velasco v. Apostol,* this Court highlighted the aforesaid exception and ruled in this wise: A pre-trial order is not meant to be a detailed catalogue of each and every issue that is to be or may be taken up during the trial. **Issues that are impliedly included therein or may be inferable therefrom by necessary implication are as much integral parts of the pre-trial order as those that are expressly stipulated.** In fact, it would be absurd and inexplicable for the respondent company to knowingly disregard or deliberately abandon the issue of non-payment of the premium on the policy considering that it is the very core of its defense. Correspondingly, We cannot but perceive here an undesirable resort to technicalities to evade an issue determinative of a defense duly averred.

3. ID.; ID.; ID.; CASE AT BAR FALLS UNDER THE PARTICULAR EXCEPTION; THE FACT OF OVERPAYMENT, THOUGH NOT EXPRESSLY INCLUDED IN THE ISSUES RAISED IN

THE PRE-TRIAL ORDER DATED 8 SEPTEMBER 2000 CAN BE EVIDENTLY INFERRED FROM THE STIPULATIONS AND ADMISSIONS MADE BY THE PARTIES THEREIN.— The case at bar falls under this particular exception. Upon scrupulous examination of the Pre-Trial Order dated 8 September 2000, it can be deduced that the parties stipulated that the remaining sum of petitioner LCK's obligation as of 13 October 1997 was ₱2,962,500.00. In the same Pre-Trial Order, the parties likewise stipulated that the Baguio City property was sold at the public auction for ₱2,625,000.00 and the Quezon City property for ₱2,231,416.67. On both occasions, respondent bank emerged as the highest bidder. By applying simple mathematical operation, the mortgaged properties were purchased by the respondent at the public auctions for ₱4,856,416.67; thus, after deducting therefrom the balance of petitioner LCK's obligation in the amount of ₱2,962,500.00, an excess in the sum of ₱1,893,916.67 remains. Needless to say, the fact of overpayment, though not expressly included in the issues raised in the Pre-Trial Order dated 8 September 2000, can be evidently inferred from the stipulations and admissions made by the parties therein. Even only upon plain reading of the said Pre-Trial Order, it can be readily discerned that there was an overpayment.

4. **ID.; ID.; ID.; THE COURT WILL NOT ALLOW RESPONDENT BANK TO HIDE BEHIND THE CLOAK OF PROCEDURAL TECHNICALITIES IN ORDER TO EVADE ITS OBLIGATION TO RETURN THE EXCESS OF THE BID PRICE, FOR SUCH AN ACT CONSTITUTES A VIOLATION OF THE ELEMENTARY PRINCIPLE OF UNJUST ENRICHMENT.—** Petitioner LCK's obligation with the respondent bank was already fully satisfied after the mortgaged properties were sold at the public auction for more than the amount of petitioner LCK's remaining debt with the respondent bank. As the custodian of the proceeds from the foreclosure sale, respondent bank has no legal right whatsoever to retain the excess of the bid price in the sum of ₱1,893,916.67, and is under clear obligation to return the same to petitioners. In any case, this Court would not allow respondent bank to hide behind the cloak of procedural technicalities in order to evade its obligation to return the excess of the bid price, for such an act constitutes a violation of the elementary principle of unjust enrichment in human relations. Under the principle of

unjust enrichment - *nemo cum alterius detrimento locupletari potest* - no person shall be allowed to enrich himself unjustly at the expense of others. This principle of equity has been enshrined in our Civil Code, Article 22 of which provides: 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. We have held that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience. Equity, as the complement of legal jurisdiction, seeks to reach and 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. Equity regards the spirit and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts.

5. **ID.; ID.; ID.; COURT LITIGATIONS ARE PRIMARILY FOR SEARCH OF TRUTH, AND A LIBERAL INTERPRETATION OF THE RULES BY WHICH BOTH PARTIES ARE GIVEN THE FULLEST OPPORTUNITY TO ADDUCE PROOFS, IS THE BEST WAY TO FERRET SUCH TRUTH.—** It is the policy of the Court to afford party-litigants the amplest opportunity to enable them to have their cases justly determined, free from constraints of technicalities. Since the rules of procedures are mere tools designed to facilitate the attainment of justice, it is well recognized that this Court is empowered to suspend its operation, or except a particular case from its operation, when the rigid application thereof tends to frustrate rather promote the ends of justice. Court litigations are primarily for search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret such truth. The dispensation of justice and vindication of legitimate grievances should not be barred by technicalities. Given the foregoing discussion, this Court finds the respondent bank liable not only for retaining the excess of the bid price or the surplus money in the sum of ₱1,893,916.67, but also for paying the interest thereon at the rate of 6% *per annum* from the time of the filing

of the complaint until finality of judgment. Once the judgment becomes final and executory, the interest of 12% *per annum,* should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied.

APPEARANCES OF COUNSEL

Ching Mendoza Quilas & Associates Law Firm for petitioners.

Janda Asia & Associates for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is the Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court filed by petitioners LCK Industries Inc. (LCK), Chiko Lim and Elizabeth Lim, seeking the reversal and the setting aside of the Decision[1] dated 1 April 2005 and the Resolution[2] dated 29 November 2005 of the Court of Appeals in CA-G.R. CV No. 73944. The appellate court, in its assailed Decision and Resolution, reversed the Decision[3] of the Regional Trial Court (RTC) of Quezon City, Branch 81, dated 3 September 2001, in Civil Case No. Q-98-33835, which found respondent Planters Development Bank (respondent bank) liable for the amount of ₱1,856,416.67, representing overpayment.

Petitioner LCK is a domestic corporation duly organized and existing as such under Philippine laws.[4]

Respondent bank is a banking institution duly authorized to engage in banking business under Philippine laws.[5]

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[1] Penned by Associate Justice Celia Librea-Leagogo with Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin, concurring. *Rollo,* pp. 42-64.

[2] *Id*. at 65-66.

[3] *Id*. at 35-40.

[4] *Id*. at 17.

[5] *Id*.

On 1 September 1995, petitioner LCK obtained a loan from the respondent bank in the amount of ₱3,000,000.00 as evidenced by two promissory notes.[6]

As a security for the loan obligation, petitioners-spouses Chiko and Elizabeth Lim executed a Real Estate Mortgage over a parcel of land covered by Transfer Certificate of Title (TCT) No. T-138623, registered under their names and located at Quezon City, with an area of 68 square meters (Quezon City property).[7] Later on, to secure the same obligation, another Real Estate Mortgage was executed over another parcel of land covered by TCT No. T-62773, also registered under the names of the petitioner-spouses, with an area of 71 square meters located at Baguio City (Baguio City property).[8]

Subsequently, petitioner LCK incurred default in its payment; thus, making the obligation due and demandable. Several demands were thereafter made by the respondent bank to no avail.[9] On 13 October 1997, a final letter-demand was sent by respondent bank to petitioner LCK asking for the payment of its obligation in the amount of ₱2,962,500.00. Such final demand notwithstanding, petitioner LCK failed or refused to pay its obligation.

Consequently, respondent bank caused the extrajudicial foreclosure of the Baguio City property which was sold at the public auction for ₱2,625,000.00 as shown in the Certificate of Sale[10] dated 29 January 1998. Since the proceeds of the foreclosed Baguio City property were not enough to satisfy the entire loan obligation which amounted to ₱2,962,500.00, respondent bank further caused the extrajudicial foreclosure of the Quezon City property. As evidenced by the Certificate of Sale[11] dated 18

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[6] *Id.* at 38.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 13-14.

[11] *Id.* at 15-16.

March 1998, signed by Notary Public Atty. Allene Anigan (Atty. Anigan), the foreclosed Quezon City property was sold at a public auction for ₱2,231,416.67. The respondent bank was the highest bidder on both occasions.

Prior to the auction sale of the Quezon City property on 18 March 1998, petitioners, on 12 March 1998, filed with the RTC of Quezon City, Branch 81, an action for Annulment of the Foreclosure of Mortgage and Auction Sale of the Quezon City property with Restraining Order/Preliminary Injunction and with Damages against respondent bank and Atty. Anigan.[12] The case was docketed as Civil Case No. Q-98-33835.

In their Complaint,[13] petitioners alleged that respondent bank failed to comply with the posting and publication requirements as well as with the filing of the Petition for the Extrajudicial Foreclosure of the Real Estate Mortgage with the Clerk of Court as required by Act No. 3135.[14] Petitioners prayed for the issuance of temporary restraining order (TRO) in order to enjoin the respondent bank from conducting the auction sale, and in the alternative, to enjoin the Registry of Deeds of Quezon City from transferring the ownership of the Quezon City property to the purchaser at the auction sale.

In its Answer with the Opposition to the Prayer for the Issuance of Temporary Restraining Order (TRO), respondent bank averred that it had fully observed the posting and publication requirements of Act No. 3135. It insisted that the filing of the Petition for Extrajudicial Foreclosure of the Mortgage Property with the Notary Public was sanctioned by the same statute. Respondent bank thus prayed for the dismissal of petitioners' complaint for lack of merit.[15]

For failure of the counsels for both petitioners and respondent bank to appear in the scheduled hearing for the issuance of

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[12] *Id*. at 17-23.

[13] *Id*. at 17-23.

[14] An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages.

[15] *Id*. at 36-37.

temporary restraining order, the RTC, in an Order dated 15 May 1998, deemed the prayer for TRO abandoned.[16]

Thereafter, the RTC conducted a pre-trial conference. In the Pre-Trial Order[17] dated 8 September 2000, the parties made the following admissions and stipulations:

(1) the real estate mortgage executed by the plaintiffs in favor of the defendant bank covers the loan obligation in the total amount of ₱3,000,000.00;

(2) there were two promissory notes executed by the plaintiffs: one for ₱2,700,000.00 and another for ₱300,000.00;

(3) a demand letter dated 13 October 1997 was sent to petitioner LCK by respondent bank stating that the remaining balance of petitioner LCK's loan obligation was ₱2,962,500.00 as of 13 October 1997;

(4) a Notice of Auction Sale by Notary Public was made by the respondent bank in foreclosing the Baguio City property, and in the Certificate of Sale issued by the Notary Public, the respondent bank bid ₱2,625,000.00 for the property;

(5) the respondent bank also foreclosed the real estate mortgage over the petitioners' Quezon City property on 18 March 1998 and said defendant bank bid ₱2,231,416.67 for the property;

(6) the foreclosure of petitioners' Quezon City property was made by a notary public;

(7) the petition for foreclosure was not included in the raffle of judicial notice;

(8) the petitioners failed to fully pay their loan obligation as of 13 October 1997 in the amount of ₱962,500.00; and

(9) despite the demands, petitioners failed to pay their due obligations.

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[16] *Id.* at 37.

[17] *Id.*

The court further defined the issues as follows:

(1) whether or not the petition was filed with the Office of the Clerk of Court;

(2) whether or not the extra-judicial foreclosure of real estate mortgage by defendant bank was made in accordance with the provisions of Act 3135, as amended; and

(3) whether or not the parties are entitled to their respective claims for attorney's fees and damages.[18]

The parties were given 15 days from receipt of the Pre-Trial Order to make amendments or corrections thereon.

On 18 April 2001, the parties agreed to submit the case for the decision of the RTC based on the stipulations and admissions made at the pre-trial conference. The parties further manifested that they were waiving their respective claims for attorney's fees. On the same day, the RTC required the parties to submit their respective memoranda.[19]

In their Memorandum,[20] petitioners, aside from reiterating issues previously raised in their Complaint, further claimed that there was an overpayment of the loan obligation by ₱1,856,416.67. As shown in the letter-demand dated 13 October 1997 received by petitioner LCK, its outstanding loan obligation amounted to ₱2,962,500.00. The Baguio City property was purchased by respondent bank at the public auction for ₱2,625,000.00, while the Quezon City property was purchased for ₱2,231,416.67.

For its part, respondent bank maintained in its Memorandum[21] that the complaint filed by petitioners is devoid of merit. It further asseverated that petitioners' claim for overpayment was not among the issues submitted for the resolution of the RTC. It is clear from the Pre-Trial Order that the issues to be resolved

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[18] *Id.* at 38.

[19] *Id.*

[20] *Id.* at 24-27.

[21] *Id.* at 28-34.

are limited to whether the petition for the foreclosure of the real estate mortgage was filed before the Clerk of Court and whether or not the extrajudicial foreclosure of real estate mortgage was made by the respondent bank in accordance with the provisions of Act No. 3135. For failure of petitioners to promptly raise the alleged overpayment, the RTC is now barred from adjudicating this issue.

On 3 September 2001, the RTC rendered its Decision[22] declaring the foreclosure and the auction sale of the Quezon City property legal and valid, but ordered respondent bank to return the overpayment made by petitioners in the amount of ₱1,856,416.67. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring the extra-judicial foreclosure and auction sale of the Quezon City property of plaintiffs LCK Industries, Inc., Chiko Lim and Elizabeth Lim subject of this case legal and valid;

2. Ordering defendant Planters Development Bank to pay to plaintiffs the amount of ₱1,856,416.67 representing overpayment;

3. Dismissing plaintiffs' claim for attorney's fees and other litigation expenses;

4. Dismissing the case against defendant Atty. Allene M. Anigan; and

5. Dismissing the counterclaims of defendants Planters Development Bank and Atty. Arlene M. Anigan.[23]

For lack of merit, the Motion for Reconsideration filed by the respondent bank was denied by the RTC in its Order dated 3 December 2001.[24]

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[22] *Id.* at 35-40.

[23] *Id.* at 40.

[24] *Id.* at 41.

Aggrieved, respondent bank elevated the matter to the Court of Appeals by assailing the portion of the RTC Decision ordering it to pay petitioners the amount of ₱1,856,416.67 representing the alleged overpayment. The respondent bank's appeal was docketed as CA-G.R. CV No. 73944.[25]

On 1 April 2005, the Court of Appeals granted the appeal of the respondent bank and partially reversed the RTC Decision insofar as it ordered respondent bank to pay the overpaid amount of ₱1,856,416.67 to petitioners. In deleting the award of overpayment, the appellate court emphasized that the primary purpose of pre-trial is to make certain that all issues necessary for the disposition of the case are properly raised in order to prevent the element of surprise. Since the alleged overpayment was only raised by the petitioners long after the pre-trial conference, the court *a quo* cannot dispose of such issue without depriving the respondent bank of its right to due process.[26]

The Motion for Reconsideration filed by petitioners was denied by the Court of Appeals in its Resolution[27] dated 29 November 2005.

Petitioners are now before this Court *via* a Petition for Review on *Certiorari,*[28] under Rule 45 of the Revised Rules of Court, assailing the Court of Appeals Decision and raising the following issues as grounds:

I.

WHETHER OR NOT THE EXCESS AMOUNT OF ₱1,893,916.67 WHICH THE RESPONDENT BANK ACQUIRED FROM THE AUCTION SALE OF THE PETITIONERS' PROPERTIES SHALL BE RETURNED TO THEM.

II.

WHETHER OR NOT THE ISSUE OF OVERPAYMENT WAS RAISED BY THE PARTIES AND INCLUDED IN THE PRE-TRIAL ORDER.[29]

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[25] *Id.* at 42.

[26] *Id.* at 42-64.

[27] *Id.* at 65.

[28] *Id.* at 3-11.

[29] *Id.* at 91.

The petition centers on the claim propounded by petitioners that there was an overpayment of the loan obligation in the amount of ₱1,856,416.67. Petitioners insist they are entitled to the reimbursement of the overpaid amount invoking the elementary principle of *in rem verso*[30] in human relations and the rule on the disposition of the proceeds of the sale providing that the balance or the residue after deducting the cost of the sale and the payment of the mortgage debt due, shall be paid to the junior encumbrancers, and in the absence of junior encumbrancers, to the mortgagor or his duly authorized representative.[31]

On the other hand, respondent bank counters that the question of overpayment, not being included in the issues stipulated in Pre-Trial Order dated 8 September 2000, and totally unrelated therein, cannot be considered by the RTC. The belated ventilation of the alleged overpayment precluded the RTC from ruling on the matter in consonance with the primordial purpose of the pre-trial conference which is to delineate the issues necessary for the disposition of the case.[32]

The conduct of pre-trial in civil actions has been mandatory as early as 1 January 1964 upon the effectivity of the Revised Rules of Court.[33] Pre-trial is a procedural device intended to clarify and limit the basic issues between the parties[34] and to take the trial of cases out of the realm of surprise and maneuvering.[35]

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[30] CIVIL CODE, Article 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.

[31] REVISED RULES OF COURT, Rule 68, Section 4.

[32] *Rollo*, pp. 74-87.

[33] *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 49410, 26 January 1989, 169 SCRA 409, 412-413.

[34] *Interlining Corporation v. Philippine Trust Company*, 428 Phil. 584, 588 (2002).

[35] *Permanent Concrete Products, Inc. v. Teodoro*, 135 Phil. 364, 367 (1968).

Pre-trial is an answer to the clarion call for the speedy disposition of cases. Hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century,[36] pre-trial is a device intended to clarify and limit the basic issues between the parties.[37] It thus paves the way for a less cluttered trial and resolution of the case.[38] Pre-trial seeks to achieve the following:

(a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;

(b) The simplification of the issues;

(c) The necessity or desirability of amendments to the pleadings;

(d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(e) The limitation of the number of witnesses;

(f) The advisability of a preliminary reference of issues to a commissioner;

(g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;

(h) The advisability or necessity of suspending the proceedings; and

(i) Such other matters as may aid in the prompt disposition of the action.[39]

The purpose of entering into a stipulation of facts is to expedite trial and to relieve the parties and the court as well of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry. Its main objective is to simplify, abbreviate and expedite the trial, or totally dispense with it.[40]

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[36] *Tiu v. Middleton*, 369 Phil. 829, 835 (1999).

[37] *Interlining Corporation v. Philippine Trust Company, supra* note 34.

[38] *Id*.

[39] REVISED RULES OF COURT, Rule 18, Section 2.

[40] *Interlining Corporation v. Philippine Trust Company*, *supra* note 34.

The parties themselves or their representative with written authority from them are required to attend in order to arrive at a possible amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents. All of the matters taken up during the pre-trial, including the stipulation of facts and the admissions made by the parties, are required to be recorded in a pre-trial order.[41]

Thus, Section 7, Rule 18 of the Revised Rules of Court provides:

> SEC. 7. *Record of pre-trial.* – The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice.

In the Pre-Trial Order dated 8 September 2000, the RTC defined the issues as follows: (1) whether or not the petition was filed with the Office of the Clerk of Court; (2) whether or not the extrajudicial foreclosure of real estate mortgage by defendant bank was made in accordance with the provisions of Act No. 3135; and (3) whether or not the parties are entitled to their respective claims for attorney's fees and damages.

Based on the admissions and stipulations during the pre-trial conference and the issues defined by the court *a quo* as embodied in the Pre-Trial Order, the parties agreed to submit the case for the resolution of the RTC. Both petitioners and respondent also manifested that they would forego their respective claims for attorney's fees, leaving solely the issue of the validity of the foreclosure of mortgage and auction sale for the RTC's disposition. However, in petitioners' Memorandum filed after the case was submitted for resolution, petitioners raised the question of overpayment, a new issue that was included neither

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[41] *Alarcon v. Court of Appeals,* 380 Phil. 678, 697-698 (2000).

in their Complaint nor in the issues defined in the Pre-Trial Order issued by the RTC.

Generally, pre-trial is primarily intended to make certain that all issues necessary to the disposition of a case are properly raised. Thus, to obviate the element of surprise, parties are expected to disclose at the pre-trial conference all issues of law and fact they intend to raise at the trial.[42] However, in cases in which the issue may involve privileged or impeaching matters,[43] or if the issues are impliedly included therein or may be inferable therefrom by necessary implication to be integral parts of the pre-trial order as much as those that are expressly stipulated, the general rule will not apply.[44] Thus, in *Velasco v. Apostol,*[45] this Court highlighted the aforesaid exception and ruled in this wise:

> A pre-trial order is not meant to be a detailed catalogue of each and every issue that is to be or may be taken up during the trial. **Issues that are impliedly included therein or may be inferable therefrom by necessary implication are as much integral parts of the pre-trial order as those that are expressly stipulated.**
>
> In fact, it would be absurd and inexplicable for the respondent company to knowingly disregard or deliberately abandon the issue of non-payment of the premium on the policy considering that it is the very core of its defense. Correspondingly, We cannot but perceive here an undesirable resort to technicalities to evade an issue determinative of a defense duly averred. (Emphasis supplied).

The case at bar falls under this particular exception. Upon scrupulous examination of the Pre-Trial Order dated 8 September 2000, it can be deduced that the parties stipulated that the remaining sum of petitioner LCK's obligation as of 13 October 1997 was ₱2,962,500.00. In the same Pre-Trial Order, the

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[42] *Caltex (Philippines), Inc. v. Court of Appeals*, G.R. No. 97753, 10 August 1992, 212 SCRA 449, 462.

[43] *Co v. Court of Appeals,* 353 Phil. 305, 312 (1998).

[44] *Velasco v. Apostol*, G.R. No. L-44588, 9 May 1989, 173 SCRA 228, 232-233.

[45] *Id*.

parties likewise stipulated that the Baguio City property was sold at the public auction for ₱2,625,000.00 and the Quezon City property for ₱2,231,416.67. On both occasions, respondent bank emerged as the highest bidder. By applying simple mathematical operation, the mortgaged properties were purchased by the respondent at the public auctions for ₱4,856,416.67; thus, after deducting therefrom the balance of petitioner LCK's obligation in the amount of ₱2,962,500.00, an excess in the sum of ₱1,893,916.67 remains.

Needless to say, the fact of overpayment, though not expressly included in the issues raised in the Pre-Trial Order dated 8 September 2000, can be evidently inferred from the stipulations and admissions made by the parties therein. Even only upon plain reading of the said Pre-Trial Order, it can be readily discerned that there was an overpayment.

The pertinent provisions of the Revised Rules of Court on extrajudicial foreclosure sale provide:

> Rule 39. 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 the judgment. If it does, he shall pay only the excess.**
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> Rule 68. 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.** (Emphasis supplied.)

The renowned jurist Florenz Regalado, in *Sulit v. Court of Appeals,*[46] underscored the obligation of the mortgagee with respect to the surplus money resulting from a foreclosure sale of the mortgaged property:

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[46] 335 Phil. 914, 926-927.

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 dation; 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.

Commenting on the theory that a mortgagee, when he sells under a power, cannot be considered otherwise than as a trustee, the vice-chancellor in *Robertson v. Norris (1 Giff. 421)* observed: "That expression is to be understood in this sense: that with the power being given to enable him to recover the mortgage money, **the court requires that he shall exercise the power of sale in a provident way, with a due regard to the rights and interests of the mortgagor in the surplus money to be produced by the sale.** (Emphasis supplied.)

Petitioner LCK's obligation with the respondent bank was already fully satisfied after the mortgaged properties were sold at the public auction for more than the amount of petitioner LCK's remaining debt with the respondent bank. As the custodian of the proceeds from the foreclosure sale, respondent bank has no legal right whatsoever to retain the excess of the bid price in the sum of ₱1,893,916.67, and is under clear obligation to return the same to petitioners.

In any case, this Court would not allow respondent bank to hide behind the cloak of procedural technicalities in order to evade its obligation to return the excess of the bid price, for such an act constitutes a violation of the elementary principle of unjust enrichment in human relations.

Under the principle of unjust enrichment - *nemo cum alterius detrimento locupletari potest* - no person shall be allowed to enrich himself unjustly at the expense of others.[47] This principle

[47] *National Development Company v. Madrigal Wan Hai Lines Corporation*, 458 Phil. 1039, 1054-1055 (2003).

of equity has been enshrined in our Civil Code, Article 22 of which provides:

> 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.

We have held that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience.[48]

Equity, as the complement of legal jurisdiction, seeks to reach and 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. Equity regards the spirit and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts.[49]

It is the policy of the Court to afford party-litigants the amplest opportunity to enable them to have their cases justly determined, free from constraints of technicalities. Since the rules of procedures are mere tools designed to facilitate the attainment of justice, it is well recognized that this Court is empowered to suspend its operation, or except a particular case from its operation, when the rigid application thereof tends to frustrate rather promote the ends of justice.[50]

Court litigations are primarily for search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret

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[48] *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, 23 January 2006, 479 SCRA 404, 412.

[49] *Tamio v. Ticson*, G.R. No. 154895, 18 November 2004, 443 SCRA 44, 55.

[50] *Metro Rail Transit Corporation v. Court of Tax Appeals,* G.R. No. 166273, 21 September 2005, 470 SCRA 562, 566.

such truth. The dispensation of justice and vindication of legitimate grievances should not be barred by technicalities.[51]

Given the foregoing discussion, this Court finds the respondent bank liable not only for retaining the excess of the bid price or the surplus money in the sum of ₱1,893,916.67, but also for paying the interest thereon at the rate of 6% *per annum* from the time of the filing of the complaint until finality of judgment. Once the judgment becomes final and executory, the interest of 12% *per annum,* should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied.[52]

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[51] *Go v. Tan,* 458 Phil. 727, 736-737 (2003).

[52] 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 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. (*Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97).

WHEREFORE, premises considered, the instant Petition is *GRANTED*. The Court of Appeals Decision dated 1 April 2005 and its Resolution dated 29 November 2005 in CA-G.R. CV No. 73944 are hereby *REVERSED*. Respondent Planters Development Bank is *ORDERED* to return to the petitioners LCK Industries Inc., Chiko Lim and Elizabeth Lim, the sum of ₱1,893,916.67 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 respondent Planters Development Bank.

SO ORDERED.

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

EN BANC

[G.R. No. 171048. November 23, 2007]

RUDY A. PALECPEC, JR., *petitioner, vs.* **HON. CORAZON C. DAVIS, in her capacity as the Regional Executive Director, Department of Environment and Natural Resources-National Capital Region, Manila,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; PETITIONER'S BEING DROPPED FROM THE ROLLS DUE TO ABSENCE WITHOUT OFFICIAL LEAVE (AWOL) SHOULD NEITHER RESULT IN THE FORFEITURE OF BENEFITS NOR HIS DISQUALIFICATION FROM RE-

EMPLOYMENT IN THE GOVERNMENT.— This Court finds no cogent reason to reverse its earlier ruling that there is substantial evidence of petitioner's AWOL for more than 30 days. However, considering that ***dropping from the rolls due to AWOL*** does not automatically amount to charges of conduct prejudicial to the best interest of the public and frequent unauthorized absences, his being ***dropped from the rolls*** due to his AWOL should neither result in the forfeiture of his benefits nor his disqualification from re-employment in the government.

APPEARANCES OF COUNSEL

Balanquit Diesta Law Offices for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

***PER CURIAM*:**

Before the Court is petitioner's Motion for Reconsideration[1] dated 28 August 2007 seeking the reversal of its *per curiam* Decision[2] dated 31 July 2007, which denied petitioner's appeal.

Petitioner was serving as Administrative Officer III of the Interim Internal Audit Division of the Department of Environment and Natural Resources, National Capital Region (DENR-NCR) when he was dropped from the rolls by the respondent DENR-NCR Executive Regional Director for absences without official leave (AWOL). The Court affirmed the finding of the Court of Appeals that, except for the period 8-10 May 2000 for which petitioner was granted an approved leave of absence, petitioner had been absent without authorization beginning 2 May 2000, the entire months of June and July 2000, and up to 1 August 2000. Petitioner was AWOL for a continuous period of more than 30 days for which he was properly dropped by the respondent from the rolls. Thus, the dispositive portion of this Court's Decision dated 31 July 2007 reads:

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[1] *Rollo*, pp. 278-291.

[2] *Id*. at 253-277.

WHEREFORE, premises considered, we **DENY** the present Petition for Review on *Certiorari* and **AFFIRM** the Decision dated 29 September 2005 and Resolution dated 10 January 2006 of the Court of Appeals in CA-G.R. SP No. 90292. We hereby **ORDER** that petitioner Rudy A. Palecpec, Jr. be dropped from the rolls of the Plantilla of Personnel of the Department of Environment and Natural Resources, National Capital Region effective 1 August 2000, with the cancellation of his civil service eligibility, forfeiture of retirement benefits; and with prejudice to his reemployment in any branch of the government or any of its agencies or instrumentalities, including government owned and controlled corporations. Costs against the petitioner.[3]

This Court finds no cogent reason to reverse its earlier ruling that there is substantial evidence of petitioner's AWOL for more than 30 days. However, considering that ***dropping from the rolls due to AWOL*** does not automatically amount to charges of conduct prejudicial to the best interest of the public and frequent unauthorized absences, his being ***dropped from the rolls*** due to his AWOL should neither result in the forfeiture of his benefits[4] nor his disqualification from re-employment in the government.[5]

WHEREFORE, the Motion for Reconsideration filed by petitioner is hereby *PARTLY GRANTED*. The Decision, dated 31 July 2007 of this Court ordering that petitioner Rudy A. Palecpec, Jr. be dropped from the rolls of the Plantilla of Personnel of the Department of Environment and Natural Resources, National Capital Region, effective 1 August 2000, for **Absence Without Official Leave,** is hereby *AFFIRMED WITH MODIFICATION*. The provision in the dispositive portion thereof ordering the cancellation of petitioner's civil service eligibility, forfeiture of retirement benefits, and prejudice to his reemployment in any branch of the government or any of its agencies or instrumentalities, including government owned and

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[3] *Id.* at 276.

[4] *Id*.

[5] *Municipality of Butig, Lanao del Sur v. Court of Appeals,* G.R. No. 138348, 9 December 2005, 477 SCRA 115.

controlled corporations, is hereby *DELETED*. Costs against petitioner.

SO ORDERED.

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

Corona, J., on official leave.

Nachura, J., took no part. Signed pleading as Solicitor General.

THIRD DIVISION

[G.R. No. 172101. November 23, 2007]

REPUBLIC OF THE PHILIPPINES, represented by the SOCIAL SECURITY COMMISSION and SOCIAL SECURITY SYSTEM, *petitioners, vs.* **ASIAPRO COOPERATIVE,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; SOCIAL SECURITY COMMISSION (SSC); SOCIAL SECURITY SYSTEM (SSS) REVISED RULES OF PROCEDURE; JURISDICTION; ISSUE REGARDING COMPULSORY COVERAGE OF THE SOCIAL SECURITY SYSTEM IS WELL WITHIN THE EXCLUSIVE DOMAIN OF THE SOCIAL SECURITY COMMISSION.—** Petitioner SSC's jurisdiction is clearly stated in Section 5 of Republic Act No. 8282 as well as in Section 1, Rule III of the 1997 SSS Revised Rules of Procedure. Section 5 of Republic Act No. 8282 provides: SEC. 5. *Settlement of Disputes*. – (a) Any dispute arising under this Act **with respect to coverage,** benefits, contributions and penalties

thereon **or any other matter related thereto, shall be cognizable by the Commission,** x x x. Similarly, Section 1, Rule III of the 1997 SSS Revised Rules of Procedure states: Section 1. *Jurisdiction*. – Any dispute arising under the Social Security Act ***with respect to coverage,*** entitlement of benefits, collection and settlement of contributions and penalties thereon, **or any other matter related thereto, shall be cognizable by the Commission** after the SSS through its President, Manager or Officer-in-charge of the Department/Branch/Representative Office concerned had first taken action thereon in writing. It is clear then from the aforesaid provisions that any issue regarding the compulsory coverage of the SSS is well within the exclusive domain of the petitioner SSC. It is important to note, though, that the mandatory coverage under the SSS Law is premised on the existence of an employer-employee relationship except in cases of compulsory coverage of the self-employed.

2. **ID.; ID.; ID.; ID.; BASED ON THE ALLEGATIONS IN THE PETITION-COMPLAINANT FILED BEFORE THE SOCIAL SECURITY COMMISSION, THE CASE CLEARLY FALLS WITHIN ITS JURISDICTION.— It is axiomatic that the allegations in the complaint, not the defenses set up in the Answer or in the Motion to Dismiss, determine which court has jurisdiction over an action; otherwise, the question of jurisdiction would depend almost entirely upon the defendant.** Moreover, it is well-settled that once jurisdiction is acquired by the court, it remains with it until the full termination of the case. The said principle may be applied even to quasi-judicial bodies. In this case, the petition-complaint filed by the petitioner SSS before the petitioner SSC against the respondent cooperative and Stanfilco alleges that the owners-members of the respondent cooperative are subject to the compulsory coverage of the SSS because they are employees of the respondent cooperative. Consequently, the respondent cooperative being the employer of its owners-members must register as employer and report its owners-members as covered members of the SSS and remit the necessary premium contributions in accordance with the Social Security Law of 1997. Accordingly, based on the aforesaid allegations in the petition-complaint filed before the petitioner SSC, the case clearly falls within its jurisdiction. Although the Answer with Motion to Dismiss filed by the respondent

cooperative challenged the jurisdiction of the petitioner SSC on the alleged lack of employer-employee relationship between itself and its owners-members, the same is not enough to deprive the petitioner SSC of its jurisdiction over the petition-complaint filed before it. Thus, the petitioner SSC cannot be faulted for initially assuming jurisdiction over the petition-complaint of the petitioner SSS.

3. **ID.; ID.; ID.; ID.; QUESTION ON THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP FOR THE PURPOSE OF DETERMINING THE COVERAGE OF THE SOCIAL SECURITY SYSTEM IS EXPLICITLY EXCLUDED FROM THE JURISDICTION OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND FALLS WITHIN THE JURISDICTION OF THE SOCIAL SECURITY COMMISSION WHICH IS PRIMARILY CHARGED WITH THE DUTY OF SETTLING DISPUTES ARISING UNDER THE SOCIAL SECURITY LAW OF 1997.—** Since the existence of an employer-employee relationship between the respondent cooperative and its owners-members was put in issue and considering that the compulsory coverage of the SSS Law is predicated on the existence of such relationship, it behooves the petitioner SSC to determine if there is really an employer-employee relationship that exists between the respondent cooperative and its owners-members. The question on the existence of an employer-employee relationship is not within the exclusive jurisdiction of the National Labor Relations Commission (NLRC). Article 217 of the Labor Code enumerating the jurisdiction of the Labor Arbiters and the NLRC provides that: ART. 217. *JURISDICTION OF LABOR ARBITERS AND THE COMMISSION*. - (a) x x x. xxx 6. **Except claims for** Employees Compensation, **Social Security,** Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement. Although the aforesaid provision speaks merely of claims for Social Security, it would necessarily include issues on the coverage thereof, because claims are undeniably rooted in the coverage by the system. Hence, the question on the existence of an employer-employee relationship **for the purpose of determining the coverage of the Social Security System** is explicitly excluded from the jurisdiction of

the NLRC and falls within the jurisdiction of the SSC which is primarily charged with the duty of settling disputes arising under the Social Security Law of 1997.

4. **ID.; ID.; ID.; ID.; SINCE BOTH THE SSC AND THE NLRC ARE INDEPENDENT BODIES AND THEIR JURISDICTION ARE WELL-DEFINED BY THE SEPARATE STATUTES CREATING THEM, PETITIONER SSC HAS THE AUTHORITY TO INQUIRE INTO THE RELATIONSHIP EXISTING BETWEEN THE WORKER AND THE PERSON OR ENTITY TO WHOM HE RENDERS SERVICE TO DETERMINE IF THE EMPLOYMENT IS ONE THAT IS EXCEPTED BY THE SOCIAL SECURITY LAW OF 1997 FROM COMPULSORY COVERAGE.—** Considering that the petition-complaint of the petitioner SSS involved the issue of compulsory coverage of the owners-members of the respondent cooperative, this Court agrees with the petitioner SSC when it declared in its Order dated 17 February 2004 that as an incident to the issue of compulsory coverage, it may inquire into the presence or absence of an employer-employee relationship without need of waiting for a prior pronouncement or submitting the issue to the NLRC for prior determination. Since both the petitioner SSC and the NLRC are independent bodies and their jurisdiction are well-defined by the separate statutes creating them, petitioner SSC has the authority to inquire into the relationship existing between the worker and the person or entity to whom he renders service to determine if the employment, indeed, is one that is excepted by the Social Security Law of 1997 from compulsory coverage.

5. **ID.; ID.; ID.; ID.; ELEMENTS IN DETERMINING THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP; ALL THE ELEMENTS ARE PRESENT IN CASE AT BAR.—** In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the workers; (2) the payment of wages by whatever means; (3) the power of dismissal; and (4) the power to control the worker's conduct, with the latter assuming primacy in the overall consideration. **The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish.** The power of control refers to the existence of the power and not

necessarily to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee; it is enough that the employer has the right to wield that power. All the aforesaid elements are present in this case. *First*. It is expressly provided in the Service Contracts that it is the respondent cooperative which has the **exclusive discretion in the selection and engagement of the owners-members as well as its team leaders who will be assigned at Stanfilco.** *Second*. **Wages are defined as "remuneration or earnings, however designated,** capable of being expressed in terms of money, whether fixed or ascertained, on a time, task, piece or commission basis, or other method of calculating the same, which is **payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for service rendered or to be rendered."** In this case, the **weekly** stipends or the so-called shares in the service surplus given by the respondent cooperative to its owners-members were in reality wages, as the same were equivalent to an amount not lower than that prescribed by existing labor laws, rules and regulations, including the wage order applicable to the area and industry; or the same shall not be lower than the prevailing rates of wages. It cannot be doubted then that those stipends or shares in the service surplus are indeed wages, because these are given to the owners-members as compensation in rendering services to respondent cooperative's client, Stanfilco. *Third*. It is also stated in the above-mentioned Service Contracts that it is the respondent cooperative which has the **power to investigate, discipline and remove the owners-members and its team leaders** who were rendering services at Stanfilco. *Fourth*. As earlier opined, of the four elements of the employer-employee relationship, the "control test" is the most important. In the case at bar, it is the **respondent cooperative which has the sole control over the manner and means of performing the services under the Service Contracts with Stanfilco as well as the means and methods of work.** Also, the respondent cooperative is solely and entirely responsible for its owners-members, team leaders and other representatives at Stanfilco. All these clearly prove that, indeed, there is an employer-employee relationship between the respondent cooperative and its owners-members.

6. **ID.; ID.; ID.; ID.; THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP CANNOT BE NEGATED BY EXPRESSLY REPUDIATING IT IN A CONTRACT, WHEN THE TERMS SURROUNDING CIRCUMSTANCE SHOW OTHERWISE; THE EMPLOYMENT STATUS OF A PERSON IS DEFINED AND PRESCRIBED BY LAW AND NOT BY WHAT THE PARTIES SAY IT SHOULD BE.—** It is true that the Service Contracts executed between the respondent cooperative and Stanfilco expressly provide that there shall be no employer-employee relationship between the respondent cooperative and its owners-members. This Court, however, cannot give the said provision force and effect. As previously pointed out by this Court, an employee-employer relationship actually exists between the respondent cooperative and its owners-members. The four elements in the four-fold test for the existence of an employment relationship have been complied with. The respondent cooperative must not be allowed to deny its employment relationship with its owners-members by invoking the questionable Service Contracts provision, when in actuality, it does exist. **The existence of an employer-employee relationship cannot be negated by expressly repudiating it in a contract, when the terms and surrounding circumstances show otherwise. The employment status of a person is defined and prescribed by law and not by what the parties say it should be.**

7. **ID.; ID.; ID.; ID.; THE SERVICE CONTRACT PROVISION IN QUESTION MUST BE STRUCK DOWN FOR BEING CONTRARY TO LAW AND PUBLIC POLICY SINCE IT IS APPARENTLY BEING USED BY RESPONDENT COOPERATIVE TO CIRCUMVENT THE COMPULSORY COVERAGE OF ITS EMPLOYEES, WHO ARE ALSO ITS OWNERS-MEMBERS, BY THE SOCIAL SECURITY LAW.—** It is settled that the contracting parties may establish such stipulations, clauses, terms and conditions as they want, and their agreement would have the force of law between them. However, **the agreed terms and conditions must not be contrary to law, morals, customs, public policy or public order.** The Service Contract provision in question must be struck down for being contrary to law and public policy since it is apparently being used by the respondent cooperative merely to circumvent the compulsory coverage of its employees, who are also its owners-members, by the Social Security Law.

8. **ID.; ID.; ID.; ID.; RESPONDENT COOPERATIVE, AS A JURIDICAL PERSON REPRESENTED BY ITS BOARD OF DIRECTORS CAN ENTER INTO AN EMPLOYMENT WITH ITS OWNERS-MEMBERS; AN OWNER-MEMBER OF A COOPERATIVE CAN BE AN EMPLOYEE OF THE LATTER AND AN EMPLOYER-EMPLOYEE RELATIONSHIP CAN EXIST BETWEEN THEM.—** It bears stressing, too, that a cooperative acquires juridical personality upon its registration with the Cooperative Development Authority. It has its Board of Directors, which directs and supervises its business; meaning, its Board of Directors is the one in charge in the conduct and management of its affairs. With that, a cooperative can be likened to a corporation with a personality separate and distinct from its owners-members. Consequently, an owner-member of a cooperative can be an employee of the latter and an employer-employee relationship can exist between them. In the present case, it is not disputed that the respondent cooperative had registered itself with the Cooperative Development Authority, as evidenced by its Certificate of Registration No. 0-623-2460. In its by-laws, its Board of Directors directs, controls, and supervises the business and manages the property of the respondent cooperative. Clearly then, the management of the affairs of the respondent cooperative is vested in its Board of Directors and not in its owners-members as a whole. Therefore, it is completely logical that the respondent cooperative, as a juridical person represented by its Board of Directors, can enter into an employment with its owners-members. In sum, having declared that there is an employer-employee relationship between the respondent cooperative and its owners-member, we conclude that the petitioner SSC has jurisdiction over the petition-complaint filed before it by the petitioner SSS. This being our conclusion, it is no longer necessary to discuss the issue of whether the respondent cooperative was estopped from assailing the jurisdiction of the petitioner SSC when it filed its Answer with Motion to Dismiss.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Cadiz and Tabayoyong for respondent.

DECISION

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to annul and set aside the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 87236, dated 5 January 2006 and 20 March 2006, respectively, which annulled and set aside the Orders of the Social Security Commission (SSC) in SSC Case No. 6-15507-03, dated 17 February 2004[3] and 16 September 2004,[4] respectively, thereby dismissing the petition-complaint dated 12 June 2003 filed by herein petitioner Social Security System (SSS) against herein respondent.

Herein petitioner Republic of the Philippines is represented by the SSC, a quasi-judicial body authorized by law to resolve disputes arising under Republic Act No. 1161, as amended by Republic Act No. 8282.[5] Petitioner SSS is a government corporation created by virtue of Republic Act No. 1161, as amended. On the other hand, herein respondent Asiapro Cooperative (Asiapro) is a multi-purpose cooperative created pursuant to Republic Act No. 6938[6] and duly registered with the Cooperative Development Authority (CDA) on 23 November 1999 with Registration Certificate No. 0-623-2460.[7]

The antecedents of this case are as follows:

Respondent Asiapro, as a cooperative, is composed of owners-members. Under its by-laws, owners-members are of two

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Godardo A. Jacinto and Vicente Q. Roxas, concurring; *rollo*, pp. 63-74.

[2] *Id*. at 61-62.

[3] Penned by Commissioner Sergio R. Ortiz-Luis, Jr.; *id*. at 116-119.

[4] *Id*. at 146-149.

[5] Otherwise known as "Social Security Act of 1997," which was approved on 1 May 1997.

[6] Otherwise known as "Cooperative Code of the Philippines," which was enacted on 10 March 1990.

[7] CA *rollo*, p. 63.

categories, to wit: (1) regular member, who is entitled to all the rights and privileges of membership; and (2) associate member, who has no right to vote and be voted upon and shall be entitled only to such rights and privileges provided in its by-laws.[8] Its primary objectives are to provide savings and credit facilities and to develop other livelihood services for its owners-members. In the discharge of the aforesaid primary objectives, respondent cooperative entered into several Service Contracts[9] with Stanfilco - a division of DOLE Philippines, Inc. and a company based in Bukidnon. The owners-members do not receive compensation or wages from the respondent cooperative. Instead, they receive a share in the service surplus[10] which the respondent cooperative earns from different areas of trade it engages in, such as the income derived from the said Service Contracts with Stanfilco. The owners-members get their income from the service surplus generated by the quality and amount of services they rendered, which is determined by the Board of Directors of the respondent cooperative.

In order to enjoy the benefits under the Social Security Law of 1997, the owners-members of the respondent cooperative, who were assigned to Stanfilco requested the services of the latter to register them with petitioner SSS as self-employed and to remit their contributions as such. Also, to comply with Section 19-A of Republic Act No. 1161, as amended by Republic Act No. 8282, the SSS contributions of the said owners-members were equal to the share of both the employer and the employee.

On 26 September 2002, however, petitioner SSS through its Vice-President for Mindanao Division, Atty. Eddie A. Jara, sent a letter[11] to the respondent cooperative, addressed to its Chief Executive Officer (CEO) and General Manager Leo G. Parma, informing the latter that based on the Service Contracts it executed

[8] Section 2, Asiapro Cooperative Amended By-Laws, CA *rollo*, p. 68.

[9] *Id*. at 126-130, 444-449.

[10] It represents the amount given to respondent cooperative's owners-members for rendering services to the client of respondent cooperative, like Stanfilco. Such amount shall not be lower than the prevailing rates of wages.

[11] *Rollo*, pp. 75-76.

with Stanfilco, respondent cooperative is actually a manpower contractor supplying employees to Stanfilco and for that reason, it is an employer of its owners-members working with Stanfilco. Thus, respondent cooperative should register itself with petitioner SSS as an employer and make the corresponding report and remittance of premium contributions in accordance with the Social Security Law of 1997. On 9 October 2002,[12] respondent cooperative, through its counsel, sent a reply to petitioner SSS's letter asserting that it is not an employer because its owners-members are the cooperative itself; hence, it cannot be its own employer. Again, on 21 October 2002,[13] petitioner SSS sent a letter to respondent cooperative ordering the latter to register as an employer and report its owners-members as employees for compulsory coverage with the petitioner SSS. Respondent cooperative continuously ignored the demand of petitioner SSS.

Accordingly, petitioner SSS, on 12 June 2003, filed a Petition[14] before petitioner SSC against the respondent cooperative and Stanfilco praying that the respondent cooperative or, in the alternative, Stanfilco be directed to register as an employer and to report respondent cooperative's owners-members as covered employees under the compulsory coverage of SSS and to remit the necessary contributions in accordance with the Social Security Law of 1997. The same was docketed as SSC Case No. 6-15507-03. Respondent cooperative filed its Answer with Motion to Dismiss alleging that no employer-employee relationship exists between it and its owners-members, thus, petitioner SSC has no jurisdiction over the respondent cooperative. Stanfilco, on the other hand, filed an Answer with Cross-claim against the respondent cooperative.

On 17 February 2004, petitioner SSC issued an Order denying the Motion to Dismiss filed by the respondent cooperative. The respondent cooperative moved for the reconsideration of the

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[12] *Id*. at 82-86.

[13] *Id*. at 87-88.

[14] *Id*. at 89-97.

said Order, but it was likewise denied in another Order issued by the SSC dated 16 September 2004.

Intending to appeal the above Orders, respondent cooperative filed a Motion for Extension of Time to File a Petition for Review before the Court of Appeals. Subsequently, respondent cooperative filed a Manifestation stating that it was no longer filing a Petition for Review. In its place, respondent cooperative filed a Petition for *Certiorari* before the Court of Appeals, docketed as CA-G.R. SP No. 87236, with the following assignment of errors:

I. The Orders dated 17 February 2004 and 16 September 2004 of [herein petitioner] SSC were issued with grave abuse of discretion amounting to a (sic) lack or excess of jurisdiction in that:

A. [Petitioner] SSC arbitrarily proceeded with the case as if it has jurisdiction over the petition *a quo*, considering that it failed to first resolve the issue of the existence of an employer-employee relationship between [respondent] cooperative and its owners-members.

B. While indeed, the [petitioner] SSC has jurisdiction over all disputes arising under the SSS Law with respect to coverage, benefits, contributions, and related matters, it is respectfully submitted that [petitioner] SSC may only assume jurisdiction in cases where there is no dispute as to the existence of an employer-employee relationship.

C. Contrary to the holding of the [petitioner] SSC, the legal issue of employer-employee relationship raised in [respondent's] Motion to Dismiss can be preliminarily resolved through summary hearings prior to the hearing on the merits. However, any inquiry beyond a preliminary determination, as what [petitioner SSC] wants to accomplish, would be to encroach on the jurisdiction of the National Labor Relations Commission [NLRC], which is the more competent body clothed with power to resolve issues relating to the existence of an employment relationship.

II. At any rate, the [petitioner] SSC **has no jurisdiction to take cognizance of the petition *a quo***.

A. [Respondent] is not an employer within the contemplation of the Labor Law but is a multi-purpose cooperative created pursuant to Republic Act No. 6938 and composed of owners-members, not employees.

B. The rights and obligations of the owners-members of [respondent] cooperative are derived from their Membership Agreements, the Cooperatives By-Laws, and Republic Act No. 6938, and not from any contract of employment or from the Labor Laws. Moreover, said owners-members enjoy rights that are not consistent with being mere employees of a company, such as the right to participate and vote in decision-making for the cooperative.

C. As found by the Bureau of Internal Revenue [BIR], the owners-members of [respondent] cooperative are not paid any compensation income.[15] (Emphasis supplied.)

On 5 January 2006, the Court of Appeals rendered a Decision granting the petition filed by the respondent cooperative. The decretal portion of the Decision reads:

WHEREFORE, the petition is **GRANTED**. The assailed Orders dated [17 February 2004] and [16 September 2004], are **ANNULLED** and **SET ASIDE** and a new one is entered **DISMISSING** the petition-complaint dated [12 June 2003] of [herein petitioner] Social Security System.[16]

Aggrieved by the aforesaid Decision, petitioner SSS moved for a reconsideration, but it was denied by the appellate court in its Resolution dated 20 March 2006.

Hence, this Petition.

In its Memorandum, petitioners raise the issue of **whether or not the Court of Appeals erred in not finding that the SSC has jurisdiction over the subject matter and it has**

[15] *Rollo*, pp. 66-68.

[16] *Id.* at 74.

a valid basis in denying respondent's Motion to Dismiss. The said issue is supported by the following arguments:

I. The [petitioner SSC] has jurisdiction over the petition-complaint filed before it by the [petitioner SSS] under R.A. No. 8282.

II. Respondent [cooperative] is estopped from questioning the jurisdiction of petitioner SSC after invoking its jurisdiction by filing an [A]nswer with [M]otion to [D]ismiss before it.

III. The [petitioner SSC] did not act with grave abuse of discretion in denying respondent [cooperative's] [M]otion to [D]ismiss.

IV. The existence of an employer-employee relationship is a question of fact where presentation of evidence is necessary.

V. There is an employer-employee relationship between [respondent cooperative] and its [owners-members].

Petitioners claim that SSC has jurisdiction over the petition-complaint filed before it by petitioner SSS as it involved an issue of whether or not a worker is entitled to compulsory coverage under the SSS Law. Petitioners avow that Section 5 of Republic Act No. 1161, as amended by Republic Act No. 8282, expressly confers upon petitioner SSC the power to settle disputes on compulsory coverage, benefits, contributions and penalties thereon or any other matter related thereto. Likewise, Section 9 of the same law clearly provides that SSS coverage is compulsory upon all employees. Thus, when petitioner SSS filed a petition-complaint against the respondent cooperative and Stanfilco before the petitioner SSC for the compulsory coverage of respondent cooperative's owners-members as well as for collection of unpaid SSS contributions, it was very obvious that the subject matter of the aforesaid petition-complaint was within the expertise and jurisdiction of the SSC.

Petitioners similarly assert that *granting arguendo* that there is a prior need to determine the existence of an employer-employee relationship between the respondent cooperative and its owners-members, said issue does not preclude petitioner SSC from taking cognizance of the aforesaid petition-complaint. Considering that the principal relief sought in the said petition-complaint has to be

resolved by reference to the Social Security Law and not to the Labor Code or other labor relations statutes, therefore, jurisdiction over the same solely belongs to petitioner SSC.

Petitioners further claim that the denial of the respondent cooperative's Motion to Dismiss grounded on the alleged lack of employer-employee relationship does not constitute grave abuse of discretion on the part of petitioner SSC because the latter has the authority and power to deny the same. Moreover, the existence of an employer-employee relationship is a question of fact where presentation of evidence is necessary. Petitioners also maintain that the respondent cooperative is already estopped from assailing the jurisdiction of the petitioner SSC because it has already filed its Answer before it, thus, respondent cooperative has already submitted itself to the jurisdiction of the petitioner SSC.

Finally, petitioners contend that there is an employer-employee relationship between the respondent cooperative and its owners-members. The respondent cooperative is the employer of its owners-members considering that it undertook to provide services to Stanfilco, the performance of which is under the full and sole control of the respondent cooperative.

On the other hand, respondent cooperative alleges that its owners-members own the cooperative, thus, no employer-employee relationship can arise between them. The persons of the employer and the employee are merged in the owners-members themselves. Likewise, respondent cooperative's owners-members even requested the respondent cooperative to register them with the petitioner SSS as self-employed individuals. Hence, petitioner SSC has no jurisdiction over the petition-complaint filed before it by petitioner SSS.

Respondent cooperative further avers that the Court of Appeals correctly ruled that petitioner SSC acted with grave abuse of discretion when it assumed jurisdiction over the petition-complaint without determining first if there was an employer-employee relationship between the respondent cooperative and its owners-members. Respondent cooperative claims that the question of whether an employer-employee relationship exists between it

and its owners-members is a legal and not a factual issue as the facts are undisputed and need only to be interpreted by the applicable law and jurisprudence.

Lastly, respondent cooperative asserts that it cannot be considered estopped from assailing the jurisdiction of petitioner SSC simply because it filed an Answer with Motion to Dismiss, especially where the issue of jurisdiction is raised at the very first instance and where the only relief being sought is the dismissal of the petition-complaint for lack of jurisdiction.

From the foregoing arguments of the parties, the issues may be summarized into:

I. Whether the petitioner SSC has jurisdiction over the petition-complaint filed before it by petitioner SSS against the respondent cooperative.

II. Whether the respondent cooperative is estopped from assailing the jurisdiction of petitioner SSC since it had already filed an Answer with Motion to Dismiss before the said body.

Petitioner SSC's jurisdiction is clearly stated in Section 5 of Republic Act No. 8282 as well as in Section 1, Rule III of the 1997 SSS Revised Rules of Procedure.

Section 5 of Republic Act No. 8282 provides:

SEC. 5. *Settlement of Disputes*. – (a) Any dispute arising under this Act **with respect to coverage**, benefits, contributions and penalties thereon **or any other matter related thereto, shall be cognizable by the Commission**, x x x. (Emphasis supplied.)

Similarly, Section 1, Rule III of the 1997 SSS Revised Rules of Procedure states:

Section 1. *Jurisdiction*. – Any dispute arising under the Social Security Act **with respect to coverage**, entitlement of benefits, collection and settlement of contributions and penalties thereon, **or any other matter related thereto, shall be cognizable by the Commission** after the SSS through its President, Manager or Officer-in-charge of the Department/Branch/Representative Office concerned had first taken action thereon in writing. (Emphasis supplied.)

It is clear then from the aforesaid provisions that any issue regarding the compulsory coverage of the SSS is well within the exclusive domain of the petitioner SSC. It is important to note, though, that the mandatory coverage under the SSS Law is premised on the existence of an employer-employee relationship[17] except in cases of compulsory coverage of the self-employed.

It is axiomatic that the allegations in the complaint, not the defenses set up in the Answer or in the Motion to Dismiss, determine which court has jurisdiction over an action; otherwise, the question of jurisdiction would depend almost entirely upon the defendant.[18] Moreover, it is well-settled that once jurisdiction is acquired by the court, it remains with it until the full termination of the case.[19] The said principle may be applied even to quasi-judicial bodies.

In this case, the petition-complaint filed by the petitioner SSS before the petitioner SSC against the respondent cooperative and Stanfilco alleges that the owners-members of the respondent cooperative are subject to the compulsory coverage of the SSS because they are employees of the respondent cooperative. Consequently, the respondent cooperative being the employer of its owners-members must register as employer and report its owners-members as covered members of the SSS and remit the necessary premium contributions in accordance with the Social Security Law of 1997. Accordingly, based on the aforesaid allegations in the petition-complaint filed before the petitioner SSC, the case clearly falls within its jurisdiction. Although the Answer with Motion to Dismiss filed by the respondent cooperative challenged the jurisdiction of the petitioner SSC on the alleged lack of employer-employee relationship between itself and its owners-members, the same is not enough to deprive the petitioner SSC of its jurisdiction over the petition-complaint

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[17] *Social Security System v. Court of Appeals*, 401 Phil. 132, 141 (2000).

[18] *Abacus Securities Corporation v. Ampil*, G.R. No. 160016, 27 February 2006, 483 SCRA 315, 339.

[19] *Philrock, Inc. v. Construction Industry Arbitration Commission,* 412 Phil. 236, 246 (2001).

filed before it. Thus, the petitioner SSC cannot be faulted for initially assuming jurisdiction over the petition-complaint of the petitioner SSS.

Nonetheless, since the existence of an employer-employee relationship between the respondent cooperative and its owners-members was put in issue and considering that the compulsory coverage of the SSS Law is predicated on the existence of such relationship, it behooves the petitioner SSC to determine if there is really an employer-employee relationship that exists between the respondent cooperative and its owners-members.

The question on the existence of an employer-employee relationship is not within the exclusive jurisdiction of the National Labor Relations Commission (NLRC). Article 217 of the Labor Code enumerating the jurisdiction of the Labor Arbiters and the NLRC provides that:

ART. 217. *JURISDICTION OF LABOR ARBITERS AND THE COMMISSION*. - (a) x x x.

x x x x x x x x x

6. **Except claims for** Employees Compensation, **Social Security**, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.[20]

Although the aforesaid provision speaks merely of claims for Social Security, it would necessarily include issues on the coverage thereof, because claims are undeniably rooted in the coverage by the system. Hence, the question on the existence of an employer-employee relationship **for the purpose of determining the coverage of the Social Security System** is explicitly excluded from the jurisdiction of the NLRC and falls within the jurisdiction of the SSC which is primarily charged with the duty of settling disputes arising under the Social Security Law of 1997.

[20] Article 217(a)(6) of the Labor Code of the Philippines.

On the basis thereof, considering that the petition-complaint of the petitioner SSS involved the issue of compulsory coverage of the owners-members of the respondent cooperative, this Court agrees with the petitioner SSC when it declared in its Order dated 17 February 2004 that as an incident to the issue of compulsory coverage, it may inquire into the presence or absence of an employer-employee relationship without need of waiting for a prior pronouncement or submitting the issue to the NLRC for prior determination. Since both the petitioner SSC and the NLRC are independent bodies and their jurisdiction are well-defined by the separate statutes creating them, petitioner SSC has the authority to inquire into the relationship existing between the worker and the person or entity to whom he renders service to determine if the employment, indeed, is one that is excepted by the Social Security Law of 1997 from compulsory coverage.[21]

Even before the petitioner SSC could make a determination of the existence of an employer-employee relationship, however, the respondent cooperative already elevated the Order of the petitioner SSC, denying its Motion to Dismiss, to the Court of Appeals by filing a Petition for *Certiorari*. As a consequence thereof, the petitioner SSC became a party to the said Petition for *Certiorari* pursuant to Section 5(b)[22] of Republic Act No. 8282. The appellate court ruled in favor of the respondent cooperative by declaring that the petitioner SSC has no jurisdiction over the petition-complaint filed before it because there was no employer-employee relationship between the respondent cooperative and its owners-members. Resultantly, the petitioners SSS and SSC, representing the Republic of the Philippines, filed a Petition for Review before this Court.

Although as a rule, in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and the findings of fact of the Court of Appeals are conclusive and binding on

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[21] *Rollo*, p. 117.

[22] SEC. 5. *Settlement of Disputes*. – (a) x x x.

(b) x x x. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented by an attorney employed by the Commission, by the Solicitor General or any public prosecutor.

the Court,[23] said rule is not without exceptions. There are several recognized exceptions[24] in which factual issues may be resolved by this Court. One of these exceptions finds application in this present case which is, when the findings of fact are conflicting. There are, indeed, conflicting findings espoused by the petitioner SSC and the appellate court relative to the existence of employer-employee relationship between the respondent cooperative and its owners-members, which necessitates a departure from the oft-repeated rule that factual issues may not be the subject of appeals to this Court.

In determining the existence of an employer-employee relationship, the following elements are considered: (1) the selection and engagement of the workers; (2) the payment of wages by whatever means; (3) the power of dismissal; and (4) the power to control the worker's conduct, with the latter assuming primacy in the overall consideration.[25] **The most important element is the employer's control of the employee's**

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[23] *Almendrala v. Ngo*, G.R. No. 142408, 30 September 2005, 471 SCRA 311, 322.

[24] Recognized exceptions to this rule are: (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 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 appellee and the appellant; (7) when the findings are contrary to 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; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion (*Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 400 Phil. 1349, 1356 (2000); *Nokom v. National Labor Relations Commissions*, 390 Phil. 1228, 1243 (2000); *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phils.), Inc.*, 364 Phil. 541, 546-547 (1999); *Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 (1998); *Almendrala v. Ngo*, G.R. No. 142408, 30 September 2005, 471 SCRA 311, 322.).

[25] *Jo v. National Labor Relations Commission*, 381 Phil. 428, 435 (2000).

conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish.[26] The power of control refers to the existence of the power and not necessarily to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee; it is enough that the employer has the right to wield that power.[27] All the aforesaid elements are present in this case.

First. It is expressly provided in the Service Contracts that it is the respondent cooperative which has the **exclusive discretion in the selection and engagement of the owners-members as well as its team leaders who will be assigned at Stanfilco**.[28] *Second*. **Wages are defined as "remuneration or earnings, however designated**, capable of being expressed in terms of money, whether fixed or ascertained, on a time, task, piece or commission basis, or other method of calculating the same, which is **payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for service rendered or to be rendered**."[29] In this case, the **weekly** stipends or the so-called shares in the service surplus given by the respondent cooperative to its owners-members were in reality wages, as the same were equivalent to an amount not lower than that prescribed by existing labor laws, rules and regulations, including the wage order applicable to the area and industry; or the same shall not be lower than the prevailing rates of wages.[30] It cannot be doubted then that those

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[26] *Chavez v. National Labor Relations Commission*, G.R. No. 146530, 17 January 2005, 448 SCRA 478, 490.

[27] *Jo v. National Labor Relations Commission*, *supra* note 25.

[28] 7. **SELECTION, ENGAGEMENT, DISCHARGE**. The Cooperative shall have the exclusive discretion in the acceptance, engagement, investigation and discipline and removal of its owner-members and team leaders. (Service Contract, CA *rollo*, p. 458).

[29] ART. 97(f) of the Labor Code.

[30] 4. **COOPERATIVE'S RESPONSIBILITIES**. The Cooperative shall have the following responsibilities:

x x x x x x x x x

stipends or shares in the service surplus are indeed wages, because these are given to the owners-members as compensation in rendering services to respondent cooperative's client, Stanfilco. *Third*. It is also stated in the above-mentioned Service Contracts that it is the respondent cooperative which has the **power to investigate, discipline and remove the owners-members and its team leaders** who were rendering services at Stanfilco.[31] *Fourth*. As earlier opined, of the four elements of the employer-employee relationship, the "control test" is the most important. In the case at bar, it is the **respondent cooperative which has the sole control over the manner and means of performing the services under the Service Contracts with Stanfilco as well as the means and methods of work**.[32] Also, the respondent cooperative is solely and entirely responsible for its owners-members, team leaders and other representatives at Stanfilco.[33] All these clearly prove that, indeed, there is an employer-employee relationship between the respondent cooperative and its owners-members.

It is true that the Service Contracts executed between the respondent cooperative and Stanfilco expressly provide that there shall be no employer-employee relationship between the respondent cooperative and its owners-members.[34] This Court, however, cannot give the said provision force and effect.

4.3. The Cooperative shall pay the share of the service surplus due to its owner-members assigned to the Client x x x. However, the amount of the share of the service surplus of the owner-members x x x shall be in an amount not lower than existing labor laws, rules and regulations, including the wage order applicable to the area and industry. x x x. (CA *rollo,* pp. 457-458).

[31] *Id*.

[32] 1. **SCOPE OF SERVICE**. x x x.

x x x. The Cooperative shall have sole control over the manner and means of performing the subject services under this Contract and shall complete the services in accordance with its own means and methods of work, in keeping with the Client's standards. (*Id*. at 456).

[33] 3. **RELATIONSHIP OF THE PARTIES**. x x x. The Cooperative shall be solely and entirely responsible for its owner-members, team leaders and other representatives. (*Id*. at 457).

[34] 3. **RELATIONSHIP OF THE PARTIES**. It is hereby agreed that there shall be no employer-employee relationship between the Cooperative and its owners-members x x x. (*Id*).

As previously pointed out by this Court, an employee-employer relationship actually exists between the respondent cooperative and its owners-members. The four elements in the four-fold test for the existence of an employment relationship have been complied with. The respondent cooperative must not be allowed to deny its employment relationship with its owners-members by invoking the questionable Service Contracts provision, when in actuality, it does exist. **The existence of an employer-employee relationship cannot be negated by expressly repudiating it in a contract, when the terms and surrounding circumstances show otherwise. The employment status of a person is defined and prescribed by law and not by what the parties say it should be**.[35]

It is settled that the contracting parties may establish such stipulations, clauses, terms and conditions as they want, and their agreement would have the force of law between them. However, **the agreed terms and conditions must not be contrary to law, morals, customs, public policy or public order**.[36] The Service Contract provision in question must be struck down for being contrary to law and public policy since it is apparently being used by the respondent cooperative merely to circumvent the compulsory coverage of its employees, who are also its owners-members, by the Social Security Law.

This Court is not unmindful of the pronouncement it made in *Cooperative Rural Bank of Davao City, Inc. v. Ferrer-Calleja*[37] wherein it held that:

> A cooperative, therefore, is by its nature different from an ordinary business concern, being run either by persons, partnerships, or corporations. Its owners and/or members are the ones who run and operate the business while the others are its employees x x x.

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[35] *Chavez v. National Labor Relations Commission*, *supra* note 26 at 493; *Lopez v. Metropolitan Waterworks and Sewerage System*, G.R. No. 154472, 30 June 2005, 462 SCRA 428, 445-446.

[36] Art. 1306, Civil Code of the Philippines; *Philippine National Bank v. Cabansag*, G.R. No. 157010, 21 June 2005, 460 SCRA 514, 533.

[37] G.R. No. 77951, 26 September 1988, 165 SCRA 725, 732-733.

An employee therefore of such a cooperative who is a member and co-owner thereof cannot invoke the right to collective bargaining for certainly an owner cannot bargain with himself or his co-owners. In the opinion of August 14, 1981 of the Solicitor General he correctly opined that employees of cooperatives who are themselves members of the cooperative have no right to form or join labor organizations for purposes of collective bargaining for being themselves co-owners of the cooperative.

However, in so far as it involves cooperatives with employees who are not members or co-owners thereof, certainly such employees are entitled to exercise the rights of all workers to organization, collective bargaining, negotiations and others as are enshrined in the Constitution and existing laws of the country.

The situation in the aforesaid case is very much different from the present case. The declaration made by the Court in the aforesaid case was made in the context of whether an employee who is also an owner-member of a cooperative can exercise the right to bargain collectively with the employer who is the cooperative wherein he is an owner-member. Obviously, an owner-member cannot bargain collectively with the cooperative of which he is also the owner because an owner cannot bargain with himself. In the instant case, there is no issue regarding an owner-member's right to bargain collectively with the cooperative. The question involved here is whether an employer-employee relationship can exist between the cooperative and an owner-member. In fact, a closer look at *Cooperative Rural Bank of Davao City, Inc.* will show that it actually recognized that an owner-member of a cooperative can be its own employee.

It bears stressing, too, that a cooperative acquires juridical personality upon its registration with the Cooperative Development Authority.[38] It has its Board of Directors, which directs and supervises its business; meaning, its Board of Directors is the one in charge in the conduct and management

[38] ART. 16. *Registration*. - A cooperative formed or organized under this Code acquires juridical personality from the date the Cooperative Development Authority issues a certificate of registration under its official seal. x x x. (Republic Act No. 6938).

of its affairs.[39] With that, a cooperative can be likened to a corporation with a personality separate and distinct from its owners-members. Consequently, an owner-member of a cooperative can be an employee of the latter and an employer-employee relationship can exist between them.

In the present case, it is not disputed that the respondent cooperative had registered itself with the Cooperative Development Authority, as evidenced by its Certificate of Registration No. 0-623-2460.[40] In its by-laws,[41] its Board of Directors directs, controls, and supervises the business and manages the property of the respondent cooperative. Clearly then, the management of the affairs of the respondent cooperative is vested in its Board of Directors and not in its owners-members as a whole. Therefore, it is completely logical that the respondent cooperative, as a juridical person represented by its Board of Directors, can enter into an employment with its owners-members.

In sum, having declared that there is an employer-employee relationship between the respondent cooperative and its owners-member, we conclude that the petitioner SSC has jurisdiction over the petition-complaint filed before it by the petitioner SSS. This being our conclusion, it is no longer necessary to discuss the issue of whether the respondent cooperative was estopped from assailing the jurisdiction of the petitioner SSC when it filed its Answer with Motion to Dismiss.

WHEREFORE, premises considered, the instant Petition is hereby *GRANTED*. The Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 87236, dated 5 January 2006 and 20 March 2006, respectively, are hereby *REVERSED*

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[39] ART. 38. *Composition of the Board of Directors*. - The conduct and management of the affairs of a cooperative shall be vested in a board of directors x x x.

ART. 39. *Powers of the Board of Directors*. - The board of directors shall direct and supervise the business, manage the property of the cooperative and may, by resolution, exercise all such powers of the cooperative as are not reserved for the general assembly under this Code and the by-laws. (*Id.*).

[40] CA *rollo,* p. 63.

[41] *Id*. at 68-78.

and SET ASIDE. The Orders of the petitioner SSC dated 17 February 2004 and 16 September 2004 are hereby *REINSTATED.* The petitioner SSC is hereby *DIRECTED* to continue hearing the petition-complaint filed before it by the petitioner SSS as regards the compulsory coverage of the respondent cooperative and its owners-members. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172156. November 23, 2007]

MALAYAN INSURANCE CO., INC[1] *petitioner, vs.* **REGIS BROKERAGE CORP.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; ALLEGATIONS IN PLEADINGS; ACTION OR DEFENSE BASED ON DOCUMENT; SINCE THE MARINE INSURANCE POLICY WAS NEVER PRESENTED BEFORE THE TRIAL COURT OR THE COURT OF APPEALS, THERE IS NO BASIS TO CONSIDER SUCH DOCUMENT IN THE RESOLUTION OF THE PRESENT CASE.—** Malayan's argument before this Court is not that the Court of Appeals erred in its evaluation of the Marine Risk Note following that document's terms alone, but that the appellate court could not consider the import of the purported Marine Insurance Policy. Indeed, since no insurance policy was presented at the trial by Malayan, or even before the Court of Appeals, there certainly is no basis for this Court to admit or consider the same,

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[1] See note 2.

notwithstanding Malayan's attempt to submit such document to us along with its present petition. As we recently held: Similarly, petitioner in this case cannot "enervate" the COMELEC's findings by introducing new evidence before this Court, which in any case is not a trier of facts, and then ask it to substitute its own judgment and discretion for that of the COMELEC. The rule in appellate procedure is that a factual question may not be raised for the first time on appeal, and documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action. This is true whether the decision elevated for review originated from a regular court or an administrative agency or quasi-judicial body, and whether it was rendered in a civil case, a special proceeding, or a criminal case. Piecemeal presentation of evidence is simply not in accord with orderly justice. Since the Marine Insurance Policy was never presented in evidence before the trial court or the Court of Appeals even, there is no legal basis to consider such document in the resolution of this case, reflective as that document may have been of the pre-existence of an insurance contract between Malayan and ABB Koppel even prior to the loss of the motors. In fact, it appears quite plain that Malayan's theory of the case it pursued before the trial court was that the perfected insurance contract which it relied upon as basis for its right to subrogation was not the Marine Insurance Policy but the Marine Risk Note which, unlike the former, was actually presented at the trial and offered in evidence. The Claims Processor of Malayan who testified in court in behalf of his employer actually acknowledged that the "proof that ABB Koppel insured the [shipment] to [Malayan]" was the Marine Risk Note, and not the Marine Insurance Policy. Even the very complaint filed by Malayan before the MeTC stated that "[t]he subject shipment was insured by [Malayan] under Risk Note No. 0001-19832," and not by the Marine Insurance Policy, which was not adverted to at all in the complaint.

2. **ID.; ID.; ID.; ID.; ID.; WITHOUT THE MARINE INSURANCE POLICY ITSELF AS THE MAIN INSURANCE CONTRACT, PETITIONER CANNOT ESTABLISH ITS CAUSE OF ACTION FOR RESTITUTION AS SUBROGEE.—** Malayan correctly points out that the Marine Risk Note itself adverts to "Marine Cargo Policy Number Open Policy-0001-00410" as well as to "the standard Marine Cargo Policy and the Company's Marine

Open Policy." What the Marine Risk Note bears, as a matter of evidence, is that it is not apparently the contract of insurance by itself, but merely a complementary or supplementary document to the contract of insurance that may have existed as between Malayan and ABB Koppel. And while this observation may deviate from the tenor of the assailed Court of Appeals' Decision, it does not presage any ruling in favor of petitioner. Fundamentally, since Malayan failed to introduce in evidence the Marine Insurance Policy itself as the main insurance contract, or even advert to said document in the complaint, ultimately then it failed to establish its cause of action for restitution as a subrogee of ABB Koppel.

3. **ID.; ID.; ID.; ID.; ID.; PETITIONER'S RIGHT TO RECOVERY DERIVES FROM CONTRACTUAL SUBROGATION AS AN INCIDENT TO AN INSURANCE RELATIONSHIP AND NOT FROM ANY PROXIMATE INJURY TO IT INFLICTED BY THE RESPONDENTS; IT IS CRITICAL THEN ON THE PART OF PETITIONER TO ESTABLISH THE LEGAL BASIS OF SUCH RIGHT TO SUBROGATION BY PRESENTING THE CONTRACT CONSTITUTIVE OF THE INSURANCE RELATIONSHIP BETWEEN IT AND THE INSURED AND WITHOUT SUCH LEGAL BASIS, ITS CAUSE OF ACTION CANNOT SURVIVE.—** Malayan's right of recovery as a subrogee of ABB Koppel cannot be predicated alone on the liability of the respondent to ABB Koppel, even though such liability will necessarily have to be established at the trial for Malayan to recover. Because Malayan's right to recovery derives from contractual subrogation as an incident to an insurance relationship, and not from any proximate injury to it inflicted by the respondents, it is critical that Malayan establish the legal basis of such right to subrogation by presenting the contract constitutive of the insurance relationship between it and ABB Koppel. Without such legal basis, its cause of action cannot survive.

4. **ID.; ID.; ID.; ID.; ID.; UNDER THE ESTABLISHED CIRCUMSTANCES OF THE PRESENT CASE, THE VERY INSURANCE CONTRACT EMERGES AS THE WHITE ELEPHANT IN THE ROOM, AN OBDURATE PRESENCE WHICH EVERYBODY REACTS TO, YET LEGALLY INVISIBLE AS A MATTER OF EVIDENCE SINCE NO ATTEMPT HAD BEEN MADE TO PROVE ITS CORPOREAL EXISTENCE IN THE**

COURT OF LAW.— It may be that there is no specific provision in the Rules of Court which prohibits the admission in evidence of an actionable document in the event a party fails to comply with the requirement of the rule on actionable documents under Section 7, Rule 9. Yet such qualification does not provide safe harbor for Malayan as it did not even present the Marine Insurance Policy at the trial, relying instead on the Marine Risk Note only and by its lonesome to constitute the insurer-insured relationship between it and ABB Koppel, or more precisely as stated in its Formal Offer of Evidence, "to prove that the shipment subject of this case was covered by an insurance policy with the plaintiffs." Before the MeTC, Regis objected to the admission of the Marine Risk Note on the ground of immateriality and irrelevance because it "was issued on March 21, 1995 which is after the occurrence of the loss on February 1, 1995." The Court of Appeals upheld this objection of Regis as basis for the dismissal of the complaint. In our view, Malayan may have not been of the precise belief that the Marine Risk Note is the insurance contract itself as even the purpose stated in its Formal Offer may admit to an interpretation that alludes to "an insurance policy with the plaintiffs" that may stand independent of the Marine Risk Note. Yet if that were so, it remains incomprehensible and inexcusable why Malayan neglected to attach it to its complaint as required by Section 7, Rule 9, or even offer it in the Marine Insurance Policy which constitutes the insurance contract as evidence before the trial court. It cannot be denied from the only established facts that Malayan and ABB Koppel comported as if there was an insurance relationship between them and documents exist that evince the presence of such legal relationship. But under these premises, the very insurance contract emerges as the white elephant in the room – an obdurate presence which everybody reacts to, yet legally invisible as a matter of evidence since no attempt had been made to prove its corporeal existence in the court of law. It may seem commonsensical to conclude anyway that there was a contract of insurance between Malayan and ABB Koppel since they obviously behaved in a manner that indicates such relationship, yet the same conclusion could be had even if, for example, those parties staged an elaborate charade to impress on the world the existence of an insurance contract when there actually was none. While there is absolutely no indication of any bad faith of such import by Malayan or ABB Koppel, the

fact that the "commonsensical" conclusion can be drawn even if there was bad faith that convinces us to reject such line of thinking.

5. **ID.; ID.; ID.; ID.; ID.; SUSTAINING PETITIONER'S ARGUMENT WOULD CREATE A DANGEROUS POSITION NOT ONLY BECAUSE SUCH A RULING WOULD FORMALLY VIOLATE THE RULE ON ACTIONABLE DOCUMENTS BUT IT WOULD HAVE THE COURT EFFECTUATE AN INSURANCE CONTRACT WITHOUT HAVING TO CONSIDER ITS PARTICULAR TERMS AND CONDITIONS, AND ON A BLIND LEAP OF FAITH THAT SUCH CONTRACT IS VALID AND SUBSISTING.—** The Court further recognizes the danger as precedent should we sustain Malayan's position, and not only because such a ruling would formally violate the rule on actionable documents. Malayan would have us effectuate an insurance contract without having to consider its particular terms and conditions, and on a blind leap of faith that such contract is indeed valid and subsisting. The conclusion further works to the utter prejudice of defendants such as Regis or Paircargo since they would be deprived the opportunity to examine the document that gives rise to the plaintiff's right to recover against them, or to raise arguments or objections against the validity or admissibility of such document. If a legal claim is irrefragably sourced from an actionable document, the defendants cannot be deprived of the right to examine or utilize such document in order to intelligently raise a defense. The inability or refusal of the plaintiff to submit such document into evidence constitutes an effective denial of that right of the defendant which is ultimately rooted in due process of law, to say nothing on how such failure fatally diminishes the plaintiff's substantiation of its own cause of action.

6. **ID.; ID.; ID.; ID.; ID.; QUESTIONS REGARDING THE PARTICULAR TERMS AND CONDITIONS IN THE INSURANCE CONTRACT THAT SPECIFICALLY GIVE RISE TO PETITIONER'S RIGHT TO BE SUBROGATED TO THE CONSIGNEE, OR TO SUCH TERMS AND CONDITIONS IN THE INSURANCE CONTRACT THAT MAY HAVE ABSOLVE IT FROM THE DUTY TO PAY THE INSURANCE PROCEEDS TO THE CONSIGNEE COULD ONLY BE DEFINITIVELY SETTLED BY THE ACTUAL POLICY ITSELF.—** In the absence of any evidentiary

consideration of the actual Marine Insurance Policy, the substance of Malayan's right to recovery as the subrogee of ABB Koppel is not duly confirmed. There can be no consideration of the particular terms and conditions in the insurance contract that specifically give rise to Malayan's right to be subrogated to ABB Koppel, or to such terms that may have absolved Malayan from the duty to pay the insurance proceeds to that consignee. The particular date as to when such insurance contract was constituted cannot be established with certainty without the contract itself, and that point is crucial since there can be no insurance on a risk that had already occurred by the time the contract was executed. Since the documents in evidence and testimonies allude to "marine insurance" or "marine risk note," it also is a legitimate question whether the particular marine insurance relationship between Malayan and ABB Koppel also covers cargo delivered not by ships at sea but by airplane flights, as had occurred in this case. Only the actual policy itself could definitively settle such a question. We can even note legitimate questions concerning the integrity or viability of the Marine Insurance Policy as belatedly presented before this court. For one, Regis observes that the "Marine Cargo Policy Number" as denominated in the Risk Note reads: "Open Policy-0001-00410," while the copy of the Marine Insurance Policy submitted before us is numbered "M/OP/95001-410." The variance may ultimately be explainable, yet the non-presentation of the Marine Insurance Policy before the trial court precludes the due evaluation of the reason for the difference in numbering. All told, we hold that Malayan was not able to establish its cause of action as stated in its complaint, based as it was on its right to be subrogated to ABB Koppel under the insurance contract which it failed to present as an actionable document, or as evidence before the trial court. The result reached by the Court of Appeals – the dismissal of the instant complaint – is thus correct. As such, there is no need to consider the other issues raised in the petition.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Offices for petitioner.

Buscano & Associates Law Office for respondent.

D E C I S I O N

TINGA, *J.*:

We consider whether an insurer, in an action for recoupment instituted in its capacity as the subrogee of the insured, may be conferred favorable relief even if it failed to introduce in evidence the insurance contract or policy, or even allege the existence nay recite the substance and attach a copy of such document in the complaint. The answer is as self-evident as meets the eye.

This Petition for Review under Rule 45 was filed by petitioner Malayan Insurance Co., Inc. (Malayan),[2] assailing the Decision[3]

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[2] The petition names People's Aircargo & Warehousing Corp. (Paircargo) as a co-petitioner along with Malayan, but does not contain any attached Secretary's Certificate or Board Resolution from Paircargo authorizing the filing of the present petition. This point was raised by respondent Regis Brokerage Corp. (Regis) in its Comment (see *rollo*, pp. 54-55), and in the Reply thereto, only Malayan is identified as a petitioner, *id*. at 89. It also appears that Paircargo was represented in the Court of Appeals by Atty. Pedro Santos, Jr. (see CA *rollo*, p. 99), but he did not file any pleading in behalf of Paircargo before this Court.

The case records reveal that Paircargo was a co-defendant of Regis in the complaint filed by Malayan before the Metropolitan Trial Court (MeTC) of Manila. The MeTC absolved Paircargo from any liability, although the counterclaim posed against Malayan by that company was also dismissed. (See *id*. at 35-37.) Regis alone filed a Notice of Appeal from the MeTC decision (see *id*. at 87). The RTC of Manila affirmed the MeTC ruling, causing Regis to file a petition with the Court of Appeals seeking the dismissal of the complaint against Regis, "or by finding Regis free from liability, and declaring Paircargo solely liable to Malayan, in accordance with Regis's cross-claim"(*id*. at 14). The Court of Appeals opted to dismiss Malayan's complaint against Regis, instead of adjudging Paircargo liable in lieu of Regis.

Given these premises, there would be no sensible reason for Paircargo to join Malayan as a co-petitioner before us, especially since the petition does not seek any favorable relief in favor of Paircargo. Neither is there any indication, apart from Paircargo's denomination as a petitioner in the petition prepared by Malayan's counsel alone, that Paircargo intended to join Malayan as petitioner. The fact that in its Reply, no more advertence was made to Paircargo as a petitioner, bolsters the conclusion that Paircargo was erroneously joined as a petitioner and that such error is ultimately is of no legal consequence to this

dated 23 December 2005 of the Court of Appeals in C.A. G.R. SP No. 90505, as well as its Resolution[4] dated 5 April 2006 denying petitioner's motion for reconsideration.

The facts require little elaboration. Around 1 February 1995, Fasco Motors Group loaded 120 pieces of "motors" on board China Airlines Flight 621 bound for Manila from the United States. The cargo was to be delivered to consignee ABB Koppel, Inc. (ABB Koppel).[5] When the cargo arrived at the Ninoy Aquino International Airport, it was discharged without exception and forwarded to People's Aircargo & Warehousing Corp.'s (Paircargo's) warehouse for temporary storage pending release by the Bureau of Customs. Paircargo remained in possession of the cargo until 7 March 1995, at which point respondent Regis Brokerage Corp. (Regis) withdrew the cargo and delivered the same to ABB Koppel at its warehouse.[6] When the shipment arrived at ABB Koppel's warehouse, it was discovered that only 65 of the 120 pieces of motors were actually delivered and that the remaining 55 motors, valued at US$2,374.35, could not be accounted for.[7]

The shipment was purportedly insured with Malayan by ABB Koppel. Demand was first made upon Regis and Paircargo for payment of the value of the missing motors, but both refused to pay.[8] Thus, Malayan paid ABB Koppel the amount of ₱156,549.55 apparently pursuant to its insurance agreement, and Malayan was on that basis subrogated to the rights of ABB

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petition. Since Section 11, Rule 3 authorizes courts to drop misjoined parties without consequence to the pending action, the erroneous joinder of Paircargo as plaintiff should have no legal effect to this petition.

[3] *Rollo*, pp. 27-33. Penned by Associate Justice Edgardo Cruz of the Court of Appeals Former Special Fourteenth Division, concurred in by Associate Justices Juan Enriquez, Jr. and Sesinando Villon.

[4] *Id*. at 35-36.

[5] *Id*. at 27.

[6] *Id*. at 28.

[7] *Id*.

[8] *Id*.

Koppel against Regis and Paircargo.[9] On 24 June 1996, Malayan filed a complaint for damages against Regis and Paircargo with the Metropolitan Trial Court (MeTC) of Manila, Branch 9. In the course of trial, Malayan presented Marine Risk Note No. RN-0001-19832 (Marine Risk Note) dated 21 March 1995 as proof that the cargo was insured by Malayan.[10]

The MeTC rendered a Decision[11] dated 25 May 2001 adjudging Regis alone liable to Malayan in the amount of ₱156,549.00 as actual damages, ₱15,000.00 as attorney's fees, and costs of suits. With the exception of the award of attorney's fees, the MeTC decision was affirmed on appeal to the Regional Trial Court (RTC) of Manila, through a Decision dated 28 February 2005.[12]

Regis filed a petition for review with the Court of Appeals seeking the reversal of the MeTC and RTC decisions. On 23 December 2005, the Court of Appeals promulgated its decision vacating the RTC judgment and ordering the dismissal of Malayan's complaint. The central finding that formed the Court of Appeals decision was that the Marine Risk Note presented as proof that the cargo was insured was invalid.[13] It was observed that the Marine Risk Note was procured from Malayan only on 21 March 1995, when in fact the insured, ABB Koppel, had learned of the partial loss of the motors as early as 7 March 1995.[14] The appellate court noted that under Section 3 of the Insurance Code, the past event which may be insured against must be unknown to the parties and so for that reason the insurance contract in this case violated Section 3. The Court of Appeals further ruled that the due execution and authenticity of

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[9] *Id*.

[10] See CA *rollo*, pp. 25, 56, 61. See also *rollo*, pp. 67-68.

[11] CA *rollo*, pp. 24-37. Penned by Judge Amelia Fabros.

[12] *Id*. at 18-23. Penned by Judge Eduardo Peralta, Jr. of the RTC Manila, Branch 17. The award of attorney's fees was excluded "for want of factual and legal foundations therefor." *Id*. at 22.

[13] *Rollo*, p. 31.

[14] *Id*.

the subrogation receipt presented before the trial court by Malayan were not duly proven since the signatories thereto were not presented by Malayan before the trial court to identify their signatures thereon, and neither was evidence presented to establish the genuineness of such signatures.[15]

Malayan filed a motion for reconsideration with the Court of Appeals where it contended that the Marine Risk Note is "an open policy per Marine Open Cargo Policy No. OPEN POLICY-0001-00410 issued before February 1, 1995."[16] The motion was denied by the appellate court,[17] which pointed out that Malayan "did not present the aforecited marine open cargo policy as would indicate the date of its issuance."[18]

Hence, the present petition instituted by Malayan. According to Malayan, the lost cargo was insured not only by the Marine Risk Note but by the anteceding Marine Insurance Policy No. M/OP/95/0001-410 (Marine Insurance Policy) which it issued in favor of ABB Koppel on 20 January 1995, or many days before the motors were transported to Manila. A copy of the Marine Insurance Policy was attached to the present petition, but it is clear and no pretense was made that said policy had not been presented at the trial.

The key arguments raised before us by Malayan flow from the existence of the Marine Insurance Policy. Pains are taken to establish that there existed as between Malayan and ABB Koppel an "open policy" under Section 60 of the Insurance Code, wherein the value of the thing insured is not agreed upon but left to be ascertained in case of loss, and that the Marine Risk Note was nothing but a determination of the value of the thing insured pursuant to the open policy as established by the Marine Insurance Policy. Unfortunately for Malayan, the Court could not attribute any evidentiary weight to the Marine Insurance Policy.

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[15] *Id.* at 32.

[16] *Id.* at 35.

[17] See *id.* at 35-36.

[18] *Supra* note 15.

It is elementary that this Court is not a trier of facts. We generally refer to the trial court and the Court of Appeals on matters relating to the admission and evaluation of the evidence. In this case, while the trial courts and the Court of Appeals arrived at differing conclusions, we essentially agree with the Court of Appeals' analysis of Malayan's cause of action, and its ordained result. It appeared that at the very instance the Marine Risk Note was offered in evidence, Regis already posed its objection to the admission of said document on the ground that such was "immaterial, impertinent and irrelevant to this case because the same was issued on March 21, 1995 which is after the occurrence of the loss on February 1, 1995."[19] Because the trial courts failed to duly consider whether the Marine Risk Note sufficiently established a valid insurance covering the subject motors, the Court of Appeals acted correctly in the exercise of its appellate jurisdiction in setting aside the appealed decisions.

Tellingly, Malayan's argument before this Court is not that the Court of Appeals erred in its evaluation of the Marine Risk Note following that document's terms alone, but that the appellate court could not consider the import of the purported Marine Insurance Policy. Indeed, since no insurance policy was presented at the trial by Malayan, or even before the Court of Appeals,[20] there certainly is no basis for this Court to admit or consider the same, notwithstanding Malayan's attempt to submit such document to us along with its present petition. As we recently held:

> Similarly, petitioner in this case cannot "enervate" the COMELEC's findings by introducing new evidence before this Court, which in any case is not a trier of facts, and then ask it to substitute its own judgment and discretion for that of the COMELEC.

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[19] *Id.* at 32.

[20] "Malayan did not present [before the Court of Appeals] the aforecited marine open cargo policy as would indicate the date of its issuance." Resolution dated 5 April 2006 (denying Malayan's Motion for Reconsideration), *supra* note 17.

The rule in appellate procedure is that a factual question may not be raised for the first time on appeal, and documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action. This is true whether the decision elevated for review originated from a regular court or an administrative agency or quasi-judicial body, and whether it was rendered in a civil case, a special proceeding, or a criminal case. Piecemeal presentation of evidence is simply not in accord with orderly justice.[21]

Since the Marine Insurance Policy was never presented in evidence before the trial court or the Court of Appeals even, there is no legal basis to consider such document in the resolution of this case, reflective as that document may have been of the pre-existence of an insurance contract between Malayan and ABB Koppel even prior to the loss of the motors. In fact, it appears quite plain that Malayan's theory of the case it pursued before the trial court was that the perfected insurance contract which it relied upon as basis for its right to subrogation was not the Marine Insurance Policy but the Marine Risk Note which, unlike the former, was actually presented at the trial and offered in evidence. The Claims Processor of Malayan who testified in court in behalf of his employer actually acknowledged that the "proof that ABB Koppel insured the [shipment] to [Malayan]" was the Marine Risk Note, and not the Marine Insurance Policy.[22] Even the very complaint filed by Malayan before the MeTC stated that "[t]he subject shipment was insured by [Malayan] under Risk Note No. 0001-19832,"[23] and not by the Marine Insurance Policy, which was not adverted to at all in the complaint.[24]

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[21] *Tan v. COMELEC*, G.R. Nos. 66143-47 & 166891, 20 November 2006, 507 SCRA 352; *Matugas v. COMELEC*, 465 Phil. 299, 312-313 (2004), citing *Telephone Engineering & Service Co., Inc. v. WCC*, G.R. No. L-28694, 13 May 1984, 104 SCRA 354; *Cansino v. Court of Appeals*, G.R. No. 125799, 21 August 2003, 409 SCRA 403; *Gonzales-Precilla v. Rosario*, 144 Phil. 398 (1970); *De Castro v. Court of Appeals*, 75 Phil. 824 (1946); *Dayrit v. Gonzales*, 7 Phil. 182 (1906).

[22] See *rollo*, p. 67.

[23] CA *rollo*, p. 44.

[24] *Id.* at 43-46.

Thus, we can only consider the Marine Risk Note in determining whether there existed a contract of insurance between ABB Koppel and Malayan at the time of the loss of the motors. However, the very terms of the Marine Risk Note itself are quite damning. It is dated 21 March 1995, or after the occurrence of the loss, and specifically states that Malayan "ha[d] this day noted the above-mentioned risk in your favor and hereby guarantee[s] that this document has all the force and effect of the terms and conditions in the Corporation's printed form of the standard Marine Cargo Policy and the Company's Marine Open Policy." It specifies that at risk are the 120 pieces of motors which unfortunately had already been compromised as of the date of the Marine Risk Note itself.[25]

Certainly it would be obtuse for us to even entertain the idea that the insurance contract between Malayan and ABB Koppel was actually constituted by the Marine Risk Note alone. We find guidance on this point in *Aboitiz Shipping Corporation v. Philippine American General Insurance, Co.*,[26] where a trial court had relied on the contents of a marine risk note, not the insurance policy itself, in dismissing a complaint. For this act, the Court faulted the trial court in "[obviously mistaking] said Marine Risk Note as an insurance policy when it is not."[27] The Court proceeded to characterize the marine risk note therein as "an acknowledgment or declaration of the private respondent confirming the specific shipment covered by its Marine Open Policy, the evaluation of the cargo, and the chargeable premium,"[28] a description that is reflective as well of the present Marine Risk Note, if not of marine risk notes in this country in general.

Malayan correctly points out that the Marine Risk Note itself adverts to "Marine Cargo Policy Number Open Policy-0001-00410" as well as to "the standard Marine Cargo Policy and the Company's Marine Open Policy." What the Marine Risk

[25] *Rollo*, p. 60.

[26] G.R. No. 77530, 5 October 1989, 178 SCRA 357.

[27] *Id*. at 360.

[28] *Id*. at 360-361.

Note bears, as a matter of evidence, is that it is not apparently the contract of insurance by itself, but merely a complementary or supplementary document to the contract of insurance that may have existed as between Malayan and ABB Koppel. And while this observation may deviate from the tenor of the assailed Court of Appeals' Decision, it does not presage any ruling in favor of petitioner. Fundamentally, since Malayan failed to introduce in evidence the Marine Insurance Policy itself as the main insurance contract, or even advert to said document in the complaint, ultimately then it failed to establish its cause of action for restitution as a subrogee of ABB Koppel.

Malayan's right of recovery as a subrogee of ABB Koppel cannot be predicated alone on the liability of the respondent to ABB Koppel, even though such liability will necessarily have to be established at the trial for Malayan to recover. Because Malayan's right to recovery derives from contractual subrogation as an incident to an insurance relationship, and not from any proximate injury to it inflicted by the respondents, it is critical that Malayan establish the legal basis of such right to subrogation by presenting the contract constitutive of the insurance relationship between it and ABB Koppel. Without such legal basis, its cause of action cannot survive.

Our procedural rules make plain how easily Malayan could have adduced the Marine Insurance Policy. Ideally, this should have been accomplished from the moment it filed the complaint. Since the Marine Insurance Policy was constitutive of the insurer-insured relationship from which Malayan draws its right to subrogation, such document should have been attached to the complaint itself, as provided for in Section 7, Rule 8 of the 1997 Rules of Civil Procedure:

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.

Thus, in an action to enforce or rescind a written contract of lease, the lease contract is the basis of the action and therefore a copy of the same must either be set forth in the complaint or its substance recited therein, attaching either the original or a copy to the complaint.[29] The rule has been held to be imperative, mandatory and not merely directory, though must be given a reasonable construction and not be extended in its scope so as to work injustice.[30] It was incumbent on Malayan, whose right of subrogation derived from the Marine Insurance Policy, to set forth the substance of such contract in its complaint and to attach an original or a copy of such contract in the complaint as an exhibit. Its failure to do so harbingers a more terminal defect than merely excluding the Marine Insurance Policy as relevant evidence, as the failure actually casts an irremissible cloud on the substance of Malayan's very cause of action. Since Malayan alluded to an actionable document, the contract of insurance between it and ABB Koppel, as integral to its cause of action against Regis and Paircargo, the contract of insurance should have been attached to the complaint.

It may be that there is no specific provision in the Rules of Court which prohibits the admission in evidence of an actionable document in the event a party fails to comply with the requirement of the rule on actionable documents under Section 7, Rule 8.[31] Yet such qualification does not provide safe harbor for Malayan as it did not even present the Marine Insurance Policy at the trial, relying instead on the Marine Risk Note only and by its lonesome to constitute the insurer-insured relationship between it and ABB Koppel, or more precisely as stated in its Formal Offer of Evidence, "to prove that the shipment subject of this case was covered by an insurance policy with the plaintiffs."[32] Before the MeTC, Regis objected to the admission of the Marine Risk Note on the ground of immateriality and irrelevance because

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[29] V. FRANCISCO, I *THE REVISED RULES OF COURT IN THE PHILIPPINES* (1973 ed.), p. 587.

[30] *Id.* at 537.

[31] *Id.*

[32] CA *rollo*, p. 56.

it "was issued on March 21, 1995 which is after the occurrence of the loss on February 1, 1995."[33] The Court of Appeals upheld this objection of Regis as basis for the dismissal of the complaint. In our view, Malayan may have not been of the precise belief that the Marine Risk Note is the insurance contract itself as even the purpose stated in its Formal Offer may admit to an interpretation that alludes to "an insurance policy with the plaintiffs" that may stand independent of the Marine Risk Note. Yet if that were so, it remains incomprehensible and inexcusable why Malayan neglected to attach it to its complaint as required by Section 7, Rule 9, or even offer it in the Marine Insurance Policy which constitutes the insurance contract as evidence before the trial court.

It cannot be denied from the only established facts that Malayan and ABB Koppel comported as if there was an insurance relationship between them and documents exist that evince the presence of such legal relationship. But under these premises, the very insurance contract emerges as the white elephant in the room – an obdurate presence which everybody reacts to, yet legally invisible as a matter of evidence since no attempt had been made to prove its corporeal existence in the court of law. It may seem commonsensical to conclude anyway that there was a contract of insurance between Malayan and ABB Koppel since they obviously behaved in a manner that indicates such relationship, yet the same conclusion could be had even if, for example, those parties staged an elaborate charade to impress on the world the existence of an insurance contract when there actually was none. While there is absolutely no indication of any bad faith of such import by Malayan or ABB Koppel, the fact that the "commonsensical" conclusion can be drawn even if there was bad faith that convinces us to reject such line of thinking.

The Court further recognizes the danger as precedent should we sustain Malayan's position, and not only because such a ruling would formally violate the rule on actionable documents. Malayan would have us effectuate an insurance contract without

[33] *Id.* at 78.

having to consider its particular terms and conditions, and on a blind leap of faith that such contract is indeed valid and subsisting. The conclusion further works to the utter prejudice of defendants such as Regis or Paircargo since they would be deprived the opportunity to examine the document that gives rise to the plaintiff's right to recover against them, or to raise arguments or objections against the validity or admissibility of such document. If a legal claim is irrefragably sourced from an actionable document, the defendants cannot be deprived of the right to examine or utilize such document in order to intelligently raise a defense. The inability or refusal of the plaintiff to submit such document into evidence constitutes an effective denial of that right of the defendant which is ultimately rooted in due process of law, to say nothing on how such failure fatally diminishes the plaintiff's substantiation of its own cause of action.

Indeed, in the absence of any evidentiary consideration of the actual Marine Insurance Policy, the substance of Malayan's right to recovery as the subrogee of ABB Koppel is not duly confirmed. There can be no consideration of the particular terms and conditions in the insurance contract that specifically give rise to Malayan's right to be subrogated to ABB Koppel, or to such terms that may have absolved Malayan from the duty to pay the insurance proceeds to that consignee. The particular date as to when such insurance contract was constituted cannot be established with certainty without the contract itself, and that point is crucial since there can be no insurance on a risk that had already occurred by the time the contract was executed. Since the documents in evidence and testimonies allude to "marine insurance" or "marine risk note," it also is a legitimate question whether the particular marine insurance relationship between Malayan and ABB Koppel also covers cargo delivered not by ships at sea but by airplane flights, as had occurred in this case. Only the actual policy itself could definitively settle such a question.

We can even note legitimate questions concerning the integrity or viability of the Marine Insurance Policy as belatedly presented before this court. For one, Regis observes that the "Marine Cargo Policy Number" as denominated in the Risk Note reads:

"Open Policy-0001-00410," while the copy of the Marine Insurance Policy submitted before us is numbered "M/OP/95001-410." The variance may ultimately be explainable, yet the non-presentation of the Marine Insurance Policy before the trial court precludes the due evaluation of the reason for the difference in numbering.

All told, we hold that Malayan was not able to establish its cause of action as stated in its complaint, based as it was on its right to be subrogated to ABB Koppel under the insurance contract which it failed to present as an actionable document, or as evidence before the trial court. The result reached by the Court of Appeals – the dismissal of the instant complaint – is thus correct. As such, there is no need to consider the other issues raised in the petition.

WHEREFORE, the petition is *DENIED*. Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 173491. November 23, 2007]

EDWIN CABILA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610); ELEMENTS OF SEXUAL ABUSE; THAT THE ACT IS PERFORMED WITH

A CHILD EXPLOITED IN PROSTITUTION OR SUBJECTED TO THE SEXUAL ABUSE, NOT ALLEGED IN THE INFORMATION FILED AGAINST PETITIONER.— For an accused to be convicted of child abuse through lascivious conduct on a minor below 12 years of age, **"the requisites for acts of lasciviousness under Article 336 of the RPC must be met <u>in addition to</u> the requisites for sexual abuse under Section 5 of Rep. Act No. 7610."** Section 5, Article III of RA No. 7610 enumerates the elements of sexual abuse as follows: (1) The accused commits the act of sexual intercourse or lascivious conduct; (2) The said act is performed with **a child exploited in prostitution or subjected to other sexual abuse;** and (3) The child, whether male or female, is below 18 years of age. The earlier-quoted Information filed against petitioner did not allege the presence of the above-listed second element of Section 5, Article III of RA No. 7610 – that the act is performed with a child exploited in prostitution or subjected to other sexual abuse. In fact no attempt was made to prove that element, for it would have violated petitioner's right to be informed of his constitutional right to be informed of the nature and cause of the accusation against him.

2. **ID.; ID.; ID.; ID.; THE INFORMATION UNDOUBTEDLY CHARGES PETITIONER WITH ACTS OF LASCIVIOUSNESS UNDER THE REVISED PENAL CODE.—** Petitioner could not thus have been held liable under Section 5(b), Article III of RA No. 7610. No doubt, the information charges petitioner with Acts of Lasciviousness under Article 336 of the Revised Penal Code, the elements of which are as follows: (1) That the offender commits any act of lasciviousness or lewdness; (2) That it is done under any of the following circumstances: a. By using force or intimidation; or b. When the offended party is deprived of reason or otherwise unconscious; or c. When the offended party is under 12 years of age; and (3) That the offended party is another person of either sex.

3. **ID.; ACTS OF LASCIVIOUSNESS; COMMITTED IN CASE AT BAR; THE MEDICO-LEGAL REPORT IS NOT ESSENTIAL IN ESTABLISHING GUILT IN A CASE OF ACTS OF LASCIVIOUSNESS; SOLE TESTIMONY OF PRIVATE COMPLAINANT BEING SUFFICIENT FOR THE PURPOSE.—** Petitioner argues that the failure of the prosecution to present

the physician who prepared the medico-legal report renders the report hearsay and violates his constitutional right to confront a witness testifying against him. The argument does not persuade. The medico-legal report is not essential in establishing guilt in a case for acts of lasciviousness, the sole testimony of the private complainant being sufficient for the purpose. In cases of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused. Such is the testimony of victims who are young, immature, and have no motive to falsely testify against the accused… From a reading of the transcript of AAA's testimony, she gave her account of the facts attendant to the case in a straightforward, candid, credible, and spontaneous manner. As stated early on, except for AAA's claim that petitioner committed the acts complained of which he denied, petitioner either admitted or did not deny the other details of her account. Petitioner posits that the pain ("*mahapdi*") AAA felt in her vagina and the linear erythema on the hymenal area found by the examining physician could have been caused by the bumpy ride and the hard surface of the gasoline tank on which she sat. The pain felt by AAA and the linear erythema are not vital in establishing petitioner's guilt, however. In fact, a prosecution for acts of lasciviousness under the Revised Penal Code (or for violation of Section 5, Article III of RA No. 7610) does not require any proof of injury in order to prove its commission. Petitioner did not even impute any motive on the part of AAA to falsely charge him. In fine, petitioner is guilty of acts of lasciviousness penalized, under Article 336 of the Revised Penal Code, with *prision correccional*. There being no mitigating nor aggravating circumstances and applying the Indeterminate Sentence Law, petitioner should suffer an indeterminate prison term of six (6) months of *arresto mayor* as minimum, to four (4) years and two (2) months of *prision correccional* in its medium period as maximum.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The January 31, 2006 Decision of the Court of Appeals[1] which affirmed that of the Regional Trial Court, Branch 71 of Iba, Zambales[2] convicting petitioner, Edwin Cabila, of violation of Section 5(b), Article III of Republic Act (RA) No. 7610, "SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT," is before this Court on appeal.

The accusatory portion of the Information against petitioner reads:

> That on or about the 7th day of August, 1998 at around 5:30 o'clock in the afternoon, in Sitio St. Joseph, Brgy. Namatacan, in the Municipality of San Narciso, Province of Zambales, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd design, and by means of persuasion, enticement and coercion, did then and there willfully, unlawfully and feloniously commit lascivious conduct with one [AAA],[3] a minor of eight (8) years old, by touching her private parts against her will and consent, to the damage and prejudice of the said [AAA].
>
> CONTRARY TO LAW.[4] (Underscoring supplied)

On arraignment, petitioner pleaded not guilty.[5]

Except for denying the offense charged, petitioner either admitted or did not deny the following tale of AAA, the private complainant.

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[1] CA-G.R. CR No. 29069; penned by Justice Mariano C. Del Castillo and concurred in by Justice Conrado M. Vasquez, Jr. and Justice Magdangal M. de Leon; *rollo*, pp. 67-75.

[2] Crim. Case No. RTC-2510-I; *id.* at 53-66.

[3] The names of the victim and the immediate family members of the victim were withheld pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] Records, p. 2.

[5] *Id.* at 16.

On August 7, 1998, at around 5:30 p.m., AAA, who was born on September 23, 1990,[6] boarded together with her classmates a tricycle driven by petitioner to be brought home from Namatacan, Doce Martires Elementary School, San Narciso, Zambales. On petitioner's direction, AAA sat in front of him atop the gasoline tank of the motorcycle.

After AAA's classmates had disembarked, leaving AAA and petitioner on the tricycle, petitioner inserted his fingers inside AAA's underwear and touched her private part. The pain notwithstanding, AAA did not do anything, fearing that petitioner might push her off the bridge through which the tricycle was passing.[7]

As petitioner was about to enter the yard of AAA's house, he tried to give AAA a one peso coin which she refused to accept. Petitioner then told AAA not to tell anyone that he gave her a free ride.

AAA further gave the following account:

Once inside her house, AAA cried. The following morning, AAA's mother BBB became aware that AAA had difficulty urinating. AAA soon cried profusely and recounted what petitioner did to her.

AAA's father lost no time in reporting the matter to the Office of the Barangay Chairman of Grullo, San Narciso, Zambales where a confrontation took place in which petitioner denied the accusation. The matter was later referred to the police authorities of San Narciso, Zambales.[8]

AAA underwent medical examination which revealed the following:

DIAGNOSIS/FINDINGS:
-Linear erythema, 1 mm. hymenal area, 9:00 o'clock position.
-Hymen is intact.[9]

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[6] *Id.* at 61.

[7] *Rollo*, p. 68.

[8] *Id.* at 69.

[9] Records, p. 62.

Hence, spawned the filing of the Information against petitioner.

Denying the charge, petitioner gave the following version:

The road on the way to the houses of AAA and her classmates was rough and undergoing construction, hence, the ride was bumpy. When AAA alighted from his tricycle, he did not notice any unusual behavior on her part. He in fact became acquainted with AAA only when he had a confrontation with her at the *barangay* office.[10]

As earlier mentioned, the trial court convicted petitioner of violation of Section 5(b), Article III of RA No. 7610 by Decision dated October 25, 2004, the dispositive portion of which reads:

> WHEREFORE, premises considered, this Court renders judgment finding accused EDWIN CABILA guilty beyond reasonable doubt of the crime of Violation of Secion 5(b), Article III of Republic [Act No.] 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," and he is hereby sentenced to suffer the indeterminate penalty of **EIGHT (8) YEARS AND ONE (1) DAY** of *prision mayor* as minimum to **FIFTEEN (15) YEARS, SIX (6) MONTHS AND TWENTY (20) DAYS** of *reclusion temporal* as maximum.
>
> Accused is likewise ordered to pay the private complainant [AAA] the amount of ₱30,000.00 as moral damages.[11] (Emphasis supplied)

In affirming the trial court's decision, the Court of Appeals declared:

> Unfortunately for the accused-appellant, his defense is a bare denial not established by clear and convincing evidence, thus undeserving of weight in law. It cannot prevail over the positive declarations of private complainant who in a simple and straightforward manner, convincingly and categorically identified accused-appellant as the person who touched her private parts. His suggestion that private complainant had a bumpy and an uneasy ride in his tricycle is not only difficult to believe but also preposterous. We cannot believe that a victim of private complainant's age (barely 8 years

[10] TSN, January 30, 2003, pp. 6-12.

[11] *Rollo*, pp. 65-66.

old per her certificate of live birth, Exh. C) could concoct a tale of lasciviousness, allow her [sic] examination of private parts and undergo the expense of trouble, inconvenience, not to mention the trauma of a public trial if the same were not true. Her account of her horrible ordeal evinces sincerity and truthfulness.[12]

Hence, the present petition for review anchored on the sole issue of:

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT FINDING THE PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[13]

The appellate court affirmed the trial court's conviction of petitioner under Section 5(b), Article III of RA No. 7610, the pertinent portions of which section read:

SEC. 5. *Child Prostitution and Other Sexual Abuse.* – Children, whether male or female, who for money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group, **indulge** in sexual intercourse or lascivious conduct, are deemed to be **children exploited in prostitution and other sexual abuse.**

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following;

(a) x x x x x x x x x

(b) Those who commit the **act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse**: *Provided,* That **when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under** Article 335, paragraph 3, for rape and **Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct as the case may be**; *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period;

x x x (Emphasis and underscoring supplied)

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[12] *Id.* at 74.

[13] *Id.* at 19.

For an accused to be convicted of child abuse through lascivious conduct on a minor below 12 years of age, "**the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of Rep. Act No. 7610**."[14]

Section 5, Article III of RA No. 7610 enumerates the elements of sexual abuse as follows:

(1) The accused commits the act of sexual intercourse or lascivious conduct;

(2) The said act is performed with **a child exploited in prostitution or subjected to other sexual abuse**; and

(3) The child, whether male or female, is below 18 years of age.[15] (Emphasis supplied)

The earlier-quoted Information filed against petitioner did not allege the presence of the above-listed second element of Section 5, Article III of RA No. 7610 – that the act is performed with a child exploited in prostitution or subjected to other sexual abuse. In fact no attempt was made to prove that element, for it would have violated petitioner's right to be informed of his constitutional right to be informed of the nature and cause of the accusation against him.[16]

Petitioner could not thus have been held liable under Section 5(b), Article III of RA No. 7610. No doubt, the information charges petitioner with Acts of Lasciviousness under Article 336 of the Revised Penal Code, the elements of which are as follows:

(1) That the offender commits any act of lasciviousness or lewdness;

(2) That it is done under any of the following circumstances:

a. By using force or intimidation; or

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[14] *Amployo v. People,* G.R. No. 157718, April 26, 2005, 457 SCRA 282, 291.

[15] *People v. Larin*, 357 Phil. 987, 997 (1998).

[16] Section 14(2), Article III, CONSTITUTION.

b. When the offended party is deprived of reason or otherwise unconscious; or

c. When the offended party is under 12 years of age; and

(3) That the offended party is another person of either sex.[17]

Petitioner argues that the failure of the prosecution to present the physician who prepared the medico-legal report renders the report hearsay and violates his constitutional right to confront a witness testifying against him.

The argument does not persuade. The medico-legal report is not essential in establishing guilt in a case for acts of lasciviousness, the sole testimony of the private complainant being sufficient for the purpose.

In cases of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused. Such is the testimony of victims who are young, immature, and have no motive to falsely testify against the accused...[18]

From a reading of the transcript of AAA's testimony, she gave her account of the facts attendant to the case in a straightforward, candid, credible, and spontaneous manner. As stated early on, except for AAA's claim that petitioner committed the acts complained of which he denied, petitioner either admitted or did not deny the other details of her account.

Petitioner posits that the pain ("*mahapdi*") AAA felt in her vagina and the linear erythema on the hymenal area found by the examining physician could have been caused by the bumpy ride and the hard surface of the gasoline tank on which she sat. The pain felt by AAA and the linear erythema are not vital in establishing petitioner's guilt, however. In fact, a prosecution for acts of lasciviousness under the Revised Penal Code (or for violation of Section 5, Article III of RA No. 7610) does not

[17] *People v. Abadies*, 433 Phil. 814, 822 (2002).

[18] *People v. Bon*, 444 Phil. 571, 584 (2003) citing *People v. Dichoson*, 352 SCRA 56, 66 (2001); citing *People v. Acala*, 307 SCRA 330 (1999); *People v. Abordo*, 258 SCRA 571 (1996); *People v. Fraga*, 330 SCRA 669 (2000); *People v. Molina*, 53 SCRA 495 (1973).

require any proof of injury in order to prove its commission. Petitioner did not even impute any motive on the part of AAA to falsely charge him.

In fine, petitioner is guilty of acts of lasciviousness penalized, under Article 336 of the Revised Penal Code, with *prision correccional*. There being no mitigating nor aggravating circumstances and applying the Indeterminate Sentence Law, petitioner should suffer an indeterminate prison term of six (6) months of *arresto mayor* as minimum, to four (4) years and two (2) months of *prision correccional* in its medium period as maximum.[19]

The trial court's order for petitioner to pay private complainant the amount of ₱30,000 as moral damages remains,[20] however.

WHEREFORE, the assailed January 31, 2006 Decision of the Court of Appeals is *VACATED* and another rendered finding petitioner guilty beyond reasonable doubt of Acts of Lasciviousness penalized under Article 336 of the Revised Penal Code. He is accordingly sentenced to suffer an indeterminate penalty of Six (6) months of *arresto mayor* as minimum, to Four (4) years and Two (2) months of *prision correccional* in its medium period as maximum. And he is ordered to pay the private complainant the amount of ₱30,000 as moral damages.

Costs against petitioner.

SO ORDERED.

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

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[19] *People v. Orillosa,* G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 700; *People v. Dizon*, G.R. Nos. 134522-24 and 139508-09, April 3, 2001, 356 SCRA 69.

[20] *People v. Orillosa, supra*; *People v. Lilo*, G.R. Nos. 140736-39, February 4, 2003, 396 SCRA 674.

SECOND DIVISION

[G.R. No. 173819. November 23, 2007]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MA. ISABEL LAUREL BARANDIARAN,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; CERTIFICATION ISSUED BY THE COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE (CENRO) OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) THAT THE LOT "IS NOT COVERED BY ANY KIND OF PUBLIC LAND APPLICATION PATENT" DOES NOT CONSTITUTE PROOF THAT THE LOT IS ALIENABLE AND DISPOSABLE.—** The burden of proof to overcome the presumption of state ownership of lands of the public domain lies on the person applying for registration. The evidence to overcome the presumption must be "well-nigh incontrovertible." To discharge the burden, respondent presented a Certification issued by the Community Environment and Natural Resources Office of the Department of Environment and Natural Resources. Such certificate does not state, however, that the lot of which the questioned lot forms part is alienable and disposable. The certification merely states that the lot "is not covered by any kind of public land application or patent." As for the notation on the subdivision plan of the lot stating that "the survey is inside alienable and disposable area," the same does not constitute proof that the lot is alienable and disposable. So *Republic v. Tri-Plus Corporation* instructs: In the present case, the only evidence to prove the character of the subject lands as required by law is the notation appearing in the Advance Plan stating in effect that the said properties are alienable and disposable. However, **this is hardly the kind of proof** required by law. To prove that the land subject of an application for registration is alienable, an applicant must establish the **existence of a positive act of the government** such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute. The applicant may also secure a certification from the Government that the

lands applied for are alienable and disposable. In the case at bar, while the Advance Plan bearing the notation was certified by the Lands Management Services of the DENR, the certification refers only to the technical correctness of the survey plotted in the said plan and has nothing to do whatsoever with the nature and character of the property surveyed.

2. **ID.; ID.; RESPONDENT HAS NOT ESTABLISHED BY WELL-NIGH INCONTROVERTIBLE EVIDENCE THAT SHE AND HER PREDECESSOR-IN-INTEREST HAVE BEEN IN OPEN, PEACEFUL, CONTINUOUS AND ADVERSE POSSESSION OF THE QUESTIONED LOT IN THE CONCEPT OF AN OWNER SINCE 1945.—** Respondent has not established by well-nigh incontrovertible evidence that she and her predecessors-in-interest have been in open, peaceful, continuous and adverse possession of the questioned lot in the concept of an owner since 1945. While she claims having confirmed with the Assessor's Office in Tanauan that the lot was "registered" in Gonzales' name in 1930, for what purpose was the registration made she did not elaborate, as she did not even present any document to substantiate the same.

3. **ID.; ID.; THE DECLARATION OF REAL PROPERTY IN RESPONDENT'S NAME DOES NOT PROVE OWNERSHIP OF THE QUESTIONED LOT; THE DECLARATION IS OF RECENT VINTAGE EFFECTIVE ONLY IN 1997 AND, THEREFORE, CANNOT PROVE OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION IN THE CONCEPT OF AN OWNER SINCE TIME IMMEMORIAL OR SINCE 1945.—** Respecting the Declaration of Real Property in Gonzales' name, the same does not prove ownership of the questioned lot. It is settled that tax receipts and declarations of ownership for tax purposes are "not incontrovertible evidence of ownership; they only become evidence of ownership acquired by prescription when accompanied by proof of actual possession of the property." No such proof of actual possession of the property was presented. Besides, the Declaration of Real Property shows that it was effective in 1997, indicating that the declaration is of recent vintage. It cannot thus prove open, continuous, exclusive, and notorious possession in the concept of an owner since time immemorial or since 1945.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ma. Chona M. Dimayuga for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Ma. Isabel Laurel Barandiaran (respondent) filed before the Municipal Trial Court in Cities of Tanauan City, Batangas an Application for Registration[1] over a parcel of land which she specifically described as follows:

> A parcel of land (Lot No. 12753-C=Lot 13115 of the subdivision plan, Csd-04-020537-D, being a portion of Lot 12753, Cad-168, Tanauan Cadastre, L.R.C. Rec. No. ____) [*sic*], situated in the Barrio of Boot, Municipality of Tanauan, Province of Batangas. Bounded on the NE., along line 1-2 by Lot 12753-B of this subdivision plan; on the SE., along line 2-3 by Lot 12753-E, both of the subdivision plan; on the SW., along line 3-4-5 by Lot 12269; along line 5-6 by Lot 12268; along line 6-7 by Lot 12266, all of Cad-168; Tanauan Cadastre; and on the NW., along line 7-1 by Lot 12753-A, of the subdivision plan x x x containing an area of **TWENTY-THREE THOUSAND NINE HUNDRED SIXTY-TWO (23,962) SQUARE METERS, more or less**.[2] (Emphasis in the original)

The Republic of the Philippines (the Republic, herein petitioner), represented by the Director of Lands, through the Solicitor General, opposed the application on the ground that Lot No. 12753-C (the questioned lot) is a portion of the public domain belonging to the Republic and that neither respondent nor her predecessors-in-interest had been in open, continuous, exclusive, and notorious possession or occupation thereof since June 12, 1945 or prior thereto.[3]

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[1] MTCC records, pp. 1-3.

[2] *Id.* at 2. Vide pp. 4, 5, 10, 12.

[3] *Id.* at 27.

After respondent proved compliance with jurisdictional requirements, the trial court issued on August 5, 2004 an Order of General Default,[4] no one, other than the Republic, having appeared or filed an answer within the time allowed for the purpose.

During the hearing, respondent testified[5] as follows: A certain Isadora Gonzales (Gonzales) was the owner of Lot No. 12753 (the lot) of which the questioned lot forms part. When respondent and her siblings became interested in buying the lot, they inquired from people in the vicinity and from the Assessor's Office in Tanauan and came to learn that the lot was registered in Gonzales' name in 1930. After negotiating with the heirs of Gonzales, the latter executed on October 3, 2002 a Deed of Sale[6] in favor of respondent and her siblings for a consideration of ₱100,000.

Respondent went on to declare: On June 9, 2003, she and her siblings partitioned the lot and the questioned lot was allotted to her.[7] She thereupon took possession of the questioned lot for which she hired an overseer, and had it surveyed under her name. She also had the questioned lot declared under her name for taxation purposes, and paid taxes thereon.

Carmen Garcia Azuelo (Azuelo), one of the heirs of Gonzales, corroborated respondent's testimony that she and her siblings bought the lot from her (Azuelo) and her co-heirs.[8] She added that Gonzales was, since time immemorial, in possession of the lot which was registered in Gonzales' name.[9]

By Decision of August 18, 2004, the trial court, finding respondent to have a clear registrable title over the questioned lot, disposed as follows:

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[4] *Id.* at 69.

[5] TSN, August 5, 2004, pp. 9-22.

[6] MTCC records, pp. 12-14.

[7] *Id.* at 10-11.

[8] TSN, August 5, 2004, pp. 91-96.

[9] *Id.* at 96.

WHEREFORE, and upon confirmation of the Order of General Default, the Court hereby adjudicates and decrees Lot No. 127[5]3-C, Cad-168 of the subdivision plan Csd-04-020537-D with a total area of Twenty-three thousand nine hundred sixty-two (23,962) square meters, situated at Barangay Maria Paz (formerly Boot), Tanauan, Batangas, on the name of Ma. Isabel Laurel Barandiaran with postal address at 2nd Floor, Rufina Tower, Ayala Avenue, Makati City.

Once this decision shall have become final, let the corresponding decree of registration be issued.[10]

The Republic appealed,[11] contending that respondent had not proven that the questioned lot is within the alienable and disposable land of the public domain.[12] By Decision[13] dated July 21, 2006, the Court of Appeals affirmed the trial court's decision, observing as follows:

x x x [O]ther than the bare assertion of the Office of the Solicitor General (OSG) that applicant-appellee Barandiaran possesses no registrable right over the subject property, it failed to adduce concrete and convincing evidence to support its stand. Neither were there private oppositors who came to register their opposition in the instant application for registration, which inclined us more to grant the instant application.[14]

Hence, the present Petition[15] faulting the appellate court:

. . . IN RULING THAT [THE QUESTIONED LOT] IS WITHIN THE ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN AND, HENCE, AVAILABLE FOR PUBLIC APPROPRIATION.[16]

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[10] MTCC records, p. 72.

[11] *Id*. at 92-93.

[12] CA *rollo,* pp. 19-24.

[13] Penned by Court of Appeals Associate Justice Bienvenido L. Reyes, with the concurrence of Associate Justices Jose Reyes, Jr. and Enrico A. Lanzanas; *id*. at 47-54.

[14] *Id*. at 53-54.

[15] *Rollo*, pp. 9-23.

[16] *Id*. at 15.

The petition is meritorious.

The burden of proof to overcome the presumption of state ownership of lands of the public domain lies on the person applying for registration. The evidence to overcome the presumption must be "well-nigh incontrovertible."[17]

To discharge the burden, respondent presented a Certification issued by the Community Environment and Natural Resources Office of the Department of Environment and Natural Resources. Such certificate does not state, however, that the lot of which the questioned lot forms part is alienable and disposable. The certification merely states that the lot "is not covered by any kind of public land application or patent."[18]

As for the notation on the subdivision plan of the lot stating that "the survey is inside alienable and disposable area,"[19] the same does not constitute proof that the lot is alienable and disposable. So *Republic v. Tri-Plus Corporation*[20] instructs:

> In the present case, the only evidence to prove the character of the subject lands as required by law is the notation appearing in the Advance Plan stating in effect that the said properties are alienable and disposable. However, **this is hardly the kind of proof** required by law. To prove that the land subject of an application for registration is alienable, an applicant must establish the **existence of a positive act of the government** such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute. The applicant may also secure a certification from the Government that the lands applied for are alienable and disposable. In the case at bar, while the Advance Plan bearing the notation was certified by the Lands Management Services of the DENR, the certification refers only to the technical correctness of the survey plotted in the said

[17] Vide *Turquesa v. Valera,* 379 Phil. 622, 631 (2000); 274 Phil. 284, 291 (1991).

[18] MTCC records, p. 66.

[19] *Id.* at 5.

[20] G.R. No. 150000, September 26, 2006, 503 SCRA 91.

plan and has nothing to do whatsoever with the nature and character of the property surveyed.[21] (Emphasis and underscoring supplied)

Respondent cites[22] the rulings of the Court of Appeals in *Guido Sinsuat v. Director of Lands, et al.* and *Raymundo v. Bureau of Forestry and Diaz* which she quoted in her petition, albeit inaccurately. The rulings in said cases are correctly quoted below:

x x x x x x x x x

"[W]here it appears that the evidence of ownership and possession are so significant and convincing, the government is not necessarily relieved of its duty from presenting proofs to show that the parcel of land sought to be registered is part of the public domain to enable [the courts] to evaluate the evidence of both sides."[23]

x x x [W]hen the records shows that a certain property, the registration of title to which is applied for has been possessed and cultivated by the applicant and his predecessors-in-interest for a long number of years without the government taking any action to dislodge the occupants from their holdings, and when the land has passed from one hand to another by inheritance or by purchase, the government is duty bound to prove that the land which it avers to be of public domain is really of such nature."[24]

Respondent argues thus:

In the case at bar, it was proven through documentary and testimonial evidences that the applicant and her predecessors-in-interest has been in open, peaceful, continuous and adverse possession of the subject land, in the concept of an owner as early as 1945, as shown by the Declaration of Real Property No. 030-00252 in the name of Isadora Gonzales.[25] (Citations omitted)

Respondent has not, however, established by well-nigh incontrovertible evidence that she and her predecessors-in-interest

[21] *Id.* at 102.

[22] *Vide rollo,* p. 65.

[23] 56 O.G. No. 42, 6487, 6489-6490, October 17, 1960.

[24] 58 O.G. No. 37, 6019, 6021, citation omitted.

[25] *Rollo*, pp. 65-66.

have been in open, peaceful, continuous and adverse possession of the questioned lot in the concept of an owner since 1945. While she claims having confirmed with the Assessor's Office in Tanauan that the lot was "registered" in Gonzales' name in 1930, for what purpose was the registration made she did not elaborate, as she did not even present any document to substantiate the same.

Respecting the Declaration of Real Property in Gonzales' name, the same does not prove ownership of the questioned lot. It is settled that tax receipts and declarations of ownership for tax purposes are "not incontrovertible evidence of ownership; they only become evidence of ownership acquired by prescription when accompanied by proof of actual possession of the property."[26] No such proof of actual possession of the property was presented. Besides, the Declaration of Real Property shows that it was effective in 1997, indicating that the declaration is of recent vintage.[27] It cannot thus prove open, continuous, exclusive, and notorious possession in the concept of an owner since time immemorial or since 1945.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision of July 21, 2006 is *REVERSED* and *SET ASIDE*, and respondent's Application for Registration of Lot No. 12753-C is *DISMISSED*.

SO ORDERED.

Quisumbing (Chairperson), Carpio, and *Velasco, Jr., JJ.,* concur.

Tinga, J., in the result.

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[26] *De Jesus v. Court of Appeals*, G.R. No. 57092, January 21, 1993, 217 SCRA 307, 317. Citations omitted.

[27] MTCC records, p. 68.

THIRD DIVISION

[G.R. No. 174219. November 23, 2007]

KLT FRUITS, INC., JOSEPH LAO TIAK BEN, MICHAEL LAO TIAN BEN, ARLENE LAO and ROGELIO BUAN, *petitioners, vs.* **WSR FRUITS, INC. and REGIONAL TRIAL COURT OF MANILA, BRANCH 20,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF APPEAL; FAILURE OF APPELLANT TO PAY DOCKET FEES AND OTHER LAWFUL FEES PROVIDED BY THE RULES IS A GROUND FOR DISMISSAL; PAYMENT OF DOCKET FEES WITHIN THE PRESCRIBED PERIOD IS MANDATORY FOR THE PERFECTION OF AN APPEAL.— The failure of the appellant to pay the docket fees is a ground for the dismissal of the appeal under Rule 50, Section 1(c) of the Revised Rules of Civil Procedure which explicitly states that: Rule 50. Dismissal of Appeal. Section 1. Grounds for dismissal of appeal. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds: x x x (c) Failure of the appellant to pay the docket and other lawful fees as provided in section 5 of Rule 40 and section 4 of Rule 41. From the foregoing, it can be gleaned that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. This is so because a court acquires jurisdiction over the subject matter of the action only upon the payment of the correct amount of docket fees regardless of the actual date of filing of the case in court.

2. ID.; ID.; ID.; ID.; ID.; JUSTIFICATION FOR EXEMPTION FROM MANDATORY APPLICATION OF THE RULE REGARDING MANDATORY PAYMENT OF DOCKET FEES, FOUND INADEQUATE.— In seeking exemption from the mandatory application of the rule, the reason advanced by KLT's counsel was that he was ill at the time the Notice of Appeal was filed. We are tasked to determine whether the above justification constitutes adequate excuse to call for a relaxation of the Rules

of Civil Procedure regarding the mandatory payment of docket fees. We answer this in the negative. In exceptional circumstances, we allowed a liberal application of the rule. However, in those exceptional circumstances, the payments of the required docket fees were delayed for only a few days, so much unlike this case in which the delay was for more than thirty days; and, at worse, counsel had several opportunities to rectify said *faux pas,* yet failed to do so. We are, thus, reminded of *Guevarra v. Court of Appeals,* in which the payment of docket fees was made 41 days after notice of the questioned Decision; and the excuse of "inadvertence, oversight, and pressure of work was disregarded as too flimsy, an old hat, a hackneyed pretext." Such has never been given the badge of excusability by the Court.

3. **ID.; ID.; NO DENIAL OF DUE PROCESS IN CASE AT BAR; PETITIONER WAS AFFORDED ADEQUATE AND FULL OPPORTUNITY TO VENTILATE ITS CASE IN THE PROCEEDINGS BELOW.—** As to the existence of a meritorious defense which warrants a further hearing of the case, KLT insist that the checks in question were forged or stolen from the vault of KLT by Leopoldo Gonzales, and that Gonzales admitted that he was the author of the forgery and theft. The forgery and theft of the checks in question will prevent WSR from recovering from KLT the value of the said checks. It bears stressing, though, that the RTC did not give due credence to the claim of forgery by KLT that would insulate it from liability for the amount of the checks. All told, the instant case underwent a full-blown trial, in which both parties presented evidence including rebuttal and sur-rebuttal evidence. Where a party was given the opportunity to defend its interest in due course, it cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. It must be emphasized that KLT was adequately heard, and that all issues were ventilated before the Decision was promulgated. All the necessary pleadings were filed by KLT's counsel to protect its interests when the case was still before the RTC. KLT was not deprived of its day in court. No denial of due process was shown. Verily, KLT was afforded adequate and full opportunity to ventilate its case in the proceedings below.

APPEARANCES OF COUNSEL

Vicente R. Posadas for petitioners.
Abrenica Duque Sicat Law Offices for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Civil Procedure assailing the: (1) Decision[1] of the Court of Appeals in CA-G.R. SP No. 82487, dated 28 April 2006 denying the Petition of the herein petitioners, and affirming the Order[2] of the Regional Trial Court (RTC) of Manila, Branch 20, dated 7 November 2003 in Civil Case No. 99-92683; and (2) Resolution[3] of the Court of Appeals dated 18 August 2006 denying petitioners' Motion for Reconsideration.

As narrated by the Court of Appeals, the factual background which gave rise to this petition started on 10 February 1999 when private respondent WSR Fruits, Inc. (WSR) filed before the RTC a Complaint for Sum of Money with Writ of Preliminary Attachment[4] against petitioners KLT Fruits, Inc. (KLT), Joseph Lao Tiak Ben, Michael Lao Tian Ben, Roger Buan, Arlene Lao, Leopoldo J. Gonzales, and Leida A. Gonzales before the RTC of Manila (Branch 20).[5] In its Complaint, WSR alleged

[1] Penned by Associate Justice Edgardo F. Sundiam with Associate Justices Martin S. Villarama, Jr., and Japar B. Dimaampao, concurring; *rollo*, p. 46.

[2] Penned by Presiding Judge Marivic Balisi Umali, *rollo*, p. 109.

[3] *Rollo*, p. 48.

[4] *Id*. at 50.

[5] The petitioners occupy positions in KLT as follows:

a) Joseph Lao Tiak Ben - President
b) Michael Lao Tian Ben - Executive Vice-President
c) Roger Buan - Vice-President
d) Arlene Lao - Assistant Vice-President
e) Leopoldo J. Gonzales - Purchasing Manager
f) Leida A. Gonzales - Cash Manager (CA *rollo,* p. 20)

that it is engaged in the business of fruit dealing wholesale or retail, fresh and preserved - and in food processing; while KLT is engaged in the business of purchasing and processing various fruits. Since 1988, WSR had been supplying KLT with fresh mangoes and other fruits, processed or preserved fruits and finished fruit products; and doing business with KLT through its authorized employee, Leopoldo Gonzales, the purchasing manager, and his spouse Leida Gonzales, the cash manager.

In 1997, KLT incurred a cash flow problem, forcing it to enter into a check rediscounting transaction with WSR, so that it could pay off its other fruit suppliers. The check rediscounting was carried out by the issuance of postdated checks by KLT in exchange for cash from WSR in amounts less than those stated in the checks, with the difference representing the profit earned by WSR from the arrangement. These transactions were all made and facilitated by Leopoldo and Leida Gonzales, as KLT purchasing officer and cash manager, respectively. WSR agreed to enter into the check rediscounting transaction with KLT because the latter had been its customer since 1988, and upon the guarantee and assurance of KLT officers (the other petitioners herein) and Leopoldo and Leida Gonzales that all the checks issued were in order and shall be funded when due. The check rediscounting proceeded smoothly with KLT making good on all their checks to WSR until 1998.

On various occasions in the latter part of 1998, KLT issued in favor of WSR, several postdated checks[6] in exchange for

[6]

	PCIB Check No.	Amount	Date	For payment to (Name of Supplier)
Annex A	0000263661	₱186,220.00	17 Nov 1998	Moreno de Villa
Annex B	0000263649	₱235,720.00	20 Nov 1998	Moreno de Villa
Annex C	0000263659	₱322,990.00	25 Nov 1998	Moreno de Villa
Annex D	0000263673	₱238,290.00	27 Nov 1998	Moreno de Villa
Annex E	0000263682	₱108,220.00	29 Nov 1998	Moreno de Villa
Annex F	0000263677	₱148,119.00	06 Dec 1998	Moreno de Villa
Annex G	0000263681	₱211,970.00	09 Dec 1998	Moreno de Villa
Annex H	0000263687	₱ 89,140.00	09 Dec 1998	Norma Atlas
Annex I	0000263685	₱ 66,440.00	10 Dec 1998	Norma Atlas

cash, under their check rediscounting arrangement, in the total amount of ₱3,685,766.00.[7]

However, when the said checks were deposited at the bank as they fell due, they were dishonored for the reason "Account Closed/Stop Payment." Several of the checks were replaced by KLT with other postdated checks but the latter were also dishonored upon presentment for payment for the reason "Stop Payment/DAUD." Despite several oral and written demands[8] by WSR upon the KLT for the payment of the latter's obligations for unpaid fruit purchases and for the dishonored checks, KLT refused. This led to the filing by the WSR of the Complaint before the RTC, where it prayed:

> WHEREFORE, it is respectfully prayed of this Honorable Court that pending the hearing of the case, a Writ of Preliminary Attachment be issued against the properties of the defendants to secure the satisfaction of any judgment that may be recovered therein.

Annex J	0000263678	₱106,213.00	10 Dec 1998	Nando Cosico
Annex K	0000263684	₱174,190.00	11 Dec 1998	Moreno de Villa
Annex L	0000263674	₱197,216.00	11 Dec 1998	Moreno de Villa
Annex M	0000263693	₱198,220.00	11 Dec 1998	Moreno de Villa
Annex N	0000263696	₱198,386.00	14 Dec 1998	Moreno de Villa
Annex O	0000263688	₱ 67,931.00	16 Dec 1998	Norma Atlas
Annex P	0000263676	₱146,390.00	16 Dec 1998	Nardo Cosico
Annex Q	0000263675	₱ 98,472.00	16 Dec 1998	Norma Atlas
	UCPB CHECKS NUMBERS			
Annex R	00005439824	₱ 44,910.00	17 Dec 1998	Norma Atlas
Annex S	00005439832	₱188,995.00	18 Dec 1998	Moreno de Villa
Annex T	00005439823	₱ 86,330.00	21 Dec 1998	Moreno de Villa
Annex U	00005439822	₱172,390.00	22 Dec 1998	Moreno de Villa
Annex V	00005439885	₱113,631.00	29 Dec 1998	
Annex W	00005439893	₱156,265.00	06 Jan 1999	
Annex X	00005439886	₱129,118.00	16 Jan 1999	
	TOTAL	₱3,685,766.00 (*Rollo,* p. 52)		

[7] *Id*. at 57-63.

[8] *Id*. at 64.

It is further prayed that after due hearing on the principal cause of action, judgment be rendered ordering all the defendants, jointly and severally, to pay plaintiff the following:

1. FOR THE REDISCOUNTING TRANSACTION:

   The amount of THREE MILLION NINE HUNDRED FOURTEEN THOUSAND AND NINE HUNDRED THIRTY-FOUR PESOS AND SEVENTY CENTAVOS (₱3,914,934.70), Philippine Currency, representing the total obligation due and owing with interest, thereon at 5% per month from the date of filing of the complaint until the whole obligation is fully paid and satisfied;

2. FOR THE PURCHASES:

   The amount of NINETY-FIVE THOUSAND FOUR HUNDRED PESOS AND SIX CENTAVOS (₱95,400.06), Philippine Currency, representing the total obligation due and owing with interest, thereon at 18% per annum from the date of filing of the complaint until the whole obligation is fully paid and satisfied;

3. The sum representing twenty-five percent (25%) of the total amount involved as attorney's fees plus ₱3,500 per court appearance; and

4. Cost of suit.

Plaintiff further prays for such relief deemed just and equitable under the premises.[9]

WSR likewise sought to collect on unpaid purchases of bananas by KLT amounting to ₱90,830.00.

KLT proceeded to file an Answer with cross-claim and counterclaim.[10]

Issues having been joined, a full-blown trial on the merits ensued, with the parties presenting rebuttal and sur-rebuttal evidence. Consequently, on 26 May 2003, the RTC rendered a Decision, copy of which was received by KLT on 10 July 2003, ruling in favor of the WSR, in this wise:

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[9] *Id*. at 55.

[10] *Id*. at 75.

Premised on the foregoing consideration, the Court finds for the plaintiff and hereby renders its judgment ordering defendants KLT Corporation, Michael Lao Tian Ben and Leopoldo Gonzales jointly and severally

1. To pay ₱3,685,766 to the plaintiff WSR Fruits, Inc. with legal interest;
2. To pay plaintiff WSR Fruits, Inc. the amount of ₱90,830 for the bananas delivered on October 20 & 21, 1998 with legal interest;
3. To pay a sum equivalent to 25% of the total amount due and payable as attorney's fees;
4. To pay costs.

For insufficient evidence, the case against defendants Arlene Lao, Joseph Lao Tiak Ben, Roger Buan and Leida Gonzales is ordered dismissed.

Defendants['] counter-claim is dismissed.[11]

On 23 July 2003, KLT filed a Motion for Reconsideration of the above-quoted RTC Decision but the same was denied for lack of merit on 25 September 2003. KLT received a copy of the Order denying its Motion for Reconsideration on 13 October 2003.

On 13 October 2003, KLT filed with the RTC a Notice of Appeal[12] of its Decision but **without paying the appropriate docket fees**. Thereupon, WSR filed on 24 October 2003 a Motion

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[11] *Id*. at 99.

[12] KLT's Notice of Appeal reads:

NOTICE OF APPEAL

COME NOW DEFENDANTS, by undersigned counsel, hereby file their Notice of Appeal from the judgment of this Honorable Court in the above-entitled case dated 26 May 2003 to which they filed a Motion for Reconsideration which was subsequently denied by the Honorable Court on 25 September 2003, copy of which was received by counsel on October 13, 2003.

Makati City for Manila, 13 October 2003

(SGD) VICENTE R. POSADAS (*Id*. at 100)

to Dismiss Appeal[13] on the grounds that, first, the notice of appeal filed by KLT failed to comply with the formal and substantial requirements imposed by Rule 41, Section 5 of the Revised Rules of Civil Procedure governing appeals from regional trial courts;[14] and second, there was no proof of payment of docket and other lawful fees. An Opposition to the Motion to Dismiss Appeal[15] was then filed by KLT on 28 October 2003, attaching thereto a "Corrected Notice of Appeal,"[16] but **still without any payment of the required docket fees**.

On 7 November 2003, the RTC issued the Order,[17] a copy of which was received by KLT on 14 November 2003, refusing to give due course to their appeal. The pertinent portions of the said Order reads:

Section 4, Rule 41 of the Rules mandates that within the period to appeal, the appellant shall pay to the Clerk of the Court that rendered

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[13] WSR's Motion to Dismiss Appeal states:

2. Specifically, the Notice of Appeal is not sufficient in form and substance for the following reasons:

a. It does not specify the court to which the appeal is being taken.

b. It does not state the material dates showing the timeliness of the appeal:

b.1 Date of receipt of the copy of the judgment or final order appealed from.

b.2 Date when the Motion for Reconsideration was filed and that it was filed within the fifteen-day reglementary period to file Notice of Appeal.

b.3 Statement that the Notice of Appeal is filed within the remainder/balance of the original fifteen-day period of perfecting an appeal from the trial court.

c. It does not state and indicate the proof of payment of docket and other lawful fees. (*Id*. at 103)

[14] SEC. 5. *Notice of Appeal*. – The notice of appeal shall indicate the parties to the appeal, specify the judgment or final order or part thereof appealed from, specify the court to which the appeal is being taken, and state the material dates showing the timeliness of the appeal.

[15] *Rollo*, p. 106.

[16] *Id*. at 101.

[17] *Id*. at 109.

the judgment x x x the full amount of the appellate court docket and other lawful fees.

Section 13 of the same Rule provides that the trial court may *motu propio* dismiss the appeal for non-payment of the docket fees and other lawful fees within the reglementary period.

The record of the case shows that defendants have not paid the docket fees and other lawful fees, to date.

KLT subsequently paid the docket fees only on 17 November 2003.

On 20 November 2003, KLT filed an Urgent Motion for Reconsideration[18] of the Order of the court *a quo*, dated 7 November 2003. WSR filed its Opposition[19] thereto, while KLT interposed a Reply. On 26 January 2004, the RTC denied the Urgent Motion for Reconsideration based on the following ratiocination:

This resolves the defendant's Urgent Motion for Reconsideration.

The record of the case show (sic) that on November 17, 2003 defendants through counsel filed the necessary docket fees with receipt numbers 18832287, 18827082 and 0101710 to the Office of the Clerk of Court Regional Trial Court, Manila.

It is the rule and the jurisprudence that within the period of appeal, the appellant shall pay the amount of the court docket and other fees.

The right to appeal is a procedural remedy of statutory origin and, as such, may be exercised only in the manner prescribed by the provisions of law authorizing its exercise. (*Oro vs. Diaz*, 361 SCRA 108)

The payment of docket fees within the prescribed period is mandatory for the perfection of appeal. Without such payment, the appellate court does not acquire jurisdiction of the action and the decision sought to be appealed from becomes final and executory. (*Manalili vs. de Leon*, 370 SCRA 625)

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[18] *Id*. at 110.

[19] *Id*. at 115.

WHEREFORE, defendants' Motion for Reconsideration is hereby **DENIED** for being unmeritorious.[20]

From the RTC, KLT filed before the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Revised Rules of Civil Procedure.[21] The Court of Appeals denied the Petition in its Decision dated 28 April 2006.[22]

In refusing to cater to KLT's arguments regarding the liberal interpretation of the rules of procedure, the appellate court underscored that KLT failed to show any justifiable, persuasive or weighty reasons to rationalize a relaxation of the rule. The appellate court noted that in KLT's Urgent Motion for Reconsideration dated 20 November 2003, KLT's counsel, Atty. Vicente Posadas, admitted that he committed an "honest, innocent oversight or omission" when he was unable to cause the payment of the appeal docket fees when he filed the notice of appeal. The oversight was allegedly due to the recent chronic illness plaguing counsel who was the only full-time lawyer in the law office which he shared with his brother. KLT's counsel even attached a duly notarized medical certificate to support his claim. He alleged that he failed to notice the non-payment of the docket fees when he filed their "Opposition to Motion to Dismiss Appeal," as he was already sick, resting at home; and that the said pleading was only filed through the assistance of an outside junior lawyer, who occasionally assisted him in times of indisposition. The Court of Appeals determined that by admitting his "oversight or omission," KLT's counsel effectively admitted to being grossly negligent. Negligence, to be deemed "excusable," must be one which ordinary diligence and prudence could not have guarded against.[23] The omission herein could hardly be characterized as excusable. Despite his alleged illness or indisposition, the Court of Appeals explicitly declared that Atty. Posadas should

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[20] *Id.* at 124.

[21] *Certiorari*, Prohibition and *Mandamus*.

[22] *Rollo*, p. 32.

[23] *Insular Life Savings and Trust Company v. Runes, Jr.,* G.R. No. 152530, 12 August 2004, 436 SCRA 317, 325.

have exercised greater prudence and diligence in ensuring that the appeal docket and other legal fees were paid as soon as he filed the notice of appeal.[24]

KLT's Motion for Reconsideration was denied by the Court of Appeals in a Resolution dated 18 August 2006. KLT is now before this Court on an issue that is not novel, *i.e.*, whether the non-payment of appeal docket fees within the reglementary period will mean automatic dismissal of appeal.[25]

Rule 41, Section 4 of the Revised Rules of Civil Procedure, states:

Rule 41. Appeal from the Regional Trial Court:

SEC. 4. *Appellate court docket and other lawful fees.* – Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the **full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court** together with the original record or the record on appeal. (Emphasis supplied.)

x x x x x x x x x

SEC. 9. *Perfection of appeal; effect thereof.* – A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

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[24] CA *rollo,* pp. 185-186.

[25] *Rollo*, p. 199.

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.

The failure of the appellant to pay the docket fees is a ground for the dismissal of the appeal under Rule 50, Section 1(c) of the Revised Rules of Civil Procedure which explicitly states that:

Rule 50. Dismissal of Appeal.

Section 1. Grounds for dismissal of appeal. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x

(c) Failure of the appellant to pay the docket and other lawful fees as provided in Section 5 of Rule 40 and Section 4 of Rule 41.

From the foregoing, it can be gleaned that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. This is so because a court acquires jurisdiction over the subject matter of the action only upon the payment of the correct amount of docket fees regardless of the actual date of filing of the case in court.

Villena v. Rupisan[26] pronounced the current jurisprudence on the matter, to wit:

In the case of *Gegare v. Court of Appeals* [358 Phil. 228 (1998)], this Court upheld the appellate court's dismissal of an appeal for failure of petitioner to pay the docket fees within the reglementary period despite a notice from the Court of Appeals informing him that such fees had to be paid within 15 days from receipt of such notice. Denying petitioner's plea for judicial leniency, we held that –

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[26] G.R. No. 167620, 3 April 2007, 520 SCRA 346, 363-368.

"Also without merit, in our view, is petitioner's plea for a liberal treatment by the said court, rather than a strict adherence to the technical rules, in order to promote substantial justice. For it has consistently held that payment in full of docket fees within the prescribed period is mandatory. As this Court has firmly declared in *Rodillas v. Commission on Elections* [245 SCRA 702 (1995)], such payment is an essential requirement before the court could acquire jurisdiction over a case:

> The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal (*Dorego v. Perez*, 22 SCRA 8 [1968]; *Bello v. Fernandez*, 4 SCRA 135 [1962]). In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees as held in *Acda v. Minister of Labor,* 119 SCRA 306 (1982). The requirement of an appeal fee is by no means a mere technicality of law or procedure. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal was filed at all. The right to appeal is merely a statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provision of the law."

In *Lazaro v. Court of Appeals* [386 Phil. 412 (2000)], decided 6 April 2000, the private respondents therein failed to pay the docket fees within the reglementary period. They paid the fees only after the Court of Appeals had dismissed the appeal, that is, six months after the filing of the Notice of Appeal. The Court of Appeals reinstated the appeal "in the interest of substantial justice" without other justification. This Court, through then Chief Justice Artemio V. Panganiban, though not persuaded, recognized that there are exceptions to the stringent requirements of the law on payment of the docket fees, thus:

We must stress that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. "Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only **for the most persuasive of reasons** when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of this thoughtlessness in not complying with the procedure prescribed."

Sure enough, the foregoing jurisprudence truly blazed the trails for a liberal application of the strict interpretation of the law.

In *Mactan Cebu International Airport Authority v. Mangubat,* [371 Phil. 393 (1999)], the payment of the docket fees was delayed by six days, but the late payment was accepted because the party showed willingness to abide by the Rules by immediately paying those fees. The Court also took note of the importance of the issues in this case involving as it does the entitlement or not of the respondents to properties involved.

Of similar import is the ruling of the court in the case of *Ginete v. Court of Appeals* [357 Phil. 36 (1998)], where we held that aside from matters of life, liberty, honor or property which would warrant the suspension of the rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (1) the existence of special or compelling circumstances; (2) the merits of the case; (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (4) a lack of any showing that the review sought is merely frivolous and dilatory, and (5) the other party will not be unjustly prejudiced thereby.

Yambao v. Court of Appeals [399 Phil. 712 (2000)], saw us again relaxing the Rules when we declared therein that "the appellate court may extend the time for the payment of the docket fees if appellant is able to show that there is a justifiable reason for the failure to pay the correct amount of docket fees within the prescribed period, like fraud, accident, mistake, excusable negligence, or a similar supervening casualty, without fault on the part of the appellant.

In *Go v. Tong* [G.R. No. 151942, 27 November 2003, 416 SCRA 557, 567], reiterated in *Heirs of Bertuldo Hinog v. Melicor* [G.R. No. 140954, 12 April 2005, 455 SCRA 460, 475], it was held that while the payment of the prescribed docket fee is a jurisdictional requirement, even its nonpayment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period; more so when the party involved demonstrates a willingness to abide by the rules prescribing such payment.

In *Planters Products, Inc. v. Fertiphil Corporation* [G.R. No. 156278, 29 March 2004, 426 SCRA 414, 420], the Court stated

that failure to pay the appellate docket fee does not automatically result in the dismissal of an appeal, dismissal being discretionary on the part of the appellate court. And in determining whether or not to dismiss an appeal on such ground, courts have always been guided by the peculiar legal and equitable circumstances attendant to each case.

In *Camposagrado v. Camposagrado* [G.R. No. 143195, 13 September 2005, 469 SCRA 602, 608], the case involved a deficiency in the payment of docket fees in the amount of Five Pesos (₱5.00). This Court called for the liberal interpretation of the rules and gave due course to the appeal. In brief, the Court said that the failure to pay the appellate docket fee does not automatically result in the dismissal of the appeal, dismissal being discretionary on the part of the appellate court. A party's failure to pay the appellate docket fee within the reglementary period confers only a discretionary and not a mandatory power to dismiss the proposed appeal. Such discretionary power should be used in the exercise of the court's sound judgment in accordance with the tenets of justice and fair play with great deal of circumspection, considering all attendant circumstances and must be exercised wisely and ever prudently, never capriciously, with a view to substantial justice.

In the subsequent case of *Far Corporation v. Magdaluyo* [G.R. No. 148739, 19 November 2004, 443 SCRA 218], this Court, while reiterating that the payment of docket and other legal fees within the prescribed period is both mandatory and jurisdictional, in the same vein, recognized that the existence of persuasive and weighty reasons call for a relaxation of the rules.

In *La Salette College v. Pilotin* [463 Phil. 785 (2003)], notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognized that its strict application is qualified by the following: *first,* failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second,* such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.

In all, what emerges from all of the above is that the rules of procedure in the matter of paying the docket fees must be followed. However, there are exceptions to the stringent requirement as to call for a relaxation of the application of the rules, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from

an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules. Anyone seeking exemption from the application of the Rule has the burden of proving that exceptionally meritorious instances exist which warrant such departure.

It bears stressing that while we have laid down the rule on the discretionary interpretation of the rules on the perfection of an appeal or the payment of docket fees, we have also in some cases refused to give due course to an appeal for failure to pay docket fees. Thus, in *Tamayo v. Tamayo, Jr.,*[27] petitioners therein failed to pay the docket fees on the ground that they were not advised by the trial court and the Court of Appeals as to when to pay the same. In affirming the dismissal of therein petitioners' appeal, this Court reiterated the rule that anyone seeking exemption from the application of the mandatory nature of the payment of docket fees has the burden of proving that exceptionally meritorious instances exist which warrant a departure from the requirement of the law. Of the same tenor is our ruling in *Enriquez v. Enriquez,*[28] in which we repeated that concomitant to the liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[29]

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[27] G.R. No. 148482, 12 August 2005, 466 SCRA 618, 622-623.

[28] G.R. No. 139303, 25 August 2005, 468 SCRA 77, 86.

[29] *Id*.

Guided by the foregoing jurisprudential pronouncements, we shall now address the issue of whether the petition may be granted, and whether the appeal of KLT may be allowed despite the late payment of docket fees. The antecedents that led to the non-payment of docket fees are not disputed.

As borne out by the "Corrected Notice of Appeal" filed by KLT, it received a copy of the RTC Decision dated 26 May 2003, on 10 July 2003. Thus, they had until 25 July 2003 within which to file an appeal therefrom. The 15-day period was interrupted when KLT filed a Motion for Reconsideration on 23 July 2003. The RTC Order denying their Motion for Reconsideration was received by KLT on 13 October 2003. KLT, therefore, had until 15 October 2003 within which to perfect an appeal in accordance with the rules by filing a Notice of Appeal and paying the appropriate appeal court docket and other legal fees.

KLT did file a Notice of Appeal on 13 October 2003, well within the period to appeal, but said notice was defective, for it was filed without payment of the corresponding docket and other fees. At that point, KLT failed to perfect its appeal.

KLT attempted to correct the defect in its Notice of Appeal by filing an Opposition to the Motion to Dismiss Appeal on 28 October 2003, attaching thereto a "Corrected Notice of Appeal," but still without any payment of the required appeal docket fees. KLT paid the docket fees only on 17 November 2003, or **more than 30 days after the period to appeal had expired on 15 October 2003**. The situation was further aggravated when KLT paid the docket fees only after it had received on 14 November 2003 a copy of the RTC Order dated 7 November 2003, dismissing its appeal, precisely on the ground that the docket and other lawful fees had not been paid.

In seeking exemption from the mandatory application of the rule, the reason advanced by KLT's counsel was that he was ill at the time the Notice of Appeal was filed, to wit.

1. Undersigned counsel admits the hones, innocent oversight or omission he had committed when he was unable to cause the

payment of the appeal docket fees with the Clerk of Court of the Regional Trial Court of Manila, when he caused the filing of the notice of appeal. The principal reason for the oversight was that said counsel was already getting frequently sick and staying at home in the month of October and in fact had to visit his physician in the Medical City Medical Center in Mandaluyong City, Dra. Ma. Theresa Chua-Agcaoili, as he had not been feeling well since September due to upper respiratory problems with beginning pneumonia and had been strongly advised to go on leave from active daily law practice for 21 to 30 days. Encloses herein is said physician's duly notarized Medical Certificate marked as Annex "1".

2. The abovementioned facts and circumstances clearly show that the required appeal docket fee was inadvertently not paid by reason of the recent chronic illness plaguing undersigned counsel who is the only full-time lawyer in his and his brother's law firm. The Opposition to Motion to Dismiss Appeal glossed over the said requirement of Sec. 4, Rule 41 of the Rules as undersigned counsel was already sick and resting at home and said pleading was rushed by an outside junior lawyer who occasionally assisted undersigned counsel in times of illness or indisposition. After being informed by phone of the Honorable Court's Order of November 7, 2003, undersigned counsel immediately instructed that appeal docket fee be paid to RTC of Manila Clerk of Court. Attached herewith as Annex "2" is the original copy of the receipt."[30]

From the foregoing, we are tasked to determine whether the above justification constitutes adequate excuse to call for a relaxation of the Rules of Civil Procedure regarding the mandatory payment of docket fees. We answer this in the negative. In exceptional circumstances, we allowed a liberal application of the rule.[31] However, in those exceptional circumstances, the payments of the required docket fees were delayed for only a few days,[32] so much unlike this case in which the delay was for more than thirty days; and, at worse, counsel had several opportunities to rectify said *faux pas,* yet failed to do so. We

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[30] *Rollo,* p. 228.

[31] *Villena v. Rupisan*, *supra* note 26.

[32] *Mactan Cebu International Airport Authority v. Mangubat*, 371 Phil. 393 (1999); *Villena v. Rupisan, id*.

are, thus, reminded of *Guevarra v. Court of Appeals,*[33] in which the payment of docket fees was made 41 days after notice of the questioned Decision; and the excuse of "inadvertence, oversight, and pressure of work was disregarded as too flimsy, an old hat, a hackneyed pretext." Such has never been given the badge of excusability by the Court.

As to the existence of a meritorious defense which warrants a further hearing of the case, KLT insist that the checks in question were forged[34] or stolen from the vault of KLT by Leopoldo Gonzales, and that Gonzales admitted that he was the author of the forgery and theft. The forgery and theft of the checks in question will prevent WSR from recovering from KLT the value of the said checks. It bears stressing, though, that the RTC did not give due credence to the claim of forgery by KLT that would insulate it from liability for the amount of the checks. All told, the instant case underwent a full-blown trial, in which both parties presented evidence including rebuttal and sur-rebuttal evidence. Where a party was given the opportunity to defend its interest in due course, it cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process.[35] It must be emphasized that KLT was adequately heard, and that all issues were ventilated before the Decision was promulgated. All the necessary pleadings were filed by KLT's counsel to protect its interests when the case was still before the RTC. KLT was not deprived of its day in court.[36] No denial of due process was shown. Verily, KLT was afforded adequate and full opportunity to ventilate its case in the proceedings below.

WHEREFORE, premises considered, the Petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated 28 April 2006 and its Resolution dated 18

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[33] G.R. No. L-43714, 15 January 1988, 157 SCRA 32, 37.

[34] *Rollo,* p. 24.

[35] *Legarda v. Court of Appeals,* 345 Phil. 890, 905 (1997).

[36] *Saint Louis University v. Cordero,* G.R. No. 144118, 21 July 2004, 434 SCRA 575, 585.

August 2006 in CA-G.R. SP No. 82487 are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177744. November 23, 2007]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GERONIMO DOMINGO,** *appellant.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; COMPLAINT OR INFORMATION; VALID AS LONG AS IT DISTINCTLY STATES THE ELEMENTS OF THE OFFENSE AND THE ACTS OR OMISSIONS CONSTITUTIVE THEREOF; IN RAPE CASES, THE PRECISE TIME WHEN THE RAPE TAKES PLACE HAS NO SUBSTANTIAL BEARING ON ITS COMMISSION, AS SUCH, THE DATE OR TIME NEED NOT BE STATED WITH ABSOLUTE ACCURACY. — An information is valid as long as it distinctly states the elements of the offense and the acts or omissions constitutive thereof. The precise time or date of the commission of an offense need not be alleged in the complaint or information, unless it is an essential element of the crime charged. In rape, it is not. The *gravamen* of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its

actual commission. The Information clearly alleged and the prosecution sufficiently established the commission by the appellant of statutory rape. We reiterate the findings of the CA in this wise: We are convinced that the prosecution was able to establish the fact that the accused-appellant had carnal knowledge of AAA in February 1998 when she was only 10 years old. AAA's birth certificate admittedly shows that she was born on July 17, 1987. At the time she had carnal knowledge of accused-appellant in February 1998, she was only 10 years and five months old. The gravamen of statutory rape is carnal knowledge of a woman below twelve years of age. AAA, in this regard, categorically testified that she in fact was raped, and that she, as shown by her birth certificate was under twelve years old at the time. More importantly, she positively identified the accused-appellant as her rapist.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

NACHURA, *J.*:

For review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02098 dated July 6, 2006 which affirmed the Decision[2] of the Regional Trial Court of Imus, Cavite, Branch 21 in Criminal Cases Nos. 7427-99 and 7428-99. The trial court convicted Geronimo Domingo of rape in Criminal Case No. 7428-99 but acquitted him in Criminal Case No. 7427-99.

Sometime in 1997, AAA, then ten years of age being born on July 17, 1987, was inside her residence located at Block 17, Lot 29, Dasmariñas, Cavite. At 2:00 in the afternoon, while

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo, concurring, *rollo*, pp. 3-17.

[2] Penned by Executive Judge Norberto J. Quisumbing, Jr., CA *rollo*, pp. 25-31.

sleeping on the sofa in their living room, AAA was awakened by the appellant, the son of AAA's maid. He told her to transfer to her bed which she did. While inside the room, she was asked to remove her shorts which she again did; then appellant subsequently inserted his penis into her private organ until the satisfaction of his bestial act. He, thereafter, warned her not to tell anybody about the incident, otherwise, something bad would happen to her. The rape incident was repeated sometime in February 1998.[3]

BBB, the mother of AAA, noticed that the latter was always crying and not happy. She thus confronted AAA but she refused to answer. Later, BBB found out that there was a stain in AAA's panty.[4] On June 20, 1998, BBB thus brought AAA to the medico-legal office for examination. The examination revealed that AAA's vagina admitted a finger with ease; and there were fresh lacerations at 12:00 and 6:00 positions.[5] AAA subsequently admitted to BBB that she was raped twice by the appellant.[6]

Appellant was separately charged with two counts of rape in the following Information:

Criminal Case No. 7427-99

That on or about and sometime in the year 1997, in the Municipality of Dasmariñas, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to have carnal knowledge of eleven (11) years old AAA and with threat and intimidation, did, there and then, willfully, unlawfully and feloniously have sexual intercourse with said AAA, an 11 year old girl, without her consent and against her will, to her damage and prejudice.

CONTRARY TO LAW.[7]

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[3] *Rollo*, p. 5.

[4] *Id*.

[5] CA *rollo*, p. 27.

[6] *Rollo*, pp. 5-6.

[7] CA *rollo*, p. 11.

Criminal Case No. 7428-99

That on or about the month of February 1998, in the Municipality of Dasmariñas, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to have carnal knowledged (sic) of eleven (11) year old AAA, and with threat and intimidation, did, there and then, willfully, unlawfully and feloniously have sexual intercourse with said eleven (11) year old AAA, against the latter's will and consent, to her damage and prejudice.

CONTRARY TO LAW.[8]

For his part, appellant denied the charges. He instead claimed that AAA fell in love with him. As evidence of his relationship with her, he claimed to have received love letters from her.[9] Appellant's mother testified that it was impossible for appellant to have raped AAA because she was with her son twenty-four hours a day.[10]

On November 11, 2003, the RTC rendered a Decision convicting the appellant of rape in Criminal Case No. 7428-99 while acquitting him in Criminal Case No. 7427-99. The pertinent portion of the decision reads:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the felony of rape as charged in the information in Criminal Case No. 7428-99, said accused is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the private complainant the amount of ₱50,000.00 as indemnity and another amount of ₱50,000.00 as moral damages and the costs of this suit.

The accused, however, is hereby acquitted of the felony of rape as charged in the information in Criminal Case No. 7427-99.

SO ORDERED.[11]

The trial court acquitted appellant of the first count of rape (in Criminal Case No. 7427-99) because of the defect in the

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[8] *Id.* at 12.

[9] *Rollo*, pp. 6-7.

[10] *Id.* at 7.

[11] CA *rollo*, p. 31.

information as to the time of the commission of the offense --- sometime in 1997. As to the second count of rape which was committed in February 1998, the court gave credence to the evidence of the prosecution and did not consider the sweetheart theory offered by the appellant. Assuming that there was consent on the part of AAA, still, the act committed by the appellant constituted statutory rape, considering the age of the victim.[12] Appellant was, thus, sentenced to suffer the penalty of *reclusion perpetua*. The court further awarded ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

The case was initially elevated to this Court but the same was transferred to the CA pursuant to the Court's directive in *People v. Mateo.*[13]

OnJuly 6, 2006, the CA affirmed the trial court's decision. The *fallo* reads:

> WHEREFORE, the instant appeal is **DISMISSED**. The assailed Decision dated November 11, 2003 of the Regional Trial Court of Imus, Cavite, Branch 21, in Criminal Case No. 7428-99 is **AFFIRMED**.
>
> SO ORDERED.[14]

On appeal before the Court, instead of filing their supplemental briefs, the parties opted to adopt their respective briefs filed before the CA.

We find no merit in the appeal.

The only issue raised by the appellant is the alleged defect in the Information charging him with the second count of rape in Criminal Case No. 7428-99, for failure to state therein the precise date and time when the offense was committed.

An information is valid as long as it distinctly states the elements of the offense and the acts or omissions constitutive thereof.[15]

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[12] *Id.* at 30.

[13] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[14] *Rollo*, p. 16.

[15] *People v. Espejon*, 427 Phil. 672, 680 (2002).

The precise time or date of the commission of an offense need not be alleged in the complaint or information, unless it is an essential element of the crime charged. In rape, it is not.[16] The *gravamen* of rape is carnal knowledge of a woman through force and intimidation. In fact, the precise time when the rape takes place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.[17]

The Information clearly alleged and the prosecution sufficiently established the commission by the appellant of statutory rape. We reiterate the findings of the CA in this wise:

> We are convinced that the prosecution was able to establish the fact that the accused-appellant had carnal knowledge of AAA in February 1998 when she was only 10 years old. AAA's birth certificate admittedly shows that she was born on July 17, 1987. At the time she had carnal knowledge of accused-appellant in February 1998, she was only 10 years and five months old. The gravamen of statutory rape is carnal knowledge of a woman below twelve years of age. AAA, in this regard, categorically testified that she in fact was raped, and that she, as shown by her birth certificate was under twelve years old at the time. More importantly, she positively identified the accused-appellant as her rapist.[18]

In view of the foregoing, the appellant was correctly sentenced to suffer the penalty of *reclusion perpetua* for statutory rape. Appellant shall not be eligible for parole pursuant to the Indeterminate Sentence Law.[19]

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[16] *People v. Mangubat*, G.R. No. 172068, August 7, 2007; *People v. Latag*, 463 Phil. 492, 502 (2003); *People v. Espejon*, *supra*.

[17] *People v. Espejon*, *supra* note 15, at 681.

[18] *Rollo*, p. 11.

[19] The Court has consistently held that the Indeterminate Sentence Law does not apply to persons sentenced to *reclusion perpetua* (See: *People v. Enriquez, Jr.*, G.R. No. 158797, July 29, 2005, 465 SCRA 407, 418; *People v. Tan*, 411 Phil. 813, 841-842 (2001); and *People v. Lampaza*, 377 Phil. 119, 137 (1999).

On the civil aspect, the court rightly awarded ₱50,000.00 as civil indemnity and another ₱50,000.00 for moral damages, but failed to award exemplary damages. As we held in *People v. Malones,*[20] this is not the first time that a child has been snatched from the cradle of innocence by some beast to sate its deviant sexual appetite. To curb this disturbing trend, appellant should, likewise, be made to pay exemplary damages which is pegged at ₱25,000.00.

WHEREFORE, premises considered, the appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02098 is *AFFIRMED* with *MODIFICATION*. Appellant Geronimo Domingo is sentenced to suffer the penalty of *reclusion perpetua* with no eligibility for parole. In addition to the award of civil indemnity and moral damages, AAA is hereby awarded ₱25,000.00 for exemplary damages.

SO ORDERED.

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

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[20] 469 Phil. 301, 333 (2004).

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Grave misconduct — The penalty of dismissal imposed carries with it disqualification from employment in any government office and forfeiture of benefits, except for accrued leaves. (*In Re:* Affidavit of Frankie N. Calabines, A Member of the Co-Terminus Staff of Justice Josefina Guevarra-Salonga, Relative To Some Anomalies Related To CA-G.R CV NO. 73287, "Candy Maker, Inc. *v.* Rep. of the Phils.") (Calabines *vs.* Gnilo, A.M. No. 04-5-20-SC, Nov. 21, 2007) p. 307

Penalty for administrative offense — If respondent is found guilty of two or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or count and the rest may be considered as aggravating circumstances. (Lao Lee *vs.* Dela Cruz, A.M. No. P-05-1955, Nov. 12, 2007) p. 178

Simple misconduct, inefficiency and incompetence — Imposable penalty. (Lao Lee *vs.* Dela Cruz, A.M. No. P-05-1955, Nov. 12, 2007) p. 178

COURTS

Duty — Courts are duty-bound to be extra vigilant in trying drug cases lest an innocent person be made to suffer the unusually severe penalties for drug offenses. (Valdez *vs.* People, G.R. No. 170180, Nov. 23, 2007) p. 934

— Courts should exercise the highest degree of diligence and prudence in deliberating upon the guilt of accused persons brought before them. (*Id.*)

— Must be detached and impartial not only when hearing and resolving the case before it, but even when its judgment is brought on appeal before a higher court; applicable to quasi-judicial agencies; *raison d'etre* of the rule. (Pleyto *vs.* PNP Criminal Investigation and Detection Group, G.R. No. 169982, Nov. 23, 2007) p. 842

Jurisdiction — Distinguished from choice of law. (Hasegawa *vs.* Kitamura, G.R. No. 149177, Nov. 23, 2007) p. 572

— The allegations in the complaint, not the defenses set up in the Answer or in the Motion to Dismiss, determine which court has jurisdiction over an action; otherwise, the question of jurisdiction would depend almost entirely upon the defendant; applied. (Rep. of the Phils. *vs.* Asiapro Cooperative, G.R. No. 172101, Nov. 23, 2007) p. 979

— The authority to decide a case and not the decision rendered therein makes up jurisdiction; when there is jurisdiction, the decision of all questions arising in the case is but an exercise of jurisdiction. (Estate of the Late Jesus S. Yujuico *vs.* Rep. of the Phils., G.R. No. 168661, Oct. 26, 2007) p. 92

Powers — The power of the court to stop further evidence, discussed; discretion of the court to stop further evidence should be exercised with caution more so in criminal cases where proof beyond reasonable doubt is required for the conviction of the accused. (Go *vs.* Looyuko, G.R. No. 147923, Oct. 26, 2007) p. 36

DAMAGES

Actual damages — Amount determined by the trial court, respected. (Tandoc *vs.* People, G.R. No. 150648, Nov. 23, 2007) p. 603

— Defined and discussed; claim for extended overhead cost classified as a claim for actual damages; payment of extended overhead cost, unwarranted. (Filipinas (Pre-Fab Bldg.)

Systems, Inc. *vs.* MRT Dev't. Corp., G.R. Nos. 167829-30, Nov. 13, 2007) p. 184

— Fair rental value, when recoverable in the concept of actual damages. (Sps. Booc *vs.* Five Star Marketing Co., Inc., G.R. No. 157806, Nov. 22, 2007) p. 368

Attorney's fees — Award thereof, when proper. (BPI Family Bank *vs.* Franco, G.R. No. 123498, Nov. 23, 2007) p. 495

— Proper where no fault could be attributed to party who was forced to litigate its cause. (Mercury Drug Corp. *vs.* Rep. Surety and Ins. Co., Inc., G.R. No. 164728, Nov. 23, 2007) p. 771

— The reason for the award thereof must be stated in the text of the trial court's decision, otherwise, it shall be disallowed if it is stated only in the dispositive portion. (Antonio *vs.* Sps. Santos, G.R. No. 149238, Nov. 22, 2007) p. 329

Award of — Damages awarded to rape victim, discussed. (People *vs.* Tuazon, G.R. No. 168650, Oct. 26, 2007) p. 74

— Damages awarded to the heirs of the victim of kidnapping for ransom and murder, discussed. (People *vs.* Salangon, G.R. No. 172693, Nov. 21, 2007) p.

— Damages awarded to the heirs of the victim of murder, discussed; sustained. (People *vs.* Gannaban, Jr., G.R. No. 173249, Nov. 20, 2007) p. 286

Exemplary damages — Amount of ₱25,000 awarded to the heirs of the victim. (People *vs.* Daleba, Jr., G.R. No. 168100, Nov. 20, 2007) p. 281

Interest — Interest on rental dues, sustained; guidelines in the award of interest. (Sps. Booc *vs.* Five Star Marketing Co., Inc., G.R. No. 157806, Nov. 22, 2007) p. 368

Moral damages — Award thereof unwarranted, absent malice or bad faith in filing the action. (Antonio *vs.* Sps. Santos, G.R. No. 149238, Nov. 22, 2007) p. 329

— Requisites; absent bad faith, a party cannot be held liable therefor; explained. (BPI Family Bank *vs.* Franco, G.R. No. 123498, Nov. 23, 2007) p. 495

Temperate or moderate damages — When award thereof proper. (College Assurance Plan *vs.* Belfranlt Devt., Inc., G.R. No. 155604, Nov. 22, 2007) p. 355

DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425 AS AMENDED)

Chain of custody rule — Discussed; law enforcers and public officers have the duty to preserve the chain of custody over the seized drugs. (Valdez *vs.* People, G.R. No. 170180, Nov. 23, 2007) p. 934

— The crucial link in the chain of custody of the seized marijuana leaves from the time they were first allegedly discovered until they were brought for examination by the forensic chemist must be established; not complied with. (*Id.*)

Illegal possession of prohibited drugs — Prosecutions for violations thereof, elements; there can be no crime of illegal possession of a prohibited drug when nagging doubts persist on whether the item confiscated was the same specimen examined and established to be the prohibited drug. (Valdez *vs.* People, G.R. No. 170180, Nov. 23, 2007) p. 934

Violation of — The non-presentation, without justifiable reason, of the police officers who conducted the inquest proceedings and marked the seized drugs is fatal. (Valdez *vs.* People, G.R. No. 170180, Nov. 23, 2007) p. 934

DENIAL

Defense of — To be believed, it must be buttressed by a strong evidence of non-culpability, otherwise, such denial is purely self-serving and without evidentiary value. (Largo *vs.* CA, G.R. No. 177244, Nov. 20, 2007) p. 293

DEPARTMENT OF LABOR AND EMPLOYMENT

Disposition of labor standard cases in the regional offices — Rules on service of notices and copies of order, liberally construed; Rules of Court apply in a suppletory character. (Ex-Bataan Veterans Security Agency, Inc. *vs.* Sec. of Labor Laguesma, G.R. No. 152396, Nov. 20, 2007) p. 228

Jurisdiction — Exception to the Regional Director's exercise of jurisdiction, enumerated; objections to the findings of the labor regulations officer must be raised by the employer during the hearing of the case or at anytime after receipt of the notice of inspection results. (Ex-Bataan Veterans Security Agency, Inc. *vs.* Sec. of Labor Laguesma, G.R. No. 152396, Nov. 20, 2007) p. 228

— The visitorial and enforcement power of the Commission's Regional Director to order and enforce compliance with labor standards law can be exercised even when the individual claim exceeds ₱5,000 except when the labor standards case is covered by the exception clause in Article 128 (b) of the Labor Code. (*Id.*)

DOCKET FEES

Payment of — Failure of appellant to pay docket fees and other lawful fees provided by the rules is a ground for dismissal; payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. (KLT Fruits, Inc. *vs.* WSR Fruits, Inc., G.R. No. 174219, Nov. 23, 2007) p. 1038

— Relaxation of the rules regarding the mandatory payment of docket fees, when allowed; relaxation of the rule not justified where the delay in the payment of docket fees was for more than thirty days and the counsel had several opportunities to rectify said *faux pas,* yet failed to do so. (*Id.*)

DUE PROCESS

Application — No denial of due process where a party was afforded adequate and full opportunity to ventilate its case in the proceedings. (KLT Fruits, Inc. *vs.* WSR Fruits, Inc., G.R. No. 174219, Nov. 23, 2007) p. 1038

Essence of — Afforded where parties were given an opportunity to be heard; applied. (Sarapat *vs.* Salanga, G.R. No. 154110, Nov. 23, 2007) p. 633

— Discussed. (Fuentes *vs.* Caguimbal, G.R. No. 150305, Nov. 22, 2007) p. 339

— No denial thereof where a party was accorded every opportunity to defend her cause. (Nittscher *vs.* Dr. Nittscher, G.R. No. 160530, Nov. 20, 2007) p. 254

Procedural due process — The rights of the employers to procedural due process cannot be cavalierly disregarded. (EDI-Staffbuilders Int'l, Inc. *vs.* NLRC, G.R. No. 145587, Oct. 26, 2007) p. 1

EJECTMENT

Complaint for — Initial determination of ownership over the disputed property is only for the purpose of settling the issue of possession. (Sudaria *vs.* Quiambao, G.R. No. 164305, Nov. 20, 2007) p. 262

— Jurisdiction of the court is determined by the allegations of the complaint and the character of the relief sought. (*Id.*)

— Power to resolve conflicts of possession is recognized within the legal competence of the civil courts; sustained. (Estrella *vs.* Robles, Jr., G.R. No. 171029, Nov. 22, 2007) p. 384

— Sole issue is physical or material possession of the premises or possession *de facto*. (Sudaria *vs.* Quiambao, G.R. No. 164305, Nov. 20, 2007) p. 262

— The Court cannot be deprived of jurisdiction thereon based merely on defendant's assertion of ownership over the litigated property; reason. (*Id.*)

— The Municipal Trial Court does not lose jurisdiction thereon by the simple expedient of a party raising the issue of tenancy. (Fuentes *vs.* Caguimbal, G.R. No. 150305, Nov. 22, 2007) p. 339

EMPLOYER-EMPLOYEE RELATIONSHIP

Existence of — Elements, discussed and applied. (Rep. of the Phils. *vs.* Asiapro Cooperative, G.R. No. 172101, Nov. 23, 2007) p. 979

— Exists between the owner-member of a cooperative and the cooperative. (*Id.*)

— The existence of an employer-employee relationship cannot be negated by expressly repudiating it in a contract, when the terms surrounding circumstance show otherwise; the employment status of a person is defined and prescribed by law and not by what the parties say it should be. (*Id.*)

EMPLOYMENT

Contract of employment — A service contract provision which is being used by the cooperative to circumvent the compulsory coverage of its employees, who are also its owners-members, by the Social Security Law, must be struck down for being contrary to law and public policy. (Rep. of the Phils. *vs.* Asiapro Cooperative, G.R. No. 172101, Nov. 23, 2007) p. 979

Fixed period employment — Brent school doctrine, applied. (AMA Computer College, Parañaque, and/or Amable C. Aguiluz IX *vs.* Austria, G.R. No. 164078, Nov. 23, 2007) p. 745

— Does not proscribe even if the duties of the employee consist of activities necessary or desirable in the usual business of the employer; explained. (*Id.*)

— Expiration thereof; lack of notice of termination is immaterial; employee not entitled to any benefit after the expiration of the contract of employment. (*Id.*)

Regular employment — Reckoning date is hiring date and regular status is attained by operation of law; benefit of regularization not limited to the employees who questioned their status but also extends to those similarly situated. (Kimberly-Clark (Phils.), Inc., *vs.* Sec. of Labor, G.R. No. 156668, Nov. 23, 2007) p. 662

EMPLOYMENT, TERMINATION OF

Abandonment as a ground — Prayer for separation pay not a manifestation of abandonment. (Macahilig *vs.* NLRC, G.R. No. 158095, Nov. 23, 2007) p. 683

— Requisites. (*Id.*)

Dismissal — An employer is liable to pay nominal damages as indemnity for violating the employee's right to statutory due process. (EDI-Staffbuilders Int'l, Inc. *vs.* NLRC, G.R. No. 145587, Oct. 26, 2007) p. 1

— Burden of proving that the employee was not dismissed or, if dismissed, that the dismissal was not illegal, lies with the employer. (Macahilig *vs.* NLRC, G.R. No. 158095, Nov. 23, 2007) p. 683

— Burden of proving that the employment was validly and legally terminated devolves not only upon the foreign-based employer but also on the recruitment agency. (EDI-Staffbuilders Int'l, Inc. *vs.* NLRC, G.R. No. 145587, Oct. 26, 2007) p. 1

— Considered illegal where the employer failed to prove that the same is for a just and valid cause. (*Id.*)

— Recruitment agency is solidarily liable with the foreign principal for any claims or liabilities arising from the dismissal of the worker. (*Id.*)

— Twin-notice requirement to be valid, not complied with. (*Id.*)

Illegal dismissal — Where an employee who was hired for a fixed period of employment was illegally dismissed before the effectivity of the Migrant Workers and Overseas Filipino Act of 1995 (R.A. No. 8042), he is entitled to backwages corresponding to the unexpired portion of his contract; rule when the dismissal case arose after the effectivity of R.A. No. 8042. (EDI-Staffbuilders Int'l, Inc. *vs.* NLRC, G.R. No. 145587, Oct. 26, 2007) p. 1

Incompetence as a ground — Should have a factual foundation. (EDI-Staffbuilders Int'l, Inc. *vs.* NLRC, G.R. No. 145587, Oct. 26, 2007) p. 1

Insubordination or willful disobedience as a ground — Elements; not present. (EDI-Staffbuilders Int'l, Inc. *vs.* NLRC, G.R. No. 145587, Oct. 26, 2007) p. 1

Loss of trust and confidence as a ground — Employer cannot be expected to retain its trust and confidence in and continue to employ a manager whose attitude is perceived to be inimical to its interests. (EPacific Global Contact Center, Inc. and/or Jose Victor Sison *vs.* Cabansay, G.R. No. 167345, Nov. 23, 2007) p. 804

Quitclaims and waivers — Compromise settlement between the overseas Filipino worker and the foreign-based employer, requirements to be valid and enforceable under the Philippine law; requirements apply only in the absence of proof of the foreign law which the parties have agreed to govern their labor contract. (EDI-Staffbuilders Int'l, Inc. *vs.* NLRC, G.R. No. 145587, Oct. 26, 2007) p. 1

— Quitclaims and waivers which are in the nature of a contract of adhesion shall be construed against the employer. (*Id.*)

— When considered valid and binding. (*Id.*)

Statutory due process — Two-notice requirement; complied with. (EPacific Global Contact Center, Inc. and/or Jose Victor Sison *vs.* Cabansay, G.R. No. 167345, Nov. 23, 2007) p. 804

Willful disobedience or insubordination as a ground — Order violated must be clearly made known to the employee concerned; complied with. (EPacific Global Contact Center, Inc. and/or Jose Victor Sison *vs.* Cabansay, G.R. No. 167345, Nov. 23, 2007) p. 804

— Refusal of the employee to obey the employer's reasonable and lawful order, a just cause for dismissal; absence of actual damage to the company is of no moment. (*Id.*)

— Requisites. (*Id.*)

ESTAFA

Commission of — Article 315, paragraph 1(b) of the Revised Penal Code, in relation to Section 13 of the Trust Receipts Law, elements; not present. (Metropolitan Bank & Trust Co. *vs.* Go, G.R. No. 155647, Nov. 23, 2007) p. 646

ESTOPPEL

Doctrine — Applied. (Filipinas (Pre-Fab Bldg.) Systems, Inc. *vs.* MRT Dev't. Corp., G.R. Nos. 167829-30, Nov. 13, 2007) p. 184

Equitable estoppel — May be invoked against public authorities when the lot was already alienated to innocent buyers for value and the government did not undertake any act to contest the title for an unreasonable length of time. (Estate of the Late Jesus S. Yujuico *vs.* Rep. of the Phils., G.R. No. 168661, Oct. 26, 2007) p. 92

Estoppel in pais — Principle thereof, explained. (Cañezo *vs.* Rojas, G.R. No. 148788, Nov. 23, 2007) p. 551

EVIDENCE

Actionable document — Actual insurance policy itself is an evidence of the presence of insurance relationship between the parties. (Malayan Ins. Co., Inc. *vs.* Regis Brokerage Corp., G.R. No. 172156, Nov. 23, 2007) p. 1003

— If a legal claim is irrefragably sourced from an actionable document, the defendants cannot be deprived of the right to examine or utilize such document in order to intelligently raise a defense; inability or refusal of the plaintiff to submit such document into evidence constitutes a denial of due process. (*Id.*)

— Piecemeal presentation of evidence is not in accord with orderly justice; application. (*Id.*)

— Questions regarding the particular terms and conditions in the insurance contract that specifically give rise to a party's right to be subrogated to the consignee, or to such terms and conditions in the insurance contract that may have absolved it from the duty to pay the insurance proceeds to the consignee could only be definitively settled by the actual policy itself. (*Id.*)

— The party must establish the legal basis of its right to subrogation by presenting the contract constitutive of the insurance relationship between it and the insured and

without such legal basis, its cause of action cannot survive. (*Id.*)

Admission of — It is arbitrary for the appellate court to simply brush aside the party's evidence just because it was not presented in the form that it expected. (Pleyto *vs.* PNP Criminal Investigation and Detection Group, G.R. No. 169982, Nov. 23, 2007) p. 842

Admissions — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him; the admissions of the Public Estates Authority on the nature of the land of the petitioners are valid and binding on the Republic. (Estate of the Late Jesus S. Yujuico *vs.* Rep. of the Phils., G.R. No. 168661, Oct. 26, 2007) p. 92

Burden of proof — Each party in an administrative case must prove his affirmative allegation with substantial evidence; the complainant has to prove the affirmative allegations in his complaint, and the respondent has to prove the affirmative allegations in his affirmative defenses and counterclaims. (Pleyto *vs.* PNP Criminal Investigation and Detection Group, G.R. No. 169982, Nov. 23, 2007) p. 842

Circumstantial evidence — When sufficient for conviction. (People *vs.* Salangon, G.R. No. 172693, Nov. 21, 2007) p. 316

DNA evidence — Admissibility thereof, discussed; DNA identification, a source of both inculpatory and exculpatory evidence. (People *vs.* Umanito, G.R. No. 172607, Oct. 26, 2007) p. 132

— Assessment of probative value of DNA evidence, explained; data to be considered. (*Id.*)

— Courts are authorized, after due hearing and notice, *motu proprio* to order a DNA testing. (*Id.*)

— The Regional Trial Court shall determine the institution which will undertake the DNA testing and the parties are free to manifest their comments on the choice of a DNA testing center; the trial court is enjoined to observe the

requirements of confidentiality and preservation of the DNA evidence. (*Id.*)

Doctrine of res ipsa loquitor — Requisites; applied. (College Assurance Plan *vs.* Belfranlt Devt., Inc., G.R. No. 155604, Nov. 22, 2007) p. 355

Documentary evidence — Affidavits are considered hearsay, absent opportunity to cross examine the affiants. (Estrella *vs.* Robles, Jr., G.R. No. 171029, Nov. 22, 2007) p. 384

Flight — Flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. (Valdez *vs.* People, G.R. No. 170180, Nov. 23, 2007) p. 934

Preponderance of evidence — In a civil case, the party must establish his case by a preponderance of evidence; preponderance of evidence, defined. (Sps. Booc *vs.* Five Star Marketing Co., Inc., G.R. No. 157806, Nov. 22, 2007) p. 368

Presumption of regularity in the performance of official duty — Cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. (Valdez *vs.* People, G.R. No. 170180, Nov. 23, 2007) p. 934

Proof beyond reasonable doubt — The failure of the prosecution to prove all the elements of the offense beyond reasonable doubt must perforce result in accused's exoneration from criminal liability; the government cannot be permitted to run roughshod over an accused's right to be presumed innocent until proven to the contrary and neither can it shirk from its obligation to establish such guilt beyond reasonable doubt. (Valdez *vs.* People, G.R. No. 170180, Nov. 23, 2007) p. 934

Prosecution of offenses — Prosecution must be accorded full opportunity to adduce evidence to prove its case and to properly ventilate the issues absent patent showing of dilatory tactics; reason. (Go *vs.* Looyuko, G.R. No. 147923, Oct. 26, 2007) p. 36

EXTRAJUDICIAL FORECLOSURE OF MORTGAGE (ACT NO. 3135)

Extrajudicial foreclosure sale — Disposition of the excess or surplus proceeds of the foreclosure sale, discussed; the right of a mortgagor to the surplus proceeds is a substantial right which must prevail over rules of technicality. (Sps. Saguan *vs.* Phil. Bank of Communications, G.R. No. 159882, Nov. 23, 2007) p. 696

— Proceeding in a petition for writ of possession is *ex-parte* and summary in nature. (*Id.*)

— Rule on issuance of writ of possession, discussed and applied. (*Id.*)

— Setting aside of sale and writ of possession, when proper; procedure, discussed. (*Id.*)

— Validity thereof not affected by the mortgagee's retention of the surplus proceeds, but simply gives the mortgagor a cause of action to recover such excess in an action for collection of a sum of money; mortgagor is not precluded from filing a case to collect on mortgagee's remaining unsecured debt. (*Id.*)

— Writ of possession, when may issue. (*Id.*)

FORUM SHOPPING

Application — Filing of a motion for reconsideration of the lower court's denial of the motion to dismiss on the *same day* or simultaneously with the filing of the petition for certiorari before the Court of Appeals constitutes forum shopping where the issues brought before the appellate court are similar to the issues raised in the motion for reconsideration involving similar causes of action and reliefs sought. (Go *vs.* Looyuko, G.R. No. 147923, Oct. 26, 2007) p. 36

— Rule against forum shopping should not be interpreted with such absolute literalness as to defeat its primary objective of facilitating the speedy disposition of cases. (Calinisan *vs.* CA, G.R. No. 158031, Nov. 20, 2007) p. 247

— Rule on forum shopping applicable where the evil sought to be prevented by the rule, which is the pendency of multiple suits involving the same parties and causes of action and the possibility of two different tribunals rendering conflicting decisions, no longer exists. (*Id.*)

Certificate of non-forum shopping — An omission therein about any event that will not constitute *res judicata* and *litis pendentia* will not warrant the dismissal and nullification of the entire proceedings. (Hasegawa *vs.* Kitamura, G.R. No. 149177, Nov. 23, 2007) p. 572

— Required for all initiatory pleadings filed in court; non-inclusion thereof in the petition for the issuance of letters testamentary is not a ground for the outright dismissal of the petition. (Nittscher *vs.* Dr. Nittscher, G.R. No. 160530, Nov. 20, 2007) p. 254

Elements — Enumerated; not applicable. (Go *vs.* Looyuko, G.R. No. 147923, Oct. 26, 2007) p. 36

ILLEGAL POSSESSION OF FIREARMS AND AMMUNITION (P.D. NO. 1866, AS AMENDED)

Violation of — Essence of the crime penalized under the law, discussed. (Capangpangan *vs.* People, G.R. No. 150251, Nov. 23, 2007) p. 590

INFORMATION

Sufficiency of — Failure to specify the exact dates or times when the rapes occurred does not *ipso facto* make the information defective on its face; rationale. (People *vs.* Ching, G.R. No. 177150, Nov. 22, 2007) p. 433

Validity and sufficiency of — Discussed. (People *vs.* Ching, G.R. No. 177150, Nov. 22, 2007) p. 433

Validity of — An information is valid as long as it distinctly states the elements of the offense and the acts or omissions constitutive thereof; in rape cases, the precise time when the rape takes place has no substantial bearing on its commission, as such, the date or time need not be stated with absolute accuracy. (People *vs.* Domingo, G.R. No. 177744, Nov. 23, 2007) p. 1057

INJUNCTION

Petition for — Shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case; lower court should proceed with the case absent any directive from the Supreme Court to defer action thereon. (Go *vs.* Looyuko, G.R. No. 147923, Oct. 26, 2007) p. 36

Writ of — Will not be issued to enjoin and restrain a criminal prosecution; exceptions. (Borlongan, Jr. *vs.* Peña, G.R. No. 143591, Nov. 23, 2007) p. 530

— Will not issue to restrain the performance of an act already done; a writ of injunction becomes moot and academic after the act sought to be enjoined has already been consummated. (Go *vs.* Looyuko, G.R. No. 147923, Oct. 26, 2007) p. 36

INTERNATIONAL LAW

Application of — The party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law; doctrine of presumed identity approach, explained. (EDI-Staffbuilders Int'l, Inc. *vs.* NLRC, G.R. No. 145587, Oct. 26, 2007) p. 1

INTRODUCTION OF FALSIFIED DOCUMENT IN A JUDICIAL PROCEEDING

Commission of — Essential elements; not present. (Borlongan, Jr. *vs.* Peña, G.R. No. 143591, Nov. 23, 2007) p. 530

JUDGES

Inhibition of — A judge cannot be compelled to inhibit himself absent valid grounds therefor. (Go *vs.* Looyuko, G.R. No. 147923, Oct. 26, 2007) p. 36

— Grounds; bias and prejudice must be proved with clear and convincing evidence in order to be considered valid reasons for the voluntary inhibition of a judge; bare allegations of partiality and prejudgment, not sufficient. (*Id.*)

— Not a remedy to oust a judge from sitting on the case absent proof that the same had acted in a wanton, whimsical or oppressive manner or for an illegal consideration in giving undue advantage to a party. (*Id.*)

— The decision of the judge to disqualify himself from sitting in the case lies within his sound discretion, where the grounds raised by the party in his motion to inhibit are outside of those mentioned in the rules. (*Id.*)

JUDGMENTS

Dismissal of — Dismissal of a case without prejudice, effect of. (Hasegawa *vs.* Kitamura, G.R. No. 149177, Nov. 23, 2007) p. 572

Doctrine on precedents — Explained; applied. (Estate of the Late Jesus S. Yujuico *vs.* Rep. of the Phils., G.R. No. 168661, Oct. 26, 2007) p. 92

Execution of — The court which rendered judgment has control over the processes of execution; independent action for damages based on the implementation of writ of execution, not proper; appropriate recourse. (Collado *vs.* Heirs of Alejandro Triunfante, Sr., G.R. No. 162874, Nov. 23, 2007) p. 713

Interpretation of — In construing a judgment, its legal effects including such effects that necessarily follow because of legal implications, rather than the language used, govern; a judgment rests on the intention of the court as gathered from every part thereof, including the situation to which it applies and the attendant circumstances. (Bacolod City Water District *vs.* Bayona, G.R. No. 168780, Nov. 23, 2007) p. 825

Order of restitution — A judgment of the court ordering restitution of the possession of a parcel of land to the actual occupant, who has been deprived thereof by another through the use of force or in any other illegal manner, should never be construed as an interference with the disposition and alienation of public lands. (Estrella *vs.* Robles, Jr., G.R. No. 171029, Nov. 22, 2007) p. 384

Res judicata — A party cannot, by varying the form of action or adopting a different method of presenting his case, or by pleading justifiable circumstances, escape the operation of the principle that one and the same cause of action should not be twice litigated. (Del Rosario *vs.* Far East Bank & Trust Co., G.R. No. 150134, Oct. 31, 2007) p. 149

— Bar by prior judgment, explained; essential requisites. (*Id.*)

— Conclusiveness of judgment, discussed. (*Id.*)

— Identity of cause of action, test. (*Id.*)

— Not applicable. (Calinisan *vs.* CA, G.R. No. 158031, Nov. 20, 2007) p. 247

— Requisites. (Estate of the Late Jesus S. Yujuico *vs.* Rep. of the Phils., G.R. No. 168661, Oct. 26, 2007) p. 92

— Reversion suit is already barred by *res judicata*. (*Id.*).

JUSTIFYING CIRCUMSTANCES

Self-defense — Burden of proof shifted to the accused. (Tandoc *vs.* People, G.R. No. 150648, Nov. 23, 2007) p. 603

— Burden of proving the elements thereof lies with the accused. (People *vs.* Daleba, Jr., G.R. No. 168100, Nov. 20, 2007) p. 281

KIDNAPPING FOR RANSOM

Commission of — Penalty of *reclusion perpetua* without eligibility for parole imposed instead of death in view of the passage of R.A. No. 9346. (People *vs.* Salangon, G.R. No. 172693, Nov. 21, 2007) p. 316

KIDNAPPING FOR RANSOM AND MURDER

Commission of — Where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, two separate offenses of kidnapping for ransom and murder were committed. (People *vs.* Salangon, G.R. No. 172693, Nov. 21, 2007) p. 316

LABOR ORGANIZATIONS

Intra-union conflicts — 5% special assessment fee, disallowed for failure to support the litigation expenses upon which the same was based; restitution of amount deducted from the members' settlement amount, proper. (Sarapat *vs.* Salanga, G.R. No. 154110, Nov. 23, 2007) p. 633

— Litigation expenses must be established by substantial proof. (*Id.*)

LACHES

Application — The action for reversion is already barred by laches where the same was filed 27 years after the lot was acquired by the innocent purchaser for value. (Estate of the Late Jesus S. Yujuico *vs.* Rep. of the Phils., G.R. No. 168661, Oct. 26, 2007) p. 92

Doctrine — Defined. (Cañezo *vs.* Rojas, G.R. No. 148788, Nov. 23, 2007) p. 551

— Evidentiary in nature and cannot be resolved in a motion to dismiss. (Go *vs.* Looyuko**,** G.R. No. 147923, Oct. 26, 2007) p. 36

— Explained; applied. (Estate of the Late Jesus S. Yujuico *vs.* Rep. of the Phils., G.R. No. 168661, Oct. 26, 2007) p. 92

LAND REGISTRATION

Application for — Certification issued by the Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources (DENR) that the lot "is not covered by any kind of public land application patent," not sufficient proof that land subject of the application for registration is alienable. (Rep. of the Phils. *vs.* Barandiaran, G.R. No. 173819, Nov. 23, 2007) p. 1030

— Open, peaceful, continuous and adverse possession of the questioned lot in the concept of an owner since 1945 must be established by well-nigh incontrovertible evidence. (*Id.*)

— Tax receipts and declarations of ownership for tax purposes only become evidence of ownership acquired by prescription when accompanied by proof of actual possession of the property; actual possession of the property, not proved. (*Id.*)

— The burden of proof to overcome the presumption of state ownership of lands of the public domain lies on the person applying for registration; proof required to establish that the land subject of an application for registration is alienable. (*Id.*)

— The Declaration of Real Property in respondent's name effective only in 1997 cannot prove open, continuous, exclusive and notorious possession in the concept of an owner since time immemorial or since 1945. (*Id.*)

Certificate of title — Rule when certificate of title covering the same property is issued to two different persons; explained. (Antonio *vs.* Sps. Santos, G.R. No. 149238, Nov. 22, 2007) p. 329

Imperfect title — No reference point for counting adverse possession for purposes of an imperfect title, absent evidence that the lands were already classified as alienable and disposable agricultural lands. (Gordoland Dev't. Corp. *vs.* Rep. of the Phils., G.R. No. 163757, Nov. 23, 2007) p. 732

Reconveyance — Action for reconveyance based on fraud, prescriptive period. (Antonio *vs.* Sps. Santos, G.R. No. 149238, Nov. 22, 2007) p. 329

— For an action for reconveyance based on fraud to prosper, the title to the property and the fact of fraud must be proved by clear and convincing evidence. (*Id.*)

Torrens system — Every subsequent purchaser of registered land taking a certificate of title for value and in good faith shall hold the same free from all encumbrances except those noted in the certificate and any of the encumbrances which may be subsisting; legal shield redounds to his successors-in-interest. (Estate of the Late Jesus S. Yujuico *vs.* Rep. of the Phils., G.R. No. 168661, Oct. 26, 2007) p. 92

LAW ON FORFEITURE OF ILL-GOTTEN WEALTH (R. A. NO. 1379)

Unexplained wealth — A reasonable estimation of the cost of foreign travels of the public officials charged is required to determine whether they were within their lawful means. (Pleyto *vs.* PNP Criminal Investigation and Detection Group, G.R. No. 169982, Nov. 23, 2007) p. 842

— Frequency of foreign travel, by itself, is not proof of unexplained wealth of a public officer or employee; it must be established that the trips abroad are beyond the public officer or employee's financial capacity, taking into account his salary and other lawful sources of income. (*Id.*)

— The "net-worth-to-income-discrepancy analysis" may be effective only as an initial evaluation tool, meant to raise warning bells as to possible unlawful accumulation of wealth by a public officer or employee, but it is far from being conclusive proof of the same. (*Id.*)

Unlawfully acquired properties — Proof of; certificates of title are the best proof of ownership that may only be rebutted by competent evidence on the contrary; mere allegation that the properties covered by the Transfer Certificate of Titles (TCTs) are actually owned by someone else is insufficient. (Pleyto *vs.* PNP Criminal Investigation and Detection Group, G.R. No. 169982, Nov. 23, 2007) p. 842

— The charges that the public official is the true owner of the properties registered in his children's names and that he spent for their foreign travels must be proven by the complainant, before the burden of evidence shifts to the public official to prove the contrary. (*Id.*)

— The *prima facie* presumption of unlawful acquisition cannot be automatically extended to the properties that are registered in the names of the public official's children; burden of proving that the properties are actually owned by the public official lies with the complainant. (*Id.*)

— The *prima facie* presumption of unlawful acquisition would arise only when the amount of property is manifestly out of proportion to the salary of the public officer or employee and to his other lawful income and the income from legitimately acquired property. (*Id.*)

— The public official's candid admission of his shortcomings in properly and completely filling out his Statements of Assets, Liabilities and Net Worth (SALN), his endeavor to clarify the entries therein and provide all other necessary information and his submission of supporting documents as to the acquisition of the real properties in his and his wife's names, negate any intention to conceal his properties. (*Id.*)

— Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired; presumption may be overcome by evidence to the contrary. (*Id.*)

Violation of — Unsubstantiated charges of unexplained wealth and unlawfully acquired properties against a hapless public official cannot be countenanced. (Pleyto *vs.* PNP Criminal Investigation and Detection Group, G.R. No. 169982, Nov. 23, 2007) p. 842

LEASE

Contract of lease — Lessee is liable for the deterioration or loss of the thing leased except where the same was due to a fortuitous event which took place without his fault or negligence. (College Assurance Plan *vs.* Belfranlt Devt., Inc., G.R. No. 155604, Nov. 22, 2007) p. 355

— The right of lessee to suspend payment of rent if lessor fails to make necessary repairs on property leased cannot be invoked by lessee who assumed to make all repairs at its expense. (Mercury Drug Corp. *vs.* Rep. Surety and Ins. Co., Inc., G.R. No. 164728, Nov. 23, 2007) p. 771

LEGAL FEES

Sheriff's fees — Expenses in the execution of writs, procedure to be followed. (Aranda, Jr. *vs.* Alvarez, A.M. No. P-04-1889, Nov. 23, 2007) p. 474

LOANS

Simple loan — Deposit of money in banks governed by provisions on simple loan or mutuum; debtor-creditor relationship exists between bank and depositor; discussed. (BPI Family Bank *vs.* Franco, G.R. No. 123498, Nov. 23, 2007) p. 495

MORTGAGES

Innocent mortgagee for value — The mortgage rights of a mortgagee in good faith cannot be nullified by a finding that the mortgagor's title was fraudulent and the declaration that the title is null and void. (Estate of the Late Jesus S. Yujuico *vs.* Rep. of the Phils., G.R. No. 168661, Oct. 26, 2007) p. 92

MOTION FOR RECONSIDERATION

Second motion for reconsideration — Not allowed; filing thereof will not affect period to appeal. (De la Cruz Loyola *vs.* Mendoza**,** G.R. No. 163340, Nov. 23, 2007) p. 723

MURDER

Commission of — Imposable penalty. (People *vs.* Salangon, G.R. No. 172693, Nov. 21, 2007) p. 316

— Proper penalty. (People *vs.* Gannaban, Jr., G.R. No. 173249, Nov. 20, 2007) p. 286

OBLIGATIONS

Fortuitous event — Defined and construed. (College Assurance Plan *vs.* Belfranlt Devt., Inc., G.R. No. 155604, Nov. 22, 2007) p. 355

— If the negligence or fault of the obligor coincided with the occurrence of the fortuitous event, and caused the loss or damage or the aggravation thereof, the fortuitous event cannot shield the obligor from liability for his negligence. (*Id.*)

OMBUDSMAN

Duties — As the disciplining authority or tribunal which heard the case and imposed the penalty, the Office of the Ombudsman must remain partial and detached; right of the Office the Ombudsman to intervene in the appeal of its decision, clarified. (Pleyto *vs.* PNP Criminal Investigation and Detection Group, G.R. No. 169982, Nov. 23, 2007) p. 842

Powers — Grave abuse of discretion in the exercise of its power, when present. (PCGG *vs.* Hon. Desierto, G.R. No. 139296, Nov. 23, 2007) p. 517

— Includes the determination of probable cause during preliminary investigation; discussed. (*Id.*)

— The Office of the Ombudsman can review the Statements of Assets, Liabilities and Net Worth (SALN) of a public officer or employee, if a complaint is filed against the latter, separate and independent of the review thereof by the public officer or employee's head of office; although in an administrative case before the Ombudsman, the public officer or employee is no longer afforded the opportunity for corrective action on his Statements of Assets, Liabilities and Net Worth (SALN), he is still allowed to file counter-affidavits and other evidence in his defense. (Pleyto *vs.* PNP Criminal Investigation and Detection Group, G.R. No. 169982, Nov. 23, 2007) p. 842

— The Office of the Ombudsman is not barred from conducting an investigation of a public officer or employee for violation of the Code of Conduct and Ethical Standards for Public Officials and Employees and the Anti-Graft and Corrupt Practices Act, upon filing of a complaint. (*Id.*)

OVERSEAS EMPLOYMENT

Employment contracts — If freely entered into, it is considered the law between the parties, hence should be respected. (EDI-Staffbuilders Int'l, Inc. *vs.* NLRC, G.R. No. 145587, Oct. 26, 2007) p. 1

PARTIES TO CIVIL ACTIONS

Indispensable party — Effect of absence thereof. (Cañezo *vs.* Rojas, G.R. No. 148788, Nov. 23, 2007) p. 551

PENALTY

Indeterminate sentence law — Does not apply to persons sentenced to *reclusion perpetua.* (People *vs.* Tuazon, G.R. No. 168650, Oct. 26, 2007) p. 74

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION

Standard employment contract — Disability benefits, enumerated; certification from company-designated physician, required; findings thereof may be impugned by contradicting evidence. (Cadornigara *vs.* NLRC, 3rd Div., and/or Amethyst Shipping Co., Inc., and/or Escobal Naviera, Co., S.A. G.R. No. 158073, Nov. 23, 2007) p. 671

PLEADINGS

Service of — Personal service and filing of pleadings and other papers, mandatory; use of another mode of service requires written explanation; exceptions. (Cadornigara *vs.* NLRC, 3rd Div., and/or Amethyst Shipping Co., Inc., and/or Escobal Naviera, Co., S.A. G.R. No. 158073, Nov. 23, 2007) p. 671

— Priorities in modes of service and filing; purpose. (*Id.*)

Verification — Where defect in verification was later ratified, the same is allowed as objectives of the law were not circumvented. (Gordoland Dev't. Corp. *vs.* Rep. of the Phils., G.R. No. 163757, Nov. 23, 2007) p. 732

Verification and certification — Substantial compliance with the rule, when allowed. (Ericsson Telecommunications, Inc. *vs.* City of Pasig, G.R. No. 176667, Nov. 22, 2007) p. 417

PRELIMINARY INVESTIGATION

Probable cause — Although the determination of probable cause requires less than evidence which would justify conviction, it should at least be more than mere suspicion; the accused should not be burdened with a criminal

proceeding if there is no evidence sufficient to engender a well-founded belief that an offense was committed; applied. (Borlongan, Jr. *vs.* Peña, G.R. No. 143591, Nov. 23, 2007) p. 530

— Defined and discussed. (*Id.*)

— Determination of the existence thereof, procedure; the judge is not required to personally examine the complainant and his witnesses; explained. (*Id.*)

— Findings of the Office of the City Prosecutor, affirmed absent grave abuse of discretion. (Metropolitan Bank & Trust Co. *vs.* Go, G.R. No. 155647, Nov. 23, 2007) p. 646

— In cases cognizable by the Municipal Trial Court, probable cause may be determined on the basis alone of the affidavits and supporting documents of the complainant; submission of counter-affidavits, not mandatory. (Borlongan, Jr. *vs.* Peña, G.R. No. 143591, Nov. 23, 2007) p. 530

— The Supreme Court does not interfere with the prosecutor's determination thereof; rationale; exception. (*Id.*)

PRESCRIPTION

Computation of — Prescriptive period for offenses involving behest loans, clarified. (PCGG *vs.* Hon. Desierto, G.R. No. 139296, Nov. 23, 2007) p. 517

PRE-TRIAL

Application — The parties should disclose all the issues of fact and law they intend to raise at the trial; exception; applied. (LCK Industries Inc. *vs.* Planters Dev't. Bank, G.R. No. 170606, Nov. 23, 2007) p. 957

Issues — Not limited to those expressly stipulated but may include all other matters pertinent to the issue; applied. (Mercury Drug Corp. *vs.* Rep. Surety and Ins. Co., Inc., G.R. No. 164728, Nov. 23, 2007) p. 771

Nature — Purpose of a pre-trial, discussed. (LCK Industries Inc. *vs.* Planters Dev't. Bank, G.R. No. 170606, Nov. 23, 2007) p. 957

PROHIBITION

Writ of — Will not be issued to enjoin and restrain a criminal prosecution; exceptions. (Borlongan, Jr. *vs.* Peña, G.R. No. 143591, Nov. 23, 2007) p. 530

PROPERTY

Certificate of title — A conclusive evidence of ownership; applied. (Sps. Booc *vs.* Five Star Marketing Co., Inc., G.R. No. 157806, Nov. 22, 2007) p. 368

Movable property — Determinate or specific property distinguished from generic and fungible property. (BPI Family Bank *vs.* Franco, G.R. No. 123498, Nov. 23, 2007) p. 495

Tax declaration — Good indicia of possession in the concept of owner. (Sps. Booc *vs.* Five Star Marketing Co., Inc., G.R. No. 157806, Nov. 22, 2007) p. 368

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Application — A levy on execution duly registered takes preference over a prior unregistered sale; reason. (Pineda *vs.* Arcalas, G.R. No. 170172, Nov. 23, 2007) p. 919

— Registration of the deed validly transfers or coveys a person's interest in real property, insofar as third persons are concerned; an unrecorded Deed of Sale operates only as a contract between the parties to the deed; a lien which was registered and annotated at the back of the title of the property amounts to a constructive notice to all persons. (*Id.*)

— Where a party has actual knowledge of the claimant's actual, open, and notorious possession of the disputed property at the time the levy or attachment was registered, the said actual notice and knowledge of a prior unregistered interest, not the mere possession of the disputed property, is equivalent to registration; application. (*Id.*)

PUBLIC LAND ACT (C.A. NO. 141)

Reversion suit — Disputed land is registrable and not part of Manila Bay at the time of the filing of the land registration

application. (Estate of the Late Jesus S. Yujuico *vs.* Rep. of the Phils., G.R. No. 168661, Oct. 26, 2007) p. 92

— Even if the original grantee of a patent and title has obtained the same through fraud, reversion will no longer prosper as the land had become private land and the fraudulent acquisition cannot affect the titles of innocent purchasers for value. (*Id.*)

— The Land Registration Court initially has jurisdiction to entertain application for land registration but must dismiss the application in the event that the subject matter of the application turns out to be inalienable public land. (*Id.*)

— The waiver of the right of the respondent Republic through Public Estates Authority to challenge petitioners' titles is declared valid. (*Id.*)

— When proper; where filed. (*Id.*)

PUBLIC OFFICERS AND EMPLOYEES

Administrative complaint against — Cessation from office by reason of resignation, death, or retirement does not warrant the dismissal of the administrative case filed against a public officer while he was still in the service, or render the said case academic; rationale. (Largo *vs.* CA, G.R. No. 177244, Nov. 20, 2007) p. 293

— The burden of proving the acts complained of, particularly the relation thereof to the official functions of the public officer, rests on the complainant; applied. (*Id.*)

Conduct of — Police officers and public officials are admonished to perform their mandated duties with commitment to the highest degree of diligence, righteousness and respect for the law. (Valdez *vs.* People, G.R. No. 170180, Nov. 23, 2007) p. 934

Conduct prejudicial to the best interest of the service — Acts complained of need not be related or connected to the public officer's official functions. (Largo *vs.* CA, G.R. No. 177244, Nov. 20, 2007) p. 293

— Classified as a grave offense; proper penalty; penalty of fine imposed instead of suspension due to the retirement of the employee. (*Id.*)

Gross misconduct and dishonesty — A finding that a public officer or employee is administratively liable therefor must be supported by substantial evidence and not by disputable or rebuttable presumption; applied. (Pleyto *vs.* PNP Criminal Investigation and Detection Group, G.R. No. 169982, Nov. 23, 2007) p. 842

— Defined and discussed; intent to commit a wrong, an essential element thereof; not present. (*Id.*)

Misconduct — An employee cannot be held liable therefor where he acted in his private capacity. (Largo *vs.* CA, G.R. No. 177244, Nov. 20, 2007) p. 293

— To warrant dismissal from office, the act complained of must have a direct relation to and be connected with the performance of the employee's official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office. (*Id.*)

Negligence — An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/ or purposes, a case of simple negligence; absent bad faith or intent to mislead, the failure of the employee to ascertain that his Statements of Assets, Liabilities and Net Worth (SALN) was accomplished properly, accurately, and in more detail constitutes simple negligence. (Pleyto *vs.* PNP Criminal Investigation and Detection Group, G.R. No. 169982, Nov. 23, 2007) p. 842

Penalty for administrative offense — Dropping from the rolls due to Absence Without Official Leave (AWOL) should neither result in the forfeiture of benefits nor disqualification from re-employment in the government. (Palecpec, Jr. *vs.* Hon. Davis, G.R. No. 171048, Nov. 23, 2007) p. 976

— Imposition of penalty proper where the act of erring public officer or employee tarnished the image and integrity of his public office. (Largo *vs.* CA, G.R. No. 177244, Nov. 20, 2007) p. 293

QUALIFYING CIRCUMSTANCES

Abuse of superior strength — Present where there is proof of gross physical disparity between the protagonists or when the force used by the assailant is out of proportion to the means available to the victim; appreciated. (People *vs.* Salangon, G.R. No. 172693, Nov. 21, 2007) p. 316

Circumstance of minority — How proved. (People *vs.* Ching, G.R. No. 177150, Nov. 22, 2007) p. 433

Circumstance of minority and relationship — Must be alleged in the complaint and proved to warrant the imposition of the death penalty. (People *vs.* Ching, G.R. No. 177150, Nov. 22, 2007) p. 433

Evident premeditation — It is not enough that the evident premeditation is suspected or surmised, but criminal intent must be evidenced by notorious outward acts evincing determination to commit the crime. (People *vs.* Salangon, G.R. No. 172693, Nov. 21, 2007) p. 316

Treachery — Defined; present. (People *vs.* Gannaban, Jr., G.R. No. 173249, Nov. 20, 2007) p. 286

— When present; appreciated. (People *vs.* Daleba, Jr., G.R. No. 168100, Nov. 20, 2007) p. 281

RAPE

Commission of — If it can be conclusively determined that the accused did not sire the alleged victim's child, this may cast the shadow of reasonable doubt and allow his acquittal on the basis thereof. (People *vs.* Umanito, G.R. No. 172607, Oct. 26, 2007) p. 132

— Imposable penalty. (People *vs.* Tuazon, G.R. No. 168650, Oct. 26, 2007) p. 74

— Lust is no respecter of time and place. (*Id.*)

— Physical resistance need not be established when intimidation is exercised upon the victim who submits against her will to the rapist's lust because of fear for her life or personal safety. (*Id.*)

RULES OF PROCEDURE

Application — Lenient application of procedural rules not applied where the same would result in a manifest injustice and the abuse of court processes. (Pineda *vs.* Arcalas, G.R. No. 170172, Nov. 23, 2007) p. 919

— Substantial compliance will not suffice in a matter that demands strict observance of the rules. (Hasegawa *vs.* Kitamura, G.R. No. 149177, Nov. 23, 2007) p. 572

— The court will not allow a party to hide behind the cloak of procedural technicalities in order to evade its obligation; applied. (LCK Industries Inc. *vs.* Planters Dev't. Bank, G.R. No. 170606, Nov. 23, 2007) p. 957

— The dispensation of justice and vindication of legitimate grievances should not be barred by technicalities. (*Id.*)

— While the court in some instances allows a relaxation in the application of the rules, it was never intended to forge a bastion for erring applicants to violate the rules with impunity; liberality in the interpretation and application of the rules, when allowed. (Pleyto *vs.* PNP Criminal Investigation and Detection Group, G.R. No. 169982, Nov. 23, 2007) p. 842

SALES

Buyer in good faith — Good faith is always presumed. (Aleligay *vs.* Laserna, G.R. No. 165943, Nov. 20, 2007) p. 272

Contract to sell — A conditional sale; discussed. (Demafelis *vs.* CA, G.R. No. 152164, Nov. 23, 2007) p. 614

— The payment of realty taxes after the consummation of the sale, though not conclusive evidence of ownership, bolsters the party's right over the property in dispute; questioned Deed of Sale is one of sale not an equitable mortgage. (Aleligay *vs.* Laserna, G.R. No. 165943, Nov. 20, 2007) p. 272

— When deemed an equitable mortgage; presence of any of these circumstances is sufficient; not applicable. (*Id.*)

SEARCH AND SEIZURE

Search warrant — Finding of probable cause for the issuance thereof, discussed. (Santos *vs.* Pryce Gases, Inc., G.R. No. 165122, Nov. 23, 2007) p. 781

— Legality thereof can only be contested by a real party-in-interest; officer of the corporation has authority to question the seizure of the items belonging to the corporation. (*Id.*)

— Requisites for validity thereof. (*Id.*)

— The seized items should remain in the custody of the trial court which issued the search warrant pending the institution of the criminal action against the respondent. (*Id.*)

Warrantless search and seizure — The accused's lack of objection to the search and seizure is not tantamount to a waiver of his constitutional right or a voluntary submission to the warrantless search and seizure, where his implied acquiescence could not have been more than mere passive conformity given under coercive or intimidating circumstances. (Valdez *vs.* People, G.R. No. 170180, Nov. 23, 2007) p. 934

SHERIFFS

Dishonesty, grave misconduct and conduct prejudicial to the best interest of the service — Demanding and receiving money in excess of the fees allowed by the Rules, a case of. (Aranda, Jr. *vs.* Alvarez, A.M. No. P-04-1889, Nov. 23, 2007) p. 474

Duties — Only the payment of sheriff's fees can be lawfully received and the acceptance of any other amount is improper, even if it were to be applied for lawful purposes. (Aranda, Jr. *vs.* Alvarez, A.M. No. P-04-1889, Nov. 23, 2007) p. 474

— Required to comply with the procedure laid down in Section 10, Rule 141 of the Rules of Court with respect to expenses in executing writs; good faith is not a defense for non-compliance with the rule. (*Id.*)

Simple neglect of duty — Failure of the sheriff to implement the writ of execution for more than one year constitutes simple neglect of duty; proper penalty. (Sy *vs.* Binasing, A.M. No. P-06-2213, Nov. 23, 2007) p. 491

SOCIAL JUSTICE PRINCIPLE

Application — Protection to labor not meant to be an instrument to oppress employers. (AMA Computer College, Parañaque, and/or Amable C. Aguiluz IX *vs.* Austria, G.R. No. 164078, Nov. 23, 2007) p. 745

SOCIAL SECURITY COMMISSION

Jurisdiction — Has the authority to inquire into the relationship existing between the worker and the person or entity to whom he renders service to determine if the employment is one that is excepted by the Social Security Law of 1997 from compulsory coverage. (Rep. of the Phils. *vs.* Asiapro Cooperative, G.R. No. 172101, Nov. 23, 2007) p. 979

— Issue regarding compulsory coverage of the Social Security System is well within the exclusive domain of the Commission. (*Id.*)

— Question on the existence of an employer-employee relationship for the purpose of determining the coverage of the Social Security System is explicitly excluded from the jurisdiction of the National Labor Relations Commission (NLRC) and falls within the jurisdiction of the Commission which is primarily charged with the duty of settling disputes arising under the Social Security Law of 1997. (*Id.*)

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Child abuse through lascivious conduct — Elements of sexual abuse; accused cannot be convicted for violation of R.A. No. 7610 absent allegation in the information that the act is performed with a child exploited in prostitution or subjected to other sexual abuse. (Cabila *vs.* People, G.R. No. 173491, Nov. 23, 2007) p. 1020

SUPREME COURT

Judicial review — The time spent by the judiciary, more so of the Supreme Court, in taking cognizance and resolving cases is not limitless and cannot be wasted on cases devoid of any right calling for vindication and are merely reprehensible efforts to evade the operation of a decision that is final and executory. (Pineda *vs.* Arcalas, G.R. No. 170172, Nov. 23, 2007) p. 919

13TH MONTH-PAY LAW (P.D. NO. 851)

Provisions of — 13TH month pay given not later than December 24 of every year; burden of proving compliance therewith lies with the employer. (Macahilig *vs.* NLRC, G.R. No. 158095, Nov. 23, 2007) p. 683

TAXATION

Double taxation — Defined; exemplified. (Ericsson Telecommunications, Inc. *vs.* City of Pasig, G.R. No. 176667, Nov. 22, 2007) p. 417

Gross receipts — Explained. (Ericsson Telecommunications, Inc. *vs.* City of Pasig, G.R. No. 176667, Nov. 22, 2007) p. 417

TRADEMARK LAW (R.A. NO. 623, AS AMENDED)

Provisions of — Creates a *prima facie* presumption of the unlawful use of gas cylinders based on two separate acts of unauthorized use of the cylinder by a person other than the registered manufacturer and the possession thereof by a dealer. (Santos *vs.* Pryce Gases, Inc., G.R. No. 165122, Nov. 23, 2007) p. 781

Violation of — Possession and distribution of the gas cylinders without authority, sufficient indication that the defendant is probably guilty of the illegal use of the gas cylinders punishable under Section 2 of R.A. No. 623, as amended; issuance of search warrant, proper. (Santos *vs.* Pryce Gases, Inc., G.R. No. 165122, Nov. 23, 2007) p. 781

TRUST RECEIPTS LAW

Construction of — Trust receipts which are in the nature of a contract of adhesion are not *per se* invalid and inefficacious, but the same shall be strictly interpreted against the party who prepared the document , in case of ambiguities. (Metropolitan Bank & Trust Co. *vs.* Go, G.R. No. 155647, Nov. 23, 2007) p. 646

Violation of — Dishonesty and abuse of confidence in handling of money or goods to the prejudice of another must be sufficiently proved. (Metropolitan Bank & Trust Co. *vs.* Go, G.R. No. 155647, Nov. 23, 2007) p. 646

TRUSTS

Constructive implied trust — Prescription may supervene even if the trustee does not repudiate the relationship; explained. (Cañezo *vs.* Rojas, G.R. No. 148788, Nov. 23, 2007) p. 551

Constructive trust — When created. (Cañezo *vs.* Rojas, G.R. No. 148788, Nov. 23, 2007) p. 551

Existence of — Elements. (Cañezo *vs.* Rojas, G.R. No. 148788, Nov. 23, 2007) p. 551

— The burden of proving existence of a trust is on the party asserting it. (Sps. Booc *vs.* Five Star Marketing Co., Inc., G.R. No. 157806, Nov. 22, 2007) p. 368

Express trust — A trustee cannot acquire by prescription a property entrusted to him unless he repudiates the trust; rationale. (Cañezo *vs.* Rojas, G.R. No. 148788, Nov. 23, 2007) p. 551

— Existence thereof concerning real property may not be established by parol evidence; exception. (*Id.*)

Implied trust — Cannot be established upon vague and inconclusive proof; establishment thereof by parol evidence, requisite. (Cañezo *vs.* Rojas, G.R. No. 148788, Nov. 23, 2007) p. 551

Nature — Defined; express trust distinguished from implied trust. (Cañezo *vs.* Rojas, G.R. No. 148788, Nov. 23, 2007) p. 551

— Legal title is vested in the fiduciary while equitable ownership is vested in a *cestui que trust;* elaborated. (*Id.*)

Resulting trust — Defined. (Cañezo *vs.* Rojas, G.R. No. 148788, Nov. 23, 2007) p. 551

UNJUST ENRICHMENT

Principle of — Explained and applied. (LCK Industries Inc. *vs.* Planters Dev't. Bank, G.R. No. 170606, Nov. 23, 2007) p. 957

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Credibility of — Accused may be convicted solely on the basis of the testimony of the victim provided the same is credible, natural, convincing and consistent with human nature and the normal course of things. (People *vs.* Tuazon, G.R. No. 168650, Oct. 26, 2007) p. 74

— Factual findings of the trial court thereon are generally not disturbed on appeal; rationale; exceptions. (Capangpangan *vs.* People, G.R. No. 150251, Nov. 23, 2007) p. 590

— Findings of the trial court with respect thereto are binding and conclusive; exceptions, not present. (People *vs.* Gannaban, Jr., G.R. No. 173249, Nov. 20, 2007) p. 286

— Findings of trial court with respect thereto, respected. (Tandoc *vs.* People, G.R. No. 150648, Nov. 23, 2007) p. 603

— Hesitance of the victim in reporting the crime to the authorities is not necessarily an indication of a fabricated charge. (People *vs.* Tuazon, G.R. No. 168650, Oct. 26, 2007) p. 74

— Identification of an accused by his voice is accepted particularly in cases where the witnesses have known the malefactor personally for so long and so intimately. (*Id.*)

— It is unnatural for a grandparent to use her offspring as an instrument of malice, especially if it will subject a granddaughter to embarrassment and even stigma. (*Id.*)

— Testimonies of rape victims who are young and immature demand full credence. (*Id.*)

— When the testimony of the rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established. (*Id.*)

Presentation of — Sole prerogative of prosecution; applied. (Capangpangan *vs.* People, G.R. No. 150251, Nov. 23, 2007) p. 590

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