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FROM

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MANILA
2013

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2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. RTJ-06-1982. December 14, 2007]
(Formerly A.M. No. 05-12-757-RTC)

SHERLITA O. TAN, *complainant, vs.* **JUDGE REXEL M. PACURIBOT, Regional Trial Court, Branch 27, Gingoog City,** *respondent.*

(Formerly A.M. No. 05-12-757-RTC)

JOHANNA M. VILLAFRANCA, *complainant, vs.* **JUDGE REXEL M. PACURIBOT, Regional Trial Court, Branch 27, Gingoog City,** *respondent.*

ANONYMOUS LETTER-WRITERS, *complainant, vs.* **JUDGE REXEL M. PACURIBOT, Regional Trial Court, Branch 27, Gingoog City,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; DISCIPLINE OF JUDGES; JUDGES ARE MANDATED TO MAINTAIN GOOD MORAL CHARACTER AND ARE AT ALL TIMES EXPECTED TO OBSERVE IRREPROCHABLE BEHAVIOR SO AS NOT TO OUTRAGE PUBLIC DECENCY; RATIONALE.— The integrity of the Judiciary rests not only upon the fact that it is able to administer justice, but also upon the perception and confidence of the community that the people who run the system

have administered justice. At times, the strict manner by which we apply the law may, in fact, do justice but may not necessarily create confidence among the people that justice, indeed, has been served. Hence, in order to create such confidence, the people who run the judiciary, particularly judges and justices, must not only be proficient in both the substantive and procedural aspects of the law, but more importantly, they must possess the highest integrity, probity, and unquestionable moral uprightness, both in their public and in their private lives. Only then can the people be reassured that the wheels of justice in this country run with fairness and equity, thus creating confidence in the judicial system. We have repeatedly reminded members of the Judiciary to so conduct themselves as to be beyond reproach and suspicion, and to be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their everyday lives. For no position exacts a greater demand on the moral righteousness and uprightness of an individual than a seat in the Judiciary. Judges are mandated to maintain good moral character and are at all times expected to observe irreproachable behavior so as not to outrage public decency. We have adhered to and set forth the exacting standards of morality and decency, which every member of the judiciary must observe. A magistrate is judged not only by his official acts but also by his private morals, to the extent that such private morals are externalized. He should not only possess proficiency in law but should likewise possess moral integrity for the people look up to him as a virtuous and upright man. We explained the rationale for requiring judges to possess impeccable moral integrity, thus: The personal and official actuations of every member of the Bench must be beyond reproach and above suspicion. The faith and confidence of the public in the administration of justice cannot be maintained if a judge who dispenses it is not equipped with the cardinal judicial virtue of moral integrity, and if he obtusely continues to commit an affront to public decency. In fact, moral integrity is more than a virtue; it is a necessity in the judiciary.

2. **ID.; JUDGES; A JUDGE MUST BEHAVE WITH PROPRIETY AT ALL TIMES.—** We also stressed in *Castillo v. Calanog, Jr.* that: The Code of Judicial Ethics mandates that the conduct of a judge must be free of [even] a whiff of impropriety not only with respect to his performance of his judicial duties,

but also to his behavior outside his sala and as a private individual. There is no dichotomy of morality: a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have very recently explained, a judge's official life can not simply be detached or separated from his personal experience. Thus: Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen. A judge should personify integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life should be above suspicion.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; COMPLAINANT HAS THE BURDEN OF PROVING BY SUBSTANTIAL EVIDENCE THE ALLEGATIONS IN HIS COMPLAINT; SATISFIED IN CASE AT BAR.—** It is well settled that in administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint. Substantial evidence is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. In the cases at bar, the complainants Ms. Tan and Ms. Villafranca were able to adequately substantiate their allegations. We find totally unacceptable the temerity of Judge Pacuribot in subjecting the complainants, both his subordinates, to his unwelcome sexual advances and acts of lasciviousness. Over long periods of time, he persistently solicited sexual favors from Ms. Tan and Ms. Villafranca. When they refused, he made their working conditions so unbearable that Ms. Tan was eventually forced to transfer to another office and Ms. Villafranca to seek employment abroad. Certainly, no judge has a right to solicit sexual favors from any court employee, even from a woman of loose morals. Judge Pacuribot's conduct indubitably bears the marks of impropriety and immorality. Not only do his actions fall short of the exacting standards for members of the judiciary; they stand no chance of satisfying the standards of decency even of society at large. His severely abusive and outrageous acts, which are an affront to women, unmistakably constitute sexual harassment because they

necessarily ". . . result in an intimidating, hostile, or offensive environment for the employee[s]."

4. **ID.; ID.; ID.; DISMISSAL FROM SERVICE; PROPER PENALTY FOR THE CHARGES OF SEXUAL HARASSMENT; APPLICATION IN CASE AT BAR.—** In sum, we concur with the Investigating Justice in holding that complainants were able to muster the requisite quantum of evidence to prove their charges against Judge Pacuribot. By having sexual intercourse with Ms Tan and Ms. Villafranca, his subordinates, respondent violated the trust reposed on his high office and completely failed to live up to the noble ideals and strict standards of morality required of members of the Judiciary. Having tarnished the image of the Judiciary, we hold, without any hesitation, that Judge Pacuribot be meted out the severest form of disciplinary sanction dismissal from the service for the charges of sexual harassment against him. All those who don the judicial robe must always instill in their minds the exhortation that "[T]he administration of justice is a mission. Judges, from the lowest to the highest levels are the gems in the vast government bureaucracy, beacon lights looked upon as the embodiments of all that is right, just and proper, the ultimate weapons against injustice and oppression. The Judiciary hemorrhages every time a Judge himself transgresses the very law he is sworn to uphold and defend at all costs. This should not come to pass."

5. **REMEDIAL LAW; EVIDENCE; DENIAL CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED BY THE WITNESSES WHO HAD NO ILL MOTIVE TO TESTIFY FALSELY; PRESENT IN CASE AT BAR. —** Already beyond cavil is the evidentiary rule that mere denial does not overturn the relative weight and probative value of an affirmative assertion. Denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with no evidentiary value. Like the defense of alibi, denial crumbles in the light of positive declarations. Moreover, in the case at bar, there is utter lack of basis to sustain the purported ill motives attributed by Judge Pacuribot to the complainants. The Investigating Justice correctly disregarded Judge Pacuribot's imputation. No married woman would cry sexual assault, subject herself and her family to public scrutiny

and humiliation, and strain her marriage in order to perpetrate a falsehood. The only plausible and satisfactory explanation for us is that the charges against respondent are true

APPEARANCES OF COUNSEL

Melanie E. Gasendo for complainants.

Kho Roa & Partners and Gapuz & Associates Law Offices for respondent.

D E C I S I O N

PER CURIAM:

These consolidated-complaints filed against Executive Judge Rexel M. Pacuribot (Judge Pacuribot) of the Regional Trial Court (RTC) of Gingoog City, Branch 27, consist of the following:

1. Affidavit-Complaint[1] dated 4 December 2005 filed by Sherlita O. Tan (Ms. Tan), Court Stenographer of RTC, Branch 27, Gingoog City, and affidavit-complaint[2] dated 20 December 2005 filed by Johanna M. Villafranca (Ms. Villafranca), Clerk II, Gingoog City Parole and Probation Office, charging Judge Pacuribot with sexual harassment;

2. Letter [3] dated 4 April 2005 from "concerned citizens," asking for the relief of Judge Pacuribot on the grounds that he has been terrorizing and harassing most of the employees, both casual and contractual, of the Hall of Justice of Gingoog City; and

3. An undated letter [4] from "concerned citizens" also asking the Office of the Court Administrator (OCA) to investigate the illicit relationship of Judge Pacuribot and a certain Sheryl Gamulo. They informed the OCA that Sheryl Gamulo bore two

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[1] *Rollo*, pp. 8-13.

[2] *Id*. at 330-331.

[3] *Id*. at 303.

[4] *Id*. at 475.

acknowledged children of Judge Pacuribot, the eldest of whom named Rexell Pacuribot was born on 15 October 2004, and the second child was born on 2 September 2005, both at Maternity Hospital, Cagayan de Oro City.

On 14 December 2005, OCA issued a Memorandum[5] recommending that:

1. The complaint of Ms. Sherlita Tan be referred to the Committee on Decorum and Investigation of the Regional Trial Court of Gingoog City for investigation;
2. the complaint of Ms. Johanna M. Villafrancia be docketed as a regular administrative matter
3. Judge Pacuribot be required to comment on the complaint of Ms. Villafranca; and
4. Judge Pacurribot be suspended immediately until further orders from this Court.[6]

On 7 March 2006, we issued a resolution amending Section 8 of A.M. No. 03-03-13-SC, approving all the other recommendations of OCA and suspending Judge Pacuribot, thus:

With respect to all the other recommendations of the OCA, finding them to be in accord with existing laws, the same are hereby APPROVED. In particular, Judge Rexel Pacuribot is immediately SUSPENDED until further notice from this Court. He is likewise DIRECTED to comment on the complaints of Mesdames Tan and Villafranca within ten days. The complaint, however, of Ms. Sherlita Tan should be docketed as a regular administrative matter to be consolidated with that of Ms. Johanna M. Villafranca's for proper disposition in line with the foregoing discussions.[7]

On 25 October 2006, the court referred the case to Justice Teresita Dy-Liacco Flores of the Court of Appeals, Cagayan De Oro City Station, for investigation, report and recommendation within 90 days from notice thereof.

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[5] *Id.* at 1-6.

[6] *Id.* at 6.

[7] *Id.* at 14-23.

On 8 October 2007, Investigating Justice Dy Liaco Flores submitted her Report[8] with the following findings:

Tan's story

Ms. Tan's nightmare as an underling of respondent judge started on 20 October 2004 – a Wednesday. Having officially filed a half-day leave, she went to Cagayan de Oro City to attend a wedding ceremony at six o'clock in the evening at Pryce Plaza Hotel. She stood as one of the principal sponsors to a couple named Kimberly Castillon and Thomas Elliot. At around 8:00 o'clock in the evening, while relishing the "gala" portion during the wedding reception (when the newly weds dance and guests pin peso bills on their attire), she received from [Judge Pacuribot] a call through her mobile phone, asking when is she going back to Gingoog City. She said she intends to go back right after the wedding reception. [Judge Pacuribot] offered to bring her to Agora Bus Terminal but she politely refused the offer saying that she will just take a taxi in going there. Taking her answer as declining his offer, he ordered her to come out, displaying short temper, saying he was already waiting outside the hotel. To hint at urgency, he told her that he just slipped out from the Masonic Meeting he was attending and will immediately return to it right after he will have shuttled her there. Aware that he has the tendency to humiliate anyone in public when he is angry, she decided to abruptly leave the wedding reception and comply.

xxx xxx xxx

Coming out into the lobby of the hotel, Ms. Tan saw respondent judge [Judge Pacuribot] inside his car, alone. When she came near, he opened the car door for her and she took her seat. Then, angrily he asked: "What took you so long?" She kept mum. She saw in between their seats his clutch bag with his short firearm. That sight frightened her although she was consoled by the thought that she would soon get rid of him at the bus terminal. Pryce Plaza Hotel to the bus terminal would be about twenty (20) minutes ride, traffic considered.

Unfortunately, [Judge Pacuribot] had other ideas. Along the way to the bus terminal, he drove in to what looked like a compound. She unexpectedly saw that his car entered a small garage, and when it stopped, the roll down shutter quickly locked up from behind.

[8] CA *rollo,* pp. 1-86.

She was brought not to the bus terminal but to a motel whose name she came to recognize only after the incident as the City Lodge Motel in Carmen, Cagayan de Oro City. She felt deceived. Knowing the implications, she protested: "Why did you bring me here, sir? Didn't I tell you that I will just take a taxicab to the Agora Terminal?" He rudely told her: "Shut up! As if you are still a virgin!" Respondent judge [Judge Pacuribot] then directed her to get down the car. Timorously, she obeyed. As soon as she went down his car, she looked for a possible exit and found none. All she saw was a door which opened. He ushered her into the room, walking closely from behind her. He locked the door.

Ms. Tan, scared and confused, walked to the comfort room, where she pretended to relieve herself. There, she again looked for a possible exit. Again, she found none. After a short while, she heard [Judge Pacuribot] asking: "What are you doing there? What's taking you so long?" Remembering, that he has a gun, she came out of the comfort room. To her dismay, she found him nude in bed and fear overcame her more.

[Judge Pacuribot] ordered Ms. Tan to undress. Her reluctance made her move slowly. He let out more impatience asking: "What's taking you so long to undress? Excite me!" She refused at first, but he became furious. At that moment too, she saw his gun on what seemed to her was headboard of the bed. Frightened, she undressed, retaining her bra and panty. He asked her to kiss him and she obeyed half-heartedly. While she was kissing his neck, he expressed dissatisfaction by asking: "You don't know how to kiss! How do you do it with Ramon? Get into sex right away without any preliminaries?" Ramon is her husband. She was quiet.

[Judge Pacuribot] ordered her to lie down on the bed. She yielded out of fear. He pulled her bra and panty, kissed her neck and lips, and sucked her tongue and breasts. Minutes after, he inserted his penis to her vagina. While he did a push and pull motion, she was complaining: "You are so rude, Sir! We work in the same office yet you disgrace me!" He told her angrily: "Shut up! Concentrate! See! It's softening...." She recalled that he tried several times to stiffen his penis but he seemingly has some erection problem. At his attempt for coitus, she felt the penetration was just slight. Later, he was getting exhausted and was breathing hard. He would rest each time he failed to have full enjoyment. While he rested, she would ask him to let her go, but angrily he refused. Instead, he would forcibly

ride on top of her again and make more attempts at coitus until he finally gave up. He said to her: "It won't stiffen because I have been forbidden to eat many kinds of food such as meat which gives energy."

After a while, Ms. Tan saw [Judge Pacuribot] got up from bed, took his gun, and peeped through the window of the motel. This time, she once again implored him, "Sir, I'll just take a taxi to Agora." He answered: "I'll bring you there." At the time, she was so confused that she cannot recall whether he made payment in the motel. She could not concentrate anymore.

The two left the motel in his car. However, instead of conducting her to the bus terminal, again [Judge Pacuribot] brought Ms. Tan to another place . . . this time to Discovery Hotel adjacent to Limketkai Center, Cagayan de Oro City. When she protested, he told her that it would be safer for her to sleep there instead of traveling alone. It was around 10 o'clock in the evening. Still unrelieved of her fright which Ms. Tan calls "shock," or "rattled," she failed to ask for help, nor did she think of escaping. She was not even able to call her husband. She was even wondering whether anyone will help her if the judge will do anything to her. After he partially settled the room's bill, he warned her not to leave until his return the following morning saying he was returning to the Masonic Conference. After he left, she asked a bellboy if she could leave, but the bellboy told her that she should first settle the hotel bill before she can check out. Unfortunately, she had no money enough to pay the balance of the hotel bill. Meantime, through his cell phone, he kept calling her that night and threatening her to watch out in the office if she would disobey. She was crying in the hotel. She was terrified of what he will do to her and her family, and what reaction her husband would make once he learns of what happened to her. She was scared that her husband might kill [Judge Pacuribot] and her husband would be harmed in turn.

At around 7 a.m. of the following morning, [Judge Pacuribot] arrived. He came panting and rested in bed while Ms. Tan just stood by. She saw him put his gun near the bed. She recounted the events that happened after, as follows:

Q: What did he do, if any?

A: He ordered me again saying: "Make Love to me!"

Q: What was your reaction, if any?

A: I refused.

Q: What was his reaction, if any?

A: He angrily shouted at me: "My goodness! Why are you so slow? As if you are a virgin!"

Q: What did you feel, if any?

A: I was terrified of him.

Q: What did you do, if any?

A: I was forced to go near him, kissed his neck, but [I] stopped.

Q: Why did you stop?

A: I was disgusted with what I was doing and with him.

Q: What was his reaction, if any?

A: He angrily told me: "You don't know how to make love! How do you do it with Ramon? You simply have sex without foreplay? *Kayati ba sab?"*

Q: What was your reaction, if any?

A: I felt helpless and kept quiet.

Q: What happened next, if any?

A: He ordered me saying: "Suck it!"

Q: What did he want you to suck on him?

A: His penis.

Q: What did you do, if any?

A: I refused.

Q: What was his reaction, if any?

A: He got angry, pulled my hair and pushed my face to his penis saying: "suck it! Let it in till deep your throat! Let my penis reach your throat!"

Q: What did you do, if any?

A: I gasped for breath so that when I opened my mouth, his penis entered my mouth.

Q: What happened next, if any?

A: He tightened his hold on me so I was forced to suck his penis afraid that he might break my neck.

Q: What happened next, if any?

A: His penis reached my throat and I felt nauseated so I ran to the bathroom and vomited.

Q: What happened next, if any?

A: I stayed in the bathroom for a while because I was not feeling well.

Q: What was his reaction, if any?

A: He angrily ordered me to go to him and lie beside him and I obeyed.

Q: What happened next, if any?

A: He rode on top of me again and tried to insert his penis into my vagina.

Q: What happened next, if any?

A: His penis could hardly stiffen.

Q: What was his reaction, if any?

A: He got angry saying: "It can't enter! Your vagina's too small.

Q: What did he do next, if any?

A: He spread my two (2) legs wide apart and tried to insert his penis but it did not stiffen.

Q: What happened next, if any?

A: He pulled my head towards him by pulling my hair.

Q: What was your reaction, if any?

A: I told him: "Don't pull my hair, sir! It's very painful! What a sadist you are!"

Q: What was his reaction, if any?

A: He just kissed my lips, neck, sucked my nipple and mashed

my breast by saying: “This is the breast of a lustful woman” while continuing to suck my neck and breast.

Q: What happened next, if any?

A: He said: “I’m going to plant lots of kiss marks here to let the people know that you passed through my hands.”

Q: What was he referring to as “here”?

A: My neck.

Q: What was your reaction, if any?

A: I cried.

Q: What happened after that, if any?

A: He rested while I went crying to the bathroom, washed my body then dressed up.

Ms. Tan again pleaded for [Judge Pacuribot] to let her go. This time, [Judge Pacuribot] assented, but he offered to bring her to the bus terminal. Traumatized, she refused the offer. She told him that she will just take a taxi and will have breakfast at the Ororama. Still he insisted to shuttle her there. Thus, at about past 8:00 o’clock in the morning, he left her at Ororama Cogon, Cagayan de Oro City.

Ms. Tan did not report to the office the next working day, that was 22 October 2004 – a Friday. She absented herself from her work because she still had noticeable number of kiss marks on her neck. She only reported on Monday and covered her kiss marks with her hair. At the office, [Judge Pacuribot] told her not to file anymore her leave for October 20 and 21, 2004 while bragging, “*Ako na gud ni, kinsay magbuot nako?*” (It is me, who will prevail against me?)

Ms. Tan told no one of her traumatic experience and carried on as if nothing happened. But from then on, [Judge Pacuribot’s] advances on her went on unabated even in the office. Whenever she would go inside his chamber, at times, he would grab her blouse, mash her breast, and kiss her neck saying that she smells so sweet. At times, he would touch the crotch of her pants or pull the string of her panty. On 13 October 2005, he did the same indignities to her in the presence of Placido Abellana, the court aide, and the latter just pretended to see nothing by turning his back. Every time she would resist and/or evade his sexual advances, he would shame her before her officemates

at a later time. He also told her to send him text messages of endearment. She was warned that her failure to comply, or to receive his call, or reply to his text messages will have an adverse effect on her performance rating.

The situation got worse for Ms. Tan when respondent judge [Judge Pacuribot] indicated his interest in renting a room in her house which she used as her home office. Ms. Tan's house is near the Police Station and the courthouse. Initially, she candidly told him that the said room is not for rent. She even refused him in the presence of her officemates who cannot comprehend why she should not allow him to rent the room considering that it would be an additional income for her. At that time, they were unaware what she was going through.

Ms. Tan brought her commercial calendar to their office. It has her picture. Having seen it, [Judge Pacuribot], in the presence of Ms. Tan, instructed Placido Abellana, the court aide, to mount her calendar at the door of his chamber, saying: "Whoever removes the calendar would take a scolding from me. Don't remove Shirley's calendar. I like that hot babes." Then, pointing to her picture, he added: "That's my idol, the hot babes Kikay!" As he was still trying to persuade her then to let him rent a room in her house, he said in jest to Placido Abellana: "If I rent the room, I will call Shirley… she will massage me and step on my back and I will feel good because Shirley is sexy."

With the pressure on her to rent him a room being kept, Ms. Tan eventually yielded, but she erected a wall between his rented room and her house, and provided for him a separate ingress and egress. Nonetheless, when her husband is not around, she would find him knocking on her window and ordering her to go to his room.

Ms. Tan claims that if [Judge Pacuribot] could not have his way with her because she resists, he would scold her in his chamber and would also humiliate her in the presence of her officemates. She would also receive threats from him as regards her performance rating. In fact, her "Very Satisfactory" rating in the previous years of her service went down to "Satisfactory" for the period of January to June 2005, the first and only time that she was given such a rating.

Because of the very oppressive ways of [Judge Pacuribot], Ms. Tan eventually suffered from what doctors call "chronic fatigue syndrome" and was hospitalized in December 2005. Dr. Virgilio Lim of Lipunan Hospital of Gingoog City treated her. Dr. Lim testified

that emotional stresses of a patient could lead to chronic fatigue syndrome.

Ms. Tan's helplessness against the sexual abuses and advances of her judge was gnawing on her. She found it revolting. She finally mustered enough courage to come out in the open to free herself. She executed an Affidavit Complaint sworn before a woman Clerk of Court of Cagayan de Oro City on 06 December 2005. She flew to Manila and went to the Supreme Court on 08 December 2005 to file her administrative case against her superior. In February 2006, she filed criminal charges of rape, acts of lasciviousness and sexual harassments against [Judge Pacuribot] before the City Prosecutor of Gingoog City. At the onset, no lawyer in Gingoog City would even want to accept her case. The criminal cases were dismissed for lack of jurisdiction. She re-filed the case with the Prosecutor's Office of Cagayan de Oro City. They were also dismissed.

Villafranca's Story

Ms. Villafranca first met respondent judge [Judge Pacuribot] sometime in November 2004 at the lobby near the Probation Office at the Hall of Justice of Gingoog City where she holds office. When [Judge Pacuribot] passed by, she was then talking to a certain Dondi Palugna, her childhood friend who at that time was [Judge Pacuribot's] driver. Short introductions followed.

On 18 December 2004, Ms. Villafranca received a call through her cell phone from [Judge Pacuribot]. To Ms. Villafranca, the call was unexpected. After their talk, he asked her if he could call again for chitchat. She answered "*Ok lang*." She asked him how he got her mobile number. He said he got it from Dondi Palugna. Later, she began to receive text messages from him, telling her how beautiful and sexy she is, how the mini skirt suited her, etc. She courteously acknowledged his praises and said "thank you" to him. Then, he started inviting her for dinner. Knowing him to be married and the fact that she is married, she declined these invitations citing an inoffensive excuse which is her evening teaching sessions at Bukidnon State College, Gingoog City. But she found him persistent. One time, he took offense at her refusal, saying "Why don't you come with me? I AM A JUDGE! Why should you refuse me? Why do you go with Dondi and not with me when I AM A JUDGE?" At another instance, he even asked her why she goes with Dondi Pallugna, a drug addict, and not him a judge. Although scared of his outbursts, which by reputation he was known, she politely explained to him

that his driver Dondi Pallugna was her childhood friend. Still, she had to dodge his persistence.

In avoidance, Ms. Villafranca requested for a transfer to Probation Office, Cagayan de Oro City. This was in February 2005. She was asked to make a written request which she failed to file due to heavy work load. At that time, the Regional Office of the Probation Office for Region X was about to hold a Timestral Conference. Venue of the Conference was Gingoog City and so the host office for that conference was the Gingoog City Parole Office where Ms. Villafranca works. She was assigned to take charge of the hotel accommodations of participants in the conference. For that reason, she was too busy attending to her assigned task that she failed to prepare the written request. Accordingly, nothing materialized out of her intended transfer.

Although calls of [Judge Pacuribot's] were unwanted, but Ms. Villafranca wanted to be polite to him for two (2) reasons: his status as a judge and his reputation, in the Hall of Justice, as "terror" which caused most people to fear him. So, she took his calls politely, gave him respect, and when she had to turn down his call, she had to do it courteously like: "Ok, sir, I still have work to do, I cannot talk long."

In the last week of February 2005, Ms. Villafranca got a call from [Judge Pacuribot] who was fuming mad because she refused his dinner invitations. Scared, she finally relented. It was scheduled on 22 February 2005 which turned out to be her worst nightmare.

February 22, 2005 came. [Judge Pacuribot] asked Ms. Villafranca to choose a restaurant. She singled out The Mansion in Gingoog City for good reasons. The Mansion is owned by her relative. On that account, she thought that in the place she will be safe. She planned to invite one of her relatives in that restaurant during the dinner. By arrangement, she was to be picked up at 7 p.m. at the school gate.

A few minutes past 7 p.m., on the appointed date, [Judge Pacuribot], driving his car, fetched Ms. Villafranca. He opened the car door to her and she took her seat. While she was talking to him, she saw him brought out his clutch bag, took out his gun, cocked it and put it in between them. Frightened that it may blow off anytime, she voiced out her fears of guns. He quickly replied that guns are for the safety of judges who are prone to ambushes.

Noticing that [Judge Pacuribot] was driving towards the opposite direction of The Mansion, she told him they are driving the wrong way. But she was told that they are going to Butuan City as he knew a great dining place there. While driving with his left hand, [Judge Pacuribot] would hold his gun with his right hand and put it down every now and then when he had to change gear. This scared her even more and she started shaking in fear. She observed that he was over speeding and would honk his horn furiously so the other drivers would allow him to overtake. She started having frightening thoughts like imagining being killed if she resists and be left along the road. She feared for her life, and of her children.

After about an hour, Ms. Villafranca noticed that [Judge Pacuribot] turned right from the national highway, and a little farther, he honked his horn, entered a garage which then immediately closed as soon as his car entered. It was late for her to realize that he brought her to a motel in Butuan City. She became numbed with fear. He alighted from the car carrying his gun, and opened the door on her side. She asked him: "Why are you taking me here? You told me we were going to a restaurant." He ignored her. He told her to get out of the car. Sensing she was uncooperative because she would not get down, he grabbed her from the car. She tried to resist but she was numbed with fear. She wanted to get away but she could not seem to move. He pushed her in the room. She attempted to go out of the room but he locked the door and blocked it with his body. She pleaded to him to let her go because her children and family are looking for her. Then, [Judge Pacuribot] grabbed Ms. Villafranca by her shoulders and tried to kiss her. She evaded by backing out from him and turning her face away. As she continued to back away from him, she fell on the bed while he immediately laid on top of her. She felt his hands groping all over her body, as he tried to kiss her. She kept on pleading to him to let her go; that she wants to go home because her kids are looking for her. He lifted her blouse, unbuttoned and unzipped her pants while she was pushing him away. But he was too strong and big for her. She tried to get up when he took off his pants and brief, but he was fast and was soon on top of her. As he pinned her down on the bed, she could hardly move and found him too heavy. All along she was trembling in fear and was crying while pleading to him for mercy. But he could not be dissuaded. On cross examination, [Judge Pacuribot's] counsel asked her some details on this incident, as follows:

Atty. Kho:

Q: You said you were brought to Butuan City in a motel. Do you remember the name of the motel?

A: No, I don't.

Q: Could you remember the size of the room that you were in on that day which you claim on February 22, 2004?

A: I'm sorry, Attorney, everything seems to be so blurred during that time. All I could really remember was asking him to take me home because it was not agreed that I go with him in a motel but in a restaurant at Mansion by the sea at Gingoog City.

Q: So you don't remember really anything else?

A: I remember what happened to me.

Q: Why, what happened to you?

A: When he forced himself to me.

Q: When you say he forced himself to you, what do you mean?

A: When he was on top of me and he was kissing me. God, I can feel and I can remember how heavily he was breathing in my face and he was kissing me all over and he was trying to position himself inside of me. Those are what I can remember and I kept on telling him: "No! I want to go home to my children." I wanted to go home because my family will be looking for me. What? Did he listen to me? No, he kept on telling me I am emancipated. Nobody will look for me.

Q: What were you wearing at that time on February 22?

A: I was wearing pants and a blouse.

Q: Were you undressed at that time?

A: I am sorry?

Q: Were you undressed?

A: Undressed? He undressed me.

Q: He undressed you?

A: Yes.

Q: Nothing left?

(No reply).

Ms. Villafranca felt that her legs were being parted as [Judge Pacuribot] tried to insert his penis into her vagina, but she could sense he had difficulty with erection. She felt penetration was slight. She recalled that he tried penetration more than three times, but was unsuccessful. She felt his heavy breathing while he planted vile kisses on her neck and chest. Her repeated pleas for mercy had not done her any good. Not long after, he rolled over with her and she found herself on top of him. He grabbed her hair and pushed down her face to his penis, and forced her to do oral sex on him instead. She resisted, but he insisted saying that it was what he wanted, otherwise she would be put to harm. She took it to mean that he will kill her if she refuses him. Scared, she relented and had oral sex on him. She felt shamed as she sucked his limp penis. She was disgusted with him, with herself and the very act itself. Still not having an erection, he released his grip on her. While she was physically and emotionally exhausted, she continued crying for mercy, but [Judge Pacuribot] was boasting that nobody in his right mind would refuse his demands as he could easily cause damage to anybody's honor if he wanted to.

Ms. Villafranca then got up, and put on her underwear and pants. [Judge Pacuribot] also got up and took his cell phone. She pulled the sheets to cover herself because her blouse was on the opposite side of the bed. However, he pulled the sheets from her and pushed her to the bed half naked. She braced herself with her arms so that the she would not be pinned down on the bed again. But to her surprise, he took a picture of her, using his cell phone. She was petrified. He then looked at the picture commenting that it was no good because she was not smiling, so he ordered her to smile as he will take another picture of her. Although she defied him, yet he did take another picture of her. She the hurriedly put on her blouse while he dressed up, fixed himself and tucked his shirt and his gun.

After [Judge Pacuribot] settled the bill, he led her out of the room. Ms. Villafranca shrugged him off. At the garage, she was ushered to the front seat of the car. She was dying to go home. He drove back to Gingoog City. On their way back, she turned her back on him, closed her eyes, covered her face with hand, and pretended to

be asleep. Later, he informed her of their approach to Gingoog City. She asked him to drop her off at the old Caltex gasoline station along the national highway. From there, she hailed a motorela, went home, took a long bath to wash his marks of her. At about 11 p.m., she fetched her children from her father's house. When asked where she had been, she gave her father a lame excuse that she went out with her friends.

Ms. Villafranca reported to work the next day. There had been some phone calls in their office. Like any other office, whoever has the convenience to answer at the time would pick up the phone. [Judge Pacuribot] had called twice their office already and when her officemates answer the phone, he would just hang the line. When the phone rung again, she picked it up. It was [Judge Pacuribot] on the other end. After recognizing her voice, he belittled her yelling: "Prostitute! Devil! Animal! Why don't you pick up the phone?" She was consumed with fear, and meekly told him that she was just busy. Days passed as he continued to threaten her with the publication of her half naked picture. She tried to pacify him sensing that he could make real his threats. Being married to an overseas worker with two kids, she was so scared of figuring in a scandal. Her fright of him was burdensome. He would send her text messages telling her of sweet nothings, but every time she would ignore them, he would burst in anger and would renew his threats. At times, she made excuses, like having no cell phone load, but he would insist that she should secure a load, otherwise he would shame her. He was far too wise to accept excuses. Her constant fear made her succumb to his blackmails.

[Judge Pacuribot] was always demanding that Ms. Villafranca send him text messages and letters expressing nonsense, a matter she could not understand then. She thought it was only to feed his ego. On cross examination, [Judge Pacuribot's] counsel asked why she complied with these orders. She answered:

Atty. Kho:

Q: In your affidavit, do you remember having said that the respondent is forcing you to send to him text messages?

A: Yes.

Q: And you complied with the sending of these text messages?

A: Yes, because one day when I was not able to text he called

me and he screamed at me over the phone and then he said: "*Burikat, animal ka, yawa ka, imo gibuhat... dili ko nimo i-ignore.* This will be the last time *na imo ko i-ignore sa text or sa tawag nako.* Otherwise, you will pay for it."

Atty. Ignes translating:

"You whore, you devil, you animal, don't you dare! This will be the last time you will ignore me in my call, otherwise you will pay for it."

Atty. Kho:

Q: Why did you allow him to do that to you?

A: Because he constantly tells me that he will develop that picture, he will show that to my mother-in-law and then he will destroy me and he will create scandal in Gingoog City.

Q: Is it not that you are well-connected? Your grandmother is the mayor. Did you not report it to her?

A: My husband is not around, Attorney.

Q: And?

A: And what? How would I explain to them that I was there? How he took my picture? How am I going to? I don't know. I just wanted to protect my family from any shame, from any scandal. And he knew that it would be his hold to me. And he knew that I would be very careful with the name that my family had, that is why he is constantly threatening me with such same arguments, you know. "*Ikaw and madaot ani. Imo ning kuan tana.*"

Atty. Ignes:

"You will be destroyed because of this."

Atty. Kho:

Q: So, you admit that you sent him a lot of text messages?

A: I did not deny it in my affidavit. I had it in my affidavit, that there were text messages and forced notes written for him.

[Judge Pacuribot] also asked her to send him cards with amorous messages. On these, she was also grilled on cross – examination. It went as follows:

Atty. Kho:

Q: You mean you often wrote some notes?

A: Yes. I may even have some drafts there wherein he even edited it.

Q: What kind of notes were they?

A: Love notes and there was a time he made me write a letter to my mother-in-law which the very next day I was posting myself at the Post Office awaiting for that letter to come so that I could intercept it.

xxx xxx xxx

Q: Also attached to the Comment of respondent are some notes already marked as Annex 9. Could you go over some of these notes and tell us if this is your handwriting? Annexes 9 and 9B.

A: I will not deny that I wrote these letters but they were under his supervision just like the ones he made to my mother-in-law and to my husband.

Q: You mean to say you were writing the letters?

A: Yes. He will dictate to me what to do, what to say.

xxx xxx xxx

Q: So you were acting like a stenographer who writes down his dictation?

A: I did not act like a stenographer who wrote down his dictation. But I acted like a victim who is under threat by some…

Q: The words here in Annexes 9-A and 9-B, you mean to say all of these are his words, the respondent?

A: As I said Attorney, yes, under his dictation, under his supervision. Do you know what is this?

Atty. Kho:

No. Do not ask me a question. You are not allowed to do that.

Witness (continuing)

While I was doing those writing, I felt that all my limbs were so tired. I felt so heavy writing those letters.

Atty. Kho:

Q: So you admit sending the respondent a lot more letters that the ones I've presented you?

A: I admit that I wrote those letters under his supervision, yes.

Q: All of the letters that you sent were all under his supervision?

A: As I said, yes, under his supervision. There were times that he would even call me to his chamber to have some cards signed.

Q: So, aside from notes, you also sent him cards?

A: Yes, I recall signing them because he would ask me to do so.

xxx xxx xxx

Justice Flores:

Q: When you said that the judge would even call you to his chamber to sign cards, what kinds of cards?

A: Greeting cards, Your Honor.

Atty. Kho:

Q: Hallmark?

A: I don't recall. I would just easily sign them, do whatever he wanted and then after he is done touching me I would ask myself to leave.

Q: So, you also sent him lots of greeting cards?

A: I did not send your client. He gave it to himself.

Q: I am going to show you one last card. Tell me, is this one of the cards that you said you signed? I'm going to give this to you. For submission.

A: Yes.

Q: This is one of the cards that you signed?

A: One of those cards that I signed.

xxx xxx xxx

Q: Miss Witness, the handwriting on this card now marked as Exhibit 6, on the second line of the handwriting are the words "Love you, Bi." Could you tell us what is the meaning of the word "*Bi",* if you know?

A: It has no significance with me because your client dictated it to me.

Q: So, it was dictated only.

A: As I said, he dictated words to me.

Ms. Villafranca's resistance would always be met with a threat to divulge the incident in the motel. Although she yielded to these promptings of sending him text messages or cards or notes, she never understood why [Judge Pacuribot] behaved so. It was late in the day when enlightenment came to her that all his orders to her to send him amorous text messages, letters and cards were not to feed his ego but to prepare for his defense even while she was as submissive as a lamb. In his Comment to the administrative charge against him, he cited the text messages, letters and cards he induced her to send to him to deflect her charges of rape and unprofessional conduct and prove them untrue. He cited them in his Comment as her manifestation of "fatal attraction" to him.

xxx xxx xxx

There had been occasions when [Judge Pacuribot] summoned Ms. *Villafranca* to his chambers on the pretext of discussing probation matters, but once inside his chamber, he would lock the door, grab her, kiss her, put kiss marks on her neck and chest. He would pull her hair and push her down to his crotch and demand that she performs oral sex on him. Her overpowering fear of him and the scandal he can inflict on her family made her yield to him. When she would disobey him he would call her cell phone with lots of insults like calling her "*burikat"* or with his threats.

Also, [Judge Pacuribot] demanded food from Ms. Villafranca which the latter had to bring to his room in Ms. Tan's house. Her fear of dire consequences of her resistance absorbed her. When demanded to bring food, she would comply out of fear. In her words, "*Yes, I went because he would put me under pressure and under fire."* She went not only because of his constant threat of making public his cell phone picture of her, half naked, but also because of "*his*

added threat that he is going to tell my mother-in-law; that he is going to destroy me; that I am nobody; that my family is no good and he would call me 'burikat, burikat (whore)'. He would call me that name 'yawa ka, animal ka. Sumunod ka nako." She was angst-ridden with the set – up. She was fearful that somebody might see her in his rented room or on her way to it or back. She was made to go there about eight (8) times. All these instances, she saw him display his gun. She found him too selfish and an ingrate. Once, on his demand to bring food, she brought him only *pansit* and *lumpia* which was no longer crisp. Unappreciative, he furiously stabbed his plate with fork, breaking it and carped that she served him food which is not fit for a judge, and suited only to her seaman husband. He also made her eat with him on occasions which she abhorred so much because according to her "he ate like a pig – eating fast with shoulders hunched, elbows on the table, mouth noisily chewing the food."

When grilled on those eight (8) times, the following exchanges between [Judge Pacuribot's] counsel and Ms. Villafranca took place:

Atty. Kho:

Q: In all of these times, 8 times which you said, you did not care to offer any resistance?

A: I had offered a lot of resistance, Attorney, but your client would make it a point that I should not refuse him.

Q: You tried to resist?

A: I had evaded him many times, many times but he would always point out that I should not refuse him, otherwise he will destroy me and he did eventually when I finally had the courage to put up with him, you know.

(The witness is crying at the witness stand)

Q: During those 8 times which you said you went to the room of respondent at Sherlita Tan's place which is near the police station and the LTO, was there a time that you shouted?

A: I could not shout, I'm scared.

Q: You were scared of what?

A: Scared of your client.

Q: Of the person?

A: Yes and how intimidating he could be and how evil he could be.

After eating, Ms. Villafranca would be ordered to take off her clothes; then, [Judge Pacuribot] would lay on top of her for his sexual pleasures. But penetration would be slight because, as usual, he had difficulty with erection. As a consequence, he would push her down to his organ and order her to do oral sex on him. She detested his routine of putting kiss marks on her neck and chest which he intentionally used so that, as he told her, people would know that he owned her. At times, she left his rented room wearing a hooded jacket in order o (sic) hide her face fearful that certain people might recognize her along the way. There were times she also left his room without underwear because he would not give it to her. She hated his sexual abuses, but she was more afraid of causing scandal to her family.

In April 2005, after having dinner with [Judge Pacuribot] in his rented room, Ms. Villafranca was pulled by her hair and was asked, "[w]ho owns you now?" She answered in fear – "you." He looked very pleased. Then, he told her to leave her husband and promised to help her file a marriage annulment complaint in Gingoog City. She did not say a word. He went on top of her and pulled her hair demanding for an answer. Terrified, she said "*opo.*" Then, she was forced to have sex with him.

[Judge Pacuribot] wanted to destroy the relationship Ms. Villafranca has with her husband and his family. He forced her to write a letter, asking for a break up of marriage from her husband which [Judge Pacuribot] edited. He also ordered her to write to her mother-in-law with whom she had some difficulty in their in-law relationship, to say she wanted a marriage break-up. She told him she does "not need to write letters to her mother-in-law. What for?" But he insisted. Her hands felt heavy writing them, in fact it took her three drafts to write as shown in Exhibits "B", "C" and "D" of Ms. Villafranca. Discontented with her drafts, he took away the last from her, edited it, and told her he will mail it to her mother-in-law. Thinking he will make good of his threat, the following day she posted herself outside the Gingoog City Post Office for a long time and waited for the mailing of said letter so that she can intercept it. No one came. She instructed the postal clerk that if there is a letter intended for her mother-in-law, she should not give it to her mother-in-law but to her instead.

Meantime, Ms. Villafranca's morbid fear of [Judge Pacuribot], his threat to mire her and her family in scandal and her guilt toward her family had been sucking her into a vortex of emotional and physical collapse. She bore the immense pain of yielding to him. She seemingly could not withstand the humiliation for being involved in forced sordid incidents with [Judge Pacuribot] whom she detested.

On 9 May 2005, seemingly depressed for her accumulated frustrations for not being able to see her way out of her predicament, Ms. Villafranca, sent a text message to her husband who was then working aboard a foreign vessel. Her text message went this way: "Whatever will happen to me, you take care of the kids." He asked: "What's wrong?" She answered: "I cannot fully disclose to you everything but in due time I will. Whatever happens to me, just take care of the kids and that I love them." Her disturbing message constrained her husband to pre-terminate his employment contract and rushed home to Gingoog City on 15 May 2005. She then personally told [Judge Pacuribot] to stop calling her or asking for food, but he grabbed her hair, twisted her head and planted a kiss mark on her neck, telling her that it would send a message to her husband that he, not her husband, owned her. Still, she was not prepared to make her revelations to her husband.

In the third week of May 2005, Ms. Villafranca was persistently instigated by [Judge Pacuribot] to file an annulment case against her husband. Later, he asked her to sign what Ms. Villafranca calls a "ridiculous document" he drafted wherein it purported to show that she and her husband agreed that each of them may freely cohabit with a third person. She signed it in the face of his threats. Worse, he asked her to ask her husband to sign the same document.

On 25 May 2005, at the Hall of Justice in Gingoog City, Ms. Villafranca was summoned to [Judge Pacuribot's] chamber. Once inside, he slapped her for not filing her petition for annulment of marriage and hit her head with clenched fist. Then, he planted on her neck kiss marks which he said he wanted her husband to see. Indeed, when her husband found her with kiss marks, she suffered from her husband's beating.

Citing her husband's beating her, Ms. Villafranca pleaded to [Judge Pacuribot] to stop molesting her. He countered with an unusual suggestion – File a rape case against him. When she refused, the threat of the dire consequences of her refusal came again. She still kept from her husband what she was going through.

But [JudgePacuribot] seized another incident to destroy her more. On 15 June 2005, he reported in writing to the superiors of Ms. Villafranca – superiors in local office and superiors in Manila – alleging her negligence allegedly committed on 6 June 2005 in forgetting to shut off the air-con unit in their Probation Office. Her local superior in the Probation Office referred to her the letter of [Judge Pacuribot]. She prepared an explanation which her local superior used as letter to the judge. Thinking that because she authored that letter, the explanation there covered already her side, she did not write nor see the judge anymore. This further infuriated him.

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In July 2006, Ms. Villafranca's request for transfer was granted and she started working in Cagayan de Oro City on 17 July 2006. The transfer of assignment resulted in her constant separation from her nine (9) year old son and four (4) year old daughter, plus the great inconvenience of a 2½ hours bus ride from Gingoog City one way, and transportation expenses. She would usually go home to Gingoog City to be with her family and children on weekends, or every now and then, and sometimes late at night.

After her transfer to the Probation Office in Cagayan de Oro City on 17 July 2006, Ms. Villafranca was able to tell her husband what she went through. Before that, she just could not find the courage to tell him because she was scared. When she was twitted on cross examination on how so long that she was scared, she said:

Atty. Kho:

Q: So, what you told him at that time was that you were scared?

A: Attorney, I was walking in fear most of those times and even up to now when I came home I am walking in fear. I don't know if I'm safe. I don't know if the next day I will be dead. I don't know. Those were the times when I asked my husband to accompany me because I'm always scared all the time. Even if I just go out of the gate ask my husband to accompany me.

(At this juncture, witness is sobbing)

Ms. Villafranca decided to fight back with this administrative charge. She subscribed her Affidavit-Complaint before State Prosecutor Roberto A. Escaro on 13 December 2005. In Ms. Villafranca's Complaint she prayed that [Judge Pacuribot] be found guilty of gross

violation of the Judicial Code Of Professional Responsibility (Code of Judicial Conduct) for being totally unfit to stay in the Judiciary and she prayed that he be ordered immediately dismissed from service. She also prayed that [Judge Pacuribot] be immediately ordered to cease and desist from causing any further assault on her person, in her personal and professional capacity.

On the same day, Ms. Villafranca submitted her Affidavit-Complaint to the Office of the Court Administrator. [Judge Pacuribot] filed his Comment. Among others, he cited that Ms. Villafranca was "fatally attracted to him" and that he refused to reciprocate because "he is a judge and happily married," and for the reason that Ms. Villafranca's "misdirected adoration is atrociously immoral." Ms. Villafranca filed a Rejoinder refuting point by point the defenses of [Judge Pacuribot] and calling them lies. Ms. Villafranca said his defenses are presumptuous and revolting because in the Hall of Justice, female personnel "invariably veer away from his path in trepidation." She asserts that [Judge Pacuribot's] extramarital indiscretions are well known, if not well documented, in Gingoog City, that it is common knowledge that his mistress Sheryl Gamulo, whom [Judge Pacuribot] housed in Motomull St., Gingoog City, gave birth to two (2) children by [Judge Pacuribot] on 16 October 2004 and 02 September 2005 at the Maternity Hospital, Cagayan de Oro City; that the eldest child was baptized in Opol, Misamis Oriental with Atty. Wilfredo Bibera, his clerk of Court, and Dondi Pallugna, his driver, as baptismal sponsors. Ms. Villafranca claims therein that respondent judge is also known to have sired a daughter in Ozamiz City now about ten (10) years old whose picture has been circulated in the Hall of Justice and that [Judge Pacuribot's] immorality most probably inflicted on victimized women is a sick source of scandal and gossip in the city.

To be able to put behind her harrowing experience, Ms. Villafranca applied for leave of absence with their office to work abroad knowing that [Judge Pacuribot's] order in *People v. Anude* and his letter to her superiors have effectively made her lose that desired promotion. Eventually she left the country on 2 October 2006 for Dubai, UAE to work and forget her past even if her leave of absence in their office was not yet approved. On 18 March 2007, she returned to testify in this case after struggling against employment restrictions and financial constraints, she not having been half a year yet abroad. On 22 March 2007, when asked on the witness stand when she will leave again for Dubai, she said: "I want to leave the country as much

as possible and stay out of here. I don't want to be reminded of what happened to me." At the time she testified in March 2007 in this case, her leave of absence in the Probation Office was not yet granted.

In his Comment,[9] Judge Pacuribot denied the charges of Ms. Tan and Villafranca for "lack of factual and legal bases"; and opposed the allegations on the ground that the same were motivated by revenge and were part of a comprehensive and sinister plan to drive him out of service.

Judge Pacuribot made total denial of Ms. Tan's charges against him and claimed that the alleged incidents on 20 and 21 October 2004 were "big lie[s], a fraud, a hoax and deception." He insisted that he could not have committed the acts complained of by Ms. Tan because in his first five months in office, he was busy planning what to do and how to quickly dispose of the almost 500 cases he inherited, including the new ones raffled to him.

In particular, Judge Pacuribot denied the alleged rape incidents on 20-21 October 2004 in Cagayan de Oro City, and interposed the defense of alibi. He contended that he was in faraway Gingoog City, which is 120 kilometers away from Cagayan de Oro City. He stated that on Mondays, he reports for his duties in Gingoog City, and goes home to Cagayan de Oro City only on Fridays. He maintained that on 20 October 2004, a Wednesday, at 7:00 p.m., he went out of his chambers with his court aide Placido Abellana, Jr., and his security officer SPO1 Ronald Espejon. They proceeded to Garahe Sugbahan Grill for dinner. After dinner, Espejon and Abellana escorted him back to his boarding house. Abellana left him at 9:00 p.m. while Espejon went home at about 11:00 p.m.

Judge Pacuribot admitted that he did not hold trial on 21 October 2004, a Thursday, because the scheduled settings were all cancelled that day which cancellation was made a week before. He averred that on the same day, he was writing decisions in his chambers. In the evening, he asked Abellana to buy food

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[9] *Rollo,* pp. 124-154.

and they ate supper with Espejon. Abellana left him about 8:00 p.m. while Espejon left at about 10:00 p.m.

He, thus, concluded that it was impossible for him to be with Ms. Tan on 20 and 21 October 2004, a Wednesday and a Thursday, respectively. He argued that no proof existed to show his physical presence in Cagayan de Oro City on those dates; hence, the presumption of his continuing physical presence in his station during the inclusive period alluded to ran in his favor.

Judge Pacuribot also cited several factors which made Ms. Tan's allegations unbelievable:

1. Ms. Tan's behavior was not reflective of a rape victim. Ms. Tan did not immediately report the incident to the authorities. As a 43-year-old lady who is no longer naïve and having assisted as stenographer in countless rape cases, she should know how important it is to immediately report the incident.

2. Judge Pacuribot pointed to Ms. Tan's admission that she did not put up a struggle when he allegedly brought her to City Lodge Motel and Discovery Hotel. Had she wanted to catch the attention of employees, she could have done so. He also stressed that what Ms. Tan called a headboard where he allegedly put his gun in the motel room was merely less than one inch in width, too narrow for a .45 cal. gun to rest.

3. On 25 November 2004, a month and three days after the alleged rape, Ms. Tan invited all her officemates, including him, to her birthday party held at her home, where she sang and danced. She displayed her dancing skills then. She even taught him how to dance the swing. Again, during the Court's Christmas Party in December 2004, she socialized with her fellow workers, including him, and even performed the "kikay dance" during the program.

4. On 1 Septemeber 2005, all the staff of Judge Pacuribot, including Ms. Tan, attended his birthday party at his house in Cagayan de Oro City, where she merrily danced with dance instructors and posed with Judge Pacuribot's wife.

5. On May 2006, five months after she filed the administrative charge against Judge Pacuribot, Ms. Tan joined the Search for Mrs. Gingoog City Contest as one of the candidates and she paraded in the gymnasium, all smiles, while attired in an elegant gown.

6. Judge Pacuribot alleged that Ms. Tan and her husband were publicly known to be putting up a façade that all was well with them, although they constantly quarreled and had been sleeping in separate rooms already.

Judge Pacuribot disputed Ms. Tan's version of how he became the lessee of a room at Ms. Tan's house. He claimed that in January 2005, she came to know that he was looking for a new boarding house and she offered two small rooms at her house available for rent. He chose the one facing the Police Station of Gingoog City, which he claimed to be only about five meters more or less from the room he rented. He paid an advance rental of ₱5,000.00.

Judge Pacuribot denied sexually harassing Ms. Tan. In refuting her claim that he sexually harassed her in his chambers, he countered that this could not have happened as his court aide, Placido Abellana, was always in his chamber with him. If Abellana was out on an errand, his security officer, SPO1 Ronald Espejon, temporarily took over. There had never been any moment in his chambers that he was without companion. There was always either his court aide or his security officer with him. Even when he had visitors, his court aide was still in his chambers to maintain transparency and avoid unwarranted talk. Once in a while, his branch clerk of court, Atty. Willfredo Bibera, Jr., would go to his chambers to confer with him regarding cases. Sometimes, too, his security officer Espejon would take his blood pressure in his chambers. Under these circumstances, Judge Pacuribot argued that no sexual harassment could have occurred. He also called attention to the fact that Ms. Tan's affidavit and testimony presented the dates of the alleged sexual harassments as follows:

27 October 2004	06 January 2005
03 November 2004	08 August 2005

25 November 2004	03 October 2005
08 December 2004	04 October 2005
09 December 2004	11 October 2005
05 January 2005	13 October 2005[10]

The 6 January 2005 alleged incidents were followed only on 8 August 2005, thus, belying Ms. Tan's claim that the sexual harassments were done regularly. Also, Ms. Tan's allegation that he sexually harassed her on 25 November 2005 was incredible, because on that date she was on her birthday leave, and was busy preparing the dishes she was going to serve them during her party. He emphasized that the criminal complaints for rape, acts of lasciviousness and sexual harassments filed by Ms. Tan against him with the City Prosecutors Office in Gingoog City and Cagayan de Oro City were all dismissed.

Judge Pacuribot explained that these administrative and criminal charges filed against him by Tan and Villafranca were part and parcel of a grand plot hatched by Ronnie Waniwan, a radio commentator, to oust him from office. He claimed that Waniwan was then facing four counts of libel in his *sala*. The City Prosecutor recommended ₱50,000.00 bail for each. When Waniwan filed a motion to reduce bail bond, respondent denied it for several reasons, *i.e.*, (1) there was a previous conviction, (2) he was not from Gingoog City, and (3) when a warrant for his arrest was issued, he went into hiding instead of surrendering. Waniwan filed a motion for respondent to inhibit himself, which the latter denied. As a consequence, Waniwan spent 13 days in jail for failure to put up a bail bond. Judge Pacuribot learned that Waniwan had contacted the NPA for Judge Pacuribot's "liquidation" as revealed in the affidavits of two captured NPA sparrow unit members. He discovered that Waniwan with Mesdames Tan and Villafranca plotted and conspired to destroy him after his personal talk with other media men including Jonas Bustamante, Jerry Orcullo and Jessie Mongcal.

Judge Pacuribot believed that Ms. Tan succumbed to the egging of Waniwan to jump the gun on him. Ms. Tan knew that

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[10] CA *rollo,* p. 44.

her job was in danger because of her growing inefficiency, a subject of his several warnings, since her inefficiency would essentially affect the performance of his court, a scenario which he abhorred, having been a consistent performer in the disposal of cases during his days as labor arbiter. In fact, he considered Ms. Tan the most inefficient among the four stenographers he had. She was allegedly lazy, inarticulate in the English language, and flawed in spelling, which hampered her effectiveness in preparing transcriptions. Worse, due to her moonlighting as manager of the Tan-Hoegee Internet Café, she would usually go home during office hours to catch some sleep. He believed that his good relationship with her soured when he asked Ms. Tan to be more focused on the job; that he was going to move to a new house; and when he did not let her borrow ₱200,000.00, or at least be a guarantor of her loan.

Anent the written charges of Ms. Villafranca, Judge Pacuribot specifically denied all material allegations therein for being untrue. In particular, he denied the alleged rape incident on 22 February 2005 in Butuan City. He asserted that he never went out alone at night in Gingoog City, knowing the place to be dangerous, and the fact that PNP confirmed to him that he was in the list of those slated for "liquidation" by the NPA. Hence, he insisted that he neither invited Ms. Villafranca for dinner, nor did he travel from Gingoog City to Butuan City during night time.

Judge Pacuribot claimed that on 22 February 2005, at 5:00 o'clock more or less in the afternoon, he asked a certain Fil Sumaylo to buy and cook a big fish and ten pieces of small octopus because they would have dinner at the latter's house. At about 6:30 p.m., respondent went with his security officer Espejon and court aide Abellana to Sumaylo's house. His branch clerk of court, Atty. Bibera, was also there. After dinner, Espejon and Abellana escorted him back to his boarding house at about 11:00 p.m. Abellana left ahead, while Espejon left at about 11:30 p.m.

Also, Judge Pacuribot gave several reasons why he would not venture at all to go to Butuan City alone. He said he was security conscious, considering that he handled drug cases and

other high-profile cases. He had also received NPA threats on his life. He claimed that Butuan City was about 80 kilometers from Gingoog City and he would not go there and risk his life for a woman he barely knew.

In denying Ms. Villafranca's allegations of sexual harassment and acts of lasciviousness, Judge Pacuribot pointed out that the acts of grabbing, kissing and performing oral sex in his chambers could not have happened as his court aide, Abellana, who is the uncle of Ms. Villafranca, was always present in his chambers, aside from the fact that his chamber was just beside the room of the staff.

Judge Pacuribot contended that Ms. Villafranca's charges were improbable. He assessed her to be a very intelligent woman with a strong personality. Ms. Villafranca is well connected, because she is a recognized illegitimate daughter of a certain Polkem Motomull, a one-time member of the Provincial Board of Misamis Oriental and nephew of Mrs. Ruthie Guingona, incumbent City Mayor of Gingoog City. A sister of her father is the Assistant City Auditor of Gingoog City, while Judge Pacuribot's predecessor, Judge Potenciano de los Reyes, is her father's first cousin-in-law. RTC Judge Downey Valdevilla of Cagayan de Oro City is also her uncle; and even Judge Pacuribot's court aide, Abellana, is her father's first cousin. Considering the big family of Ms. Villafranca, anyone will think, not just twice, but several times, before doing anything against her. Ms. Villafranca will not just allow herself to be raped and beaten by a stranger like him in Gingoog City. He found out that, as indicated in the police blotter of Gingoog City, Ms. Villafranca reported that she was raped and mauled by Mr. Ricky Lee Villfranca, her husband, who carted away important belongings at about 2:00 a.m. of 26 May 2005. He claimed that if Ms. Villafranca could report her husband to the police for said offense, then she should have reported him also to the police if her allegations were true.

Judge Pacuribot denied calling Ms. Villafranca through her cellphone. On the contrary, it was she who was calling him. She also sent him adoring or alluring text messages including

seductive notes and poems. He claimed that being a happily married man, he ignored the flirtatious and seductive advances of Ms. Villafranca, to her consternation and bewilderment. He claimed that her adulation of him came to an abrupt end and metamorphosed into an intense hatred and dislike after he issued the 6 June 2005 Order in Criminal Case No. 2004-2879 entitled, "*People v. Anunde*" pointing out her incompetence, inexperience and unprofessional attitude toward her work. He opined that the charges of Ms. Villafranca are typical under the adage, *"Hell hath no fury than a woman scorned."*

Judge Pacuribot further complained that Ms. Villafranca would follow up cases of her relatives in his *sala*.

After weighing the evidences and arguments of all the parties, Investigating Justice Dy-Liacco Flores found:

FATHERHOOD UNPROVEN

On the Anonymous Letters about [Judge Pacuribot's] illegitimate fatherhood, the Investigator finds the claim unsupported by any documentary evidence. Although the certification of the hospital's administrative officer proves correct the claim in the anonymous letter as to (1) the hospital; (2) the identity of the mother; (3) the number of children delivered; and (4) the date of birth of the two children, but it did not shed light on the identity of the children's father. In this case, the certificates of birth of the two (2) children mentioned in the anonymous letter showing [Judge Pacuribot's] fatherhood would be the best evidence adequate to prove the claim. With no-record-of-birth-certifications issued by the local civil city registrar and the office of the Civil Registrar General, no finding of guilt can be made.

RAPE AND SEXUAL HARASSMENTS PROVEN BEYOND REASONABLE DOUBT

Ms. Villafranca's story of rape and repeated sexual harassments is credible. [Judge Pacuribot's] defense of denial and alibi failed to overcome complainants' evidence.

On the rape in Butuan City motel, [Judge Pacuribot] insists on the improbability of his presence at the scene of the crime because he alleges that he does not go out at night in Gingoog City without

company for two (2) reasons – that he is security conscious and that there is an NPA threat on his person.

Firstly, [Judge Pacuribot's] being security conscious is no proof of improbability in going to Butuan City. So many criminals are security conscious yet they go out alone at night to commit a crime. Hence, his being security conscious could not have deterred him to go out.

Secondly, his claim of an NPA threat on his person is suspect. He claims that he learned he was marked for NPA liquidation when he was given a copy of the affidavits of two (2) captured NPAs named Marvin Lumod and Rico Roselem marked as Exhibits "22" and "23" respectively. Unfortunately, these two (2) affidavits will not help [Judge Pacuribot]. Marvin E. Lumod's Affidavit is dated 20 June 2006 while Rico A. Roselem's Affidavit is dated 19 June 2006. The incident in Butuan City occurred on 22 February 2005. The reason, therefore, in not wanting to go out at night without company on 22 February 2005 was still absent. [Judge Pacuribot's] alibi that he was in Gingoog City on 22 February 2005 is backed up by the testimonies of SPO1 Ronald Espejon and Placido Abellana. But these two are his loyals aside from the fact that Abellana, as his court aide, is also one whose employment is under control and supervision of [Judge Pacuribot]. Thus, on that account, their testimony must be taken with grain of salt. Their testimony cannot discredit the straightforward testimony of Ms. Villafranca on how [Judge Pacuribot] deceived her twice – on the purpose and on the place. He invited her for dinner but ravished her instead. They agreed on The Mansion in Gingoog City for the dinner, yet drove her to a Butuan City motel.

[Judge Pacuribot] asks: Why did Ms. Villafranca not report to the authorities that he sexually assaulted her, if true, when she even reported to the police that her husband raped her on 26 May 2005? [Judge Pacuribot], to prove that Ms. Villafranca reported to the Police, presented Annex "3", a certified copy of an entry in the Police Blotter of Gingoog City. [Judge Pacuribot] should have noted that in that certified copy, it is shown that it was his security officer, SPO1 Ronald Espejon, not Ms. Villafranca, who had the report entered in the police blotter. The certification did not say that Ms. Villafranca appeared at all in the Police Station and had the incident blottered. All that Ms. Villafranca did was to ask Espejon for assistance because he was beaten by her husband.

[Judge Pacuribot] claims that the administrative charge is Ms. Villafranca's reprisal against him. He claims that Ms. Villafranca appears to be "fatally attracted to him" and that he "remains steadfast in his refusal to reciprocate he atrociously immoral and misdirected adoration to him." He claims the administrative charge is proof of the fury of a woman scorned. On the "fatal attraction" [Judge Pacuribot] cited the text messages, notes and cards he claims Ms. Villfranca sent him. Ms. Villaffranca explained how he has always demanded of her to send him those, the reason for which she could not fathom then. He would even have cards in his chamber and then summon her to sign them. When she resists, he would let out a barge of insults and threats. [Judge Pacuribot's] possession of those letters, cards, and text messages was adequately explained by Ms. Villafranca.

[Judge Pacuribot's] theory of Ms. Villafranca's "fatal attraction" and "misdirected adoration" of him is funny. He never disputed the testimony of the two (2) complainants that [Judge Pacuribot] is reputed in the Hall of Justice as "terror", that he is fond of humiliating people in public, using excoriating language on his victim, that female employees avoid him and veer away from him when they meet in the Hall of Justice. He also failed to specifically deny the claim of Ms. Villafranca that he housed his mistress, Sheryl Gamulo, in Motomul St., Gingoog City. He also failed to specifically deny her claim that he sired a ten (10) year old daughter in Ozamis City. Will all the dark side of his character publicly known, hardly would a twenty-nine (29) year-old, very pretty married woman who [Judge Pacuribot] claims is very intelligent fall for such character. Thus, [Judge Pacuribot's] claim of Ms. Villafranca's "fatal attraction" and "misdirected adoration" of him becomes incredible.

[Judge Pacuribot] asks why did Ms. Villafranca allow herself to be raped and victimized over a prolonged period of time when there were people capable of helping or protecting her considering her illustrious, although illegitimate, lineage? Further, if he committed sexual abuses on Ms. Villafranca at his rented room which was very near the police station, why did she not shout or report to the police?

The fact that Ms. Villafranca is well connected in Gingoog City was actually not a boon but a bane. It was on that account that she wanted to protect at all costs their family from any scandal. [Judge Pacuribot] capitalized on it with his constant threat that he will bring scandal to them by making public her half naked picture taken in the

motel. Her wanting to protect her family from shame cowed her into silence and submission. Her testimony demonstrates that. It reads:

Atty. Kho:

Q: A cellphone picture that is what you are afraid of?

A: No, also his added threats that he is going to tell my mother-in-law, that he is going to destroy me, that I am nobody, that my family is no good, and that he would call me "*burikat, burikat.*" He would call me that name. "*Yawa ka. Animal ka. Sumunod ka nako.*"

(Atty. Ignes – Div. Clerk of Court interpreting:)

"Burikat" means a whore. "You lewd devil, and you have to follow me."

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Q: Why did you allow him to do that to you?

A: Because he constantly tells me that he will develop that picture, he will show that to my mother-in-law and then he will destroy me and he will create a scandal in Gingoog City.

Q: Is it not that you are well-connected?

A: My husband is not around, Attorney.

Q: And?

A: And what? How could I explain to them that I was there? How he took my picture? How am I going to? I don't know. I just wanted to protect my family from my shame, from any scandal. And he knew that it would be his hold to me. And he knew that I would be very careful with the name that my family had, that is why he is constantly threatening me with such same argument, you know: "*Ikaw and madaot ani. Ino ning huan tanan.*"

(Atty. Ignes:)

"You will be destroyed because of this."

Ms. Villafranca said she was scared of [Judge Pacuribot's] person and "how intimidating he could be and how evil he could be." She

feared him because when she resists him he would tell her "*madaot ka ani.*" (You will be destroyed because of this.) So she had to yield to him because she knew he could do what he threatens to do – to destroy her. She points to the Order dated 6 June 2005 in *People v. Anude* of how indeed he had destroyed her.

[Judge Pacuribot] claims in his Comment and Consolidated Memorandum that Ms. Villafranca is a very intelligent girl and with strong personality, reasons why it is improbable to make her a victim of rape and sexual harassments. And yet, when he issued the *Anude Order,* he made her look like she is an irredeemable incompetent who "cannot spell", who "uses high falutin words in her Post Sentence Investigation Report which she herself may not have understood," whose sentence construction is horrendous," "her proper noun is written with small letter" and that "her adjectives or adverbs do not fit the things or persons described." [Judge Pacuribot] engages in double – talk.

In the three – paged *Anude Order*, [Judge Pacuribot] tried to show that Ms. Villafranca's incompetence is toxically mixed with acute haughtiness because Ms. Villafranca refuses to consult the judge or see him or refused to come to him even when summoned repeatedly. [Judge Pacuribot] should not gripe. He summoned Ms. Villafranca to his chamber on 25 May 2005. Once inside, [Judge Pacuribot] slapped her for not filing her petition for annulment of marriage and her head with his clenched fist. He planted on her neck kiss marks which he said he wanted her husband to see. When Ms. Villafranca's husband saw them later, he beat her. At 2:00 am of 26 May 2005, SPO1 Ronald Espejon claims that Ms. Villafranca called him for assistance. It was the start of Ms. Villafranca's growing defiance to [Judge Pacuribot], a fact that roiled him to point of issuing the *Anude Order* eleven (11) days later.

[Judge Pacuribot] also belittled Ms. Villafranca repeatedly in said Order by referring to here as "MERE Clerk II/understudy Johanna M. Villafranca of Gingoog City Parole and Probation Office," calling her "visibly inexperienced mere clerk," "very raw," and that her report was atrocious. He ordered her Post Sentence Investigation Report returned "OFFICIALLY" to the superior of Ms. Villafranca for proper corrections. [Judge Pacuribot] stated therein that Ms. Villafranca cannot be located in her office as she is always absent per information in her office. He stated that she should not be allowed to practice making post sentence investigation in preparation for a desired promotion.

The *Anude Order* is the classic proof of how Ms. Villafranca's disobedience to [Judge Pacuribot] ended up in her destruction – "*Madaut ka ani.*" The Order destroyed her person and her career. Therein, he has beaten Ms. Villafranca's career to a pulp. Any superior of Ms. Villafranca who will read the *Anude Order* will block any desire of Ms. Villafranca for promotion which the latter was aiming for at the time. She rued with tears how the *Anude Order* displaced her from her job.

[Judge Pacuribot's] repeated harping in said Order about Ms. Villafranca's failure to consult him and to come to him even when summoned, rendered more believable Ms. Villafranca's claim that [Judge Pacuribot] would summon her to his chamber on the pretext of official matters and thereafter subject her to his lasciviousness conduct.

[Judge Pacuribot's] claim that Ms. Villafranca was part of Ms. Waniwan's conspiracy was unproven. All the Sun Star pictures of Ms. Tan's filing of the criminal complaint before the City Prosecutor's Office did not show at any instance the face of Ms. Villafranca. Also, she made it clear in her testimony that sometime in February 2006, when Ms. Tan filed her criminal complaint with the Office of the City Prosecutor, two other media men called her up to see if they can get a copy of her Affidavit-Complaint. But she refused to prevent the public from knowing what she went through.

Indubitably, Ms. Villafranca's testimony and the anguish that came with it can only come from a very sad experience. Even on the very delicate matters where [Judge Pacuribot] had stripped her mercilessly of her dignity and womanhood, Ms. Villafranca was frank and straightforward, proof of how outraged she was when [Judge Pacuribot] had raped her and had sexually harassed her repeatedly.

Her spontaneity in answering the cross examination questions, the anguish she revealed in court, her very natural and coherent way of telling how she was ravished and abused repeatedly as an underling leaves no room to doubt her testimony and the things she said under oath in her Affidavit – Complaint, her Rejoinder, and her Sworn Statement. Her tears could only be the clues to her righteous indignation against the indignities she suffered from [Judge Pacuribot]. Indeed, the conviction to reveal the truth must have been so strong that she had to come back to the country hurdling employment restrictions and the difficulty of not having saved enough yet for her trip back just to testify in this case.

[Judge Pacuribot's] claim that her administrative charge is a fabrication is unacceptable against the avalanche of Ms. Villafranca's evidence. The Investigator cannot find any valid reason to sustain [Judge Pacuribot's] denial and alibi as a defense.

[Judge Pacuribot] is guilty beyond reasonable doubt of the charge of rape in Butuan City and guilty of multiple sexual harassment committed inside respondent judge's chamber and in his rented room in Gingoog City. His claim that Ms. Villafranca's charge is a fabrication is unacceptable considering the avalanche of evidence against him.

While [Judge Pacuribot] committed physical assault on Ms. Villafranca on 25 May 2005 when after summoning her to his chamber, he slapped her for not filing the petition to annul her marriage and hit her head with his clenched fist, the same is deemed absorbed by the offense of sexual harassment considering that brute force and intimidation had always been used by [Judge Pacuribot] to commit said offenses.

On the eight (8) occasions that [Judge Pacuribot] had carnal knowledge of Ms. Villafranca in his rented room while [Judge Pacuribot's] gun was always displayed on the table, implying the commission of rape, the same are treated as sexual harassments only for Ms. Villafranca's failure to state when they were committed and to provide details on those occasions.

Ms. Tan's agony started with [Judge Pacuribot's] deception. He made her believe he will bring her in his car to the bus terminal from Pryce Plaza Hotel, only to surprise her after riding with him by bringing her to the City Lodge Motel to ravish her. Again, while about to leave City Lodge Motel, he deceived her again by telling her that he will bring her now to the bus terminal, only to bring her to the Discovery Hotel, so that he can ravish her some more later. Aside from deception, [Judge Pacuribot] uses extravagantly another tool – intimidation. Immediately after Ms. Tan settled herself on the front seat on that infelicitous night of 20 October 2004, he immediately had his bag between them, the bag Ms. Tan knows contains [Judge Pacuribot's] gun. Also, he used on her an uncouth language in a loud voice, an irrational temper, a fake message of urgency to rattle Ms. Tan and make her jump to obedience without thinking. By the time Ms. Tan realized [Judge Pacuribot's] repulsive intentions, it was too late to fight back because she had been trapped in the motel.

His repeated intimidating warnings on Ms. Tan that she could harm her if she disobeys were indeed proven true. On 24 November 2004, Ms. Tan was severely and publicly scolded before her office mates, a fact that was affirmed by Atty. Wilfredo Bibera. Her performance rating from "Very Satisfactory" slipped down to "Satisfactory" in 2005.

[Judge Pacuribot] uses force and cruelty on his hapless victims. When he ordered her to do oral sex on him and she refused, he pulled her hair and pushed her face to his penis with an order: "Suck it. Let it in till deep your throat. Let my penis reach your throat." He tightened his hold on her that she was frightened he might break her neck. In pain, she had to plead: "Don't pull my hair, sir. It's very painful. What a sadist you are." While he was sucking her nipple and mashing her breasts, he was telling her: "This is the breast of a lustful woman." While he was planting vile kisses on her neck to produce "*chiquinini"* on her, he told her: "I am going to plant lots of kiss marks here to let the people know that you passed through my hands." Upon hearing it, Ms. Tan cried. Indeed, [Judge Pacuribot] is a sadist beyond description capable of declaring his unconcealed intention to parade her to the public as his victim.

At the trial, when issues would touch on her tender feelings towards her family or when it would recall [Judge Pacuribot's] cruelty that crushed her respectability or the delicateness of her womanhood, she would invariably sob on the witness stand. The way he ravished her and sexually harassed her showed how irrationally lewd or unbearably cruel he was.

Even when Ms. Tan was already abused, still the thought that he is her superior had never been lost to her. Ms. Tan has always addressed him – "Sir."

"Why did you bring me here, Sir? Didn't I tell you I will just take a taxi to Agora Terminal?

"Don't pull my hair, Sir. It is very painful. What a sadist you are."

"You are so rude, Sir, we work in the same office yet you disgrace me."

"Sir, I just take a taxi to Agora."

[Judge Pacuribot's] moral ascendancy over Ms. Tan was an undeniable factor to her blind submission to his depravity.

[Judge Pacuribot] pointed to Ms. Tan's inefficiency, her not being a happily married woman, that her husband is a wife beater and a violent man, that she is in financial straits who even run to him for help. It is precisely these weaknesses, personal problems, and economic difficulties which added to Ms. Tan's inability to fight back and made her so submissive. She was the ideal prey. As she was made to admit during her cross examination, she is the lone breadwinner in the family with two (2) children to support.

[Judge Pacuribot] challenges Ms. Tan's claim of rape and repeated sexual harassments by arguing, to wit:

"Why did she not refuse to go with respondent when he allegedly fetch her at Pryce Plaza Hotel on 20 October 2004 and instead go voluntarily with him?"

"At the Discovery Hotel, if indeed she stayed and slept there all by herself, why did she not escape or call for help and instead wait for respondent to arrive the next morning? So that he can sexually assault her again? Or why did she fail to ask for help from any of the hotel staff or from anybody while in the Discovery Hotel?"

"If she immediately reported to the police authorities the maltreatment of her son by her husband, why did she not complain of the alleged incidents of sexual harassments and acts of lasciviousness she experienced from the respondent?"

Despite her claims of having been subjected to rape, sexual harassment and acts of lasciviousness, why did she gleefully socialize with respondent during their Christmas party and respondent's birthday celebration?"

Ms. Tan had only two (2) options –

"Lose her job by promptly fighting back at [Judge Pacuribot]; or

"Keep her job tolerating him with muffled defiance.

Ms. Tan had correctly assessed the far reaches of his influence. When she was looking for a lawyer to help her file the administrative charge, no lawyer in Gingoog City would like to accept her case. She had to look for one in Cagayan de Oro City. She was thus correct to wonder while she was in Discovery Hotel whether anyone there would come her aid if [Judge Pacuribot] will start harming her.

Ms. Tan as a victim cannot be put in the same footing as other rape victims where the offender holds no control on the victim's

survival and has no moral ascendancy over her. Fighting back immediately against the offender is a rational move. In the case at bench, [Judge Pacuribot's] moral ascendancy and influence over her was a given. It was that together with his flair to humiliate people and his blackmails which made her succumb to his sexual abuses. Ms. Tan values her job; in fact, she consciously keeps track of her performance ratings. An underling who believes that her immediate superior wields control over her continued employment or sudden separation from service will cower in fear to the point of tolerating the indignities committed on her. As [Judge Pacuribot] impressed on her, looking for a new job at her age is not easy.

At the time that [Judge Pacuribot] was taking advantage of Ms. Tan, [Judge Pacuribot's] proverbial explosives temper and short fuse were being put to good use to terrorize her with remarkable frequency. That dark spot in his character which has been brought up front in other people's consciousness in the months following his arrival in the Hall of Justice as a "terror" is enough intimidation. To Ms. Tan, to "submit now and complain later" is a good, albeit temporary, shelter against immediate public humiliation or job separation. Thus, Ms. Tan's failure to report to the police is understandable.

Also, [Judge Pacuribot] seems to have a masterful skill on how to exploit his victim's weaknesses. Ms. Tan is a stenographer, a position she has difficulty coping with because as [Judge Pacuribot] noted, her spelling, her grammar and her knowledge of the English language are not at par with the demands of her job. He has warned her of her "inefficiency" and of staying late in the evening as manager of the internet café. He pointed to her joining without prior SC permission a trip to Hongkong on a weekend in a packaged tour for stenographers in Cagayan de Oro City. Thus, with such faults and difficulties, she is the ideal prey. Her fear of losing a source of livelihood has made her behave submissive to him.

[Judge Pacuribot's] alibi that on October 20 and 21, 2004, he was in Gingoog City and it was impossible for him to be in Cagayan de Oro City on those days does not impress. It fails to establish the impossibility of his presence at the scene of the crime. With the convenience of his car, [Judge Pacuribot] could travel and be in different places, one after another in a short time. After all, the incidents on October 20 and 21, 2004 were all beyond office hours.

To support [Judge Pacuribot's] claim that he was present on those days in Gingoog City, he presented his Certificate of Service for

the month which shows that he was only on leave on October 4 to 7, 2004.

Noteworthy is the testimony of Ms. Tan stating that when she met [Judge Pacuribot] on Monday in their office after the rape incident, the latter told her not to file anymore her leave for October 20 and 21, 2004 and bragging, "*Ako na gud ni, kinsay magbuot nako?"* (It is me, who will prevail against me). If he can forego the filing of application for leave for his subordinates, much more is there reason for him not to submit an application for leave for his own absence reason why his Certificate of Service for the month of October is not reliable.

On 21 October 2004 – a Thursday, all schedule of hearing were cancelled and [Judge Pacuribot] said that they were cancelled the week before. Was the cancellation the week before due to the fact that [Judge Pacuribot] received the notice of their Masonic Conference scheduled on October 20 in Cagayan de Oro City? It was [Judge Pacuribot] who informed Ms. Tan of that Masonic Conference that evening of October 20. Ms. Tan could not just have invented that idea of a Masonic Conference. That is the reason why the cancellation of hearing on October 21 casts doubt on [Judge Pacuribot's] alibi.

Mere denial cannot prevail over the positive testimony of a witness. A mere denial, like alibi, is a self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. As between a categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail.

[Judge Pacuribot] cites Ms. Tan's merry behavior during the Christmas Party and his Birthday Party in Cagayan de Oro City as hardly the behavior of a rape victim or a victim or repeated sexual harassments. Normally, such a victim is expected to behave with animosity and grievance toward the offender. Unfortunately for her, she cannot afford to display such animosity and grievance unless it is at the cost of her job. If she cannot defy his demands when he victimizes her, shouldn't her economic realities prompt her to win her war with friendship? [Judge Pacuribot] should be reminded that in sexual harassments under Section 3 of RA No. 7877, an offense is committed regardless of whether the demand, request or requirement for submission is accepted by the subject of said act.

Ms. Tan's testimony was clear, frank and consistent. Her candid and clear-cut account of how respondent judge had been deceitful

and intimidating in his dealings with her that evening has inspired belief. And throughout her testimony, she succeeded in revealing how [Judge Pacuribot] took full advantage of his moral ascendancy over her as his underling, destroying whatever resistance she could put up by belittling her, outwitting her and insulting her to reduce her to submission.

There is no standard reaction of a victim in a rape incident. In fact, not every victim of rape can be expected to act in conformity with the expectations of anyone who has not been subjected to the same danger at any time. The workings of a human mind placed under emotional stress are unpredictable; people react differently.

Investigator, thus, finds [Judge Pacuribot] guilty beyond reasonable doubt of the charges of rape committed on October 20 and 21, 2004 in Cagayan de Oro City, and guilty of sexual harassments committed in respondent judge's chamber in RTC, Branch 27, Hall of Justice, Gingoog City against Ms. Sherlita O. Tan.

One can see in these two cases a common strategy used by [Judge Pacuribot] in achieving his vile purposes. He used deceit on Ms. Tan. He used deceit on Ms. Villafranca. He used intimidation on Ms. Tan and he used it on Ms. Villafranca. He makes use of a substantial blackmail against both.

In the case of *People v. Fernandez,* the Supreme Court had occasion to instruct us on the effects of intimidation, thus:

Physical resistance need not be established in rape when threats and intimidation are employed, and the victim submits herself to her attackers because of fear. Besides, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused. Rape victims show no uniform reaction. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. The use of a weapon, by itself, is strongly suggestive of force or at least intimidation, and threatening the victim with a gun is sufficient to bring her into submission. Thus, the law does not impose upon the private complainant the burden of proving resistance.

[Judge Pacuribot] computed nine (9) months, twenty-one (21) days as interval from the time Ms. Villafranca claimed she was raped on 22 February 2005 to 13 December 2005 when she filed the complaint. Ms. Tan also filed her administratively charge only thirteen

(13) months of being his superior's prey. Did delay cast doubt on the truthfulness of their claim?

In the case of *People v. Aguero, Jr.,* where there was a two (2) years delay in the filing of the complaint for rape, the Supreme Court said:

As to the alleged two-year delay in the filing of the complaint, suffice it to say, that complainant's failure to promptly report the incident does not sufficiently detract from her credibility and cannot be taken against her. It has been held that a rape victim's delay or hesitation in reporting the crime does not destroy the truth of the complaint and is not an indication of deceit as it is common for a rape victim to prefer silence for fear for her aggressor and lack of courage to face the public stigma of having been sexually abused.

In the case of *People v. Espinosa,* where the criminal complaint was filed about one and a half years from commission of the offense, the Supreme Court said:

x x x Delay in reavealing the commission of rape is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapist, for they prefer to silently bear the ignominy and pain, rather than reveal their shame to the world or risk the offender's making good on his threats. This is understandable, considering the inbred modesty of Filipinas and their aversion to the public disclosure of matters affecting their honor.

Delay in the filing of the charges does not necessarily undermine the credibility of witnesses.

The Supreme Court has deemed delay as justified when there is fear of reprisal, social humiliation, familial considerations and economic reasons. In the case of Ms. Tan, her tormentor is her superior who constantly dangles his influence and power over her and her job. As regards Ms. Villafranca, the threat to destroy her, her family and her family's good name was ever present; thus, haunting her emotionally and psychologically. The delay in reporting the rape cases committed by [Judge Pacuribot] has been justified.

On the repeated sexual harassments and violence committed separately on the persons of Ms. Tan and Ms. Villafranca within the chamber of [Judge Pacuribot], the latter deems them improbable because of the situation in his chamber. He points out that outside

his chamber is the staff room and there is a glassed window that divides them. Ms. Villafranca cited the incident on 13 October 2005 where [Judge Pacuribot] did lascivious acts on her inside the chamber in the presence of Placido Abellana, the court aide, and the latter's just turned his back and pretended to see nothing.

In the case of *People v. Lavador,* the rapist-appellant argued that rape was impossible due to the presence of the victim's son on her side. The Supreme Court said:

Nor can we accept the argument that the rape was improbable due to the presence of Noniluna's sons by her side. This Court has repeatedly declared that lust is no respecter of time and place and rape can be committed even in places where people congregate: in parks, along the roadside, within the school premises, inside the house where there are several occupants and even in the same room where other members of the family are sleeping. x x x.

[Judge Pacuribot's] defense of "improbability" cannot, therefore, be accepted.

[Judge Pacuribot] declares that the charges against him are complainants' tools of revenge against him. He cites his *Order* in *People v. Anude* and his letter reporting Ms. Villafranca's negligence as reasons from Ms. Villafranca's anger and resentment. Against Ms. Tan, he cites his warning against her inefficiency as stenographer, her moonlighting in her internet café his refusal to grant her a loan of ₱200,000.00 or being her guarantor.

In the case of *Simbajon v. Esteban,* the Supreme Court in believing the testimony of the complainant saying:

"The investigating judge correctly disregarded the respondent's imputation of ill motive on the part of complainant. **No married woman would cry sexual assault, subject herself and her family to public scrutiny and humiliation, and strain her marriage in order to perpetuate a falsehood.**

Indeed, it is against human nature for a married woman to fabricate a story that would not only expose herself to a lifetime of dishonor, but destroy her family as well. Besides, there is no sufficient evidence of any ill-motive imputable to Mesdames Tan and Villafranca to narrate anything other than their respective desire to tell the truth and seek redress for the wrong inflicted on each of them. For the kind of reputation [Judge Pacuribot] has in the Hall of Justice and

by his behavior where he projects himself as full of influence and power, these two women will be the last to even cross the path of respondent judge without just cause. Thus, the presumption applies that, one will not act and prevaricate *"and cause damnation to one who brought him no harm or injury.*

[Judge Pacuribot's] theory that all these charges are part of the sinister plan to oust [Judge Pacuribot] from office at the instigation of Mr. Waniwan is far fetched.

On 8 December 205, (sic) or earlier, when Ms. Tan filed her complaint, there was no Mr. Waniwan to speak of. Mr. Waniwan only materialized in February 2006 when she filed the same charges against [Judge Pacuribot] before the City Prosecutor of Gingoog City. Media men at the slightest clue of a "scoop" hound without let up those who could be sources of information. When the media men became nosey, it was already in February 2006 when Ms. Tan filed the case in the Prosecutor's Office. By then, the filing of the administrative charge of Ms. Tan and Ms. Villafranca was *fait accompli.* In the case of Ms. Villafranca, the Waniwan theory is patently absurd. Two media men were eager in February 2006 to take hold of Ms. Villafranca's affidavit but she refused them staunchly. It is incredible that two (2) married women would prevaricate against a person who has power and control over their jobs at the mere urging of Mr. Waniwan is irrelevant. In *People v. Mortales,* the Supreme Court, speaking through now Chief Justice Renato Puno, appositely said:

No married woman would subject herself to public scrutiny and humiliation to foist a false charge of rape. Neither would she take the risk of being alienated from her husband and her family. The fact that the victim resolved to face the ordeal and relate in public what many similarly situated would have kept secret evinces that she did so to obtain justice. Her willingness and courage to face the authorities as well as to submit to medical examination are mute but eloquent confirmation of her sincere resolve.

Finally, it may be true there are minor and trivial discrepancies in Ms. Tan's testimony, but they neither impair the integrity of the victim's evidence as a whole nor reflect negatively on the witness' honesty. Such inconsistencies, which might have been caused by the natural fickleness of memory, even tend to strengthen, rather than weaken the credibility of the witness, for they shake off the suspicion of a rehearsed testimony.

In sum, [Judge Pacuribot] should be made administratively liable for the charges against him in A.M. Nos. RTJ-06-1982 and RTJ-06-1983.

Black's Law Dictionary defines integrity to mean "soundness or moral principle and character." It is said to be synonymous with "probity," "honesty," and "uprightness." The evidence adduced indubitably show that [Judge Pacuribot] lacks the honesty in dealing with his two subordinates herein. Not only did he fail to live up to the high moral standard expected of a member of the Judiciary but he has transgressed the norms of morality expected of every person.

[Judge Pacuribot's] offenses in raping his victims and sexually harassing them were committed with aggravation. He knew they were married but instead of helping strengthen or protect their marriage, he tried his best to destroy their marital bonds.

Indeed, [Judge Pacuribot's] reprehensible acts amount to gross misconduct, and immorality the depravity of which is quite rare. They undoubtedly violated the Code of Judicial Conduct. They are classified as severe charges under Section 8, Rule 140 of the Rules of Court.

Under Section 22 of the same Rules, any of the following sanctions may be imposed if the respondent is guilty of a serious charge:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government owned or controlled corporations. Provided, however, That the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more that three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

In *Simbajon v. Esteban,* the respondent Judge Esteban, for his sexual advances on one of his female subordinates which consisted of "grabbing her, kissing her all over her face, embracing her and touching her right breast" was preventively suspended for the duration of the investigation until further notice AND was subsequently dismissed from service with forfeiture of all retirement benefits

except leave credits and with prejudice to reemployment in any branch or instrumentality of the government, including government – owned or controlled corporations.

Herein [Judge Pacuribot's] conduct is far worse that those of Judge Esteban. [Judge Pacuribot's] acts indubitably went far beyond the bounds of decency and morality. He raped and repeatedly sexually assaulted, not only one, but two female, married subordinates. He did not only violate his victims' womanhood and their dignities as persons but he aimed to weaken, then eventually destroy two families. By such act, [Judge Pacuribot] disgraced his noble office, as well as the judiciary, in the eyes of the public. He has shown himself unworthy of the judicial robe.

When the fading sobs of two tearful women finally died down and their copious tears dried in the numerous hankies that absorbed them what emerges is a figure that unmistakably exudes the abominable torpedo of marital bonds, a practicing deceiver and a merciless pervert whose face is unrecognizable as he is hooded with a judicial robe that helps conceal his dark side. His family, wife and children may have all been innocently kept away from knowing this dark side and to spare them from the afflictive and crushing humiliation of having a husband and father of such a character, may the foregoing description be a "for your eyes only" to the members of the highest court and the court administrator.

Thus, Investigating Justice Dy-Liacco Flores recommended:

> This finding is made with full awareness of the recent Supreme Court ruling on quantum of evidence required in the cases at bench. In the 7 August 2007 case of *Alquizar v. Carpio, et al.,* the Supreme Court pronounced that:
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> x x x. In administrative or disciplinary proceedings, the burden of proving the allegations in the complaint rests on the complainant. While substantial evidence would ordinarily suffice to support a finding of guilt, the rule is a bit different where the proceedings involve judges charged with grave offense. Administrative proceedings against judges are, by nature, highly penal in character and are to be governed by the rules applicable to criminal cases. The quantum of proof required to support the administrative charges or to establish the ground/s for the removal of a judicial officer should thus be more than substantial;

they must be proven beyond reasonable doubt. To borrow from *Reyes v. Mangino*:

> Inasmuch as what is imputed against respondent Judge connotes a misconduct so grave that, if proven, would entail dismissal from the bench, the quantum of proof required should be more than substantial.

It is doctrinal that the requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind. The evidence adduced here overwhelmingly established moral certainty that respondent judge raped and sexually harassed complainant Mesdames Tan and Villafranca on separate and repeated occasions.

xxx xxx xxx

Having found [Judge Pacuribot] guilty beyond reasonable doubt of the offenses of rape and repeated sexual harassments, the penalty of dismissal from service with forfeiture of retirement benefits except accrued leave credits is hereby recommended.[11]

We agree in the recommendation of the Investigating Justice.

We have reviewed the record of this case and are thereby satisfied that the findings and recommendations of the Investigating Justice are in truth adequately supported by the evidence and are in accord with applicable legal principles. We therefore resolve to adopt such findings and recommendations relative to the administrative liability of the respondent judge for grave misconduct and immorality.

The integrity of the Judiciary rests not only upon the fact that it is able to administer justice, but also upon the perception and confidence of the community that the people who run the system have administered justice. At times, the strict manner by which we apply the law may, in fact, do justice but may not necessarily create confidence among the people that justice, indeed, has been served. Hence, in order to create such confidence, the people who run the judiciary, particularly judges and justices,

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[11] *Id.* at 57-86.

must not only be proficient in both the substantive and procedural aspects of the law, but more importantly, they must possess the highest integrity, probity, and unquestionable moral uprightness, both in their public and in their private lives. Only then can the people be reassured that the wheels of justice in this country run with fairness and equity, thus creating confidence in the judicial system.

With the avowed objective of promoting confidence in the Judiciary, the Code of Judicial Conduct has the following provisions:

Canon I

Rule 1.01: A Judge should be the embodiment of competence, integrity and independence.

Canon II

Rule 2.00: A Judge should avoid impropriety and the appearance of impropriety in all activities.

Rule 2.01: A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

We have repeatedly reminded members of the Judiciary to so conduct themselves as to be beyond reproach and suspicion, and to be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their everyday lives. For no position exacts a greater demand on the moral righteousness and uprightness of an individual than a seat in the Judiciary. Judges are mandated to maintain good moral character and are at all times expected to observe irreproachable behavior so as not to outrage public decency. We have adhered to and set forth the exacting standards of morality and decency, which every member of the judiciary must observe.[12] A magistrate is judged not only by his official acts but also by his private morals, to the extent that such private morals are externalized.[13] He should not only possess proficiency

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[12] *Sicat v. Alcantara*, A.M. No. R-6-RTJ, 11 May 1988, 161 SCRA 284, 288-289.

[13] *Junio v. Rivera, Jr.,* A.M. No. MTJ-91-565, 30 August 1993, 225 SCRA 688, 706.

in law but should likewise possess moral integrity for the people look up to him as a virtuous and upright man.

We explained the rationale for requiring judges to possess impeccable moral integrity, thus:

> The personal and official actuations of every member of the Bench must be beyond reproach and above suspicion. The faith and confidence of the public in the administration of justice cannot be maintained if a judge who dispenses it is not equipped with the cardinal judicial virtue of moral integrity, and if he obtusely continues to commit an affront to public decency. In fact, moral integrity is more than a virtue; it is a necessity in the judiciary.[14]

We also stressed in *Castillo v. Calanog, Jr.*[15] that:

> The code of Judicial Ethics mandates that the conduct of a judge must be free of [even] a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala and as a private individual. There is no dichotomy of morality: a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have very recently explained, a judge's official life can not simply be detached or separated from his personal experience. Thus:
>
>> Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.
>>
>> A judge should personify integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life should be above suspicion."

Judge Pacuribot miserably failed to measure up to these exacting standards. He behaved in a manner unbecoming a judge and model of moral uprightness. He betrayed the people's high

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[14] *Dy Teban Hardware and Auto Supply Co. v. Tapucar*, A.M. No. 2300-CFI, 31 January 1981, 102 SCRA 493, 504.

[15] A.M. No. RTJ-90-447, 12 July 1991, 199 SCRA 75, 83-84.

expectations and diminished the esteem in which they hold the Judiciary in general.

It is well settled that in administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint. Substantial evidence is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[16] In the cases at bar, the complainants Ms. Tan and Ms. Villafranca were able to adequately substantiate their allegations.

We find totally unacceptable the temerity of Judge Pacuribot in subjecting the complainants, both his subordinates, to his unwelcome sexual advances and acts of lasciviousness. Over long periods of time, he persistently solicited sexual favors from Ms.Tan and Ms. Villafranca. When they refused, he made their working conditions so unbearable that Ms. Tan was eventually forced to transfer to another office and Ms. Villafranca to seek employment abroad. Certainly, no judge has a right to solicit sexual favors from any court employee, even from a woman of loose morals.[17] Judge Pacuribot's conduct indubitably bears the marks of impropriety and immorality. Not only do his actions fall short of the exacting standards for members of the judiciary; they stand no chance of satisfying the standards of decency even of society at large. His severely abusive and outrageous acts, which are an affront to women, unmistakably constitute sexual harassment because they necessarily "x x x result in an intimidating, hostile, or offensive environment for the employee[s]."[18]

We need not detail again all the lewd and lustful acts committed by Judge Pacuribot in order to conclude that he is indeed unworthy to remain in office. The narration of the Investigating Justice

[16] *Jugueta v. Estacio,* A.M. No. CA-04-17-P, 25 November 2004, 444 SCRA 10, 15-16.

[17] *Madredijo v. Loyao, Jr.*, A.M. No. RTJ-98-1424, 13 October 1999, 316 SCRA 544, 559.

[18] *Dawa v. De Asa*, A.M. No. MTJ-98-1144, 22 July 1998, 292 SCRA 703, 726.

was sufficiently thorough and complete. The audacity under which the sexual violation of the complainants were committed and the seeming impunity with which they were perpetrated by Judge Pacuribot shock our sense of morality. All roads lead us to the conclusion that Judge Pacuribot has failed to behave in a manner that will promote confidence in the Judiciary. His actuations, if condoned, would damage the integrity of the Judiciary, fomenting distrust in the system. Hence, his acts deserve no less than the severest form of disciplinary sanction — dismissal from the service.

On his part, Judge Pacuribot put up the defense of denial, attributing ill feelings and bad motives to Ms. Tan and Ms. Villafranca.

Already beyond cavil is the evidentiary rule that mere denial does not overturn the relative weight and probative value of an affirmative assertion. Denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with no evidentiary value. Like the defense of alibi, denial crumbles in the light of positive declarations.[19] Denial cannot prevail over the positive identification of the accused by the witnesses who had no ill motive to testify falsely. Moreover, in the case at bar, there is utter lack of basis to sustain the purported ill motives attributed by Judge Pacuribot to the complainants. The Investigating Justice correctly disregarded Judge Pacuribot's imputation. No married woman would cry sexual assault, subject herself and her family to public scrutiny and humiliation, and strain her marriage in order to perpetrate a falsehood.[20] The only plausible and satisfactory explanation for us is that the charges against respondent are true.

Judge Pacuribot and his witnesses failed to overcome the evidence presented by the complainants.

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[19] *Jugueta v. Estacio*, *supra* note 16 at 16.

[20] *Simbajon v. Esteban*, A.M. No. MTJ-98-1162, 11 August 1999, 312 SCRA 192, 200.

Let it be remembered that respondent has moral ascendancy and authority over complainants, who are mere employees of the court of which he is an officer. His actuations are aggravated by the fact that complainants are his subordinates over whom he exercises control and supervision, he being the executive judge. He took advantage of his position and power in order to carry out his lustful and lascivious desires. Instead of acting *in loco parentis* over his subordinate employees, he was even the one who preyed on them, taking advantage of his superior position.[21]

In sum, we concur with the Investigating Justice in holding that complainants were able to muster the requisite quantum of evidence to prove their charges against Judge Pacuribot. By having sexual intercourse with Ms Tan and Ms. Villafranca, his subordinates, respondent violated the trust reposed on his high office and completely failed to live up to the noble ideals and strict standards of morality required of members of the Judiciary.

Having tarnished the image of the Judiciary, we hold, without any hesitation, that Judge Pacuribot be meted out the severest form of disciplinary sanction - dismissal from the service for the charges of sexual harassment against him.

We, however, find the complaints of the Anonymous Letter Writers without merit. Beyond the bare allegations that Judge Pacuribot maintained an illicit relationship with a certain Sheryl Gamulo and fathered two children with her, there is nothing in the records that would indicate that he, indeed, committed the crime charged. We have stressed time and again that allegations must be proven by sufficient evidence. Mere allegation is not evidence and is not equivalent to proof.[22] The letter dated 4 April 2005 from "concerned citizens" asking for the relief of Judge Pacuribot on the grounds that he has been terrorizing and harassing most of the employees has been rendered moot by the disposition of these cases.

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[21] *Talens-Dabon v. Judge Arceo*, 328 Phil. 692, 708 (1996).

[22] *Nedia v. Laviña*, A.M. No. RTJ-05-1957. 26 September 2005, 471 SCRA 10, 20.

All those who don the judicial robe must always instill in their minds the exhortation that "[T]he administration of justice is a mission. Judges, from the lowest to the highest levels are the gems in the vast government bureaucracy, beacon lights looked upon as the embodiments of all that is right, just and proper, the ultimate weapons against injustice and oppression. The Judiciary hemorrhages every time a Judge himself transgresses the very law he is sworn to uphold and defend at all costs. This should not come to pass."[23]

WHEREFORE, Judge Rexel M. Pacuribot is hereby *DISMISSED* from the service for gross misconduct and immorality prejudicial to the best interests of the service, with forfeiture of all retirement benefits and with prejudice to re-employment in any branch of the government, including government-owned and controlled corporations, except the money value of accrued earned leave credits. Respondent judge is hereby *ORDERED* to cease and desist immediately from rendering any order or decision; or from continuing any proceedings, in any case whatsoever, effective upon receipt of a copy of this Decision. Lastly, respondent judge is *REQUIRED* to *SHOW CAUSE* why he should not be disbarred as a member of the Philippine Bar.

Let a copy of this Decision be furnished the Department of Justice for appropriate action.

This Decision is immediately executory. The Office of the Court Administrator shall see to it that a copy of this resolution be immediately served on respondent.

SO ORDERED.

Puno, C.J. (Chairperson), Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and *Leonardo-de Castro, JJ.,* concur.

Carpio, J., on leave.

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[23] *Employees of the RTC of Dagupan City v. Judge Falloran-Aliposa,* 384 Phil. 168, 191 (2000).

EN BANC

[G.R. No. 123346. December 14, 2007]

MANOTOK REALTY, INC. and MANOTOK ESTATE CORPORATION, *petitioners, vs.* **CLT REALTY DEVELOPMENT CORPORATION,** *respondent.*

[G.R. No. 134385. December 14, 2007]

ARANETA INSTITUTE OF AGRICULTURE, INC., *petitioner, vs.* **HEIRS OF JOSE B. DIMSON, REPRESENTED BY HIS COMPULSORY HEIRS: HIS SURVIVING SPOUSE, ROQUETA R. DIMSON AND THEIR CHILDREN, NORMA AND CELSA TIRADO, ALSON AND VIRGINIA DIMSON, LINDA AND CARLOS LAGMAN, LERMA AND RENE POLICAR, AND ESPERANZA R. DIMSON; REGISTER OF DEEDS OF MALABON,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; AS A RULE, THE ORIGINAL CERTIFICATE OF TITLE IS ISSUED ON THE DATE THE DECREE OF REGISTRATION IS TRANSCRIBED; SIGNIFICANCE, EXPLAINED.**—With the plain language of the law as mooring, this Court in two vintage and sound rulings made it plain that the original certificate of title is issued on the date the decree of registration is transcribed. In the first ruling, it was held that there is a marked distinction between the entry of the decree and the entry of the certificate of title; the entry of the decree is made by the chief clerk of the land registration and the entry of the certificate of title is made by the register of deeds. Such difference is highlighted by Sec. 31 of Act No. 496 as it provides that the certificate of title is issued in pursuance of the decree of registration. In the second, it was stressed that what stands as the certificate of the title is the transcript of the decree of registration made by the registrar of deeds in the registry. Otherwise stated, what is actually issued by the register of

deeds is the certificate of title itself, not the decree of registration, as he is precisely the recipient from the land registration office of the decree for transcription to the certificate as well as the transcriber no less. Since what is now acknowledged as the authentic OCT No. 994 indicates that it was received for transcription by the Register of Deeds of Rizal on 3 May 1917, it is that date that is the date of registration since that was when he was able to transcribe the decree in the registration book, such entry made in the book being the original certificate of title. Moreover, it is only after the transcription of the decree by the register of deeds that the certificate of title is to take effect.

2. ID.; ID.; ACTION FOR RECONVEYANCE; REQUIREMENTS.— The established legal principle in actions for annulment or reconveyance of title is that a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

3. ID.; ID.; CADASTRAL COURTS; JURISDICTION; CLARIFIED.— The reality that cadastral courts may have jurisdiction over lands already registered in ordinary land registration cases was acknowledged by this Court in *Pamintuan v. San Agustin*. Such jurisdiction is "limited to the necessary correction of technical errors in the description of the lands, provided such corrections do not impair the substantial rights of the registered owner, and that such jurisdiction cannot operate to deprive a registered owner of his title." It was further clarified in *Timbol v. Diaz* that the limited jurisdiction of the cadastral court over such lands even extends to the determination of "which one of the several conflicting registered titles shall prevail[, as such] power would seem to be necessary for a complete settlement of the title to the land, the express purpose of cadastral proceedings, and must therefore be considered to be within the jurisdiction of the court in such proceedings." The question raised in *Sideco v. Aznar* concerned the validity of an order of a cadastral court directing the issuance of new certificates of title in the name of Sideco and his children, at Sideco's own prayer, over land previously registered in the name of Crispulo Sideco. This Court ruled that such order was valid and did not amount to a

readjudication of the title. After the cadastral proceedings therein had been initiated, the chief surveyor had reported to the cadastral court that the land was covered by a decree in a land registration proceeding and registered in the name of Sideco; the surveyor recommended that the title be cancelled and a new one issued in the names of such persons as the court may determine. In ruling that the new titles were valid, the Court stated that "[t]he proceedings did not in any way purport to reexamine the title already issued, or to readjudicate the title of the land. They were precisely predicated on the finality of the title already issued, because it was the registered owner who was asked to express his desire with respect thereto, and the court's order precisely followed the petition of the registered owner." x x x What is prohibited in a cadastral proceeding is the registration of land, already issued in the name of a person, in the name of another, divesting the registered owner of the title already issued in his favor, or the making of such changes in the title as to impair his substantial rights. Yet such prohibition does not mean that the cadastral court will not have jurisdiction over the action involving the previously registered land, as explained in *Pamintuan* and *Timbol*, or that the cadastral court may not issue a new title at all even if it would not impair the rights of the previously registered owner, as emphasized in *Sideco*. The dissent contents itself with the simplistic conclusion that because there was a cadastral case covering the Maysilo Estate from which the titles emanated, such titles could not have been valid. It is clear that there could be such titles issued, and they would be valid for so long as they do not impair the rights of the original registrant to whom OCT No. 994 dated 3 May 1917 was issued.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ORIGINAL CASES; COURT OF APPEALS HAS THE AUTHORITY TO REVIEW FINDINGS OF FACT, AS A RULE; SUSTAINED.— Under Section 6 of Rule 46, which is applicable to original cases for *certiorari*, the Court may, whenever necessary to resolve factual issues, delegate the reception of the evidence on such issues to any of its members or to an appropriate court, agency or office. The delegate need not be the body that rendered the assailed decision. The Court of Appeals generally has the authority to review findings of fact. Its conclusions as to findings of fact are generally accorded

great respect by this Court. It is a body that is fully capacitated and has a surfeit of experience in appreciating factual matters, including documentary evidence. In fact, the Court had actually resorted to referring a factual matter pending before it to the Court of Appeals. In *Republic v. Court of Appeals*, this Court commissioned the former Thirteenth Division of the Court of Appeals to hear and receive evidence on the controversy, more particularly to determine "the actual area reclaimed by the Republic Real Estate Corporation, and the areas of the Cultural Center Complex which are 'open spaces' and/or 'areas reserved for certain purposes,' determining in the process the validity of such postulates and the respective measurements of the areas referred to." The Court of Appeals therein received the evidence of the parties and rendered a "Commissioner's Report" shortly thereafter. Thus, resort to the Court of Appeals is not a deviant procedure. The provisions of Rule 32 should also be considered as governing the grant of authority to the Court of Appeals to receive evidence in the present case. Under Section 2, Rule 32 of the Rules of Court, a court may, *motu proprio*, direct a reference to a commissioner when a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or for carrying a judgment or order into effect. The order of reference can be limited exclusively to receive and report evidence only, and the commissioner may likewise rule upon the admissibility of evidence. The commissioner is likewise mandated to submit a report in writing to the court upon the matters submitted to him by the order of reference. In *Republic*, the commissioner's report formed the basis of the final adjudication by the Court on the matter.

CORONA, *J., concurring and dissenting opinion:*

1. **REMEDIAL LAW; APPEALS; ISSUES AND ARGUMENTS NOT ADEQUATELY BROUGHT TO THE ATTENTION OF THE LOWER COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; CASE AT BAR.—** A party cannot adopt a new theory or argument, specially one that is inconsistent with its previous contention. The Court should not countenance CLT's act of adopting inconsistent postures as this would be a mockery of justice. This rule applies more strictly in case of appeal. As this Court declared in *Rizal Commercial Banking Corporation v. Commissioner of*

Internal Revenue: The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process.

2. **ID.; ID.; AS A RULE, THE SUPREME COURT IS NOT A TRIER OF FACT; EXCEPTIONS. —**True, this Court is not a trier of facts, specially if the factual findings of the trial court are affirmed by the appellate court. But it is not without exceptions. The Court may review the findings of fact of the trial and appellate courts when such findings are manifestly mistaken, absurd or impossible. Moreover, to lay the matter to rest and in the interest of justice, this Court can set aside the procedural barrier to a re-examination of the facts to resolve the legal issues.

3. **CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; AS A RULE, WHEN TWO CERTIFICATES OF TITLE ARE ISSUED TO TWO DIFFERENT PERSONS, THE EARLIER IN DATE MUST PREVAIL; EXPLAINED.—**The rule is that where two certificates of title are issued to different persons covering the same parcel of land in whole or in part, the earlier in date must prevail as between the original parties and, in case of successive registration where more than one certificate is issued over the land, the person holding title under the prior certificate is entitled to the property as against the person who relies on the second certificate. In other words, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and that person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from, the person who was the holder of the earliest certificate.

4. **ID.; ID.; ID.; IRREVOCABLE AND INDEFEASIBLE NATURE THEREOF, EXPLAINED.—** A certificate of title cannot be changed, altered, modified enlarged or diminished in a collateral proceeding. As a rule, it is irrevocable and indefeasible. *A strong presumption exists that it was validly and regularly issued*. The duty of courts is to see to it that this title is

maintained and respected unless assailed in a direct proceeding. A Torrens title cannot be attacked collaterally. The efficacy and integrity of the Torrens system must be protected at all costs.

5. **REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; MANDATORY APPLICATION THEREOF TO REPORTS OF THE SENATE AND THE DEPARTMENT OF JUSTICE.—** The reports of the Senate and the Department of Justice are official acts of co-equal branches of the government. Under Section 9, Rule 129 of the Rules of Court, it is mandatory for courts to take judicial notice of these reports.

6. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; JUDICIAL POWER; DEFINED AND CONSTRUED.—** Judicial power "includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable." Courts resolve only cases that involve actual controversies. They are mandated to settle disputes between real conflicting parties through the application of the law. Until it can be shown that an actual controversy exists, courts have no jurisdiction to render a binding decision. A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. *There will be no more justiciable controversy in these cases* after the Court declares that the respective certificates of title of CLT and the heirs of Dimson are void and unworthy of legal recognition. Thus, there will be nothing more to remand.

SANDOVAL-GUTIERREZ, *J., dissenting opinion:*

1. **POLITICAL LAW; LEGISLATIVE DEPARTMENT; INVESTIGATION IN CONGRESSIONAL COMMITTEE DISTINGUISHED FROM A CASE IN COURT.—** The Senate Committee, it must be stressed, has a different role from that of the Judiciary. The courts of law have the constitutional duty to adjudicate legal disputes properly brought before them. A congressional investigation, however, is conducted in aid of legislation. As aptly held by this Court, through then Justice (now Chief Justice) Reynato S. Puno, in **Agan, Jr., et al. vs. Philippine International Air Terminals Co., Inc., et al**.: Finally, the respondent Congressmen assert that at least two

(2) committee reports by the House of Representatives found the PIATCO contracts valid and contend that this Court, by taking congnizance of the cases at bar, reviewed an action of a co-equal body. They insist that the Court must respect the findings of the said committees of the House of Representatives. With due respect, **we cannot subscribe to their submission. There is a fundamental difference between a case in court and an investigation of a congressional committee. The purpose of a judicial proceeding is to settle the dispute in controversy by adjudicating the legal rights and obligations of the parties to the case. On the other hand, a congressional investigation is conducted in aid of legislation.** (*Arnault v. Nazareno*, G.R. No. L-3820, July 18, 1950). Its aim is to assist and recommend to the legislature a possible action that the body may take with regard to a particular issue, specifically as to whether or not to enact a new law or amend an existing one. *Consequently, this Court cannot treat the findings in a congressional committee report as binding because the facts elicited in congressional hearings are not subject to the rigors of the Rules of Court on admissibility of evidence*. The Court in assuming jurisdiction over the petition at bar simply performed its constitutional duty as the arbiter of legal disputes properly brought before it, especially in this instance when public interest requires nothing less.

2. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT WHEN AFFIRMED BY THE COURT OF APPEALS ARE ACCORDED THE HIGHEST DEGREE OF RESPECT AND GENERALLY NOT DISTURBED ON APPEAL; RATIONALE. –** Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended, strictly forbids this Court from resolving **questions of fact** as it is not a trier of facts. **Thus, it is not our function to review factual issues and evaluate or weigh the probative value of the evidence presented by the parties already considered in the proceedings below. Since there is not specific showing that the trial courts and the Court of Appeals committed any reversible error, we cannot disregard the elementary and well-established rule that where the findings of fact of the trial courts are affirmed by the Court of Appeals, as in these cases, the same are accorded the highest degree of respect and, generally, will not be disturbed on appeal. Such findings are binding and conclusive on this Court.**

3. **ID.; ID.; ID.; REMAND OF THE CASE TO THE COURT OF APPEALS, NOT NECESSARY.—** To reiterate, there is absolutely no basis to remand these cases to the Court of Appeals. To repeat, the trial courts had already received, evaluated, and appreciated the respective evidence of the contending parties in support of their contrasting claims on the validity of their respective titles. The Court of Appeals has affirmed the uniform findings of the trial courts. Significantly, all the courts below have **consistent findings** that the titles of the **Manotok Corporations and the Araneta Institute** are spurious, and that those of the **CLT Realty and Jose B. Dimson are valid, having originated from OCT No. 994 of the Registry of Deeds of Rizal, based on the Decree No. 36455 issued on April 19, 1917 in Land Registration Case No. 4429.**

4. **CIVIL LAW; LAND REGISTRATION; NATURE OF LAND REGISTRATION PROCEEDINGS AS PROCEEDINGS IN REM, EXPLAINED.—** Section 2 of Act No. 496 (otherwise known as "The Land Registration Act"), as amended, provides that the land registration proceedings under the said Act "shall be proceedings ***in rem***." Section 38, same Act, also provides that *"(*e)**very decree of registration shall bind the land, and quiet title thereto," and "shall be conclusive upon and against all persons,** including the Insular Government and all the branches thereof, **whether mentioned by name in the application, notice, or citation, or included in the general description 'To whom it may concern.'"** Section 38 further declares that upon the expiration of one year from entry of the decree of registration within which the said decree may be questioned, "every decree or certificate of title issued xxx **shall be incontrovertible,"** meaning, it can no longer be changed, altered or modified. This has to be the rule so as not to defeat the objective of the Torrens system, which is **to guarantee the indefeasibility of the title to the property.** Thus, we have invariably ruled that since the proceedings for the registration of land titles under the Torrens system is an action *in rem,* not *in personam*, personal notice to all claimants of the *res* is **not necessary** to give the land registration court jurisdiction to deal with and dispose of the *res*; and neither may lack of such personal notice vitiate or invalidate the decree or title issued in a registration proceeding. This rule is founded

on the principle that the State, as sovereign over the land situated within it, may provide for the adjudication of title in a proceeding *in rem*, which shall be **binding upon all persons, known or unknown**, herein petitioners included.

5. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *STARE DECISIS ET NON QUIETA MOVERE;* CONSTRUED.** – *Stare decisis et non quieta movere.* Stand by the decision and disturb not what is settled. This established doctrine simply means that a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different, as in these cases. **It comes from the basic principle of justice that like cases ought to be decided alike.** Thus, where the same question relating to the same event is brought by parties similarly situated as in a previous case already litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.

6. **ID.; ID.; TRIAL BY COMMISSIONER; TRIAL COURT MAY RELY ON THEIR FINDINGS AND CONCLUSIONS; RATIONALE.—** It bears stressing that it is well within the power of the trial court to **adopt** the commissioners' Majority Report as the basis of its judgment. The very reason why the commissioners were appointed by the trial court, upon agreement of the parties, was to determine whether there is overlapping of the parties' titles. By appointing them based on their background, expertise and experience in the fields of geodetic engineering, the contending parties and the trial court **concede that their chosen commissioners are in a better position to determine which of the titles were regularly issued.** Consequently, the trial court may rely on their findings and conclusions. Under Section 11, Rule 32 of the 1997 Rules of Civil Procedure, as amended, the trial court is clearly authorized to "render judgment **by adopting,** modifying, or rejecting **the report** *(***by the commissioners***) in whole* or in part or it may receive further evidence or may recommit it with instructions." Furthermore, the trial court did not conduct further reception of evidence before deciding the case since not one of the parties asked for it. The parties themselves **opted** to submit the case for decision on the bases, among others, of their respective comments on the commissioners' Reports. By doing so, they unmistakably impressed upon the trial court

that their respective evidence they submitted to the commissioners were complete and ripe for adjudication. **In fact, petitioners themselves specifically prayed that the trial court adopt in its Decision the Minority Report of a single Commissioner, which is favorable to them.** Certainly, under the doctrine of *estoppel,* petitioners are **barred** from assailing the trial court's judgment for being premature since they themselves had asked the said court that it should already decide the case. They cannot now espouse a posture inconsistent with their conduct below as this is anthema to the orderly administration of justice.

7. ID.; ID.; ID.; WHEN COMMISSIONERS ACTED WITHIN THE SCOPE OF THEIR AUTHORITY; SUSTAINED IN CASE AT BAR.— In *De la Rama Steamship Co. v. National Development Co.,* this Court held that **where, as here, a party fails to file opportunely his objections to the Report of the commissioner or referee, questions relating to the Report cannot be reviewed and he cannot dispute the findings therein or escape the legal consequences flowing therefrom.** In the same vein, we ruled in *Santos v. De Guzman and Martinez* that: **By way of emphasis,** we now desire to add that if a party desires to challenge the findings of a referee, he **must do so by timely and specific exceptions** to the referee's report. If he fails to make such exceptions and the report is confirmed by the trial judge, he is **bound by the findings and cannot be heard to dispute their truthfulness or escape the legal consequences flowing therefrom.** Questions relating to the report of a referee can be **reviewed only where the record discloses the exceptions taken thereto.** The Commissioners explained their findings and stated their conclusions in their Majority Report pursuant to their mandate to *resolve* the issue of whether petitioners **Manotok Corporations' titles overlap that of CLT Realty. Intrinsically intertwined with such mandate** is the commissioners' **duty to state the basis** of their findings and conclusions. This is obviously necessary to enable the trial court, as well as the appellate court in case of appeal, to fully understand the commissioners' findings and to make proper judgment. Petitioners very well know that the commissioners' Report are still **subject to approval by the trial court which has the final say** on the matter. Clearly, the commissioners acted within their authority.

APPEARANCES OF COUNSEL

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R E S O L U T I O N

TINGA, *J.*:

The stability of the country's Torrens system is menaced by the infestation of fake land titles and deeds. Any decision of this Court that breathes life into spurious or inexistent titles all but contributes to the blight. On the contrary, the judicial devotion is towards purging the system of illicit titles, concomitant to our base task as the ultimate citadel of justice and legitimacy.

These two petitions[1] involve properties covered by Original Certificate of Title (OCT) No. 994 which in turn encompasses 1,342 hectares of the Maysilo Estate.[2] The vast tract of land stretches over three (3) cities, comprising an area larger than the sovereign states of Monaco and the Vatican.[3] Despite their prime location within Metropolitan Manila, the properties included in OCT No. 994 have been beset by controversy and sullied by apparent fraud, cloudy titles and shady transfers. It may as well be renamed the "*Land of Caveat Emptor*."

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[1] The present motions for reconsideration seek reversal of the Decision dated 29 November 2005 (see 476 SCRA 305) promulgated in the consolidated cases of *Manotok Realty v. CLT Realty* (G.R. No. 123346), *Araneta Institute v. Heirs of Jose B. Dimson* (G.R. No. 13485) and *Sto. Niño Kapitbahayan Association v. CLT Realty* (G.R. No. 148767). However, the losing party in G.R. No. 148767 failed to file any motion for reconsideration within the reglementary period.

[2] See Memorandum filed by the Office of the Solicitor General dated 25 August 2006, p. 6.

[3] The total land areas of Monaco and the Vatican are 1.95 sq km and .44 sq. km. respectively. The New York Times 2008 Almanac (2007 ed.), p. 632.

The controversy attending the lands of OCT No. 994 has not eluded this Court. Since 1992, our findings and ruling in *MWSS v. Court of Appeals*[4] have stood as the Rosetta Stone in deciphering claims emanating from OCT No. 994, as was done in *Gonzaga v. Court of Appeals*,[5] and in the Court's Decision dated 29 November 2005 (2005 Decision) in these cases.[6] Yet in the course of resolving these motions for reconsideration came the revelation that OCT No. 994 was lost in translation following *MWSS*. Certain immutable truths reflected on the face of OCT No. 994 must emerge and gain vitality, even if we ruffle feathers in the process.

I.

A recapitulation of the facts, which have already been extensively narrated in the 2005 Decision, is in order. For clarity, we narrate separately the antecedent facts in G.R. Nos. 123346 and 134385.

A. G.R. No. 123346, Manotok Realty, Inc. and Manotok Estate Corporation, vs. CLT Realty Development Corporation

On 10 August 1992, CLT Realty Development Corporation (CLT) sought to recover from Manotok Realty, Inc. and Manotok Estate Corporation (Manotoks) the possession of Lot 26 of the Maysilo Estate in an action filed before the Regional Trial Court of Caloocan City, Branch 129.[7]

CLT's claim was anchored on Transfer Certificate of Title (TCT) No. T-177013 issued in its name by the Caloocan City Register of Deeds, which title in turn was derived from Estelita Hipolito (Hipolito) by virtue of a Deed of Sale with Real Estate Mortgage dated 10 December 1988. Hipolito's title emanated from Jose Dimson's (Dimson) TCT No. R-15169, a title issued pursuant to an order of the Court of First Instance (CFI) of

[4] G.R. No. 103558, 17 November 1992, 215 SCRA 783.

[5] 330 Phil. 8 (1996).

[6] *Supra* note 1.

[7] *Rollo,* G.R. No. 123346, p. 2081.

Caloocan City, Branch 33. Dimson's title appears to have been sourced from OCT No. 994.[8]

For their part, the Manotoks challenged the validity of the title relied on by CLT, claiming that Dimson's title, the proximate source of CLT's title, was irregularly issued and, hence, the same and subsequent titles flowing therefrom are likewise void. The Manotoks asserted their ownership over Lot 26 and claimed that they derived it from several awardees and/or vendees of the National Housing Authority.[9] The Manotok title likewise traced as its primary source OCT No. 994 which, on 9 September 1918, was transferred to Alejandro Ruiz and Mariano Leuterio who had previously acquired the property on 21 August 1918 by virtue of an *"Escritura de Venta"* executed by Don Tomas Arguelles and Don Enrique Llopis.[10] On 3 March 1920, Ruiz and Leuterio sold the property to Francisco Gonzalez who held title thereto until 22 August 1938 when the property was transferred to Jose Leon Gonzalez, Consuelo Susana Gonzalez, Juana Francisca Gonzalez, Maria Clara Gonzalez, Francisco Felipe Gonzalez and Concepcion Maria Gonzalez under TCT No. 35486. The lot was then, per annotation dated 21 November 1946, subdivided into seven (7) parcels each in the name of each of the Gonzalezes.[11]

The trial court, ruling for CLT, adopted the factual findings and conclusions arrived at by the majority commissioners appointed to resolve the conflict of titles. It was established that the entire Maysilo Estate was registered under Act No. 496 by virtue of which OCT No. 994 was issued by the Register of Deeds of Rizal;[12] that Lot 26 was transferred to CLT by Hipolito whose title was derived from the Dimson title and that on the basis of the technical descriptions of the property

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[8] *Id*. at 2081-2082.

[9] *Id*. at 2082.

[10] *Id*. at 2087.

[11] *Id*. at 2088.

[12] *Id*. at 2087.

appearing in the Manotok titles, the latter's property indeed encroached on the property described in CLT's title.[13]

The Manotoks appealed to the Court of Appeals, which affirmed the decision of the trial court.[14] Their motion for reconsideration having been denied,[15] they filed a petition for review with the Supreme Court, ascribing error to the appellate court in upholding the trial court's decision which decided the case on the basis of the majority commissioners' report and overlooked relevant facts in the minority commissioner's report.[16]

B. G.R. No. 134385, Araneta Institute of Agriculture, Inc. v. Heirs of Jose B. Dimson, et. al.

On 18 December 1979, Dimson filed with the then CFI of Rizal, Branch 33, Caloocan City a complaint for recovery of possession and damages against Araneta Institute of Agriculture, Inc. (Araneta). Dimson alleged that he was the absolute owner of part of the Maysilo Estate in Malabon covered by TCT No. R-15169 of the Registry of Deeds of Caloocan City. Alleging that Araneta had been illegally occupying the land and that the latter refused to vacate the same despite repeated demands, he prayed that Araneta be ordered to vacate the same and remove all improvements thereon and to return full possession thereof to him. Araneta for its part admitted occupancy of the disputed land by constructing some buildings thereon and subdividing portions thereof in the exercise of its right as absolute owner. He alleged that Dimson's title to the subject land was void and hence he had no cause of action.[17]

The trial court ruled for Dimson in its Decision dated 28 May 1993 with these findings: first, there were inherent technical infirmities or defects in the titles that formed each link in the

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[13] *Rollo*, G.R. No. 123456, p. 2088.

[14] *Id.* at 131.

[15] *Id.* at 134.

[16] *Id.* at 25-26.

[17] *Id.* at 2093-2094.

chain of ownership that culminated in the Manotok title, *i.e.,* that the technical descriptions in the titles were written in Spanish whereas those in the alleged mother title, OCT No. 994, were in English, which, an abnormal state that deviated from the usual practice in the issuance of titles; and second, it was established procedure to indicate in the certificate of title, whether original or transfer certificate, the date of the original survey of the mother title together with the succeeding date of subdivision or consolidation. Thus, the absence of the original survey dates of OCT No. 994 on Manotok's chain of titles, the trial court added, should mean that OCT No. 994 was not the mother title not only because the original survey dates were different but also because the original survey date must always be earlier than the issue date of the original title. OCT No. 994 was issued on May 3, 1917 which was much ahead of the survey date indicated in the succeeding titles, which is December 22, 1917.[18]

Undaunted, Araneta interposed an appeal to the Court of Appeals which, on 30 May 1997, affirmed the lower court's decision.[19] In so holding, the appellate court declared that the title of Araneta to the disputed land is a nullity. It noted that Dimson's TCT No. R-15169 was derived from "OCT No. 994 registered on April 19, 1917" and that the same was obtained by Dimson simultaneously with other titles, *viz*: TCT Nos. 15166, 15167, and 15168 by virtue of the Decision dated October 13, 1977 and Order dated October 18, 1977, in Special Proceedings No. C-732. It was also pointed out that Araneta's TCT No. 13574 and 21343 were both derived from "OCT No. 994 registered on May 3, 1917" which was previously "declared null and void by the Supreme Court in *Metropolitan Waterworks and Sewerage System v. Court of Appeals.*"[20]

Araneta then filed a petition for review with the Supreme Court attributing error to the Court of Appeals in failing to

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[18] *Rollo,* G.R. No. 123346, p. 2097.

[19] *Id.* at 2094-2095.

[20] *Id.* at 2095-2096.

recognize that it had a better right of possession over the property than did Dimson.[21]

As both petitions involved interrelated challenges against the validity of the parties' separate titles to portions of the greater Maysilo Estate, they, along with G.R. No. 148767 22, were consolidated per Resolutions dated 21 April 1999 and 6 March 2002. Also in 2002, the Republic of the Philippines sought and was allowed intervention in these cases.

On 29 November 2005, the Third Division of the Court rendered the 2005 Decision,[23] the dispositive portion of which reads:

> WHEREFORE, the instant petitions are DENIED and the assailed Decisions and Resolution of the Court of Appeals are hereby AFFIRMED *in toto.* Costs against petitioners.
>
> SO ORDERED.[24]

The Court acknowledged that the paramount question raised in the petitions is whether the titles issued in the name of Dimson and of CLT are valid. Noting that this question is one purely of fact, the Court held that the same was beyond its power to determine and so, the factual findings of the trial courts in these cases as affirmed by the Court of Appeals must be accorded the highest degree of respect and not disturbed at all.

Nonetheless, the Court proceeded to discuss the absence of merit in the petitions. First, particularly with respect to G.R. No. 123346, the Court upheld the validity of the trial court's adoption of the commissioners' majority report as part of the decision inasmuch as the same is allowed by Section 11, Rule 32 of the Rules of Court and that a case of overlapping titles

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[21] *Rollo,* G.R. No. 134385, pp. 25-28.

[22] *Supra* note 1.

[23] *Supra* note 1. Decision penned by Associate Justice Angelita Sandoval Gutierrez, and concurred by then Associate Justice (later Chief Justice) Artemio Panganiban, Associate Justices Renato Corona and Conchita Carpio Morales.

[24] *Id.*, at 339.

absolutely necessitates the assistance of experts in the field of geodetic engineering who, on account of their experience and expertise, are in a better position to determine which of the contending titles is valid. For this reason, the Court emphasized, the trial court may well rely on their findings and conclusions. Second, the Court pointed out that the titles of respondents in all three cases were derived from OCT No. 994 of the Registry of Deeds of Caloocan City registered on 19 April 1917. However, because the validity of said mother title was upheld by the Court itself in *MWSS* and reiterated in *Heirs of Gonzaga*, the Court chose not to delve anymore into the correctness of the said decisions which had already attained finality and immutability.

The Manotoks and Araneta duly filed their respective motions for reconsideration. On 5 June 2006, the cases were elevated to the Court *en banc*, which heard oral arguments on 1 August 2006. The Court formulated the issues for oral argument, thus:

From the above petitions, the following principal issues are gathered:

I.

Which of the Certificates of Title of the contending parties are valid:

A. Petitioner's titles:

1. Transfer Certificate of Title (TCT) Nos. 7528, 7762, 8012, 9866, C-17272, 21107, 21485, 26405, 26406, 26407, 33904, 34255, C-35267, 41956, 63268, 55896, T-1214528, 163902 and 165119 in the name of Manotok Realty, Inc., and TCT No. T-232568 in the name of Manotok Estate Corporation;

2. TCT Nos. 737 and 13574 in the name of Araneta Institute of Agriculture; and

3. TCT Nos. T-158373 and T-158374 in the name of Sto. Niño Kapitbahayan Association, Inc.

All these titles were derived from Original Certificate of Title (OCT) No. 994 registered on May 3, 1917 in the Registry of Deeds

of Caloocan City covering Lot 26 of the Maysilo Estate, same city.

B. Respondents' Title:

1. TCT No. T-177013 in the name of CLT Realty Development Corporation;
2. TCT No. R-15169 in the name of Jose B. Dimson; and
3. TCT No. T-1770 in the name of CLT Realty Development Corporation/

All these titles were derived from OCT No. 994 registered earlier, or on April 19, 1917, covering the same Lot No. 26 of the Maysilo Estate.

II.

Can this Court still overturn at this point its Decision in *Metropolitan Water Works and Sewerage Systems (MWSS) v. Court of Appeals* (G.R. No. 103558, November 17, 1992) and *Heirs of Luis J. Gonzaga v. Court of Appeals* (G.R. No. 96259, September 3, 1996) sustaining the validity of OCT No. 994 registered on April 19, 1917 and nullify the same OCT No. 994 registered later, or on May 3, 1917?

III.

How will the Reports of the Department of Justice and the Senate Fact-Finding Committee, not presented in evidence before the trial courts concluding that the valid title is OCT No. 994 registered on May 3, 1917, affect the disposition of these cases?

Will it be necessary to remand these cases to the trial courts to determine which of the Certificates of Title are valid? If so, which trial court?[25]

A crucial fact emerged during the oral arguments. The Republic, through the Solicitor General,[26] strenuously argued that contrary to the supposition reflected in the Advisory, there was, in fact, only one OCT No. 994.

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[25] Per the Advisory furnished to the parties prior to oral arguments.

[26] Then Antonio E. Nachura, now an Associate Justice of this Court. Justice Nachura took no part in the present cases.

x x x In this particular case, it appears that on December 3, 1912, the Court of Land Registration, the Judge Norberto Romualdez presiding, acting on Land Registration Case No. 4429 rendered judgment ordering the GLRO to issue a decree. Pursuant to this order, the GLRO prepared Decree No. 36455 and issued the same on April 19, 1917 at 9:00 o'clock in the morning, at Manila, Philippines. It may be observed that at the face of the OCT 994 which was then on file at the Registry of Deeds of Caloocan and now kept in the LRA, the following entry can be seen. Received for transcription at the Office of the Register of Deeds for the province of Rizal this 3rd day of May 1917 at 7:30 a.m. Obviously, April 19, 1917 is not the date of inscription or the date of transcription of the decree into the Original Certificate of Title. It appears that the transcription of the decree was done on the date it was received by the Register of Deeds of Rizal on May 3, 1917. There is no other date to speak of. In the records of the Land Registration Authority, there is only one OCT 994, on its face appears the date of transcript, May 3, 1917. The validity then of all subsequent titles tracing their origin from OCT 994 should be tested in the light of these set of facts. x x x[27]

On the other hand, the counsel for CLT stated during the same oral argument that he had seen a photocopy of an OCT No. 994 that was dated 19 April 1917,[28] and manifested that he could attach the same to CLT's memorandum.[29] At the same time, on even date, the Court directed the Solicitor General and counsel for CLT to submit to the Court "certified true copies of the Original Certificate of Title No. 994 dated May 3 1917 and April 19, 1917, respectively, on or before Friday, August 4, 2006."[30]

In response to this directive, both the Solicitor General and the counsel for CLT submitted their separate "Compliance" to this Court, with their respective copies of OCT No. 994 attached thereto. Both copies of OCT No. 994 submitted by the Solicitor General and CLT indicate on their face that the decree of

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[27] TSN dated 1 August 2006, 353-354.

[28] *Id*. at 323.

[29] *Id*. at 324.

[30] Resolution dated 1 August 2006. See also *id*. at 379-380.

registration issued on 19 April 1917 was received for transcription at the office of the Register of Deeds for the Province of Rizal on 3 May 1917. Indeed, there is no evident variance between the copies of OCT No. 994 submitted by the OSG and CLT, and CLT admits just as much in its Memorandum dated 3 September 2006.[31]

The claim of the Solicitor General that there is only one OCT No. 994 was duly confirmed though belatedly by CLT itself. Even the *ponente* of the 2005 Decision has recognized this fact, as indicated in her present Dissenting Opinion. The emergence of such fact, contrary as it is to the crucial predicate underlying the issues presented in the Court's Advisory, has changed the essence and complexion of the controversy. The key to grant or deny the motions for reconsideration is the answer to the question: which is the true date of OCT No. 994, 17 April 1917 or 3 May 1917?

II.

We turn to the date of OCT No. 994 as reflected in the quoted portion of the certified true copy thereof submitted by the Republic of the Philippines:[32]

Therefore, it is ordered by the Court that said land be registered in accordance with the provisions of the Land Registration Act in the name of said xxx

'Witness: the Honorable Norberto Romualdez, Associate Judge of said Court, the 3rd day of December, A.D. nineteen hundred and twelve.

'Issued at Manila, P.I., the 19th day of April A.D. 1917 at 9:00 A.M.

ATTEST: ENRIQUE ALTAVAS
Chief of the Land Registration Office of Justice

Received for transcription at the office of the Register of Deeds for the Province of P.I. this third day of May, nineteen hundred and seventeen at 7:30 A.M. (emphasis supplied)

[31] Memorandum of CLT dated 3 September 2006, p. 9.

[32] See Attachment to Compliance dated 11 August 2006 filed by the Office of the Solicitor General.

As evident on the face of OCT No. 994, the decree of registration was issued on 19 April 1917, and actually "received for transcription" by the Register of Deeds on 3 May 1917. Interestingly, even as CLT admits that there is only one OCT No. 994, that which the Solicitor General had presented to the Court,[33] it maintains that the OCT should be deemed registered as of the date of issuance of the decree of registration, 19 April 1917, instead of the date it was received for transcription by the Register of Deeds on 3 May 1917. The argument is based on the theory that it is "the decree of registration [that] produces legal effects," though it "is entered before the transmittal of the same for transcription at the Register of Deeds."[34]

This argument marks a radical departure from CLT's earlier theory that there were two OCTs No. 994, one dated 19 April 1917 and the other 3 May 2007, a theory which was likewise reflected in the Court's earlier Advisory on the issues prior to the oral argument.[35] Yet the argument smacks of plain sophistry.

The process involved is what this Court called "the method of giving a paper title."[36] It is spelled out in detail in Sections 41 and 42 of Act No. 496, otherwise known as the Land Registration Act:

SEC. 41. Immediately upon the entry of the decree of registration the clerk **shall send a certified copy thereof, under the seal of the court, to the register of deeds for the province, or provinces, or city in which the land lies, and the register of deeds shall transcribe the decree in a book to be- called the 'registration book,' in which a leaf, or leaves, in consecutive order, shall be devoted exclusively to each title. The entry made by the register of deeds in this book in each case shall be the original certificate of title, and shall be signed by him and sealed with the seal of the court.** All certificates of title shall be numbered consecutively, beginning with number one. The register of deeds shall in each case make an exact duplicate of the original certificate, including the

[33] See note 31.

[34] *Supra* note 31 at 11-12.

[35] See note 25.

[36] See *City of Manila v. Lack*, 19 Phil. 324, 331 (1911).

seal, but putting on it the words 'Owner's duplicate certificate,' and deliver the same to the owner or to his attorney duly authorized. In case of a variance between the owner's duplicate certificate and the original certificate the original shall prevail. The certified copy of the decree of registration shall be filed and numbered by the register of deeds with a reference noted on it to the place of record of the original certificate of title: Provided, however, That when an application includes land lying in more than one province, or one province and the city of Manila, the court shall cause the part lying in each province or in the city of Manila to be described separately by metes and bounds in the decree of registration, and the clerk shall send to the register of deeds for each province, or the city of Manila, as the case may be, a copy of the decree containing a description of the land within that province or city, and the register of deeds shall register the same and issue an owner's duplicate therefor, and thereafter for all matters pertaining to registration under this Act the portion in each province or city shall be treated as a separate parcel of land.

SEC. 42. **The certificate first registered in pursuance of the decree of registration in regard to any parcel of land shall be entitled in the registration book 'Original certificate of title, entered pursuant to decree of the Court of Land Registration, dated at' (stating time and place of entry of decree and the number of case). This certificate shall take effect upon the date of the transcription of the decree.** Subsequent certificates relating to the same land shall be in like form, but shall be entitled 'Transfer from number' (the number of the next previous certificate relating to the same land), and also the words 'Originally registered' (date, volume, and page of registration.")

With the plain language of the law as mooring, this Court in two vintage and sound rulings made it plain that the original certificate of title is issued on the date the decree of registration is transcribed. In the first ruling, it was held that there is a marked distinction between the entry of the decree and the entry of the certificate of title; the entry of the decree is made by the chief clerk of the land registration and the entry of the certificate of title is made by the register of deeds.[37] Such difference is highlighted by Sec. 31 of Act No. 496 as it provides that the

[37] *Antiporda v. Mapa*, 55 Phil. 89, 91 (1930).

certificate of title is issued in pursuance of the decree of registration. In the second, it was stressed that what stands as the certificate of the title is the transcript of the decree of registration made by the registrar of deeds in the registry.[38]

Otherwise stated, what is actually issued by the register of deeds is the certificate of title itself, not the decree of registration, as he is precisely the recipient from the land registration office of the decree for transcription to the certificate as well as the transcriber no less. Since what is now acknowledged as the authentic OCT No. 994 indicates that it was received for transcription by the Register of Deeds of Rizal on 3 May 1917, it is that date that is the date of registration since that was when he was able to transcribe the decree in the registration book, such entry made in the book being the original certificate of title.[39] Moreover, it is only after the transcription of the decree by the register of deeds that the certificate of title is to take effect.

The textbook writers and authorities on Land Registration are unanimous on the matter. The late Commissioner Antonio Noblejas, widely acknowledged as the leading authority on the subject during his time, wrote, thus:

> Immediately upon the issuance and entry of the decree of registration, the Registrar of Land Titles transcribes the same in the registry book called the "Registration Book" and issues an owner's duplicate certificate of title to the applicant upon payment by him of the necessary registration fees. **The entry made by the Registrar of Land Titles in his registry book is actually the original copy of the original certificate of title** and shall be signed by him and sealed with the seal of the Court and of his office. Pursuant to Rep. Act No. 113, the Registrar of Land Titles may now use only the seal of his office, dispensing with the court seal.[40]

Professor Florencio Ponce, who was also once Register of Deeds of Quezon City and Deputy Register of Deeds of Manila, was of the same conviction:

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[38] *PNB v. Tan*, 51 Phil. 317, 321 (1927).

[39] See Act No. 496, Sec. 41.

[40] NOBLEJAS AND NOBLEJAS, *LAND TITLES AND DEEDS* at 127. Emphasis supplied.

A decree of registration is an order issued under the signature of the Commissioner of Land Registration (formerly Chief, G.L.R.O.) in the name of the Judge to the fact that the land described therein is registered in the name of the applicant or oppositor or claimant as the case maybe. **When this is transcribed or spread *in toto* in the registration book and signed by the register of deeds, the page on which the transcription is made become the "original certificate of title," more commonly called the Torrens title.**

xxx xxx xxx

The land becomes a registered land only upon the transcription of the decree in the original registration book by the register of deeds, the date and time of such transcription being set forth in the process and certified to at the foot of each entry or certificate of title.

xxx xxx xxx

The issuance of the original and owner's duplicate certificates are basic for the valid existence of the title. Issuance of additional copies are permissive and their non-existence does not affect the status of title. **A certificate of title is deemed as regularly issued with the issuance of the original copy and owner's duplicate.**[41]

So was Professor Francisco Ventura:

Immediately upon the issuance and entry of the decree of registration, the Commissioner of Land Registration sends a certified copy thereof, under seal of the said office, to the Register of Deeds of the province where the land lies, and the register of Deeds transcribes the decree in a book, called the Registration Book," in which a leaf, or leaves, in consecutive order should be devoted exclusively to each title. **The entry made by the Register of Deeds in said book constitutes the original certificate of title** and is signed by him and sealed with the seal of his office.[42]

The same view came from Professor Narciso Peña, also a former Assistant Commissioner of the Land Registration

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[41] Ponce, *THE PHILIPPINES TORRENS SYSTEM*, at 202, 205, 242. Emphasis supplied.

[42] Ventura, *LAND TITLES AND DEEDS* (1955 ed.) at 168. Emphasis supplied.

Commission and Acting Register of Deeds of Manila, as he wrote, thus:

> Thus, Section 42 of Act No. 496 provides that the certificate first registered in pursuance of the decree of registration in regard to any parcel of land shall be entitled in the registration book "Original Certificate of Title, entered pursuant to decree of the Court of Land Registration, dated at (*stating time and place of entry of decree and the number of the case*). **This certificate shall take effect upon the date of the transcription of the decree**. Subsequent certificates relating to the same land shall be in like form, but shall be entitled. "Transfer from number (*the number of the next previous certificate relating to the same land*)," and also the words "Originally registered (*date, volume, and page of registration*).[43]

The dissent has likewise suggested that the variance between these two dates is ultimately inconsequential. It cannot be so for otherwise, the recent decision of the Court in *Alfonso v. Office of the President*[44] would simply be wrong. In *Alfonso*, the Court precisely penalized Alfonso, the former register of deeds of Caloocan because she acquiesced to the change of the date of registration of OCT No. 994, as reflected in several subsequent titles purportedly derived from that mother title, from 3 May 1917 to 19 April 1917. If indeed the difference in dates were "inconsequential," then it should not have really mattered that Mrs. Alfonso, as found by the Court, had invariably issued certificates of title, reflecting either the 19 April or 3 May date, a circumstance which, the Court concluded, was irregular. But if the Court were to accede to the dissent and agree that it did not really matter whether the date of registration of OCT No. 994 was 3 May or 19 April, then poor Mrs. Alfonso should be spared of the penalty of dismissal from the service which the Court had already affirmed.

III.

Even the dissent does not insist, as the 2005 Decision did, that there is an OCT No. 994 registered or dated 19 April

[43] PEÑA, PEÑA AND PEÑA, *REGISTRATION OF LAND TITLES AND DEEDS* (1988 ed.) at 141. Emphasis supplied.

[44] G.R. No. 150091, 2 April 2007, 520 SCRA 64.

1917. This new stance squarely contravenes or deviates from the following unequivocal pronouncement in the 2005 Decision:

> We noted in the beginning of this Decision that the issue in all these three (3) cases involves the validity of the parties' overlapping titles. **The titles of the respondents in these cases were derived from OCT No. 994 of the Registry of Deeds of Caloocan City registered on April 19, 1917. The validity of such mother title has already been upheld by this Court in G.R. No. 103558, *MWSS v. Court of Appeals, et al.* dated November 17, 1992 earlier cited in the assailed Decisions. Significantly, the ruling in MWSS was reiterated in G.R. No. 96259, *Heirs of Luis J. Gonzaga v. Court of Appeals* dated September 3, 1996**.
>
> We cannot delve anymore into the correctness of the Decision of this Court in MWSS. The said Decision, confirming the validity of OCT No. 994 issued on April 19, 1917 from which the titles of the respondents in the cases at bar were derived, has long become final and executory. Nothing is more settled in law than that once a judgment attains finality it becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[45]

This new conclusion likewise differs from what the Court had to say regarding OCT No. 994 "dated April 19, 1917" in the adverted *MWSS v. Court of Appeals*[46] decision:

> **It must be observed that the title of petitioner MWSS was a transfer from TCT No. 36957 which was derived from OCT No. 994 registered on May 3, 1917. Upon the other hand, private respondents' title was derived from the same OCT No. 994 but dated April 19, 1917. Where two certificates (of title) purport to include the same land, the earlier in date prevails . . .** In successive registrations, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and the person is deemed to hold under the prior certificate who is the

[45] *Supra* note 1 at 336-337.

[46] *Supra* note 4.

holder of, or whose claim is derived directly or indirectly from the person who was the holder of the earliest certificate issued in respect thereof. Hence, in point of priority of issuance, private respondents' title prevails over that of petitioner MWSS.[47]

Four years later, the Court promulgated the *Gonzaga v. Court of Appeals*[48] decision, which essentially reaffirmed foregoing factual pronouncements made in MWSS.

Notwithstanding the emerging error in fact that informed the *MWSS* and *Gonzaga* decisions, the dissent now claims that said decisions confirmed "the validity of the OCT No. 994 **issued** on **April 19, 1917.**" But if we examine *MWSS* closely, it appears to be beset with semantic confusion. We make the following relevant references from that decision, presented sequentially:

(1) "Jose B. Dimson was the registered owner of a parcel land situated in Balintawak, Kalookan City with an area of 213,012 square meters, more or less, and covered by TCT No. C-15167 which was registered on June 8, 1978. Said parcel of land was originally **Lot 28 of the Maysilo Estate (OCT) No. 994 which was registered on April 19, 1917** pursuant to Decree No. 36455 issued in Land Registration Case No. 4429."[49]

(2) Although petitioner's title was issued in 1940, it will be noted that petitioner's title over Lots 2693 and 2695 both with an area of 599 square meters was based on the Cadastral Survey of Caloocan City, Cadastral Case No. 34, while private respondents' title **was derived from OCT No. 994 issued on April 19, 1917;**[50]

(3) "It must be observed that the title of petitioner MWSS was a transfer from TCT No. 36957 which was derived from OCT No. 994 registered on May 3, 1917. Upon the other hand, private respondent's title **was derived from the same OCT No. 994 but dated April 19, 1917;**"[51]

[47] *Id*. at 788.

[48] *Supra* note 5.

[49] *MWSS v. Court of Appeals*, *supra* note 4 at 784. Emphasis supplied.

[50] *Id*. at 787-788. Emphasis supplied.

[51] *Id*. at 788. Emphasis supplied.

(4) "Lastly, a certificate is not conclusive evidence of title if it is shown that the same land had already been registered and an earlier certificate for the same is in existence. Since the land in question **has already been registered under OCT No. 994 dated April 19, 1917**, the subsequent registration of the same land on May 3, 1917 is null and void;"[52]

In one (1) out of the four (4) times that reference was made to the mother title of Dimson in *MWSS*, it was "OCT No. 994 issued on April 19, 1917" which is the language preferred by the dissent since it hews to the date of issuance of the decree of registration in the authentic OCT No. 994. However, the same decision inconsistently refers to it also as OCT No. 994 "registered on April 19, 1917", "dated April 19, 1917," and "registered under OCT No. 994 dated April 19, 1917." Notably, the context of *MWSS* in making the final citation, "registered under OCT No. 994 dated April 19, 1917," was to point out that as a result "the subsequent registration of the same land on May 3, 1917 is null and void;" hence, no other conclusion can be reached than that the Court deemed Dimson's mother title as having been registered on a date earlier than 3 May 1917.

Since the dissent and even CLT now acknowledge that there is only one OCT No. 994 which was registered by the Registry of Deeds of Rizal on 3 May 1917, the earlier factual finding in *MWSS* is indefensible. *MWSS* recognized an OCT No. 994 registered on 19 April 1917, a title that never existed and, even assuming that it did exist, is now acknowledged as spurious.

Gonzaga primarily relied on the ruling of the Court in *MWSS* upon a finding that the case involved "facts that are exactly the same as those that we have passed and ruled upon in the [*MWSS* case]." The title which was affirmed by the Court in *Gonzaga*, TCT No. C-26806 in the name of Lilia Sevilla, was "a transfer from Original Certificate of Title (OCT) No. 994 which was registered on April 19, 1917 pursuant to Decree No. 36455."[53] It was further observed by the Court that "on the one hand,

[52] *Id.* Emphasis supplied.

[53] *Supra* note 5 at 12.

[therein] petitioners' titles indicate original registration to have been made on May 3, 1917, but on the other hand, private respondents' title indicates original registration to have been made on April 19, 1917."[54]

It was the title originally registered on 19 April 1917 which was made to prevail in *Gonzaga*, following *MWSS*. Since there is no OCT No. 994 originally registered on 19 April 1917, as now acknowledged, it follows that *Gonzaga*, like *MWSS*, is no longer reliable as well.

The argument has been raised by the *ponente* of the 2005 Decision that the 3 May 1917 OCT No. 994 must be distinguished from "OCT No. 994 dated May 3, 1917 involved in the *MWSS* and *Gonzaga* cases" because the former title was "based on the Cadastral Survey of Kalookan City under Cadastral Case No. 34, also covering the Maysilo Estate." It is elemental to note that assuming said 3 May OCT was somehow flawed because it was based on Cadastral Case No. 34, it **does not mean that the so-called 17 April 1917 OCT No. 994 is valid or had existed in the first place. Since even the dissent now discounts the existence of the so-called 17 April 1917 OCT No. 994, it should necessarily follow that any title that is sourced from the 17 April 1917 OCT is void. Such conclusion is inescapable whatever questions there may be about the veracity of the 3 May 1917 OCT based on Cadastral Case No. 34.**

It would be especially incoherent for the Court to reiterate *MWSS* and *Gonzaga* when they effectuated the OCT No. 994 registered on 19 April 1917 and acknowledge at the same time that the same OCT never existed, the genuine OCT No. 994 being that which was registered on 3 May 1917. We need not go as far as to revive the *MWSS* or *Gonzaga* decisions, but certainly we can decline to infuse further validity to their erroneous basic premise that there was an OCT No. 994 registered on 19 April 1917. The dissent proposes that we perpetuate the erroneous premise even as the error is plainly acknowledged, a stance that will not serve the Court well should it prevail.

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[54] *Id*. at 13.

Moreover, the two cases should not bind the parties in the petitions now before us. Undisputedly, the two cases involved different parcels of land. The present petitioners could not be bound by the decisions in the two cases, as they were not parties thereto and and their properties were not involved therein. As we very recently reaffirmed, it is basic that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court.[55]

We can take instruction from the tack previously taken by this Court in dealing with municipalities created by executive orders. Beginning with *Pelaez v. Auditor General*, [56] the Court declared as a general principle that the President had no power to create municipalities through executive orders. However, instead of nullifying the creation of all municipalities created in the same manner, the Court only annulled those municipalities whose creation was specifically attacked in the petition filed by then-Vice President Pelaez.[57] With respect to the other municipalities which were not annulled in *Pelaez*, the Court would, in the next few decades, annul only the municipalities which were specifically challenged in petitions raised before

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[55] *Galicia v. Manliquez*, G.R. No. 155785, 13 April 2007, 521 SCRA 85, 95; citing *National Housing Authority v. Evangelista,* G.R. No. 140945, 16 May 2005, 458 SCRA 469, 478 (2005). See also, *e.g.*, *Mabayo Farms v. Court of Appeals*, 435 Phil. 112, 118 (2002).

[56] 122 Phil. 963 (1965).

[57] As was later observed in *Camid v. Office of the President*, G.R. No. 161414, 448 SCRA 711, 17 January 2005.

The eminent legal doctrine enunciated in *Pelaez* was that the President was then, and still is, not empowered to create municipalities through executive issuances. The Court therein recognized "that the President has, for many years, issued executive orders creating municipal corporations, and that the same have been organized and in actual operation . . . ." However, the Court ultimately nullified only those thirty-three (33) municipalities, including Andong, created during the period from 4 September to 29 October 1964 whose existence petitioner Vice-President Pelaez had specifically assailed before this Court. No pronouncement was made as to the other municipalities which had been previously created by the President in the exercise of power the Court deemed unlawful. (*Id*., at 724, citations omitted)

the Court.[58] However, after the adoption of the Local Government Code of 1991 that gave statutory recognition to the *de facto* municipalities which had not yet been annulled, the Court started to affirm the legal existence of such municipalities.[59]

As in *Pelaez*, the operative effect of the "doctrines" pronounced in *MWSS* and *Gonzaga* can extend only to the parties and properties involved in said cases, even if it can be argued that the rights involving other parties and properties are afflicted with inconsistency as regards the legal rulings therein, similar to the municipalities created which though created by void executive orders were not however annulled. Yet with the emergence of a new fact–the enactment of the Local Government Code *vis-à-vis Pelaez*, or the present acknowledgment that only the 3 May 1917 OCT No. 994 exists *vis-à-vis MWSS* and *Gonzaga*–subsequent rulings would be informed primarily by the new developments, rather than by the previous precedents that were not able to take into account the true or new factual premises.

IV.

The determinative test to resolve whether the prior decision of this Court should be affirmed or set aside is whether or not the titles invoked by the respondents are valid. If these titles are sourced from the so-called OCT No. 994 dated 17 April 1917, then such titles are void or otherwise should not be recognized by this Court. Since the true basic factual predicate concerning OCT No. 994 which is that there is only one such OCT differs from that expressed in the *MWSS* and *Gonzaga* decisions, said rulings have become virtually *functus officio* except on the basis of the "law of the case" doctrine, and can no longer be relied upon as precedents.

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[58] See *e.g.*, *Municipality of San Joaquin v. Siva,* 125 Phil. 1004 (1967); *Municipality of Malabang v. Benito*, 137 Phil. 358 (1969) and *Municipality of Kapalong v. Moya*, G.R. No. L-41322, 29 September 1988, 166 SCRA 70.

[59] See *Municipality of San Narciso v. Mendez*, G.R. No. 103702, 6 December 1994, 239 SCRA 11; *Municipality of Candijay v. Court of Appeals*, 321 Phil. 922 (1995); *Municipality of Jimenez v. Baz*, 333 Phil. 1 (1996).

This approach immensely differs from that preferred by the 2005 Decision and the dissenting view, which dwells in the main on the alleged flaws in the titles held by the Manotoks and Araneta, without making a similar inquiry into the titles held by CLT and the Heirs of Dimson. Since the decision in favor of CLT and the Heirs of Dimson was ultimately grounded on a factual predicate now acknowledged as erroneous, it follows that the primary focus should have been whether the titles held by CLT and the Dimsons are valid and with force and effect. To that end, we need only examine the titles relied upon by CLT and the Dimsons.

In the *Manotok* petition, CLT had originally filed a complaint for annulment of the titles in the name of the Manotoks, alleging that it was the registered owner of Lot 26 of the Maysilo Estate covered by TCT No. T-177013 of the Registry of Deeds of Caloocan City. Reproduced below is what appears on the face of TCT No. T-177013:[60]

IT IS FURTHER CERTIFIED that said land was originally registered on the 19th day of April, in the year, nineteen hundred and seventeen in the Registration Book of the Office of the Register of Deeds of Rizal, Volume 36455, page ____, as Original Certificate of Title No. 994, pursuant to Decree No. 36455 issued in L.R.C. ____ Record No. _____in the name of ___________.

This certificate is a transfer from Trans. Certificate of Title No. R-17994/T-89, which is cancelled by virtue hereof in so far as the above-described land is concerned.

Entered at City of Kalookan
Philippines, on the 15th day of March
In the year nineteen hundred and eighty-nine at 19:48 a.m.

CLT further alleged that it derived TCT No. T-177013 on 10 December 1988 from Estelita Hipolito whose title, TCT No. R-17994, is depicted, thus:[61]

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[60] RTC records in G.R. No. 123346, Vol. 1, p. 14.

[61] *Id.* at 19-23.

IT IS FURTHER CERTIFIED that said land was originally registered on the 19th day of April, in the year nineteen hundred and seventeen in the Registration Book of the Office of the Register of Deeds of Rizal, Volume NA, page NA, as Original Certificate of Title No. 994, pursuant to Decree No. 36455 issued in L.R.C. Case No. 4429, Record No. ________.

This certificate is a transfer from Transfer Certificate of Title No. R-15166/T-75, which is cancelled by virtue hereof in so far as the above-described land is concerned.

Entered at the City of Caloocan Philippines, on the 12th day of December in the year nineteen hundred and seventy-eight at 3:30 p.m.

Dimson's original complaint for recovery of possession against Araneta was founded on the claim that he was the absolute owner of a parcel of land located at Malabon, comprising fifty (50) hectares of the Maysilo Estate covered by TCT No. R-15169 of the Registry of Deeds of Caloocan City. Said TCT No. R-15169 is reproduced below:[62]

IT IS FURTHER CERTIFIED that said land was originally registered on the 19th day of April, in the year nineteen hundred and seventeen, in the Registration Book of the Office of the Register of Deeds of Rizal, Volume NA, page___ , Original Certificate of Title No. 994, pursuant to Decree No. 36455, issued in LRC Case No. 4429, Record No. __

This Certificate is a transfer from Original Certificate of Title No. [illegible] which is cancelled by virtue hereof in so far as the above-described land is concerned.

Entered at Caloocan City Philippines, on the 8th day of June in the year nineteen hundred and seventy-eight at 10:34 a.m.

It is evident from all three titles—CLT's, Hipolito's and Dimson's—that the properties they purport to cover were "originally registered on the 19th day April, in the year nineteen hundred and

[62] *Rollo,* G.R. No. 134385, p. 155.

seventeen in the Registration Book of the Office of the Register of Deeds of Rizal." Note, as earlier established, there is no such OCT No. 994 originally registered on 19 April 1917.

The conclusion is really simple. On their faces, none of these three titles can be accorded recognition simply because the original title commonly referred to therein never existed. To conclude otherwise would constitute deliberate disregard of the truth. These titles could be affirmed only if it can be proven that OCT No. 994 registered on 19 April 1917 had actually existed. CLT and the Dimsons were given the opportunity to submit such proof before this Court, but they did not. In fact, CLT has specifically manifested that the OCT No. 994 they concede as true is also the one which the Office of Solicitor General submitted as true, and that is OCT No. 994 issued on 3 May 1917.

Given this essential clarification, there is no sense in affirming the 2005 Decision which sustained the complaints for annulment of title and/or recovery of possession filed by CLT and the Dimson when their causes of action are both founded on an inexistent mother title. How can such actions prosper at all even to the extent of dispossessing the present possessors with title?

The dissent is hard-pressed in defending the so-called 19 April 1917 OCT from which the Dimson and CLT titles are sourced. As earlier mentioned, the focus is instead placed on the purported flaws of the titles held by the Manotoks and Araneta **notwithstanding that said parties swere the defendants before the lower court and, therefore, the burden of proof did not lie on them. The established legal principle in actions for annulment or reconveyance of title is that a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his.**[63] **In an action to recover, the property**

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[63] See CIVIL CODE, Art. 364,. See also *Silvestre v. Court of Appeals*, G.R. Nos. L-32694 & L-33119, 16 July 1982, 115 SCRA 63, 68. "The trial court correctly applied the established legal principle that in cases of annulment and/or reconveyance of title, a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that

must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.[64]

V.

The dissenting view perceives a material difference between the present acknowledgment of the validity of OCT No. 994 dated 3 May 1917 and the titles involved in the *Gonzaga* and *MWSS* cases. It dwells on the fact that the titles debunked in the *MWSS* and *Gonzaga* cases, which find origination from OCT No. 994 dated 3 May 1917, seem to have been derived from Cadastral Case No. 34 also covering the Maysilo Estate. It is in fact the theory of the dissent that there are, in effect, two competing sources of title – the OCT No. 994 dated 3 May 1917 arising from the issuance of Decree No. 36455 in Land Registration Case No. 4429; and OCT No. 994 dated 3 May 1917 based on the Cadastral Survey of Caloocan City in Cadastral Case No. 34. It is further opined that the registration of lands pursuant to Cadastral Case No. 34, even if the date of such registration is 3 May 1917, is void since such registration could not supplant the earlier decision of the land registration court.

The supposition blatantly runs counter to long-established principles in land cases. Had it been adopted by the Court, the

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the land sought to be reconveyed is his. In the case at bar, respondent [Rufino] Dimson not only failed to establish by a preponderance of evidence that he has a better right over the land in dispute but even failed to establish private ownership of his alleged predecessor in interest. Although it is alleged that a decision was rendered in a cadastral case in favor of the spouses Mariano Batungbakal and Hilaria Vergara, respondent failed to produce a copy thereof, (certificate or reconstituted) or to show when the alleged decision was rendered, but merely asserts that it was before the war." *Silvestre v. Court of Appeals*, *id*.

[64] *Pisalbon v. Balmoja*, 122 Phil. 289, 292 (1965); citing CIVIL CODE, Art. 364. See also *Misamis Lumber v. Director of Lands*, 57 Phil. 881, 883 (1933); *Sanchez Mellado v. Municipality of Tacloban*, 9 Phil. 92, 93-94 (1907). "In an action to recover possession of real estate, the burden of proof is on the plaintiff to show that he has a better right to the possession than the defendant; and the universal rule in actions of ejectment, where plaintiff seeks to recover possession and establish title to the land in controversy; is that he must rely on the strength of his own and not on the weakness of defendant's title." *Nolan v. Jalandoni*, 23 Phil. 292, 298 (1912).

effect would have been to precipitate the utter astonishment of legal scholars, professionals and students alike.

The reality that cadastral courts may have jurisdiction over lands already registered in ordinary land registration cases was acknowledged by this Court in *Pamintuan v. San Agustin*.[65] Such jurisdiction is "limited to the necessary correction of technical errors in the description of the lands, provided such corrections do not impair the substantial rights of the registered owner, and that such jurisdiction cannot operate to deprive a registered owner of his title."[66] It was further clarified in *Timbol v. Diaz*[67] that the limited jurisdiction of the cadastral court over such lands even extends to the determination of "which one of the several conflicting registered titles shall prevail[, as such] power would seem to be necessary for a complete settlement of the title to the land, the express purpose of cadastral proceedings, and must therefore be considered to be within the jurisdiction of the court in such proceedings."[68]

The question raised in *Sideco v. Aznar*[69] concerned the validity of an order of a cadastral court directing the issuance of new certificates of title in the name of Sideco and his children, at Sideco's own prayer, over land previously registered in the name of Crispulo Sideco. This Court ruled that such order was valid and did not amount to a readjudication of the title. After the cadastral proceedings therein had been initiated, the chief surveyor had reported to the cadastral court that the land was covered by a decree in a land registration proceeding and registered in the name of Sideco; the surveyor recommended that the title be cancelled and a new one issued in the names of such persons as the court may determine. In ruling that the new titles were valid, the Court stated that "[t]he proceedings did not in any way purport to reexamine the title already issued, or to

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[65] 43 Phil. 558 (1922).

[66] *Id.* at 561.

[67] 44 Phil. 587 (1923).

[68] *Id.* at 590.

[69] 92 Phil. 952 (1953).

readjudicate the title of the land. They were precisely predicated on the finality of the title already issued, because it was the registered owner who was asked to express his desire with respect thereto, and the court's order precisely followed the petition of the registered owner."[70]

The eminent U.P. law professor Francisco Ventura, himself a former Register of Deeds, explains why cadastral courts have jurisdiction to order the issuance of new titles in place of the title issued under voluntary registration proceedings:

> "Inasmuch as the land is identified in the plan by cadastral number, it is necessary that a new title be issued, giving the lot its cadastral number in accordance with the cadastral survey. This does not mean that the court has the power to alter the decree entered in the previous registration proceeding. The court cannot change or modify the said decree. It does not adjudicate the title anew. It simply deals with the certificate of title. This is for the convenience of the landowner because it is easier for him to identify his property inasmuch as all the lands brought under the cadastral survey are designated by cadastral numbers."[71]

What is prohibited in a cadastral proceeding is the registration of land, already issued in the name of a person, in the name of another, divesting the registered owner of the title already issued in his favor, or the making of such changes in the title as to impair his substantial rights.[72] Yet such prohibition does not mean that the cadastral court will not have jurisdiction over the action involving the previously registered land, as explained in *Pamintuan* and *Timbol*, or that the cadastral court may not issue a new title at all even if it would not impair the rights of the previously registered owner, as emphasized in *Sideco*. The dissent contents itself with the simplistic conclusion that because there was a cadastral case covering the Maysilo Estate from which the titles emanated, such titles could not have been valid.

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[70] *Id*. at 960.

[71] VENTURA, *supra* note 42 at 232; citing *Government of Philippine Islands v. Arias*, 36 Phil. 194 (1917).

[72] PEÑA, *supra* note 42 at 491.

It is clear that there could be such titles issued, and they would be valid for so long as they do not impair the rights of the original registrant to whom OCT No. 994 dated 3 May 1917 was issued.

VI.

From these premises, the Court is able to make the following binding conclusions. *First*, there is only one OCT No. 994. As it appears on the record, that mother title was received for transcription by the Register of Deeds on 3 May 1917, and that should be the date which should be reckoned as the date of registration of the title. It may also be acknowledged, as appears on the title, that OCT No. 994 resulted from the issuance of the decree of registration on 17 April 1917, although such date cannot be considered as the date of the title or the date when the title took effect.

Second. Any title that traces its source to OCT No. 994 dated 17 April 1917 is void, for such mother title is inexistent. The fact that the Dimson and CLT titles made specific reference to an OCT No. 994 dated 17 April 1917 casts doubt on the validity of such titles since they refer to an inexistent OCT. This error alone is, in fact, sufficient to invalidate the Dimson and CLT claims over the subject property if singular reliance is placed by them on the dates appearing on their respective titles.

Third. The decisions of this Court in *MWSS v. Court of Appeals* and *Gonzaga v. Court of Appeals* cannot apply to the cases at bar, especially in regard to their recognition of an OCT No. 994 dated 19 April 1917, a title which we now acknowledge as inexistent. Neither could the conclusions in *MWSS* or *Gonzaga* with respect to an OCT No. 994 dated 19 April 1917 bind any other case operating under the factual setting the same as or similar to that at bar.

With these conclusions, what then is the proper course of action to take with respect to the pending motions for reconsideration? Considering that CLT and the Dimsons clearly failed to meet the burden of proof reposed in them as plaintiffs in the action for annulment of title and recovery of possession,

there is a case to be made for ordering the dismissal of their original complaints before the trial court. However, such solution may not satisfactorily put to rest the controversy surrounding the Maysilo Estate.

More pertinently, after the instant petitions were filed with this Court, the Republic of the Philippines, through the OSG, had sought to intervene. The Republic did not participate as a party when these cases were still before the trial courts and the Court of Appeals. While the Republic had originally prayed for the grant of the petitions filed by all the petitioners in these consolidated cases, instead it presently seeks of the Court the promulgation of a new ruling upholding the validity of OCT No. 994 issued[73] or registered[74] on May 3, 1917. Rather than suggest whether the petitions be granted or denied, the OSG argues that after a declaration from this Court that it is the 3 May 1917 mother title that is valid, "a remand of this case to the Court of Appeals, to settle which among the private parties derived their titles from the existing OCT 994, is proper."[75]

Notably, both the Manotoks and Araneta are amenable to the remand of the petition, albeit under differing qualifications. The Manotoks submit that there should be a remand to the court of origin, consolidating all the present petitions, and that a full trial be conducted by the trial court.[76] On the other hand, Araneta proposes four (4) options for the Court to consider: (1) the dismissal of the original complaint filed by Dimson; (2) a ruling granting Araneta's appeal and dismissing Dimson's complaint, but at the same time remanding the case to a new division of the Court of Appeals for factual determination pursuant to Section 6, Rule 47 of the Rules of Court; (3) the suspension of the resolution of the present motion for reconsideration while the case is remanded to the Court of Appeals for factual

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[73] *Supra* note 2 at 35.

[74] *Id*. at 31.

[75] *Id*.

[76] See Memorandum for Manotok Realty Inc. and Manotok Estate Corp. dated 3 September 2006, p. 26.

determination; or (4) the remand of the proceedings to the Court of Appeals for the reception of further evidence, particularly the Senate and DOJ Reports, pursuant to Section 6, Rule 47 of the Rules of Court, and the consequent resolution by the appellate court of the instant petitions.

The OSG observes that during the oral arguments on the motion for reconsideration, then Chief Justice Panganiban suggested that a remand may be required to determine the status of the original title.[77] Considering that the genuine OCT No. 994 is that issued on/ registered on/dated 3 May 1917, a remand would be appropriate to determine which of the parties, if any, derived valid title from the said genuine OCT No. 994. On the one hand, the appreciation of facts is beyond the province of this Court, since it is not a trier of fact[78] as well as not capacitated to appreciate evidence at the first instance. On the other hand, the Court of Appeals has the competence to engage in that undertaking.

Under Section 6 of Rule 46, which is applicable to original cases for *certiorari*,[79] the Court may, whenever necessary to resolve factual issues, delegate the reception of the evidence on such issues to any of its members or to an appropriate court, agency or office.[80] The delegate need not be the body that rendered the assailed decision.

The Court of Appeals generally has the authority to review findings of fact.[81] Its conclusions as to findings of fact are generally accorded great respect by this Court. It is a body that

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[77] *Id*. at 34.

[78] See *St. Martin Funeral Home v. NLRC, et al*, 356 Phil. 811, 824 (1998), *People v. Go*, G.R. Nos. 116001 & 123943, 14 March 2001, 354 SCRA 338, 346.

[79] See REVISED RULES OF COURT, Rule 56, Sec. 2. "The procedure in original cases for *certiorari,* prohibition, *mandamus, quo warranto* and *habeas corpus* shall be in accordance with the applicable provisions of the Constitution, laws, and Rules 46, 48, 49, 51, and 52.

[80] REVISED RULES OF COURT, Rule 46, Sec. 6.

[81] See REVISED RULES OF COURT, Rule 43, Sec. 6.

is fully capacitated and has a surfeit of experience in appreciating factual matters, including documentary evidence.

In fact, the Court had actually resorted to referring a factual matter pending before it to the Court of Appeals. In *Republic v. Court of Appeals*,[82] this Court commissioned the former Thirteenth Division of the Court of Appeals to hear and receive evidence on the controversy, more particularly to determine "the actual area reclaimed by the Republic Real Estate Corporation, and the areas of the Cultural Center Complex which are 'open spaces' and/or 'areas reserved for certain purposes,' determining in the process the validity of such postulates and the respective measurements of the areas referred to."[83] The Court of Appeals therein received the evidence of the parties and rendered a "Commissioner's Report" shortly thereafter.[84] Thus, resort to the Court of Appeals is not a deviant procedure.

The provisions of Rule 32 should also be considered as governing the grant of authority to the Court of Appeals to receive evidence in the present case. Under Section 2, Rule 32 of the Rules of Court, a court may, *motu proprio*, direct a reference to a commissioner when a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or for carrying a judgment or order into effect.[85] The order of reference can be limited exclusively to receive and report evidence only, and the commissioner may likewise rule upon the admissibility of evidence.[86] The commissioner is likewise mandated to submit a report in writing to the court upon the matters submitted to him by the order of

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[82] 359 Phil. 530 (1998).

[83] *J*. Puno (now Chief Justice), concurring, *Republic v. Court of Appeals*, 359 Phil. 530, 598.

[84] *Id*.

[85] Reference to a commissioner may also be directed in cases when the trial of an issue of fact requires the examination of a long account on either side; or when the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect. See REVISED RULES OF COURT, RULE 32, Sec. 2.

[86] REVISED RULES OF COURT, Rule 32, Sec. 3.

reference.[87] In *Republic*, the commissioner's report formed the basis of the final adjudication by the Court on the matter. The same result can obtain herein.

VII.

The OSG likewise adverts to the findings reached in the respective investigations and reports by the Department of Justice and the Philippine Senate, components of the two other co-equal branches of the government. Both the DOJ Report dated 28 August 1997 and the Senate Report dated 25 May 1998 conclude that there is only one (1) OCT No. 994 issued or registered on 3 May 1997. The OSG argues that the contents of both of these reports may be considered as evidence. It also points out, with basis, that these reports may be taken judicial notice of by this Court, following Section 1, Rule 129 of the Rules of Court. Indeed, it cannot be disputed that these reports fall within the ambit of "the official acts of the legislative [and] executive… departments."[88]

It bears noting that the DOJ and Senate Reports were rendered on 28 August 1997 and 25 May 1998 respectively. They were issued some years after the trial courts had promulgated their respective decisions in the Manotok and Araneta cases, and even after the Court of Appeals handed down its decision against the Manotoks which is assailed in its present petition.[89] In Araneta's case, the Court of Appeals had first ruled against Araneta in its Decision dated 30 May 1997, or just shortly before the rendition of the DOJ and Senate Reports.

Since this Court is not a trier of fact, we are not prepared to adopt the findings made by the DOJ and the Senate, or even consider whether these are admissible as evidence, though such questions may be considered by the Court of Appeals upon the initiative of the parties. The Court, in the 2005 Decision, refused

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[87] REVISED RULES OF COURT, Rule 32, Sec. 9.

[88] See Rule 129, Sec. 1, which details when judicial notice is mandatory.

[89] In the Manotok petition, the Court of Appeals had first ruled against Manotok in September of 1995, and subsequently affirmed its decision on motion for reconsideration in January of 1996.

to take into account the reports on the regrettable premise that they could somehow "override" the judicial decisions earlier arrived at.[90] The reports cannot conclusively supersede or overturn judicial decisions, but if admissible they may be taken into account as evidence on the same level as the other pieces of evidence submitted by the parties. The fact that they were rendered by the DOJ and the Senate should not, in itself, persuade the courts to accept them without inquiry. The facts and arguments presented in the reports must still undergo judicial scrutiny and analysis, and certainly the courts will have the discretion to accept or reject them.

There are many factual questions looming over the properties that could only be threshed out in the remand to the Court of Appeals. The Manotoks and Araneta advert to certain factual allegations relating to their titles and backstories to advance their respective positions. Still, if it indeed emerges from the determination of the Court of Appeals on remand that notwithstanding the clear flaws of the title of respondents the titles of petitioners are cut from the same counterfeit cloth, then the Republic of the Philippines, an intervenor in these cases, is armed anyway with any and all appropriate remedies to safeguard the legitimate owners of the properties in question.

VIII.

The definitive conclusions reached by the Court thus far in these cases are spelled out in Part VI of this Resolution. Said conclusions serve to guide the Court of Appeals in hearing these cases on remand.

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[90] "Finally, we cannot consider the alleged newly-discovered evidence consisting of the DOJ and Senate Fact-Finding Committee Reports invoked by petitioners herein. Certainly, such committee reports cannot override the Decisions of the trial courts and the Court of Appeals upholding the validity of respondents' titles in these cases. The said Decisions were rendered after the opposing parties have been accorded due process. It bears stressing that the courts have the constitutional duty to adjudicate legal disputes properly brought before them. The DOJ and Senate, or any other agencies of the Government for that matter, have clearly distinguishable roles from that of the Judiciary. Just as overlapping of titles of lands is abhorred, so is the overlapping of findings of facts among the different branches and agencies of the Government." *Supra* note 1 at 338.

The Court hereby constitutes a Special Division of the Court of Appeals to hear these cases on remand. The Special Division shall be composed of three Associate Justices of the Court of Appeals, namely; Justice Josefina Guevara-Salonga as Chairperson; Justice Lucas Bersamin as Senior Member; and Associate Justice Japar B. Dimaampao as Junior Member.

The Special Division is tasked to hear and receive evidence, conclude the proceedings and submit to this Court a report on its findings and recommended conclusions within three (3) months from finality of this Resolution.

In ascertaining which of the conflicting claims of title should prevail, the Special Division is directed to make the following determinations based on the evidence already on record and such other evidence as may be presented at the proceedings before it, to wit:

i. Which of the contending parties are able to trace back their claims of title to OCT No. 994 dated 3 May 1917?

ii. Whether the imputed flaws in the titles of the Manotoks and Araneta, as recounted in the 2005 Decision, are borne by the evidence? Assuming they are, are such flaws sufficient to defeat the claims of title of the Manotoks and Araneta?

iii. Whether the factual and legal bases of 1966 Order of Judge Muñoz-Palma and the 1970 Order of Judge Sayo are true and valid. Assuming they are, do these orders establish a superior right to the subject properties in favor of the Dimsons and CLT as opposed to the claims of Araneta and the Manotoks?

iv. Whether any of the subject properties had been the subject of expropriation proceedings at any point since the issuance of OCT No. 994 on 3 May 1917, and if so what are those proceedings, what are the titles acquired by the Government and whether any of the parties is able to trace its title to the title acquired by the Government through expropriation.

v. Such other matters necessary and proper in ascertaining which of the conflicting claims of title should prevail.

WHEREFORE, the instant cases are hereby *REMANDED* to the Special Division of the Court of Appeals for further proceedings in accordance with Parts VI, VII and VIII of this Resolution.

SO ORDERED.

Quisumbing, Austria-Martinez, Carpio Morales, Azcuna, Chico-Nazario, and *Leonardo-de Castro, JJ.,* concur.

Puno, C.J. (*Chairperson*), no part due to relationship to one of the counsels.

Sandoval-Gutierrez, J., see my dissenting opinion.

Corona, J., see my concurring and dissenting opinion.

Velasco, Jr. and *Reyes, J.,* join the dissent of J. A.S. Gutierrez.

Carpio, J., no part and on leave.

Nachura, J., no part. As a Solicitor General appeared in the oral argument.

Ynares-Santiago, J., no part.

CONCURRING AND DISSENTING OPINION

CORONA, *J.*:

The integrity of the Torrens system of land registration should be zealously guarded at all costs. Otherwise, the value of certificates of titles will be seriously impaired. This is the fundamental principle that should guide this Court in resolving the motions for reconsideration in these consolidated petitions. And the reason why I respectfully submit that the decision dated November 29, 2005 should be reconsidered.

**THERE IS ONLY ONE OCT NO. 994:
THAT REGISTERED ON MAY 3, 1917**

The issue involving OCT No. 994 is not whether the true date of its registration was April 19, 1917 or May 3, 1917 but which of these dates exists in the books of the Land Registration Authority (LRA).

While it appears at first glance that there were two different dates of registration of OCT No. 994 — April 19, 1917 and May 3, 1917 — only one OCT No. 994 appears in the books of the LRA. This was OCT No. 994 registered on May 3, 1917. *There was only one OCT No. 994. And it was registered on May 3, 1917*, not on April 19, 1917.

The voluminous records of these cases show the following material antecedent facts relative to the issuance of OCT No. 994:

1. on December 3, 1912, the Court of First Instance (CFI) of Rizal presided by Judge Norberto Romualdez, rendered judgment in Land Registration Case No. 4429 ordering the issuance of a decree of registration;

2. pursuant thereto, the General Land Registration Office prepared decree no. 36455 and issued the same on April 19, 1917 at 9:00 in the morning in Manila, Philippine Islands and

3. on May 3, 1917, the Register of Deeds of the Province of Rizal received decree no. 36455 and had it transcribed. Thus, the following entries appeared on the first page of OCT No. 994:

Witness: the Honorable Norberto Romualdez, Associate, Judge of said Court, the 3rd day of December, A.D. nineteen hundred and twelve.

Issued at Manila, P.I., the 19th day of April, A.D. 1917 at 9:00 A.M.

ATTEST: ENRIQUE ALTAVAS
Chief of the Land Registration Office

Received for transcription at the Office of the Register of Deeds for the Province of Rizal, this third day of May nineteen hundred and seventeen at 7:30 A.M.

Clearly then, May 3, 1917, the date of transcription of the decree of registration, was the date OCT No. 994 was registered and became effective. This was in accordance with Sections 41 and 42 of Act No. 496 (The Land Registration Act), the applicable law at the time OCT No. 994 was issued:

Section 41. Immediately after final decision by the court directing the registration of any property, the clerk shall send a certified true copy of such decision to the Chief of the General Land Registration Office, who shall prepare the decree in accordance with Section forty of Act Numbered Four Hundred and Ninety-Six, and he shall forward a certified copy of said decree to the register of deeds of the province or city in which the property is situated. **The register of deeds shall transcribe the decree in a book to be called the "Registration Book,"** in which a leaf, or leaves, in consecutive order shall be devoted exclusively to each title. The entry made by the register of deeds in this book in each case shall be the original certificate of title, and shall be signed by him and sealed with the seal of the court. All certificates of title shall be signed by him and sealed with the seal of the court. All certificates of title shall be numbered consecutively, beginning with number one. The register of deeds shall in each case make an exact duplicate of the original certificate, including the seal, but putting on it the words "owner's duplicate certificate," and deliver the same to the owner, or to his attorney duly authorized. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail. The certified copy of the decree of registration shall be filed and numbered by the register of deeds with reference noted on it to the place of record of the original certificate of title: *Provided, however*, That when an application includes land lying in more than one province, or one province and the city of Manila, the court shall cause the part lying in each province or in the city of Manila to be described separately by metes and bounds in the decree of registration, and the clerk shall send to the register of deeds for each province, or the city of Manila, as the case may be, a copy of the decree containing the description of the land within that province or city, and the register of deeds shall register the same and issue an owner's duplicate thereof, and thereafter for all matters pertaining

to registration under this Act the portion in each province or city shall be treated as a separate parcel of land.

Section 42. The certificate first registered in pursuance of the decree of registration in regard to any parcel of land shall be entitled in the registration book, "Original certificate of title, entered pursuant to decree of the Court of Land Registration, dated at" (stating the time and place of entry of decree and the number of case). **This certificate shall take effect upon the date of the transcription of the decree**. Subsequent certificates relating to the same land shall be in like form, but shall be entitled "Transfer from number" (the number of the next previous certificate relating to the same land), and also the words "Originally registered" (date, volume, and page of registration). (emphasis supplied)

April 19, 1917 was the date of issuance or forwarding of the decree of registration (decree no. 36455) to the registrar of deeds. It was not the date of transcription of said decree. The transcription in the registry book by the registrar of deeds was made on May 3, 1917, the day it was received by the Registrar of Deeds of the Province of Rizal. There could thus be no other date of registration but *May 3, 1917*.

Registration means "**recording;** inserting in an official register; enrollment, as registration of voters; the act of making a list, catalogue, schedule, or register, particularly of an official character, or of **making entries** therein."[1] In general, it means any entry made in the books of registry, including both registration in its ordinary and strict senses, and cancellation, annotation and even the marginal notes.[2] In its strict sense, it is the entry made in the registry which records solemnly and permanently the right of ownership and other real rights.[3] In its juridical aspect, it is **the entry made in a book or public registry of deeds.**[4] Therefore, the transcription or entry of the decree of registration

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[1] Black's Law Dictionary, 4th edition, p. 1449.

[2] *Po Sun Tun v. Price and Provincial Government of Leyte*, 54 Phil. 192 (1929).

[3] *Id*.

[4] *Id*.

in the registration book was what constituted registration, in this case, on May 3, 1917.

SINCE THE "TWO OCT NO. 994 THEORY" IS FALSE, THE RULING THAT UPHELD THE RESPECTIVE TITLES OF RESPONDENTS HAS NO BASIS

The "two OCT No. 994 theory" (that is, there were two OCT No. 994s, one registered on April 19, 1917 which was superior to the other OCT No. 994 registered on May 3, 1917) was the foundation of the November 29, 2005 decision. On that theory rested the ruling that the respective titles of respondents CLT Realty Development Corporation (CLT) and the heirs of Jose B. Dimson (heirs of Dimson) as derivatives of OCT No. 994 registered on April 17, 1917[5] should be upheld over that of petitioners. The theory has been proven false as no OCT No. 994 registered on April 17, 1917 ever existed.

The difference between the "two OCT No. 994 theory" and the fact that only one OCT No. 994 existed is critical and crucial. In judicial decision-making, theory must give way to reality because a decision should always be based on facts to which the relevant law shall be applied.

Moreover, in these cases, the difference between theory and reality and the dates April 19, 1917 and May 3, 1917 are significant as well as decisive. On them hang the conflicting claims and rights of the contending parties. Indeed, the Court formulated the Advisory on the issues for oral arguments of these cases on the premise that there were two OCT No. 994s:

I.

Which of the Certificates of Title of the contending parties are valid?

A. **Petitioners' titles**:

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[5] Both their titles state that they were "originally registered on the 19th day April, in the year nineteen hundred and seventeen in the Registration Book of the Register of Deeds of Rizal."

1. Transfer Certificates of Title (TCT) Nos. 7528, 7762, 8012, 9866, C-17272, 21107, 21485, 26405, 26406, 26407, 33904, 34255, C-35267, 41956, 53268, 55896, T-1214528, 163902 and 165119 in the name of Manotok Realty, Inc., and TCT No. T-232568 in the name of Manotok Estate Corporation;
2. TCT Nos. 737 and 13574 in the name of Araneta Institute of Agriculture; and
3. TCT Nos. T-158373 and 13574 in the name of Sto. Niño Kapitbahayan Association, Inc.

All these titles were derived from Original Certificate of Title (OCT) No. 994 registered on May 3, 1917 in the Registry of Deeds of Caloocan City covering Lot 26 of the Maysilo Estate, same city.

B. **Respondents' titles**:

1. TCT No. T-177013 in the name of CLT Realty Development Corporation; and
2. TCT No. R-15169 in the name of Jose B. Dimson.

All these titles were derived from OCT No. 994 registered earlier, or on April 19, 1917, covering the same Lot No. 26 of the Maysilo Estate. (emphasis supplied)

TRANSFER CERTIFICATE OF TITLE (TCT) NOS. T-177013 AND R-151669 COULD NOT HAVE BEEN VALIDLY DERIVED FROM OCT NO. 994 REGISTERED ON MAY 3, 1917

I submit that the respective certificates of title of respondents (TCT No. T-177013 of CLT and TCT No. R-15166 of the heirs of Dimson) could not have been valid derivative titles of OCT No. 994 registered on May 3, 1917.

First, CLT and the heirs of Dimson have consistently claimed that the mother title of their respective certificates of title was *OCT No. 994 registered on April 19, 1917*. However, OCT No. 994 registered on April 19, 1917 never existed. It was a

fruit of fraud and falsification.[6] Thus, the certificates of title of CLT and the heirs of Dimson had no valid source.

Neither CLT nor the heirs of Dimson presented a certified copy (or even any copy) of the mother title of TCT Nos. T-177013 and TCT No. R-15166. CLT submitted OCT No. 994 registered on May 3, 1917 and admitted that there was only one OCT No. 994. It, however, argued that OCT No. 994's registration date should be April 19, 1917, the date of issuance of the decree of registration. This is a complete turnaround from its original contention that there were two OCT No. 994s, one registered on April 19, 1917 and another registered on May 3, 1917. The Court should not allow this.

In the trial courts, CLT and the heirs of Dimson traced their titles to the spurious OCT No. 994 registered on April 19, 1917. They even underscored this point to show that their mother title was issued earlier than, and prevailed over, OCT No. 994 registered on May 3, 1917. They are therefore estopped from claiming otherwise.[7]

Respondents cannot change horses in midstream. A party cannot adopt a new theory or argument, specially one that is inconsistent with its previous contention. The Court should not countenance CLT's act of adopting inconsistent postures as

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[6] See *Alfonso v. Office of the President*, G.R. No. 150091, 02 April 2007.

[7] Estoppel is a bar which precludes a person from denying the truth of a fact which has, in contemplation of law, become settled by the acts and proceedings of judicial or legislative officers. Or by the act of the party himself, either by conventional writing or by representations, express or implied. "Estoppel" is also defined as a preclusion of a person from asserting a fact, by previous conduct inconsistent therewith, conduct on his own part or on the part of those under whom he claims, or by adjudication on his rights, which he cannot be allowed to call in question. It is a rule of equity as well as a conclusion of law. The purpose of estoppel is to prevent inconsistency and fraud resulting in injustice. While estoppel does not make valid the thing complained of, it closes the mouth of the complainant. It is a doctrine for the prevention of injustice and is for the protection of those who have been misled by that which on its face was fair and whose character, as represented, parties to the deception will not, in the interest of justice, be heard to deny. (31 C.J.S. 288-290).

this would be a mockery of justice.[8] This rule applies more strictly in case of appeal. As this Court declared in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*:[9]

The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process.

Second, in upholding the validity of the titles of CLT, heavy reliance is made on the observations of the trial court and the Court of Appeals focusing on the alleged technical defects of TCT Nos. 4210 and 4211 (from where petitioner Manotok Realty, Inc.'s titles originated). To my mind, however, there are compelling reasons to annul respondent CLT's title.

True, this Court is not a trier of facts, specially if the factual findings of the trial court are affirmed by the appellate court. But it is not without exceptions.[10] The Court may review the findings of fact of the trial and appellate courts when such findings are manifestly mistaken, absurd or impossible.[11] Moreover, to lay the matter to rest and in the interest of justice, this Court can set aside the procedural barrier to a re-examination of the facts to resolve the legal issues.[12]

In these cases, the trial and appellate courts found (and this Court adopted the finding in its November 29, 2005 decision) that there are two OCT No. 994s, registered on April 19, 1917 and May 3, 1917, respectively. However, such finding has been shown to be manifestly erroneous.

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[8] November 29, 2005 decision in this case.

[9] G.R. No. 168498, 24 April 2007.

[10] *MEA Builders, Inc. v. Court of Appeals*, G.R. No. 121484, 31 January 2005, 450 SCRA 155.

[11] *Id*.

[12] *Alfonso v. Office of the President*, *supra* note 6.

TCT No. T-177013 covers Lot 26 of the Maysilo Estate with an area of 891,547.43 sq. m. It was a transfer from TCT No. R-17994 issued in the name of Estelita I. Hipolito. On the other hand, TCT No. R-17994 was a transfer from TCT No. R-15166 in the name of Jose B. Dimson which, in turn, was supposedly a direct transfer from OCT No. 994 registered on April 19, 1917.

Annotations at the back of Hipolito's title revealed that Hipolito acquired ownership by virtue of a court order dated October 18, 1977 approving the compromise agreement which admitted the sale made by Dimson in her favor on September 2, 1976. Dimson supposedly acquired ownership by virtue of the order dated June 13, 1966 of the CFI of Rizal, Branch 1 in Civil Case No. 4557 awarding him, as his attorney's fees, 25% of whatever remained of Lots 25-A, 26, 27, 28 and 29 that were undisposed of in the intestate estate of the decedent Maria de la Concepcion Vidal, one of the registered owners of the properties covered by OCT No. 994. This order was confirmed by the CFI of Caloocan in a decision dated October 13, 1977 and order dated October 18, 1977 in SP Case No. C-732.

However, an examination of the annotation on OCT No. 994, particularly the following entries, showed:

AP-6665/0-994 – *Venta: Queda cancelado el presente Certificado en cuanto a una extencion superficial de 3,052.93 metros cuadrados y 16,512.50 metros cuadrados, y descrita en el lote no. 26, vendida a favor de Alejandro Ruiz y Mariano P Leuterio, el primer casado con Deogracias Quinones el Segundo con Josefa Garcia y se ha expedido el certificado de Titulo No; 4210, pagina 163 Libro T-22.*

Fecha del instrumento – Agosto 29, 1918

Fecha de la inscripcion – September 9, 1918
10:50 AM

AP-6665/0-994 – Venta: – Queda cancelado el presente Certficado el cuanto a una extencion superficial de 871,982.00 metros cuadrados, descrita en el lote no. 26, vendida a favor de Alejandro Ruiz y Mariano P. Leuterio, el primer casado con

Deogracias Quinones el segundo con Josefa Garcia y se ha expedido el certificado de Titulo No 4211, pagina 164, Libro T-22.

Fecha del instrumento – Agosto 25, 1918

Fecha de la inscripcion – September 9, 1918
10:50- AM

Based on the description of Lot No. 26 in OCT No. 994, it has an area of 891,547.43 sq. m. which corresponds to the total area sold in 1918 pursuant to the above-cited entries. Inasmuch as, at the time the order of the CFI of Rizal was made on June 13, 1966, no portion of Lot No. 26 remained undisposed of, *there was nothing for the heirs of Maria de la Concepcion Vidal to convey to Dimson. Consequently, Dimson had nothing to convey to Hipolito who, by logic, could not transmit anything to CLT.*

Moreover, subdivision plan Psd-288152 covering Lot No. 26 of the Maysilo Estate described in Hipolito's certificate of title was not approved by the chief of the Registered Land Division as it appeared to be entirely within Pcs-1828, Psd-5079, Psd-5080 and Psd-15345 of TCT Nos. 4210 and 4211. How Hipolito was able to secure TCT No. R-17994 was therefore perplexing, to say the least.

All these significant facts were conveniently brushed aside by the trial and appellate courts. The circumstances called for the need to preserve and protect the integrity of the Torrens system. However, the trial and appellate courts simply disregarded them.

CLT'S AND THE HEIRS OF DIMSON'S PREDECESSORS-IN-INTEREST HAD NOTHING TO TRANSFER

As early as 1918, the entire Lot No. 26 had already been disposed of and title thereto was transferred to the predecessors-in-interest of Manotok Realty, Inc. as evidenced by the issuance of TCT Nos. 4210 and 4211. This fact was reflected in the following annotations on OCT No. 994:

a. Ap 6665/0-994 stating that TCT 4210 was issued on September 9, 1918 in favor of Alejandro Ruiz and Mariano P. Leuterio canceling OCT No. 994 insofar as portions of Lot No. 26 with areas of 3,052.93 sq. m. and 16,512.50 sq. m., respectively, by virtue of a deed of sale dated August 29, 1918 and

b. Ap 6665/0-994 stating that TCT No. 4211 was issued on September 9, 1918 in favor of Alejandro Ruiz and Mariano P. Leuterio totally canceling OCT No. 994 with regard to Lot 26 by virtue of a sale dated August 25, 1918 covering the remaining 871,982 sq. m. of the said lot.

Clearly, Dimson's TCT No. R-15166 had no basis because the property it was supposed to cover was already covered by TCT Nos. 4210 and 4211. Moreover, Dimson anchored his right to Lot No. 26 by virtue of the order dated June 13, 1966 of the CFI of Rizal, Branch 1. He presented the said order dated June 13, 1966 to the CFI of Caloocan City for confirmation only after the lapse of 11 years from its issuance.[13]

The order dated June 13, 1966 was recalled by the CFI of Rizal on August 16, 1966. Thus, his petition for confirmation was invalid on two grounds: (1) his right to file it had already prescribed and (2) with the recall of the order dated June 13, 1966, there was no longer anything to confirm. These fatal defects likewise tainted the heirs of Dimson's TCT No. R-15169 because it was issued on the basis of the same decision dated October 13, 1977 and order dated October 18, 1977 of the CFI of Caloocan (the same bases for the issuance of TCT No. R-15166).

The river cannot rise higher than its source. To reiterate, Dimson's TCT Nos. R-15166 and R-15169 had no basis. Since Dimson's title was the source of Hipolito's title and, subsequently, of CLT's TCT No. 177013, then CLT's certificate of title also had no basis. Dimson did not acquire any portion of Lot

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[13] The action should have been filed within ten years from the date the order became final.

Nos. 26 or 25-A (covered by the titles of Araneta Institute of Agriculture, Inc. [Araneta]). As such, he could not transfer any portion thereof to Hipolito. In the same vein, having acquired nothing from Dimson, Hipolito transmitted nothing to CLT.

Moreover, the rule is that where two certificates of title are issued to different persons covering the same parcel of land in whole or in part, the earlier in date must prevail as between the original parties and, in case of successive registration where more than one certificate is issued over the land, the person holding title under the prior certificate is entitled to the property as against the person who relies on the second certificate.[14] In other words, where more than one certificate is issued in respect of a particular estate or interest in land, the person claiming under the prior certificate is entitled to the estate or interest; and that person is deemed to hold under the prior certificate who is the holder of, or whose claim is derived directly or indirectly from, the person who was the holder of the earliest certificate.[15]

TCT Nos. 4210 and 4211 preceded Dimson's TCT No. R-15166 by almost 50 years while TCT Nos. 737 and 13574 of Araneta were issued 30 years earlier than Dimson's TCT No. R-15169. As between the source of Manotok Realty, Inc. and Manotok Estate Corporation's titles and that of CLT's, therefore, that of the latter prevails. In the same vein, Araneta's titles prevail over that of the heirs of Dimson.

THE ALLEGED DEFECTS IN CONNECTION WITH THE ISSUANCE OF TCT NO. 4211 WERE INSUFFICIENT TO NULLIFY THE TITLE

The trial and appellate courts ruled that fraud attended the issuance of TCT No. 4211 from which petitioner Manotok Realty, Inc. derived its titles. According to the trial and appellate courts:

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[14] *Iglesia ni Cristo v. CFI of Nueva Ecija*, 208 Phil. 441 (1983); *Director of Lands v. Court of Appeals*, G.R. No. L-45168, 27 January 1981, 102 SCRA 370.

[15] *Realty Sales Enterprise, Inc. v. Intermediate Appellate Court*, G.R. No. 67451, 28 September 1987, 154 SCRA 328.

(1) the dates of original survey appearing on TCT No. 4211 were different from those indicated in OCT No. 994; (2) the Bureau of Lands had no copy of Psd-2115 which was the basis for the issuance of TCTs Nos. 1368 to 1374 which preceded petitioner Manotok Realty, Inc.'s titles and (3) the technical description of the land appearing on OCT No. 994 was in English while the derivative titles were still in Spanish and the tie points in the mother lot were not adopted in the derivative titles.

However, the alleged irregularities are not sufficient to nullify TCT No. 4211. They were mere technical defects which may have been committed in the preparation thereof. The more important consideration should be whether or not there was a deviation or change in the area of Lot No. 26 as described in OCT No. 994 and those described in the derivative TCTs. In the case of TCT No. 4211, there was no such deviation or change.

Moreover, since the titles of respondents CLT and the heirs of Dimson are invalid for having a non-existent source, the respective titles of petitioners enjoy the presumption of valid and regular issuance. A review of the purported defects of these titles should await a proper action, that is, one that directly attacks their validity.

THE COMMITTEE REPORTS OF THE SENATE AND THE DEPARTMENT OF JUSTICE HAVE PROBATIVE VALUE

This Court already recognized the evidentiary value of the report of the Senate in *Alfonso v. Office of the President*[16] when it included relevant portions of the report in its factual findings. While *Alfonso* involved a disciplinary issue distinct from the issues in these cases, the facts there were intimately and extensively related to the facts here as *Alfonso* showed how OCT No. 994 allegedly registered on April 19, 1917 came about as a product of fraud and falsification.

Moreover, the reports of the Senate and the Department of Justice are official acts of co-equal branches of the government.

[16] *Supra* note 6.

Under Section 9, Rule 129 of the Rules of Court, it is mandatory for courts to take judicial notice of these reports.

THERE IS NO NEED TO REMAND THESE CASES

The discussion on the venue of these cases (should these cases be remanded to the CA) and the reasons why such venue is the proper one ought to be commended for its comprehensiveness. However, I submit it is actually academic and unnecessary. There is no need to remand these cases.

The discussion is unequivocal:

> **[The existence of the so-called 17 April OCT having been discounted], it should necessarily follow that any title that is sourced from the 17 April 1917 OCT is void. Such conclusion is inescapable whatever questions there may be about the veracity of the 3 May 1917 OCT....**
>
> **The determinative test to resolve whether the prior decision of this Court should be affirmed or set aside [is] whether or not the titles invoked by the respondents are valid. If these titles are sourced from the so-called OCT No. 994 dated 17 April 1917, then such titles are void or otherwise should not be recognized by this Court.**

As emphasis, the following point is made:

> The conclusion is really simple. On their faces, none of these three titles can be accorded recognition simply because the original title commonly referred to therein never existed. To conclude otherwise would constitute deliberate disregard of the truth. These titles could be affirmed only if it can be proven that OCT No. 994 registered on 19 April 1917 had actually existed. CLT and the [Dimsons] were given the opportunity to submit such proof before this Court, but they did not. In fact, CLT has specifically manifested that the OCT No. 994 they concede as true is also the one which the Office of the Solicitor General submitted as true and that is OCT No. 994 issued on 3 May 1917.

The certificates of title of CLT and the heirs of Dimson have no valid source. They are the bastard offsprings of the

"mother of all land titling scams."[17] This Court has the duty to snuff them out, not to perpetuate them. They should be ordered expunged from the registry books of the Office of the Registrar of Deeds. Furthermore, the respective complaints filed by CLT and the heirs of Dimson in the trial courts should be dismissed.

To reiterate, the logical consequence of declaring the respective certificates of title of CLT and the heirs of Dimson void and unworthy of legal recognition is to order the dismissal of Civil Case Nos. C-15539 and C-15491 instituted by CLT and Civil Case No. C-8050 filed by the heirs of Dimson.

With the dismissal of the complaints, no controversy remains to be decided and no case need be remanded. Nonetheless, the ponencia is still not satisfied but asks further:

> xxx what then is the proper course of action to take with respect to these pending motions for reconsideration?

The esteemed ponente further argues that:

> Considering that CLT and [the heirs of Dimson] clearly had failed to meet the burden of proof reposed in them as the plaintiffs in the action for annulment of title and recovery of possession, there is a case to be made for ordering the dismissal of their original complaints before the trial court.

Yet, more is desired:

> However, such solution may not satisfactorily put to rest the controversy surrounding the Maysilo Estate.

The ponencia's allusion to "the controversy surrounding the Maysilo Estate" is misleading and without factual and legal basis. After the respective complaints of CLT and the heirs of Dimson are dismissed, the controversy surrounding the portions of the Maysilo Estate involved in these cases will be resolved and terminated. Thus, there will be no more controversy to speak of.

Judicial power "includes the duty of the courts of justice to settle actual controversies involving rights which are legally

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[17] See *Alfonso v. Office of the President*, *supra* note 6.

demandable and enforceable."[18] Courts resolve only cases that involve actual controversies. They are mandated to settle disputes between real conflicting parties through the application of the law.[19] Until it can be shown that an actual controversy exists, courts have no jurisdiction to render a binding decision.[20]

A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.[21] *There will be no more justiciable controversy in these cases* after the Court declares that the respective certificates of title of CLT and the heirs of Dimson are void and unworthy of legal recognition. Thus, there will be nothing more to remand.

NO DIRECT CHALLENGE TO PETITIONERS' TITLES REMAINS

In support of the action to remand these cases, the following opinion is rendered:

> More pertinently, after the present petitions were filed with this Court, the Republic of the Philippines, through the Office of the Solicitor General, had sought to intervene. The Republic did not participate as a party when these cases were still before the trial courts and the Court of Appeals. While the Republic originally prayed for the grant of the petitions filed by all the petitioners in these consolidated cases, instead it presently seeks of the Court the promulgation of a new ruling upholding the validity of OCT No. 994 issued or registered on [3 May 1917]. Rather than suggest whether the petitions be granted or denied, the OSG argues that after a declaration from this Court that it is the 3 May 1917 OCT mother title which is valid, "a remand of this case to the Court of Appeals, to settle which among the private parties derived their titles from the existing OCT 994, is proper."
>
> Notably, both the *Manotok* group and *Araneta* are amenable to the remand of the petition[s], albeit under differing qualifications.

[18] Section 1, Article VIII, Constitution.

[19] *Guingona v. Court of Appeals*, 354 Phil. 415 (1998).

[20] *Id*.

[21] *Velarde v. Social Justice Society*, G.R. No. 159357, 28 April 2004, 428 SCRA 283.

And the *ponencia* concludes:

> Considering the reality that the genuine OCT No. 994 is that issued/registered/dated 3 May 1917, remand would be appropriate to determine which of the parties, if any, derived valid title from the genuine OCT No. 994.

There is no factual and legal basis therefor. The annulment of the respective certificates of title of respondents CLT and the heirs of Dimson terminated the controversies subject of these cases. It removed the direct challenge raised by respondents to the respective titles of petitioners.

Notably, nowhere did the Republic assail the validity of the respective certificates of titles of petitioners. It never prayed for the annulment of their titles.[22] Otherwise, it would have gone against one of the fundamental principles of the Torrens system of land registration: a Torrens title is not subject to collateral attack.

A certificate of title cannot be changed, altered, modified enlarged or diminished in a collateral proceeding.[23] As a rule, it is irrevocable and indefeasible. *A strong presumption exists that it was validly and regularly issued*.[24] The duty of courts is to see to it that this title is maintained and respected unless assailed in a direct proceeding.[25] A Torrens title cannot be attacked collaterally.[26] The efficacy and integrity of the Torrens system must be protected at all costs.

With the annulment of the respective titles of respondents CLT and the heirs of Dimson, no direct challenge to the respective

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[22] The Republic consistently prayed in its motion for reconsideration dated January 4, 2006 and memorandum dated August 25, 2006 that "the decision dated November 29, 2005 be reconsidered, and a new one be issued upholding the validity of OCT No. 994 issued on May 3, 1917."

[23] Section 48, PD 1529 (Property Registration Decree).

[24] *Ching v. Court of Appeals*, G.R. No. 59731, 11 January 1990, 181 SCRA 9; *Vda. De Medina v. Cruz*, G.R. No. 39272, 04 May 1988, 161 SCRA 36.

[25] *Director of Lands v. Gan Tan*, 89 Phil. 184 (1951).

[26] *Id*.

titles of petitioners subsists. The strong presumption of valid and regular issuance of petitioners' titles remains. Unless and until directly attacked by a party that has an actual and direct interest on the annulment of said titles, that presumption will stand.

The Court does not have the panacea for any and all ills allegedly surrounding the Maysilo Estate. It should be constantly reminded of its own pronouncement in *Vera v. Avelino*:[27]

> Let us not be overly influenced by the plea that for every wrong there is a remedy, and that the judiciary should stand ready to afford relief. There are undoubtedly many wrongs the judicature may not correct....
>
> Let us likewise disabuse our minds from the notion that the judiciary is the repository of remedies for all political or social ills....[28]

The duty of this Court is to ensure and preserve the integrity of the Torrens system. That duty must be performed with all due fidelity to the fundamental principles governing that system.

Resolving all controversies, perceived or real, surrounding the Maysilo Estate is a desirable objective. However, it is simply not within the Court's powers to do in these cases. The Court is not enjoined, empowered or equipped to clean the Augean stables, nor to accomplish the task in a single day.

ACCORDINGLY, I vote to *GRANT* the motion for reconsideration of the intervenor Republic of the Philippines.

DISSENTING OPINION

SANDOVAL–GUTIERREZ, *J*.:

> **"Justice delayed is justice denied." Let this Court be the shining example of speedy justice for the lower courts to emulate.**

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[27] 77 Phil. 365 (1946).

[28] *Id*.

At the outset, I must stress that the final resolution of these cases has been delayed unnecessarily and has dragged on far too long, thereby causing prejudice to the parties. The oldest[1] of these three consolidated cases was instituted in the trial court way back on **December 18, 1979**. It is now **nearly thirty (30) long years** since then and the Court *En Banc* has just resolved petitioners' motions for reconsideration[2] of the Decision dated November 29, 2005 rendered by the Third Division.

Petitioners utterly failed to show any reversible error committed by the Court of Appeals in its assailed Decisions **affirming** the trial courts' judgments. Therefore, why should these cases be remanded to the same court?

I dread the day when the aggrieved parties herein would bewail the delay of the resolution of their cases and lay the blame on this Court as the perpetrator of the awful dictum that "**justice delayed is justice denied**." Let us give sense to the constitutional mandate that "all persons shall have the **right to a speedy disposition of their cases** before all judicial, quasi-judicial or administrative bodies."[3] This constitutional guarantee is intended to stem the tide of "disenchantment among the people in the administration of justice by our judicial and quasi-judicial tribunals."[4] In ***Matias v. Plan***,[5] this Court, through then Justice (now Chief Justice) Reynato S. Puno, expressed grave concern if such constitutional guarantee is ignored, thus:

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[1] G.R. No. 134385 (*Araneta Institute of Agriculture, Inc. v. Heirs of Jose B. Dimson, et al.*); the complaint in G.R. No. 123346 (*Manotok Realty, Inc. and Manotok Estate Corporation v. CLT Realty Development Corporation*) was filed with the trial court on August 10, 1992; and the complaint in G.R. No. 148767 (*Sto. Niño Kapitbahayan Association, Inc. v. CLT Realty Development Corporation*) was filed with the trial court on July 9, 1992.

[2] Only the petitioners in G.R. Nos. 123346 and 134385 have filed separate motions for reconsideration of the November 29, 2005 Decision.

[3] Section 16, Article III (Bill of Rights) of the 1987 Constitution; underscoring supplied.

[4] Cruz, *Constitutional Law*, 2007 Edition, p. 295.

[5] A.M. No. MTJ-98-1159, August 3, 1998, 293 SCRA 532.

The Constitution guarantees the right of persons **against unreasonable delay** in the disposition of cases before all judicial, quasi-judicial or administrative bodies. **Judges play an active role in ensuring that cases are resolved with speed and dispatch so as not to defeat the cause of the litigants.**

xxx xxx xxx

The need for speedy administration of justice cannot be ignored. Excessive delay in the disposition of cases renders the rights of people guaranteed by various legislations <u>inutile</u>. x x x. (Underscoring supplied)

In the same vein, Justice Isagani A. Cruz (retired) stated that the constitutional provision on speedy disposition of cases "**deserves support**" and **its "implementation depends ultimately upon the Supreme Court, which unfortunately is no paragon of speedy justice either,** x x x."[6]

Indeed, the aphorism "justice delayed is justice denied" is by no means a trivial or meaningless concept that can be taken for granted by those who are tasked with the dispensation of justice,[7] **including this Court of last resort.** The adjudication of cases must not only be done in an **orderly manner** that is in accord with our established rules of procedure, but must also be **promptly decided** to better serve the ends of justice. The essence of the judicial function is that "justice shall be **impartially** administered **without unnecessary delay.**"[8]

This Court has incessantly admonished and dealt with severely members of the bench for undue delay in the disposition of cases, for such amounts to a denial of justice which, in turn, brings the courts into disrepute and erodes the faith and confidence of the public in the Judiciary and the justice system.[9] The integrity

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[6] Cruz, *Constitutional Law*, *supra*.

[7] *Licaros v. Sandiganbayan*, G.R. No. 145851, November 22, 2001, 370 SCRA 394.

[8] Section 1, Rule 135.

[9] *Re: Cases Left Undecided by Retired Judge Benjamin A. Bongolan of the RTC, Br. 2, Bangued, Abra*, A.M. No. 98-12-394-RTC, October 20, 2005, 473 SCRA 428.

and honor of the Judiciary is measured not only by the impartiality, fairness, and correctness of the decisions rendered, but also by the **efficiency with which disputes are speedily resolved.**[10]

Let this Court be the shining example of speedy justice for the lower courts to emulate.

It is on the basis of the above doctrine that I strongly **DISSENT** to the Resolution of the Majority remanding the entire record of these cases to the Court of Appeals for the purpose of determining:

"**(i)** Which of the contending parties are able to trace back their claims of title to OCT. No. 994 dated 3 May 1917?

(ii) Whether the imputed flaws in the titles of the Manotoks and Araneta, as recounted in the 2005 Decision, are borne by the evidence? Assuming they are, are such flaws sufficient to defeat the claims of titles of the Manotoks and Araneta?

(iii) Whether the factual and legal bases of the 1966 Order of Judge Munoz-Palma and the 1970 Order of Judge Sayo are true and valid. Assuming they are, do these orders establish a superior right to the subject properties in favor of the Dimsons and CLT as opposed to the claims of Araneta and the Manotoks?

(iv) Whether any of the subject properties had been the subject of expropriation proceedings at any point since the issuance of OCT No. 994 on 3 May 1917, and if so what are those proceedings, what are the titles acquired by the Government and whether any of the parties is able to trace its title to the title acquired by the Government through expropriation.

(v) Such other matters necessary and proper in ascertaining which of the conflicting claims of title should prevail."

At the outset, I must stress that the cases at bar have been heard and decided by the three (3) RTC Branches of Caloocan City. Their Decisions have been reviewed closely and **AFFIRMED** by the three (3) Divisions of the Court of Appeals, not to mention by this Court's Third Division in its Decision

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[10] *Tan v. Estoconing*, A.M. No. MTJ-04-1554, June 29, 2005, 462 SCRA 10.

dated November 29, 2005. **Indeed, all the factual and legal issues have been fully determined.** Furthermore, during the oral arguments, then Solicitor General, now Justice Eduardo Antonio B. Nachura, presented before the Court *En Banc* the original copy of OCT 994. Every Justice came to know that this OCT No. 994 bears two (2) dates: **April 19, 1917** – the issuance of Decree No. 36455 and **May 3, 1917** – the date the Decree was forwarded to the Registry of Deeds of Caloocan City for transcription. Thus, it became clear to all the Justices that there is only one OCT 994 from which the titles of the Dimson's heirs and CLT originated. **So why should we remand these cases to the Court of Appeals to determine again whether there are two (2) OCT No. 994?** I repeat, the evidence to prove there is only one (1) OCT 994 had been presented before all the Justices of this Court. **Why should we close our eyes and disregard completely the truth that there is only one OCT NO. 994?** By remanding these cases to the appellate court to determine the issue of whether there are indeed two (2) OCT No. 994, we are all deceiving ourselves. We are all scared to face the truth! But why?

A brief restatement of the facts is imperative.

These three (3) consolidated cases involve Lots 25-A-2 and 26 of the *Maysilo Estate* covered by OCT No. 994 of the Registry of Deeds of Rizal (later transferred to the Registry of Deeds of Caloocan).

I- G.R. No. 123346

G.R. No. 123346 stemmed from a complaint[11] for recovery of ownership filed with the Regional Trial Court (RTC), Branch 129, Caloocan City, presided by Judge Bayani Rivera, by **CLT Realty Development Corporation** (*CLT Realty*) against the *Manotok Corporations*. *CLT Realty* alleged that its title is being overlapped by those of the *Manotok Corporations*. This was specifically denied by the latter.

During the proceedings, the trial court, upon agreement of the parties, appointed three Commissioners, namely: Engr. Avelino

[11] Docketed as Civil Case No. C-15539.

L. San Buenaventura (nominated by *CLT Realty*), Engr. Teodoro I. Victorino (nominated by the *Manotok Corporations*), and **Engr. Ernesto S. Erive, Chief of the Surveys Division, Land Management Bureau, Department of Environment and Natural Resources, Quezon City** (nominated by the two Commissioners and the parties).

Commissioners Ernesto Erive and Avelino San Buenaventura submitted a Majority Report finding that *CLT Realty's* title is valid, while those of the *Manotok Corporations* are spurious.

The trial court, on the basis of the Majority Report, decided **in favor of *CLT Realty***. Its Decision was **affirmed** by the Court of Appeals in a Decision penned by Justice Eugenio S. Labitoria and concurred in by then Presiding Justice Nathanael P. de Pano, Jr. (both retired) and Justice Cancio C. Garcia, a member of this Court who retired recently.

The *Manotok Corporations* filed with this Court a Petition for Review on *Certiorari*. The Third Division, in its Decision dated November 29, 2005, **affirmed** the Decision of the Court of Appeals. I was the *ponente* of the Decision, concurred in by Justice Artemio Panganiban (who later became Chief Justice), Justice Renato Corona, now a Dissenter, and Justice Conchita Carpio Morales. Justice Cancio Garcia inhibited himself, having participated in and signed the appealed Decision of the Court of Appeals.

II – G.R. No. 134385

The second case is **G.R. No. 134385**. The ***Heirs of Jose B. Dimson*** filed with the RTC, Branch 33, Caloocan City, presided by Judge B.A. Adefuin-De La Cruz, a complaint[12] for annulment of titles of the ***Araneta Institute***.

The trial court's findings are similar to those of the Majority Report of the Commissioners stated earlier. It rendered a Decision **in favor of the *Heirs of Jose Dimson*** which was **affirmed** by the Court of Appeals in a Decision penned by Justice Eduardo

[12] Docketed as Civil Case No. C-8050.

G. Montenegro, concurred in by Justice Pedro A. Ramirez (both retired) and Justice Maximiano C. Asuncion (deceased).

The Third Division of this Court, in its same Decision, **upheld** the Court of Appeals judgment.

III - G.R. No. 148767

The third case, **G.R. No. 148767**, originated from a complaint[13] for annulment of title and recovery of ownership filed with the RTC, Branch 121, Caloocan City, presided by Judge Adoracion G. Angeles. The complaint was filed by ***CLT Realty*** against **Sto. Niño Kapitbahayan Association, Inc.** (*Sto. Niño Association*). The trial court decided in favor of *CLT Realty*. Its Decision was **affirmed** by the Court of Appeals in a Decision penned by Justice Portia Aliño-Hormachuelos and concurred in by Justice Fermin A. Martin, Jr. (retired) and Justice Mercedes Gozo-Dadole (also retired).

Again, the Third Division **sustained** the Court of Appeals Decision.

Notably, the instant petitions for review on *certiorari* filed by herein petitioners were denied by the Third Division basically on the ground that they raised **questions of fact**, over which this Court has no power to determine as it is not a trier of facts.[14] Besides, considering that the trial courts' findings of fact have been **affirmed** by the Court of Appeals, and there is no showing that their Decisions are contrary to the evidence and the law, such factual findings are **binding** and **conclusive** on this Court.[15]

The *Manotok Corporations* and *Araneta Institute* filed their respective **motions for reconsideration**. Petitioner ***Sto. Niño Association*** **did not file a motion for reconsideration**, hence,

[13] Docketed as Civil Case No. C-15491.

[14] Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[15] *Asia Trust Development Bank v. Concepts Trading Corporation*, G.R. No. 130759, June 20, 2003, 404 SCRA 449; *Omandam v. Court of Appeals*, G.R. No. 128750, January 18, 2001, 349 SCRA 483.

the Decision of the Third Division has become **final and executory** as against it.

These consolidated cases were later elevated to the Court *En Banc*. The parties (**except for *Sto. Niño Association* who no longer participated**) were then heard in oral arguments. I wrote a draft Resolution denying the Motions for Reconsideration. Justice Dante Tinga dissented.

Now, Justice Tinga, in his *ponencia,* concluded that: **first,** there is only one (1) OCT No. 994 dated May 3, 1917, it appearing on the record that OCT No. 994 was received for transcription by the Register of Deeds on **May 3, 1917**, the date which should be reckoned as the **date of registration of the title; second**, any title that traces its source to **OCT No. 994 dated April 17, 1917 is void for such title is inexistent**; and **third,** the Decisions of this Court in *MWSS vs. Court of Appeals* and *Gonzaga v. Court of Appeals* cannot apply to the cases at bar, "especially in regard to their recognition of an OCT No. 994 dated April 17, 1917, a title which we now acknowledge as inexistent."

I cannot give my concurrence to such conclusions due to the following grounds:

A

There is only ONE existing OCT No. 994, with Decree (of registration) No. 36455, "issued" on April 19, 1917 by the Court of First Instance (CFI) of Rizal acting as Court of Land Registration, then presided by Judge Norberto Romualdez, and was "received for transcription" by the Registry of Deeds, same province, on May 3, 1917.

During the oral arguments, then Solicitor General Antonio Eduardo B. Nachura (now a member of this Court) representing herein intervenor Republic of the Philippines, maintained that there is only one OCT No. 994 existing in the books of the Land Registration Authority (LRA). The Decree was issued on **April 19, 1917** and received for transcription on May 3, 1917.[16]

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[16] Solicitor General's Memorandum dated August 25, 2006, p. 19.

He then presented to the Court the original copy of OCT No. 994. On its first page, the following entries appear:

ORIGINAL CERTIFICATE OF TITLE
NO. 994

OFFICE OF THE REGISTER OF DEEDS FOR THE PROVINCE OF RIZAL
Entered pursuant to the following Decree:

Decree No. 36455

United States of America
Philippine Islands

COURT OF LAND REGISTRATION

Case No. 4429, having been duly and regularly heard, in accordance with the provisions of law, it is hereby decreed that in the undivided interests hereinafter stated, x x x.

Therefore, **it is ordered by the Court that said land be registered** in accordance with the provisions of the Land Registration Act in the name of x x x.

Witness: The Honorable Norberto Romualdez, Associate Judge of said Court, the **3rd day of December, A.D. nineteen hundred and twelve**.

Issued at Manila, P.I., the **19th day of April, A.D. 1917** at 9:00 A.M.

ATTEST: ENRIQUE ALTAVAS
Chief of the Land Registration Office

Received for transcription at the Office of the Register of Deeds for the Province of Rizal, this **third day of May, nineteen hundred and seventeen** at 7:30 A.M. (Underscoring supplied)

When asked by Associate Justice Adolfo S. Azcuna on the above-quoted entries, the Solicitor General **admitted** that **the original OCT No. 994 refers also to Decree No. 36455, "issued" on April 19, 1917**, and was "**received for transcription**" by the Office of the Register of Deeds of Rizal on **May 3, 1917**, thus:

JUSTICE AZCUNA:

Mr. Solicitor General, **I have here the original OCT 994, but it says here that it refers to the Decree also**. And **it says that it was issued** at Manila, *i.e.* the **nineteenth day of April 1917**. **So the date April 19, 1917 is also reflected in this title?**

SOLICITOR GENERAL NACHURA:

Yes, Your Honor. It's the date of the Decree.

JUSTICE AZCUNA:

In reference to the date the Decree was issued.

SOLICITOR GENERAL NACHURA:

Yes, Your Honor.

JUSTICE AZCUNA:

In fact, the **date of the decision** is also here, **December 3, 1912**?

SOLICITOR GENERAL NACHURA:

Yes, Your Honor.

JUSTICE AZCUNA:

And then it says at the bottom, **received for transcription** [on] **May 3, 1917**.

SOLICITOR GENERAL NACHURA:

Yes, Your Honor.[17] (Underscoring supplied)

In light of the Solicitor General's declaration, the Court, upon termination of the oral arguments, required respondent *CLT Realty* to submit its own copy of OCT No. 994. The parties were also directed to submit their respective memoranda in support of their motions for reconsideration, which they did.

Respondent *CLT Realty* later submitted a certified copy of the same OCT No. 994 and manifested that it forms part of the records in the *Sto. Niño Association* case (G.R. No. 148767)

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[17] Transcript of Stenographic Notes (TSN), August 1, 2006, pp. 369-372.

offered in evidence as Exhibit "D" before the trial court in Civil Case No. C-15491.

Significantly, a perusal of the copies of OCT No. 994 submitted by the Solicitor General and respondent *CLT Realty* shows that they are **identical**. There is no dispute that they are **one and the same**.

It is now clear that there is **only one OCT No. 994 at the Office of the Register of Deeds of Rizal**. This mother title, as shown on its face, was issued by virtue of the **Decision** dated **December 3, 1912** of the Court of First Instance, acting as Land Registration Court, then presided by Judge Norberto Romualdez, in **Land Registration Case (LRC) No. 4429.** The Decision ordered the registration of the land described therein in accordance with the provisions of the Land Registration Act. Thus, pursuant to the said Decision, **Decree (of registration) No. 36455 was issued** on **April 19, 1917** and on **May 3, 1917**, was "**received for transcription**" by the Office of the Register of Deeds of Rizal.

Now, why does Justice Tinga maintain there are two OCT No. 994 and that the one dated April 19, 1917 is non-existent and void?

The crucial issue is — which of the Certificates of Titles Certificates of Title of the contending parties validly emanated from the sole OCT No. 994 of the Registry of Deeds of Rizal?

Now, considering that there is only one OCT No. 994 of the Office of the Register of Deeds of Rizal pursuant to Decree No. 36455 issued on April 19, 1917 and received for transcription at the said Office on May 3, 1917, the confusion or disagreement over the date of its issuance (whether April 19, 1917 or May 3, 1917) becomes inconsequential in the resolution of the merits of the instant cases since both dates appear on the mother title itself. The real **crucial issue** here is:

Which of the Certificates of Title of the contending parties validly emanated from the sole OCT No. 994 of the Registry of Deeds of Rizal?

Let me trace the titles of the contending parties in these two (2) cases, subject of the motions for reconsideration.

I -G.R. No. 123346

(***Manotok Realty, Inc. and Manotok Estate Corporation, petitioners, v. CLT Realty Development Corporation, respondents***)

Here, the trial court and the Court of Appeals found that the titles of *Jose B. Dimson* and *CLT Realty* have been **validly derived from OCT No. 994** issued pursuant to **Decree (of registration) No. 36455** on **April 19, 1917** in **Land Registration Case No. 4429**.

The evidence shows that the titles of *CLT Realty* and Dimson were derivatives of OCT No. 994 of the Registry of Deeds of Rizal, which was originally issued to Maria de la Concepcion Vidal, married to Pioquinto Rivera. This mother title was issued pursuant to the Decision dated December 3, 1912 of the Court of First Instance (CFI) of Rizal, acting as Court of Land Registration, presided by Judge Norberto Romualdez (who later became a member of the Supreme Court) in **Land Registration Case No. 4429**. Pursuant to the said Decision, the **Decree (of registration) No. 36455** was issued on **April 19, 1917** by the CFI of Rizal. On May 3, 1917, the Decree was "received for transcription" by the Registry of Deeds, same province.

Maria de la Concepcion Vidal and Pioquinto Rivera had four children, but three died, leaving Bartolome Rivera as the surviving sibling.

Bartolome and his co-heirs (his nephews and nieces) filed with the then Court of First Instance (CFI) of Rizal an **action for partition and accounting**, docketed as **Civil Case No. C-424**.

On December 29, 1965, the CFI rendered a **Decision ordering the partition** of the properties left by Maria de la Concepcion Vidal among Bartolome and his co-heirs.

Bartolome and his co-heirs filed with the CFI of Rizal, presided by then Judge Cecilia Muñoz Palma (who later became a member of the Supreme Court), a petition for substitution of their names in lieu of Maria de la Concepcion Vidal, docketed as **Civil**

Case No. 4557. Judge Palma issued an **Order granting the petition**.

Lots 25 and 26, among others, covered by OCT No. 994, were allotted to Bartolome.

Bartolome then executed a **Deed of Transfer and Conveyance in favor of Jose B. Dimson**, herein respondent in G.R. No. 134385 represented by his heirs. Among the lots conveyed were Lots 25-A-2 and 26. This Deed of Transfer and Conveyance was **approved** by Judge Palma in an **Order** dated June 13, 1966.

Consequently, Jose Dimson filed with the CFI of Rizal, Branch 33, Caloocan City, a petition entitled "*In the matter of the Petition for Confirmation of the Order, Jose B. Dimson, represented by Roqueta Rodriguez Dimson, petitioner*," docketed as **Special Proceedings No. C-732**. On October 18, 1977, Judge Marcelino N. Sayo issued an **Order directing the Register of Deeds for Caloocan City to segregate and issue separate certificates of title over Lots 25-A-2 and 26, among others, in favor of Jose Dimson**. Thus, **TCT No. R-15166** and **TCT No. R-15169** were issued in his name.

Estelita I. Hipolito **purchased** Lot 26 from Dimson. Hence, TCT No. 15166 was cancelled and in lieu thereof, TCT No. R-17994 was issued in her name.

CLT Realty, on the other hand, acquired Lot 26 from Estelita on December 10, 1988 by virtue of a **Deed of Sale with Real Estate Mortgage**. Consequently, TCT No. R-17994 in her name was cancelled and in lieu thereof, **TCT No. 177013** was issued in *CLT Realty's* name.

CLT Realty's TCT No. 177013 is what is involved in both G.R. Nos. 123346 and 148767, while Jose Dimson's TCT No. R-15169 is the subject in G.R. No. 134385.

The trial courts found that the titles of the Manotok Corporations were not derived from OCT No. 994, hence, spurious.

As culled from the Commissioners' Majority Report and the findings of the trial courts, **the titles of the *Manotok Corporations***

were not derived from OCT No. 994 and are therefore spurious:

This is the chronology of transfer of the *Manotok Corporation*'s title. Lot 26 was subdivided leading to the issuance of TCTs Nos. 4210 and 4211 registered on September 9, 1918 in the names of Alejandro Ruiz and Mariano Leuterio, respectively. The titles of the *Manotok Corporations* were derived from **TCT No. 4211**.

TCT No. 4211 was later cancelled by TCT No. 5261 in the name of Francisco Gonzales, which was later cancelled by TCT No. 35486 in the names of his six children.

The land covered by TCT No. 35486 in the names of Francisco's six children was **subdivided under Plan Psu 21154**. **But this plan could not be traced at the depository plans – the Bureau of Lands.** The alleged Subdivision Plan had seven resultant lots covered by individual titles – TCTs Nos. 1368 to 1374 – six of which are in the individual names of Francisco's children.

These seven lots were expropriated by the government thru the Homesite and Housing Corporation, after which they were subdivided into 77 lots acquired by the tenants. The *Manotok Corporations* purchased 20 lots from the tenants covered by 20 separate TCTs.

The issuance of the Manotok Corporations' titles suffer fatal irregularities.

The Commissioners' Majority Report and the trial court found numerous irregularities – **fatal** in character – in the issuance of the *Manotok Corporations'* titles, namely:

1. The technical descriptions on the titles, TCTs Nos. 4210 and 4211 in the names of Ruiz and Leuterio; and TCTs Nos. 5261 and 35480 in the names of Francisco Gonzales and his 7 children, from where the titles of the *Manotok Corporations* originated, were inscribed in **Spanish**. However, their alleged mother title, OCT No. 994, is in **English**.

2. The date of survey appearing on the said titles (TCTs Nos. 4210, 4211, 5261 and 35486) was **December 12, 1917, instead of "September 8-27, October 4-21, November 12-18, 1911" as appearing on OCT no. 994**.

3. The lots covered by the same titles are **not identified by lot numbers**. **There is no mention therein of Lot 26, Maysilo Estate.**

4. There is **no Subdivision Survey Plan No.** indicated on TCTs Nos. 4210, 4211, 5261 and 35486 covering the purported subdivision of Lot 26.

5. **No survey plan** could be found in the Bureau of Lands or LRA.

6. Subdivision Plan No. Psd – 21154, the alleged subdivision plan of TCT No. 35486 in the names of Francisco Gonzalez's 6 children, **could not be found in the Bureau of Lands**.

7. The **tie lines** stated in the technical descriptions of TCTs Nos. 1368-1374 embracing the lots expropriated, **deviated from the mother lot's tie point** (the Bureau of Lands Location Monument No. 1, Caloocan City). **This resulted in the shifting of the position of the 7 lots which do not fall inside the boundary of the mother lot.**

Based on these concrete facts, the commissioners' Majority Report concluded that petitioners *Manotok Corporations*' titles overlap that of respondent *CLT Realty*. **The overlapping is caused by the inherent technical defects on TCT No. 4211** (from which the *Manotok Corporations* derived their titles) **and the questionable circumstances of its issuance**, thus:

8. In the light of the foregoing facts, the undersigned Commissioners have come to the following conclusions:

a. **There are inherent technical infirmities or defects on the face of TCT Nos. 4211** (also on TCT No. 4210), 5261 and 35486. **The fact that the technical descriptions in TCT Nos. 4211**, 5261 and 35486 **are written in <u>Spanish</u> while those on the alleged mother title, OCT-994, were already in <u>English</u>, is abnormal and contrary to the usual practice in the issuance of titles. <u>If</u>**

OCT-994 is the mother title of TCT Nos. 4211, 5261 and 35486, **then said titles should also be written in English because OCT-994 is already in English. It is possible that an ascendant title be written in Spanish and the descendant title in English, the language now officially used, but the reverse is highly improbable and irregular**.

b. **Also, the fact that the original survey dates of OCT-994** (September 8-27, October 4-21 and November 17-18, 1911) **are not indicated on the technical descriptions on TCT Nos. 4211**, 5261 and 35486, **but an entirely different date, December 22, 1917, is instead indicated, likewise leads to the conclusion that TCT Nos. 4211, 5261 and 35486 could not have been derived from OCT-994. It is the established procedure to always indicate in the certificate of title, whether original or transfer certificates, the date of the original survey of the mother title together with the succeeding date of subdivision or consolidation. Thus, in the absence of the original survey dates of OCT-994 on TCT Nos. 4211, 5261 and 35486, then OCT-994 is not the mother title of TCT Nos. 4211, 5261 and 35486, not only because the original survey dates are different but because the date of original survey is always earlier than the date of the issuance of the original title**. OCT-994 was issued on May 3, 1917 and this is much ahead of the date of survey indicated on TCT Nos. 4210 and 4211 which is December 22, 1917;

c. Granting that the date December 22, 1917 is the date of a subdivision survey leading to the issuance of TCT Nos. 4210 and 4211, **there are, however, no indications on the face of the titles themselves which show that a verified and approved subdivision of Lot 26 took place. In subdividing a lot, the resulting parcels are always designated by the lot number of the subdivided lot followed by letters of the alphabet starting from the letter "A" to designate the first resultant lot, etc.**, for example, if Lot 26 is subdivided into three (3) lots, these lots will be referred to as Lot 26-A, Lot 26-N and Lot 26-C followed by a survey number such as "Psd-_____" or "(LRC) Psd-_____." **However, the lots on TCT Nos. 4210 and 4211 do not contain such descriptions. In fact, the parcels of land covered by TCT Nos. 4210 and 4211 are not even described by lot number, and this is again technically irregular and defective because the designation of lots by Lot Number was already a practice at that time as exemplified by**

the technical descriptions of some sub-lots covered by OCT-994, i.e., 23-A, 25-A, 25-D, etc.;

d. That **TCT Nos. 4210 and 4211 which allegedly was the result of a subdivision of Lot 26 should not have been issued without a subdivision plan approved by the Director of Lands or the Chief of the General Land Registration Office. Republic Act No. 496 which took effect on November 6, 1902, particularly Section 58 thereof, provided that the Registry of Deeds shall not enter the transfer certificate to the grantee until a plan of such land showing all the portions or lots into which it has been subdivided, and the technical description of each portion or lot, have been verified and approved by the Director of Lands**…' and as corroborated by Section 44, Paragraph 2, and that the plan has been approved by the Chief of the General Land Registration Office, or by the Director of Lands as provided in Section fifty-eight of this Act, the Registry of Deeds may issue new certificates of title for any lot in accordance with said subdivision plan;'

e. **The absence of a lot number and survey plan number in the technical description inscribed on TCT Nos. 4210 and 4211, and the absence of a subdivision survey plan for Lot 26 at the records of the Bureau of Lands or the Land Registration Authority lead to the conclusion that there was no verified and approved subdivision survey plan of Lot 26, which is a compulsory requirement needed in the issuance of said titles**;

f. **Similarly, the absence of plan Psd-21154 from the files of the Bureau of Lands, the official depository of survey plans, is another indication that the titles covered by TCT Nos. 1368 thru 1374 which were derived from TCT No. 4211 are again doubtful and questionable**;

g. Moreover, **the changing of the tie points in the technical descriptions on TCT Nos. 1368 thru 1374 from that of the mother lot's tie point which is BLLM No. 1, Caloocan City to different location monuments of adjoining *Piedad* Estate which resulted in the shifting of the position of the seven (7) lots in relation to the mother lot defeats the very purpose of tie points and tie lines since the accepted practice is to adopt the mother lot's tie point in order to fix the location of the parcels of land being surveyed on the earth's surface**.

h. Based on the foregoing, it is the conclusion of the undersigned Commissioners that defendants' (Manotok Realty, Inc. and Manotok Estate Corporation) titles **overlap** portions of plaintiff's (CLT Realty Development Corporation's) title, **which overlapping is due to the irregular and questionable issuance of TCT Nos. 4211 (also of TCT No. 4210), 5261, 35486, 1368 to 1374. The inherent technical defects on TCT No. 4211 (from where defendants derived their titles) and TCT No. 4210 which were exhaustively elucidated above, point to the fact that there was no approved subdivision of Lot 26 which served as legal basis for the regular issuance of TCT Nos. 4210 and 4211**. Thus, as between plaintiff's title, which was derived from regularly issued titles, and defendants' titles, which were derived from irregularly issued titles, plaintiff's title which pertains to the entire Lot 26 of the Maysilo Estate should prevail over defendants' titles.[18] (Underscoring supplied)

Significantly, the above findings and conclusions in the Commissioners' Majority Report are **similar** to the findings of the trial court[19] in *Sto. Niño Kapitbahayan Association, Inc. v. CLT Realty Development Corporation* (G.R. No. 148767) wherein **the titles** of *CLT Realty*, and those of the *Manotok Corporations* (G.R. No. 123346) and *Sto. Niño Association* are involved. These findings and conclusions are discussed lengthily by the trial court in its February 12, 1996 Amended Decision, later **affirmed** by the Court of Appeals in its Decision dated May 23, 2001 in CA-G.R. CV No. 52549,[20] thus:

The conflict stems from the fact that the plaintiff's (*CLT Realty Development Corporation's*) and defendant's (*Sto. Niño Kapitbahayan Association, Inc.'s*) titles **overlap** each other, **hence, a determination of the respective origins of such titles is of utmost importance**.

TCT No. T-177013 in the name of the plaintiff was **derived from R-17994 T-89** in the name of Estelita Hipolito, **which title can trace its origin from OCT 994**. **The boundaries of OCT 994 known**

[18] *Rollo* of G.R. No. 123346, pp. 268-275.

[19] Civil Case No. C-15491 of the RTC, Branch 121, Caloocan City.

[20] *Rollo* of G.R. No. 148767, pp. 33-45.

as Lot No. 26 of the Maysilo Estate are the same as that of the plaintiff's titles.

On the other hand, TCT Nos. T-158373 and T-158374, both in the name of the defendants, are the latest in a series of titles which descend from TCT No. 4211. A trace of the history of TCT No. 4211 reveals that it was succeeded by TCT No. 5261 which was in turn succeeded by TCT No. 35486. TCT No. 35486 was allegedly subdivided into seven lots covered by TCT Nos. 1368 to 1374. One or two of these subdivided lots were the predecessors of the defendants' titles.

It behooves this court to address **the issue of whether or not TCT No. 4211 from which the defendants' titles were originally derived can validly trace its origin from OCT 994**.

There is pervasive evidence that TCT No. 4211 could not have been a true derivative of OCT No. 994.

Firstly, **the survey dates indicated in OCT No. 994 are September 8-27, October 8-21 and November 17-18, all in the year 1911**. On the other hand, **these dates of original survey are conspicuously missing in TCT No. 4211 contrary to established procedure that the original survey dates of the mother title should be indicated in succeeding titles. Instead, an examination of TCT No. 4211 reveals a different date on its face. This date, December 22, 1917, could not be an original survey date because it differs from those indicated in the mother title. Of equal importance is the fact that the date of original survey always comes earlier than the date of the issuance of the mother title. Since OCT No. 994 was issued on April 19, 1917, it is highly irregular that the original survey was made several months later or only on December 22, 1917.**

Neither is the Court inclined to consider this date as the date a subdivision survey was made. **The regular procedure is to identify the subdivided lots by their respective survey or lot numbers**; on the contrary, **no such lot number is found in TCT No. 4211, pointing to the inevitable conclusion that OCT No. 994 was never validly subdivided into smaller lots, of which one of them is covered by TCT No. 4211**.

Secondly, **the assertion that TCT Nos. 1368 to 1374 which preceded the defendants' titles were issued pursuant to subdivision plan PSD 21154 is not supported by the evidence.**

The Land Management Bureau which handles survey plans has no records of the said PSD 21154. The Registry of Deeds of Rizal has a copy of the plan but the court finds such possession questionable since the Land Registration Authority which supervises the Registry of Deeds does not have a copy of the same. **The court therefore believes that the issuance of TCT Nos. 1368 to 1374 is attended by a serious irregularity which cannot be ignored as it affects the very validity of the alleged subdivisions of the land covered by TCT No. 35486.**

Thirdly, the language of the technical descriptions of the land covered by **OCT No. 994 is already in English, while its alleged derivative titles TCT Nos. 4211, 5261 and 35486 are still in Spanish. This is in direct violation of the practice that the language used in the mother title is adopted by all its derivative titles. The reversion to Spanish in the derivative titles is highly intriguing and casts a cloud of doubt to the genuineness of such titles.**

Fourthly, **the tie points used in the mother lot were not adopted by the alleged derivative titles particularly TCT Nos. 1368 to 1374, the immediate predecessors of the defendants' titles. The pivotal role of tie points cannot be brushed aside as a change thereof could result to the shifting of positions of the derivative lots in relation to the mother lot. Consequently, overlapping could take place as in fact it did when the defendants' titles overlapped that of CLT at the northwestern portion of the latter's property.**

Fifthly, the results of laboratory analysis conducted by a Forensic Chemist of the NBI revealed that TCT Nos. 4210 and 4211 were estimated to be fifty (50) years old as of March 1993 when the examination was conducted. Hence, the documents could have been prepared only in 1940 and not in 1918 as appearing on the face of TCT No. 4211.

Based on the foregoing patent irregularities, the court finds the attendance of fraud in the issuance of TCT No. 4211 and all its derivative titles which preceded the defendants' titles. Evidently, TCT No. 4211 cannot be validly traced from OCT No. 994. Being void *ab initio*, it did not give rise to any transmissible rights with respect to the land purportedly invalid, and resultantly, the defendants, being the holders of the latest derivatives, cannot assert any right of ownership over

the lands in question. 'The void *ab initio* land titles issued cannot ripen into private ownership.' (*Republic vs. Intermediate Appellate Court*, 209 SCRA 90)

xxx xxx xxx

The court's findings are consistent with a ruling of the Court of Appeals in CA-GR No. 45255 entitled '*CLT Realty Development Corp. vs. Manotok Realty, Inc., et al.*' promulgated on September 28, 1995, affirming the decision of the other branch of this court ordering the cancellation of TCT Nos. 4210 and 4211 which encroached on a specific area of Lot No. 26 of the Maysilo Estate, Caloocan City. This court is also aware that on January 8, 1996, the Court of Appeals denied the Motion for Reconsideration of the defendants in the aforementioned case for lack of merit.[21] (Underscoring supplied)

It is clear from the foregoing findings of the trial court and the appellate court that petitioners *Manotok Corporations'* titles were derived from **questionable and irregularly issued titles** whose origin **cannot be** validly traced to OCT No. 994.

2. G.R. No. 134385

(***Araneta Institute of Agriculture, Inc., petitioner, v. Heirs of Jose B. Dimson, Represented by His Compulsory Heirs: His Surviving Spouse, Roqueta R. Dimson and Their Children, Norma and Celso Tirado, Alson and Virginia Dimson, Linda and Carlos Lagman, Lerma and Rene Policar, and Esperanza R. Dimson; and the Registry of Deeds of Malabon, Respondents***)

In this case, the trial court likewise found that the titles of the *Araneta Institute* are **not derived** from OCT No. 994 and are **spurious**. In upholding the title of the *Heirs of Dimson,* it ruled:

x x x, [T]racing back the title of the plaintiffs' (*Heirs of Jose B. Dimson's*) TCT No. R-15169, the record will show that:

1) On May 25, 1962, then Judge Cecilia Munoz-Palma of the Court of First Instance, 7th Judicial District, Pasig, Rizal, issued an Order in Case No. 4557 (In re: petition for substitution

[21] Amended Decision dated February 12, 1996, *Rollo* of G.R. No. 148767, pp. 11-13.

of names of Bartolome P. Rivera, Eleuteria Rivera, Pelagia R. Angeles, Modesta R. Angeles, Venancia R. Aquino and Rosauro R. Aquino, as petitioners) judicially declaring said petitioners Bartolome Rivera, et al. as the surviving heirs of Maria dela Concepcion Vidal and directing the cancellation of the name of said Maria dela Concepcion Vidal, 9 years of age, among the registered owners, and to substitute in lieu thereof the aforesaid petitioners Bartolome Rivera, *et al.*, (Exhibit 3-David & Santos).

This Order of May 25, 1962 (Exhibit B-David Santos) **was duly annotated on the Original Certificate of Title No. 994** (Exhibit J) **on June 3, 1962 and under Entry No. 48542 File T-104230**, which reads:

> Entry No. 43542 File T-104230 – ORDER In compliance with an Order of the Court of First Instance of Rizal in Case No. 4557, the name Maria dela Concepcion Vidal, 9 years old is hereby cancelled and in lieu thereof the following is substituted: 1. Bartolome Rivera, widower 1/3 of 1/189/1000 percent; 2. Eleuteria Rivera, married to Hermogenes Bonifacio 1/6 of 1-89/1000 percent xxx Fidela R. Angeles – 1/3 of 1-1897/1000
>
> Date of Instrument – May 25, 1962
> Date of Inscription – June 1962

2) **On June 13, 1966, said Judge Cecilia Munoz-Palma of the Court of First Instance, 7th Judicial District, Pasig, Rizal issued an Order in the same case No. 4557 wherein the deed of transfer and conveyance executed by Bartolome Rivera in favor of Jose B. Dimson of whatever property said Bartolome Rivera is entitled to as one of the heirs of Maria dela Concepcion Vidal to be taken from lots 25, 26, 27, 28-B and 29 of OCT No. 994 of Rizal was approved** (Exhibit 1-David Santos).

3) **Plaintiff applied for the segregation of the 25% agreed upon on September 30, 1960 to the Court of First Instance of Rizal, Branch XXXIII, Caloocan City docketed as Special Proceedings No. C-732**, entitled "In the Matter of the **Petition for Confirmation of the Order**, **Jose B. Dimson**, represented by Roqueta Rodriguez Dimson, petitioner (Exhibit A) **for which a favorable Decision dated October 13, 1977 was rendered by Judge Marcelino N. Sayo** (Exhibit 2-David and Santos).

4) **On October 11, 1977**, an **Order** was issued by Judge Marcelino N. Sayo **in Special Proceedings No. C-732 ordering the Register of Deeds for Caloocan City the segregation and issuance of separate certificates of titles**, which Order reads:

WHEREFORE, it having been duly established that Bartolome Rivera was the owner of the lots mentioned in Exhibit E, which are Lots Nos. 25, 26, 27, 28-B and 29; that Jose B. Dimson, per Exhibit B, is entitled to 25% of the total area of the said lots contained in Exhibit B; that the areas to which Jose B. Dimson is entitled and sought to be segregated either in whole or in part are portions of the lots mentioned in Exhibit "B"; that per Exhibit "D", the segregation of the said lots necessitates approval by the Court, upon certification by the Land Registration Commission that the subdivision Plan of the lot on lots sought to be segregated are correct: that the plans, LRC (GLRO) Rec. No. 4419 – SWO – 5268 (Exhibit "F") covering Lots 15, 26, 27, 28-B and 29 and plan are certified correct and approved by the Land Registration Commission on March 20, 1964; that plans of portion of Lot 25-A which is Lot 25-a-1 (Exhibit "H"), plan of portion of Lot 25-A which is Lot 25-A-2 (Exhibit "I"), and plan of portion of Lot 28 (Exhibit "J") are based from the technical descriptions appearing on the approved LRC SWO-5268 on file with the Land Registration Commission as correct; that Bartolome Rivera can legally dispose the lands covered by and mentioned in Exhibit "E", **the segregation and issuance of separate certificates of title over Lots 25-A-1, 25-A-2, 26 and portion of Lot 29 is hereby APPROVED. The Register of Deeds for Caloocan City is hereby directed to issue in the name of herein movant JOSE B. DIMSON, of legal age, Filipino, married to Roqueta Rodriguez Dimson, with residence and postal address at No. 10 Magalang Street, East Avenue, Diliman, Quezon City, after payment of the necessary fees, separate transfer certificates of titles for the lot covered by plan (LRC) SWO-5268 (Exhibit "G") AND for the lots covered by the PLANS Exhibits "H", "I" and "J".**

SO ORDERED.[22] (Underscoring supplied)

Obviously, the chronology of the transfer of the title of the *Heirs of Dimson* is consistent with that of *CLT Realty* in G.R. No. 123346, the same title which the trial court and Court of Appeals found to be valid.

[22] Decision, pp. 21-22.

On the other hand, it appears from the documentary evidence that TCTs Nos. 7784 and 13574 in the name of the *Araneta Institute* were derived from TCTs Nos. 26538 and 26539, respectively, both in the name of Jose Rato. Rato's titles, however, were issued pursuant to **Decree No. 4429**, which is **entirely different from Decree No. 36455 upon which OCT No. 994 was issued**. Moreover, Decree No. 4429 was issued by the CFI of **Isabela**, but with Record No. 4429 in **Laguna**. This means that the properties of *Araneta Institute* are **either in Isabela or Laguna, not in Maysilo Estate, Caloocan City**.

The issuance of the Araneta Institute's titles suffer fatal irregularities.

Similarly, the trial court also found the following fatal irregularities in the issuance of the *Araneta Institute's* titles, to wit:

a. Rato's titles from where the *Araneta Institute's* titles originated were **not annotated on OCT No. 994**.

b. When TCT No. 13574 was issued in the name of the *Araneta Institute*, **what was cancelled was TCT No. 6169, not TCT No. 26539 in the name of Jose Rato**.

c. When the other TCT No. 7784 was issued in the name of the *Araneta Institute*, **the corresponding document (Deed of Sale and Mortgage) was not annotated thereon, and the previous title supposed to be cancelled was not received by the Register of Deeds**.

In **affirming** the trial court's nullification of *Araneta Institute's* titles for being **spurious**, the Court of Appeals, in its Decision dated May 30, 1997, held:

"Upon the other hand, **defendant-appellant Araneta Institute of Agriculture's TCT No. 13574 was derived from TCT No. 26539, while TCT No. 7784 (now TCT No. 21343) was derived from TCT No. 26538**. TCT No. 26538 and TCT No. 26539 were both issued in the name of Jose Rato. **TCT No. 26538** and **TCT No. 26539 both show <u>Decree No. 4429</u> and <u>Record No. 4429</u>**.

Decree No. 4429 was issued by the Court of First Instance of Isabela. On the other hand, **Record No. 4429 was issued for ordinary Land Registration Case on March 31, 1911 in CLR No. 5898, Laguna (Exhs. 8, 8-A Rivera). The trial court ruled defendant-appellant Araneta Institute of Agriculture's TCT No. 13574 spurious because this title refers to a property in the Province of Isabela** (RTC Decision, p. 19).

Another point, Araneta's TCT Nos. 13574 (Exh. 6) and 21343 are both derived from OCT No. 994 registered on May 3, 1917 which was declared null and void by the Supreme Court in *Metropolitan Waterworks and Sewerage System vs. Court of Appeals*, 215 SCRA 783 (1992). The Supreme Court ruled: 'Where two certificates of title purport to include the same land, the earlier in date prevails x x x. Since the land in question has already been registered under OCT No. 994 dated April 19, 1917, the subsequent registration of the same land on May 3, 1917 is null and void.'

In sum, the foregoing discussions unmistakably show **two independent reasons why the title of defendant-appellant Araneta Institute of Agriculture is a nullity**, to wit: **the factual finding that the property is in Isabela**, and the decision of the Supreme Court in the *MWSS* case.[23] (Underscoring supplied)

Furthermore, the Court of Appeals sustained the trial court's findings that there exist questionable circumstances **"which create serious doubts in the mind of the Court as to the genuineness and validity of the titles of defendant Araneta (TCT Nos. 7784 and 13574) over the land in question,"** to wit:

Thus, **as correctly found by the trial court:**

The records will show that defendant Araneta's claim of ownership over the 500,000 square meters of land covered by TCT R-15169 (Exhibit D also marked Exhs. 5, 5-A, 5-B and 20, 20-A, and 20-B David & Santos) in the name of plaintiff Jose B. Dimson, is based on TCT 13574 (Exh. 6-defendant) and TCT 7784 (now TCT 12343) (Exhibit M). And these said TCT 13574 and TCT 7784 (now TCT 21343) which were found to be overlapping TCT R-15169 (Exh. D) were based on two (2) deeds of conveyances:

[23] Annex "A", Petition in G.R. No. 134385, *Rollo*, pp. 108, 122-124.

1) Deed of Sale and Mortgage dated August 23, 1947 (Exh. 5 def.) with TCT 26539 with a land area of 581,872 square meters as the subject matter thereof. Said deed was the basis of issuance of TCT 13574 (Exh. 6 def.) entered in the name of defendant Araneta Institute of Agriculture on May 20, 1949 with the same area of 581,872 square meters. TCT 26539 was consequently cancelled. **The Court observes that the said Deed of Sale and Mortgage was between Jose Ma. Rato and Victoneta Incorporated as vendee, and Don Salvador Araneta as guarantor, but TCT 13574 was issued in the name of defendant Araneta Institute of Agriculture**.

2) Novation of Contract, Deed of Sale and Mortgage dated November 13, 1947 (Exh. M) covering 390,282 square meters, was made the basis for the issuance on March 4, 1948 of TCT 7784 (now TCT 21343) issued February 19, 1951 with an area of 333,377 square meters. **As to why defendant Araneta did not present in evidence TCT 21343 was never explained. The Novation of Contract, Deed of Sale and Mortgage did not indicate therein the title of the land subject matter of the said document, but the Court noted in TCT 7784 that it cancelled TCT 26538 (Exhibit 8-A defendant) which consists of 593,606.90 square meters. No explanation was made as to the differences in the area in the Novation of Contract, Deed of Sale and Mortgage (390,282 sq.m.) in the TCT 7784 (333,377 sq.m.) and in TCT 26538 (593,606.90 sq.m.)**.

According to witnesses Zacarias Quinto, real estate officer of defendant Araneta, the land where Araneta Institute of Agriculture is located is within the area of 97.2 hectares. If the area of TCT 13574 (390,282 sq.m.) will be added, the same will give a total area of 972,154 sq.m. or 97.2 hectares.

Let us now examine TCT 26538 and TCT 26539 both in the name of Jose Ma. Rato **from where defendant was said to have acquired TCT 13574 and TCT 7784 (now TCT 21343) in the name of Araneta** and the other documents related thereto:

1) Perusal of TCT 26538 shows that its **Decree No. and Record No. are both 4429**. In the same vein, TCT 26539 **also shows that it has Decree No. 4429 and Record No. 4429**.

However, Decree No. 4429 was issued by the Court of First Instance, Province of Isabela (Exhibit I) and **Record No. 4429**, issued for Ordinary Land Registration Case, was issued on March

31, 1911 in CLR No. 5898, **Laguna** (Exhibit 8, 8-A Bartolome Rivera *et al.*).

How then could TCT 26538 and TCT 26539 both have Decree No. 4429 and Record No. 4429, which were issued in the Court of First Instance, Province of Isabela and issued in Laguna, respectively.

2) **TCT 26538 and 26539 in the name of Jose Ma. Rato are not annotated in the original Certificate of Title 994 where they were said to have originated.**

3) The *Escritura de Incorporacion de Philippine Land Improvement Company* (Exhibit I) executed on April 8, 1925 **was only registered and was stamped received by the Office of the Securities and Exchange Commission only April 29, 1953 when the Deed of Sale & Mortgage was executed on August 23, 1947** (Exh. 5 defendant) and the Novation of Contract, Deed of Sale & Mortgage executed on November 13, 1947 (Exh. M). So that when the Philippine Land Improvement was allegedly given a special power of attorney by Jose Ma. Rato to represent him in the execution of the said two (2) documents, the said Philippine Land Improvement Company has not yet been duly registered.

4) **TCT 26538 and TCT 26539 both in the name of Jose Ma. Rato both cancel TCT 21857 which was never presented in Court if only to have a clear tracing back of the titles of defendant Araneta.**

5) **If the subject matter of the Deed of Sale & Mortgage (Exhibit 5 defendant) is TCT 26539, why is it that TCT 13574 of defendant Araneta cancels TCT 6196 instead of TCT 26539. That was never explained. TCT 6196 was not even presented in Court.**

6) **How come TCT 26538 of Jose Ma. Rato with an area of 593,606.90 was cancelled by TCT 7784 with an area of only 390,282 sq.m.**

7) **How was defendant Araneta able to have TCT 7784 issued in its name, when the registration of the document entitled Novation of Contract, Deed of Sale & Mortgage (Exhibit M) was suspended/denied (Exhibit N) and no title was received by the Register of Deeds of Pasig at the time the said document was filed in the said Office on March 4, 1948 (Exhibit N and N-1).**

Under Sec. 55 of Land Registration Act (Act No. 496) now Sec. 53 of Presidential Decree No. 1529, no new certificate of title shall be entered no memorandum shall be made upon any certificate of title by the register of deeds, in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate is presented for such endorsement.

8) **The sale by Jose Ma. Rato in favor of defendant Araneta is not reflected on the Memorandum of Encumbrances of TCT 26538** (Exhibit 7-defendant) meaning that TCT 26538 still exists and intact except for the encumbrances annotated in the Memorandum of Encumbrances affecting the said title (Exhibit 16-A and 16-N David & Santos).

9) In the encumbrance annotated at the back of TCT 26539 (Exhibit 4-defendant) there appears under entry NO. 450 T 6196 Victoneta, Incorporated covering parcel of land canceling said title (TCT 26539) and TCT 6196 was issued (Doc. No. 208, page 96, Book 17 of Notary Public of Manila Rodolfo A. Scheerer, Date of Instrument: 8-23-47 Date of Inscription: 10-18-47 (Exh. 4-A defendant) which could have referred to the Deed of Sale and Mortgage of 8-23-47 (Exhibit 5-defendant) entered before Entry 5170 T-8692 Convenio Philippine Land Improvement Company, with date of Instrument: 1-10-29, and Date of Inscription: 9-21-29.

In TCT 26838 (*sic* – 26538), this Entry 5170 T-8692 Convenio Philippine Land Improvement Company (Exhibit 16-J-1) appears, but the document, Novation of Contract, Deed of Sale & Mortgage dated November 13, 1947 (Exhibit M) does not appear.

Entry marked Exhibit 16-J-1 on TCT 26538 shows only the extent of the value of P42,000.00 invested by Jose Ma. Rato in the Philippine Land Improvement Company. Said entry was also entered on TCT 26539.

The Court also wonders why it would seem that all the documents presented by defendant Araneta are not in possession of said defendant, for according to witness Zacarias Quintan, the real estate officer of the said defendant Araneta since 1970, his knowledge of the land now in possession of defendant Araneta was acquired by him from all its documents marked in evidence **which were obtained only lately when they were needed for presentation before this Court** (t.s.n. 6-24-47, p. 34)

All the foregoing are matters which create serious doubts in the mind of the Court as to the genuineness and validity of the titles of defendant Araneta over the land in question.[24] (Underscoring supplied)

Clearly, the findings and conclusions of the trial courts and the Court of Appeals that petitioners' titles are spurious are **based on hard facts fully supported by the records** and **thoroughly discussed** in their respective Decisions. They cannot simply be brushed aside without running afoul to settled principles of law.

It is appalling to note that, as observed by the Court of Appeals, the *Araneta Institute* "**never raised a single argument or assignment of error disputing these factual findings of the trial court**." Its failure to refute not only indicates the frailty or emptiness of its cause, but also validates the correctness of the rulings of the trial court and the Court of Appeals.

The recent ruling in G.R. No. 150091, Yolanda O. Alfonso, petitioner, vs. Office of the President is inconsequential to the present cases.

Justice Tinga capitalizes on the *Alfonso* Decision upholding the dismissal from the service of Yolanda O. Alfonso, former register of deeds of Caloocan City, for grave misconduct and dishonesty after having been found administratively liable for changing the date of the registration of OCT No. 994 from May 3, 1917 to April 19, 1917. **This only reinforces the fact that there is only one OCT No. 994 and that it was Alfonso who made it appear** that there are ***two*** OCT No. 994. **In fact, Justice Tinga concurred in this Decision.**

Notably, the *Alfonso* Decision categorically held that "**in deciding this administrative case, this Court deems it fit, though, to steer clear from discussing or passing judgment on the validity of the derivative titles of OCT No. 994**, x x x." It stated that: "Reference to OCT No. 994 is made only

[24] *Id.*, pp. 124-128.

to determine the circumstances surrounding the dismissal of petitioner." It cannot therefore provide support to Justice Tinga's position.

B

This Court should no longer review the trial courts' findings of fact which have been affirmed by the Court of Appeals, as there is no showing that such findings are not supported by evidence. Such findings are binding and conclusive on this Court.

Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended, strictly forbids this Court from resolving **questions of fact** as it is not a trier of facts. **Thus, it is not our function to review factual issues and evaluate or weigh the probative value of the evidence presented by the parties already considered in the proceedings below.**[25] **Since there is no specific showing that the trial courts and the Court of Appeals committed any reversible error, we cannot disregard the elementary and well-established rule that where the findings of fact of the trial courts are affirmed by the Court of Appeals, as in these cases, the same are accorded the highest degree of respect and, generally, will not be disturbed on appeal. Such findings are binding and conclusive on this Court.** [26]

In the *ponencia*, Justice Tinga also ruled that should there be a remand, the validity of Dimson's and CLT's claims should further be explored since the ultimate question would pertain to the validity of the Orders rendered in Dimson's favor by then-Judge Muñoz Palma of the Rizal CFI and Judge Sayo of the Caloocan CFI. Allegedly, the Order of Judge Sayo was recalled. I wonder why Justice Tinga, at this late stage, still assail the validity of those Orders. Does he understand that to do so violates basic procedural law?

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[25] *Asia Trust Development Bank v. Concepts Trading Corporation*, G.R. No. 130759, June 20, 2003, 404 SCRA 449; *Omandam v. Court of Appeals*, G.R. No. 128750, January 18, 2001, 349 SCRA 483.

[26] *Duremdes v. Duremdes*, G.R. No. 138256, November 12, 2003, 415 SCRA 684.

Also, **where in the records of the trial courts is the alleged "Recall Order" by Judge Sayo?** This "Recall Order" was **not** presented as evidence before the trial courts. Hence, there can be no other conclusion than that the same is **INEXISTENT**.

In his *ponencia*, Justice Tinga made reference to the DOJ Committee Report dated August 28, 1997 and the Senate Committee Report dated May 25, 1998. I submit that these Reports have no probative value as they are not recognized as evidence under our Rules of Court; and that such Reports **cannot override** or **supplant** the consistent findings and conclusions of the trial courts because **judicial proceedings had already been terminated before these courts where the parties were accorded due process and evidence were presented in accordance with the rigid observance of the Rules of Court**. Significantly, those findings were **affirmed** by the Court of Appeals and the Third Division of this Court.

The Senate Committee, it must be stressed, has a different role from that of the Judiciary. The courts of law have the constitutional duty to adjudicate legal disputes properly brought before them. A congressional investigation, however, is conducted in aid of legislation. As aptly held by this Court, through then Justice (now Chief Justice) Reynato S. Puno, in ***Agan, Jr., et al. vs. Philippine International Air Terminals Co., Inc., et al.***:[27]

> Finally, the respondent Congressmen assert that at least two (2) committee reports by the House of Representatives found the PIATCO contracts valid and contend that this Court, by taking cognizance of the cases at bar, reviewed an action of a co-equal body. They insist that the Court must respect the findings of the said committees of the House of Representatives. With due respect, **we cannot subscribe to their submission. There is a fundamental difference between a case in court and an investigation of a congressional committee. The purpose of a judicial proceeding is to settle the dispute in controversy by adjudicating the legal rights and obligations of the parties to the case. On the other hand, a congressional investigation is conducted in aid of legislation** (*Arnault v. Nazareno*, G.R. No. L-3820, July 18, 1950). Its aim is to assist and

[27] G.R. Nos. 155001, 155547 and 155661, January 21, 2004, 420 SCRA 575.

recommend to the legislature a possible action that the body may take with regard to a particular issue, specifically as to whether or not to enact a new law or amend an existing one. **Consequently, this Court cannot treat the findings in a congressional committee report as binding because the facts elicited in congressional hearings are not subject to the rigors of the Rules of Court on admissibility of evidence.** The Court in assuming jurisdiction over the petitions at bar simply performed its constitutional duty as the arbiter of legal disputes properly brought before it, especially in this instance when public interest requires nothing less. (Underscoring supplied)

Moreover, the vehement objections of the *CLT Realty* and the *Heirs of Jose B. Dimson* against any reliance on the said Reports are reasonable. They contended that:

1. The Committee Reports "were **treacherously secured** ***ex-parte*** by petitioners *Manotok Corporations* and *Araneta Institute* and their allies after they lost before the trial courts."[28]

2. The said Reports are **unreliable** because they "emanate from ***ex-parte*** **self-serving proceedings**." They (*CLT Realty* and the *Heirs of Jose B. Dimson*) were **never notified** of the hearings conducted in the Senate and DOJ, and that the same were prepared without their knowledge, consent or participation – hence, "a violation of their constitutional right to due process."[29]

3. The Senate Committee Report is "long in recommendation, but short in duration of hearing, for it took **only one day** for the Senate to conduct the aforesaid hearing on November 12, 1997. **This is incredible**."[30]

4. The Reports "were practically **solicited** for the purpose of subverting the judicial process. **This attempt continues today under the guise of persuading the Court to remand**."[31]

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[28] Memorandum for respondent *CLT Realty Development Corporation, Inc.* dated September 3, 2006, p. 61.

[29] *Id.*, p. 65; see also Memorandum for the respondent Heirs of Jose B. Dimson, dated September 4, 2006, p. 35.

[30] Memorandum for the respondent Heirs of Jose B. Dimson, *id.*, pp. 34-35.

[31] Memorandum for respondent *CLT Realty Development Corporation, Inc.* dated September 3, 2006, p. 61.

5. This Court, not being a trier of facts, cannot be unduly burdened with the task of reexamining, reviewing, reevaluating, and re-weighing each and every piece of evidence already adduced presented, evaluated and considered below. Indeed, the *Manotok Corporations* and *Araneta Institute*, after being faced with consistent and unanimous unfavorable rulings by the trial courts, cannot now induce this Court to take a **first look and a fresh crack** at **alleged new factual issues** in the alleged DOJ and Senate Committee Reports which were **never raised before the trial courts**.[32]

6. The Committee Reports cannot be considered because the factual findings and conclusions reached therein were apparently based on **inadmissible hearsay evidence** and documents that were **never authenticated in the manner provided under the Rules of Court on evidence**.[33]

7. The "scheming introduction of the Committee Reports is an attempt to influence judicial proceedings and the judiciary itself, by interjecting the findings of the different branches of the government, in the hope that said findings will influence the Honorable Court, in petitioners' favor, **after** they lost in the trial courts. **This is a crude attempt to sabotage the orderly administration of justice** x x x, **obviously to obtain a reversal of the trial courts' decisions.** This violates the time-honored principle of separation of powers and thereby undermines the independence of the judiciary.[34]

8. The Reports cannot overturn the factual findings made by courts of justice after judiciously weighing and evaluating the evidence presented by the parties. Worse, these alleged reports are now being utilized to review the rulings of the Honorable Court in the ***MWSS*** and ***Gonzaga***.

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[32] *Id.*, p. 66, citing *Boneng v. People,* 394 SCRA 252 (1999); *Alicbusan v. Court of Appeals,* 269 SCRA 336 (1997); *Ysmael v. Court of Appeals*, 318 SCRA 215 (1999); *Sumbad v. Court of Appeals*, 308 SCRA 575 (1999); *Medida v. Court of Appeals*, 208 SCRA 887 (1992).

[33] Memorandum for respondent *CLT Realty Development Corporation, Inc.* dated September 3, 2006, pp. 66-67.

[34] *Id.*

9. The Committee Reports are in the nature of a **collateral attack** against the titles of *CLT Realty* and *Jose B. Dimson*, which is proscribed under Section 48 of Presidential Decree No. 1529.[35]

10. Considering the well-settled rule that a court is not authorized to take judicial notice in the adjudication of cases pending before it of the contents of the records of other cases, and even when such cases have been tried or are pending in the same court,[36] with more reason that this Court should not take judicial notice of findings in non-judicial proceedings in the adjudication of cases. At best, what may be taken judicial notice is only the existence of these Reports, but not the findings and conclusions therein which cannot supplant pervasive evidence, as found by the trial courts and the Court of Appeals, independently establishing that petitioners' titles are spurious.[37]

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[35] "Section 48. *Certificate not subject to collateral attack.* - A certificate of title shall not be subject to **collateral attack**. It cannot be altered, modified, or cancelled except in a **direct proceeding** in accordance with law."

[36] It was held that:

"x x x As a general rule, courts are not authorized to take judicial notice, in the adjudication of cases pending before them, of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been heard or are actually pending before the same judge.'

xxx xxx xxx

It is clear though, that this exception is applicable only when, 'in the absence of objection,' 'with the knowledge of the opposing party,' or 'at the request or with the consent of the parties,' the case is clearly referred to or 'the original or part of the records of the case are actually withdrawn from the archives' and' admitted as part of the record of the case then pending.' These conditions have not been established here. On the contrary, the petitioner was completely unaware that his testimony in Civil Case No. 1327 was being considered by the trial court in the case then pending before it. As the petitioner puts it, the matter was never taken up at the trial and was 'unfairly sprung' upon him, leaving him no opportunity to counteract." [*Tabuena v. Court of Appeals*, 196 SCRA 650, 655 (1991)]

[37] "Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court.

Hence, these Reports may not even be conveniently utilized as basis for a re-trial. Moreover, a court cannot take judicial notice of a factual matter in controversy.[38]

Thus, to reiterate, there is absolutely no basis to remand these cases to the Court of Appeals. To repeat, the trial courts had already received, evaluated, and appreciated the respective

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The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.

To say that a court will take judicial notice of a fact is merely another way of saying that the usual form of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. This is because of the court assumes that the matter is so notorious that it will not be disputed. But judicial notice is not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he IS not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action. Judicial cognizance is taken only of those matters which are 'commonly' known.

Things of 'common knowledge' of which courts take judicial notice, may be matters coming to the knowledge of men generally. In the course of the ordinary experiences of life or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person." [Emphasis supplied]

[38] In *Spouses Badillo v. Tayag*, 400 SCRA 494 (2003), the Honorable Court, quoting other cases, held that the trial court cannot take judicial notice of factual matter in controversy, thus:

"In *Herrera v. Bollos*, the trial court awarded rent to the defendants in a forcible entry case. Reversing the RTC, this Court declared that the reasonable amount of rent could be determined not by mere judicial notice, but by supporting evidence:

. . . A court cannot take judicial notice of a factual matter in controversy. The court may take judicial notice of matters of public knowledge, or which are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. Before taking such judicial notice, the court must 'allow the parties to be heard thereon.' Hence, there can be no judicial notice on the rental value of the premises in question without supporting evidence."

evidence of the contending parties in support of their contrasting claims on the validity of their respective titles. The Court of Appeals has affirmed the uniform findings of the trial courts. Significantly, all the courts below have **consistent findings** that the titles of the *Manotok Corporations* and the *Araneta Institute* are spurious, and that those of the *CLT Realty* and *Jose B. Dimson* are valid, **having originated from OCT No. 994 of the Registry of Deeds of Rizal, based on the Decree No. 36455 issued on April 19, 1917 in Land Registration Case No. 4429**.

C

Petitioners are bound by the Court's Decisions in <u>MWSS</u> and <u>Gonzaga</u>.

Petitioners *Manotok Corporations'* contend that they are not bound by this Court's pronouncement in *MWSS* and *Gonzaga*, they being "strangers" in those cases. Petitioners have ignored the unique **nature of land registration proceedings under the Torrens system**, upon which OCT No. 994 was issued pursuant to Decree (of registration) No. 36455 in Land Registration Case No. 4429. Section 2 of Act No. 496 (otherwise known as "The Land Registration Act"), as amended, provides that the land registration proceedings under the said Act "shall be proceedings ***in rem***."[39] Section 38, same Act, also provides that "(**e**)**very decree of registration shall bind the land, and quiet title thereto**," and "**shall be conclusive upon and against <u>all persons</u>,** including the Insular Government and all the branches thereof, **whether mentioned by name in the application, notice, or citation, or included in the general description 'To whom**

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[39] In the same vein, Section 2 of Presidential Decree No. 1529 (otherwise known as "The Property Registration Decree," which amended and codified the laws relative to registration of property) provides: "Judicial proceedings for the registration of lands throughout the Philippines shall be ***in rem***, and shall be based on the generally accepted principles underlying the Torrens system." Section 26 of the same law also states that **such proceedings are binding on the whole world because "by the description in the notice (of initial hearing of the application for registration) 'To All Whom It May Concern,' all the world are made parties defendant**."

it may concern.'" Section 38 further declares that upon the expiration of one year from entry of the decree of registration within which the said decree may be questioned, "every decree or certificate of title issued x x x **shall be incontrovertible**," meaning, it can no longer be changed, altered or modified.[40]

This has to be the rule so as not to defeat the objective of the Torrens system, which is **to guarantee the indefeasibility of the title to the property**.[41] Thus, we have invariably ruled that since the proceedings for the registration of land titles under the Torrens system is an action *in rem*, not *in personam*, personal notice to all claimants of the *res* is **not necessary** to give the land registration court jurisdiction to deal with and dispose of the *res*; and neither may lack of such personal notice vitiate or invalidate the decree or title issued in a registration proceeding. This rule is founded on the principle that the State, as sovereign over the land situated within it, may provide for the adjudication of title in a proceeding *in rem*, which shall be **binding upon all persons, known or unknown**,[42] herein petitioners included.

The MWSS and Gonzaga Decisions, confirming the validity of OCT No. 994 issued on April 19, 1917 from which the titles of respondents herein emanated, had long become final and executory.

[40] *Aguilar et al. v. Caoagdan et al.*, No. L-12580, April 30, 1959, 105 Phil. 661, 666, citing *Director of Lands v. Gutierrez David*, No. 28151, October 3, 1927, 50 Phil. 797; *Roxas v. Enriquez*, No. 8539, December 24, 1914, 29 Phil. 31; *Grey Alba v. De la Cruz*, No. 5246, September 16, 1910, 17 Phil. 49.

[41] *Grey Alba v. De la Cruz*, *id.*; *Gestosani v. Insular Development Co.*, Inc., No. L-21166, September 15, 1967, 21 SCRA 114, citing *Director of Lands v. Gutierrez David*, *id.*; *Cabaños v. Register of Deeds*, 40 Phil. 620; *Francisco v. Court of Appeals*, No. L-35787, April 11, 1980, 97 SCRA 22, 33.

[42] *Moscoso v. Court of Appeals*, No. L-46439, April 24, 1984, 128 SCRA 705, 718-719, citing *City of Manila v. Lack et al.*, 19 Phil. 324, 337; *Roxas v. Enriquez*, *supra*; *Director of Lands v. Roman Catholic Archbishop of Manila*, 41 Phil. 120; *Aguilar v. Caogdan*, *supra*; *Garcia v. Bello*, No. L- 21355, April 30, 1965, 13 SCRA 769; *Esconde v. Barlongay*, No. L-67583, July 31, 1987, 152 SCRA 603, 610.

The correctness of the *MWSS* and *Gonzaga* Decisions of this Court are now **beyond question**. **These Decisions confirming the validity of OCT No. 994 issued on April 19, 1917 from which the titles of the respondents in the cases at bar originated had long become final and executory**. Final judgments – like those of *MWSS* and *Gonzaga*, adjudicated by this Court 15 and 11 years ago, respectively – **deserve respect and should no longer be disturbed.** At any rate, there is no question that this date appears on the face of OCT 994 as the date of the issuance of Decree No. 36455.

Stare decisis et non quieta movere. Stand by the decision and disturb not what is settled.[43] This established doctrine simply means that a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different, as in these cases. **It comes from the basic principle of justice that like cases ought to be decided alike.** Thus, where the same question relating to the same event is brought by parties similarly situated as in a previous case already litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[44]

D

Petitioners were fully afforded due process.

Petitioners Manotok Corporations allege they were denied due process and that the commissioners' Majority Report are flawed.

Even if these matters can be raised for the first time before this Court, petitioners' allegations are utterly baseless.

The proceedings before the commissioners and the trial court were properly conducted.

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[43] *Pepsico, Inc. v. Lacanilao,* G.R. No. 146007. June 15, 2006.

[44] *Ty v. Banco Filipino Savings & Mortgage Bank*, G.R. No. 144705, November 15, 2005, 475 SCRA 65, 75-76.

Records show that petitioners have been fully accorded due process during the proceedings before the commissioners and before the trial court. It is unfortunate that petitioners ignored the fact that the trial court, before it rendered its Decision, set the hearing of the commissioners' Majority and Minority Reports on December 9, 1993. However, during that hearing, **petitioners did not ask that they be allowed to present witnesses or additional evidence, if any. Instead, they submitted their comment on the Majority Report praying that the said report be rejected and that TCT Nos. 4210 and 4211 (from which their titles emanated) be upheld.**

Then, after respondent *CLT Realty* submitted its own comment on the Minority Report, the trial court, on February 8, 1994, issued an Order directing the parties to file their respective memoranda. **Again, petitioners did not object to this Order. Instead, they complied by filing their memorandum praying that the trial court approve the Minority Report of a lone commissioner and render judgment in their favor, thus:**

> WHEREFORE, premises considered, it is respectfully prayed that this Honorable Court approves the [Minority] Report dated October 23, 1993 of Commissioner Reodoro I. Victorino. Defendants [*Manotok Corporations*] further pray that their ownership of the land in question be upheld and the validity and effectiveness of their certificates of title thereto be similarly sustained.

Also, when the trial court issued its Order dated April 22, 1994 resolving respondent *CLT Realty's* Motion for Clarification and stating that the case was considered submitted for decision,[45] **still petitioners did not question or seek a reconsideration of this Order**.

Certainly, this is not the actuation of a litigant who feels aggrieved by such actions of the trial court. Simply put, had petitioners believed that the trial court acted with grave abuse of discretion in considering the case submitted for decision on

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[45] Annex "H", Petition in *Manotok*; Decision dated May 10, 1994 of the Regional Trial Court (Annex "C", *id.*), p. 5.

the basis of the commissioners' Reports, the parties' respective comments thereon, and their memoranda, they could have, right then and there, asked the trial court for reconsideration and, if the same was denied, elevated the matter to the Court of Appeals through a special civil action for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended. That they did not do so only shows that their belated allegation of denial of due process is a mere afterthought, obviously because the trial court's Decision was adverse to them.

It bears stressing that it is well within the power of the trial court to **adopt** the commissioners' Majority Report as the basis of its judgment. The very reason why the commissioners were appointed by the trial court, upon agreement of the parties, was to determine whether there is overlapping of the parties' titles. By appointing them based on their background, expertise and experience in the field of geodetic engineering, the contending parties and the trial court **concede that their chosen commissioners are in a better position to determine which of the titles were regularly issued**. Consequently, the trial court may rely on their findings and conclusions. Under Section 11, Rule 32 of the 1997 Rules of Civil Procedure, as amended, the trial court is clearly authorized to "render judgment **by adopting**, modifying, or rejecting **the report (by the commissioners) in whole** or in part or it may receive further evidence or may recommit it with instructions."

Furthermore, the trial court did not conduct further reception of evidence before deciding the case since not one of the parties asked for it. The parties themselves **opted** to submit the case for decision on the bases, among others, of their respective comments on the commissioners' Reports. By doing so, they unmistakably impressed upon the trial court that their respective evidence they submitted to the commissioners were complete and ripe for adjudication. **In fact, petitioners themselves specifically prayed that the trial court adopt in its Decision the Minority Report of a single Commissioner, which is favorable to them.** Certainly, under the doctrine of *estoppel*, petitioners are **barred** from assailing the trial court's judgment

for being premature since they themselves had asked the said court that it should already decide the case. They cannot now espouse a posture inconsistent with their conduct below as this is anathema to the orderly administration of justice.

As aptly stated by the Court of Appeals in its Decision dated September 28, 1995 in CA-G.R. CV No. 45255:

> Had defendants-appellants (herein petitioners *Manotok Corporations*) seriously believed that the trial court acted erroneously and with grave abuse of discretion in considering the case submitted for resolution and in deciding the same solely on the basis of the Commissioners' Report and the memoranda submitted by the parties without conducting hearings for the reception of evidence, **they could have immediately brought this matter up before this Court through a special civil action for** *certiorari*. **However, they did not do so.**
>
> Instead, **it was only after the trial court had rendered an adverse decision against them that defendants-appellants raised for the first time in their Brief, the alleged procedural error committed by the trial court in rendering its Decision based on the Majority Report**.[46] (Underscoring supplied)

The Commissioners' Majority Report is duly supported by evidence.

Contrary to their claim, the findings of fact and conclusions contained in the commissioners' Majority Report (as well as the Minority Report) are based on the documentary evidence of the parties. In fact, petitioners admitted that the commissioners verified the certificates of title and related documents with the proper government agencies and "examined the title records."[47] It bears stressing that these certificates are the **core** documents upon which the commissioners based their findings because they contain the **necessary facts** showing the data of the land in question, namely: the registered owner/s and the person/s to whom the titles were issued or transferred; the technical description and the metes and bounds of the land; the approved survey

[46] CA Decision in the *Manotok Case*, pp. 16-17.

[47] *Rollo* of G.R. No. 123346, p. 2136.

plans; the date of the original survey of the mother title; voluntary transaction affecting the whole land or part thereof or interest therein; the number of the previous certificate/s of title covering the same land and the fact that it was originally registered; the record number; the number of the original certificate of title; the volume page of the registration book in which the latter is found; and annotation of encumbrances in the certificates.[48]

Moreover, **it is noteworthy that the findings in the commissioners' Majority Report are based substantially on the very documents submitted by petitioners themselves in the course of the proceedings**. Clearly, their allegations that they were denied due process and that the Majority Report is defective because it does not cite any "specific evidence" are without merit.

The commissioners who rendered the Majority Report did not exceed their authority.

The commissioners acted within the scope of their authority. In their Comment on the Majority Report, petitioners did not complain that the commissioners exceeded their mandate. Likewise, petitioners did not raise such objection in their Memorandum. Instead, they asked the trial court to approve the Minority Report and render judgment in their favor. And since petitioners did not present before the trial court the alleged error of the commissioners, the same is **deemed waived**.[49]

In *De la Rama Steamship Co. v. National Development Co.*,[50] this Court held that **where, as here, a party fails to file opportunely his objections to the Report of the commissioner or referee, questions relating to the Report cannot be reviewed**

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[48] Sections 41, 43 and 44, Presidential Decree No. 1529, otherwise known as the Property Registration Decree, approved on June 11, 1978. This Decree has substantially incorporated the substantive and procedural requirements of its precursor, the Land Registration Act of 1902.

[49] *CCC Insurance Corporation v. Court of Appeals*, 31 SCRA 264, 270 (1970).

[50] No. L-26966, October 30, 1970, 35 SCRA 567, 581.

and he cannot dispute the findings therein or escape the legal consequences flowing therefrom. In the same vein, we ruled in *Santos v. De Guzman and Martinez*[51] that:

> **By way of emphasis**, we now desire to add that if a party desires to challenge the findings of a referee, he **must do so by timely and specific exceptions** to the referee's report. If he fails to make such exceptions and the report is confirmed by the trial judge, he is **bound by the findings and cannot be heard to dispute their truthfulness or escape the legal consequences flowing therefrom**. Questions relating to the report of a referee can be **reviewed only where the record discloses the exceptions taken thereto**. (Underscoring supplied)

We reiterate that the commissioners who submitted the Majority Report did not exceed their authority. They verified and examined the numerous documents and certificates of title of the parties and their predecessors, as well as the corresponding transfer documents and surveys. Upon examination, these commissioners found "**inherent technical defects on TCT No. 4211** (from which petitioners *Manotok Corporations* derived their titles) **and TCT No. 4210.**" The said defects, they explained, "**point to the fact that there was no approved subdivision of Lot 26 which served as legal basis for the regular issuance of TCT Nos. 4210 and 4211**." They further found that petitioners' titles **overlap** with portions of respondent *CLT Realty's* title, explaining that the overlapping "**is due to the irregular and questionable issuance of TCT Nos. 4211 (also of TCT No. 4210), 5261, 35486, 1368 to 1374**." They thus concluded that respondent's title (pertaining to the entire Lot 26 of the Maysilo Estate), which was derived from regularly issued titles, should prevail over petitioners' titles, which were derived from those irregularly issued.

The Commissioners explained their findings and stated their conclusions in their Majority Report pursuant to their mandate to **resolve** the issue of whether petitioners *Manotok Corporations'* titles overlap that of *CLT Realty*. **Intrinsically intertwined**

[51] No. 21113, January 23, 1924, 45 Phil. 646, 649.

with such mandate is the commissioners' **duty to state the basis** of their findings and conclusions. This is obviously necessary to enable the trial court, as well as the appellate court in case of appeal, to fully understand the commissioners' findings and to make proper judgment. Petitioners very well know that the commissioners' Reports are still **subject to approval by the trial court which has the final say** on the matter. Clearly, the commissioners acted within their authority.

Considering that petitioners *Manotok Corporations* were fully accorded due process, their plea that this case be remanded to the trial court for hearing and reception of evidence is unwarranted.

E

The magnitude of the land area involved in these cases, as alleged by petitioners, is exaggerated.

In their motion for reconsideration, the *Manotok Corporations* alleged that the Maysilo Estate consists of 1,660 hectares of land located in Malabon, Caloocan City and Quezon City, 1,342 hectares of which are covered by OCT No. 994; and that considering the magnitude of the land area involved, our Decision will prejudice many landowners.

Likewise, *Araneta Institute* claimed in its motion for reconsideration that the Decision involves 1,660 hectares of land in Malabon, Caloocan City and Quezon City; and that this case has utmost significance, affecting national interest. Hence, our Decision should be reconsidered.

The allegations of the *Manotok Corporations* and *Araneta Institute* that our ruling involves 1,660 hectares of land in Malabon, Caloocan City and Quezon City are exaggerated, to say the least. The controversy between the *Manotok Corporations* and *CLT Realty* involves only 201,288 square meters, or more than 20 hectares only.

In *Araneta Institute v. Heirs of Jose B. Dimson*, the area involved is only 50 hectares, not 1,660 hectares.

The case between *Sto. Niño Association* and *CLT Realty* only covers 30,152 square meters, or more than three hectares only.

CONCLUSION

Finally, I cannot fathom why the majority of my colleagues gave full credence to the allegations of Justice Tinga which have no bearing whatsoever to respondents' claim. Worse, they have not been raised and passed upon by the trial courts and the three (3) Divisions of the Court of Appeals. To be sure, they have not been proved by evidence. Justice Tinga's posture grossly violates the settled rule that no new issues shall be raised for the first time on appeal. The remand of these cases to the appellate court is an attempt on his part **to prolong the litigation** and disturb the findings of the said courts sustained by overwhelming evidence. I reiterate that the titles of *Dimson* and *his heirs* and that of the *CLT* are valid. On the other hand, the titles of the *Manotok Corporations* and *Araneta Institute* are spurious. These are the findings of the three trial courts and *affirmed* by the three Divisions of the Court of Appeals. To litigate these findings once again will entirely change the settled jurisprudence of this Court. The doctrine that there should be an end to litigation has been seriously disturbed. **This is a sad day for the Court.**

WHEREFORE, I vote to *DENY* the Motions for Reconsideration of the Decision dated November 29, 2005.

EN BANC

[B.M. No. 1678. December 17, 2007]

PETITION FOR LEAVE TO RESUME PRACTICE OF LAW, BENJAMIN M. DACANAY, *petitioner*.

SYLLABUS

1. **REMEDIAL LAW; ATTORNEYS; PRACTICE OF LAW IS A PRIVILEGE BURDENED WITH CONDITIONS; CLARIFIED.—** The practice of law is a privilege burdened with conditions. It is so delicately affected with public interest that it is both a power and a duty of the State (through this Court) to control and regulate it in order to protect and promote the public welfare. Adherence to rigid standards of mental fitness, maintenance of the highest degree of morality, faithful observance of the rules of the legal profession, compliance with the mandatory continuing legal education requirement and payment of membership fees to the Integrated Bar of the Philippines (IBP) are the conditions required for membership in good standing in the bar and for enjoying the privilege to practice law. Any breach by a lawyer of any of these conditions makes him unworthy of the trust and confidence which the courts and clients repose in him for the continued exercise of his professional privilege. Section 1, Rule 138 of the Rules of Court provides: SECTION 1. Who may practice law. — Any person heretofore duly admitted as a member of the bar, or thereafter admitted as such in accordance with the provisions of this Rule, and who is in good and regular standing, is entitled to practice law.

2. **ID.; ID.; QUALIFICATIONS FOR ADMISSION TO THE BAR; EXPLAINED.—** Admission to the bar requires certain qualifications. The Rules of Court mandates that an applicant for admission to the bar be a citizen of the Philippines, at least twenty-one years of age, of good moral character and a resident of the Philippines. He must also produce before this Court satisfactory evidence of good moral character and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines. Moreover, admission to the bar involves various phases such as furnishing satisfactory

proof of educational, moral and other qualifications; passing the bar examinations; taking the lawyer's oath and signing the roll of attorneys and receiving from the clerk of court of this Court a certificate of the license to practice. The second requisite for the practice of law — membership in good standing — is a continuing requirement. This means continued membership and, concomitantly, payment of annual membership dues in the IBP; payment of the annual professional tax; compliance with the mandatory continuing legal education requirement; faithful observance of the rules and ethics of the legal profession and being continually subject to judicial disciplinary control.

3. **ID.; ID.; PRACTICE OF LAW SHALL BE LIMITED TO FILIPINO CITIZENS; EXCEPTION.—** The Constitution provides that the practice of all professions in the Philippines shall be limited to Filipino citizens save in cases prescribed by law. Since Filipino citizenship is a requirement for admission to the bar, loss thereof terminates membership in the Philippine bar and, consequently, the privilege to engage in the practice of law. In other words, the loss of Filipino citizenship i*pso jure* terminates the privilege to practice law in the Philippines. The practice of law is a privilege denied to foreigners. The exception is when Filipino citizenship is lost by reason of naturalization as a citizen of another country but subsequently reacquired pursuant to RA 9225. This is because "all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of [RA 9225]." Therefore, a Filipino lawyer who becomes a citizen of another country is deemed never to have lost his Philippine citizenship **if he reacquires it in accordance with RA 9225**. Although he is also deemed never to have terminated his membership in the Philippine bar, no automatic right to resume law practice accrues.

4. **ID.; ID.; ID.; CONDITIONS FOR THE RESUMPTION OF PRACTICE OF LAW. —** Under RA 9225, if a person intends to practice the legal profession in the Philippines and he reacquires his Filipino citizenship pursuant to its provisions "(he) shall apply with the proper authority for a license or permit to engage in such practice." Stated otherwise, before a lawyer who reacquires Filipino citizenship pursuant to RA 9225 can resume his law practice, he must first secure from this Court the authority to do so, conditioned on: (a) the updating and

payment in full of the annual membership dues in the IBP; (b) the payment of professional tax; (c) the completion of at least 36 credit hours of mandatory continuing legal education; this is specially significant to refresh the applicant/petitioner's knowledge of Philippine laws and update him of legal developments and (d) the **retaking of the lawyer's oath** which will not only remind him of his duties and responsibilities as a lawyer and as an officer of the Court, but also renew his pledge to maintain allegiance to the Republic of the Philippines. Compliance with these conditions will restore his good standing as a member of the Philippine bar.

R E S O L U T I O N

CORONA, *J.*:

This bar matter concerns the petition of petitioner Benjamin M. Dacanay for leave to resume the practice of law.

Petitioner was admitted to the Philippine bar in March 1960. He practiced law until he migrated to Canada in December 1998 to seek medical attention for his ailments. He subsequently applied for Canadian citizenship to avail of Canada's free medical aid program. His application was approved and he became a Canadian citizen in May 2004.

On July 14, 2006, pursuant to Republic Act (RA) 9225 (Citizenship Retention and Re-Acquisition Act of 2003), petitioner reacquired his Philippine citizenship.[1] On that day, he took his oath of allegiance as a Filipino citizen before the Philippine Consulate General in Toronto, Canada. Thereafter, he returned to the Philippines and now intends to resume his law practice. There is a question, however, whether petitioner Benjamin M. Dacanay lost his membership in the Philippine bar when he gave up his Philippine citizenship in May 2004. Thus, this petition.

In a report dated October 16, 2007, the Office of the Bar Confidant cites Section 2, Rule 138 (Attorneys and Admission to Bar) of the Rules of Court:

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[1] As evidence thereof, he submitted a copy of his Identification Certificate No. 07-16912 duly signed by Immigration Commissioner Marcelino C. Libanan.

SECTION 2. *Requirements for all applicants for admission to the bar*. – Every applicant for admission as a member of the bar **must be a citizen of the Philippines**, at least twenty-one years of age, of good moral character, and a resident of the Philippines; and must produce before the Supreme Court satisfactory evidence of good moral character, and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines.

Applying the provision, the Office of the Bar Confidant opines that, by virtue of his reacquisition of Philippine citizenship, in 2006, petitioner has again met all the qualifications and has none of the disqualifications for membership in the bar. It recommends that he be allowed to resume the practice of law in the Philippines, conditioned on his retaking the lawyer's oath to remind him of his duties and responsibilities as a member of the Philippine bar.

We approve the recommendation of the Office of the Bar Confidant with certain modifications.

The practice of law is a privilege burdened with conditions.[2] It is so delicately affected with public interest that it is both a power and a duty of the State (through this Court) to control and regulate it in order to protect and promote the public welfare.[3]

Adherence to rigid standards of mental fitness, maintenance of the highest degree of morality, faithful observance of the rules of the legal profession, compliance with the mandatory continuing legal education requirement and payment of membership fees to the Integrated Bar of the Philippines (IBP) are the conditions required for membership in good standing in the bar and for enjoying the privilege to practice law. Any breach by a lawyer of any of these conditions makes him unworthy of the trust and confidence which the courts and clients repose in him for the continued exercise of his professional privilege.[4]

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[2] *In the Matter of the IBP Membership Dues Deliquency of Atty. Marcial A. Edillon*, A.C. No. 1928, 19 December 1980, 101 SCRA 612.

[3] *Heck v. Santos*, A.M. No. RTJ-01-1657, 23 February 2004, 423 SCRA 329.

[4] In re *Atty. Marcial Edillon*, A.C. No. 1928, 03 August 1978, 84 SCRA 554.

Section 1, Rule 138 of the Rules of Court provides:

SECTION 1. *Who may practice law.* – Any person heretofore duly admitted as a member of the bar, or thereafter admitted as such in accordance with the provisions of this Rule, and who is in good and regular standing, is entitled to practice law.

Pursuant thereto, any person admitted as a member of the Philippine bar in accordance with the statutory requirements and who is in good and regular standing is entitled to practice law.

Admission to the bar requires certain qualifications. The Rules of Court mandates that an applicant for admission to the bar be a citizen of the Philippines, at least twenty-one years of age, of good moral character and a resident of the Philippines.[5] He must also produce before this Court satisfactory evidence of good moral character and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines.[6]

Moreover, admission to the bar involves various phases such as furnishing satisfactory proof of educational, moral and other qualifications;[7] passing the bar examinations;[8] taking the lawyer's oath[9] and signing the roll of attorneys and receiving from the clerk of court of this Court a certificate of the license to practice.[10]

The second requisite for the practice of law — membership in good standing — is a continuing requirement. This means continued membership and, concomitantly, payment of annual membership dues in the IBP;[11] payment of the annual professional tax;[12] compliance with the mandatory continuing legal education

[5] Section 2, Rule 138, Rules of Court.

[6] *Id.*

[7] Sections 2, 5 and 6, *id.*

[8] Sections 8 to 11 and 14, *id.*

[9] Section 17, *id.*

[10] Sections 18 and 19, *id.*

[11] In re Integration of the Bar of the Philippines, 09 January 1973, 49 SCRA 22; In re *Atty. Marcial Edillon*, *supra* note 3.

requirement;[13] faithful observance of the rules and ethics of the legal profession and being continually subject to judicial disciplinary control.[14]

Given the foregoing, may a lawyer who has lost his Filipino citizenship still practice law in the Philippines? No.

The Constitution provides that the practice of all professions in the Philippines shall be limited to Filipino citizens save in cases prescribed by law.[15] Since Filipino citizenship is a requirement for admission to the bar, loss thereof terminates membership in the Philippine bar and, consequently, the privilege to engage in the practice of law. In other words, the loss of Filipino citizenship *ipso jure* terminates the privilege to practice law in the Philippines. The practice of law is a privilege denied to foreigners.[16]

The exception is when Filipino citizenship is lost by reason of naturalization as a citizen of another country but subsequently reacquired pursuant to RA 9225. This is because "all Philippine citizens who become citizens of another country shall be *deemed not to have lost their Philippine citizenship* under the conditions of [RA 9225]."[17] Therefore, a Filipino lawyer who becomes a citizen of another country is deemed never to have lost his Philippine citizenship **if he reacquires it in accordance with RA 9225**. Although he is also deemed never to have terminated his membership in the Philippine bar, no automatic right to resume law practice accrues.

Under RA 9225, if a person intends to practice the legal profession in the Philippines and he reacquires his Filipino citizenship pursuant to its provisions "(he) shall apply with the

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[12] Section 139, RA 7160.

[13] Resolution dated August 8, 2000 in Bar Matter No. 850 (Rules on Mandatory Continuing Legal Education for Members of the IBP).

[14] *Philippine Association of Free Labor Unions v. Binalbagan Isabela Sugar Co.*, G.R. No. L-23959, 29 November 1971, 42 SCRA 302.

[15] See last paragraph of Section 14, Article XII.

[16] In re *Bosque*, 1 Phil. 88 (1902).

[17] Section 2, RA 9225. Emphasis supplied.

proper authority for a license or permit to engage in such practice."[18] Stated otherwise, before a lawyer who reacquires Filipino citizenship pursuant to RA 9225 can resume his law practice, he must first secure from this Court the authority to do so, conditioned on:

(a) the updating and payment in full of the annual membership dues in the IBP;

(b) the payment of professional tax;

(c) the completion of at least 36 credit hours of mandatory continuing legal education; this is specially significant to refresh the applicant/petitioner's knowledge of Philippine laws and update him of legal developments and

(d) the **retaking of the lawyer's oath** which will not only remind him of his duties and responsibilities as a lawyer and as an officer of the Court, but also renew his pledge to maintain allegiance to the Republic of the Philippines.

Compliance with these conditions will restore his good standing as a member of the Philippine bar.

WHEREFORE, the petition of Attorney Benjamin M. Dacanay is hereby *GRANTED*, subject to compliance with the conditions stated above and submission of proof of such compliance to the Bar Confidant, after which he may retake his oath as a member of the Philippine bar.

SO ORDERED.

Puno, C.J. (Chairperson), Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and *Reyes, JJ.,* concur.

Quisumbing, J., on leave.

Leonardo-de Castro, J., no part.

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[18] Section 5(4), *id.*

SECOND DIVISION

[G.R. No. 148154. December 17, 2007]

REPUBLIC OF THE PHILIPPINES, represented by the Presidential Commission on Good Government (PCGG), *petitioner, vs.* **SANDIGANBAYAN (Second Division) and FERDINAND R. MARCOS, JR. (as executor of the estate of FERDINAND E. MARCOS),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DEFAULT ORDER; EFFECT.—** Under the Rules of Court, a defending party may be declared in default, upon motion and notice, for failure to file an answer within the allowable period. As a result, the defaulting party cannot take part in the trial albeit he is entitled to notice of subsequent proceedings.

2. **ID.; ID.; ID.; ID.; REMEDIES.—** The remedies against a default order are: (1) a motion to set aside the order of default at any time after discovery thereof and before judgment on the ground that the defendant's failure to file an answer was due to fraud, accident, mistake or excusable neglect and that the defendant has a meritorious defense; (2) a motion for new trial within 15 days from receipt of judgment by default, if judgment had already been rendered before the defendant discovered the default, but before said judgment has become final and executory; (3) an appeal within 15 days from receipt of judgment by default; (4) a petition for relief from judgment within 60 days from notice of judgment and within 6 months from entry thereof; and (5) a petition for *certiorari* in exceptional circumstances.

3. **ID.; ID.; ID.; ID.; GRANTING RESPONDENT THE OPPORTUNITY TO FILE RESPONSIVE PLEADING SHALL MEAN LIFTING OF THE DEFAULT ORDER; RATIONALE.—** Considering that a motion for extension of time to plead is not a litigated motion but an *ex parte* one, the granting of which is a matter addressed to the sound discretion of the court; that in some cases we have allowed defendants to file their answers even after the time fixed for their

presentation; that we have set aside orders of default where defendants' failure to answer on time was excusable; that the pendency of the motion for a bill of particulars interrupts the period to file a responsive pleading; and considering that no real injury would result to the interests of petitioner with the granting of the motion for a bill of particulars, the three motions for extensions of time to file an answer, and the motion with leave to file a responsive pleading, the anti-graft court has validly clothed respondent with the authority to represent his deceased father. The only objection to the action of said court would be on a technicality. But on such flimsy foundation, it would be erroneous to sacrifice the substantial rights of a litigant. Rules of procedure should be liberally construed to promote their objective in assisting the parties obtain a just, speedy and inexpensive determination of their case. While it is true that there was no positive act on the part of the court to lift the default order because there was no motion nor order to that effect, the anti-graft court's act of granting respondent the opportunity to file a responsive pleading meant the lifting of the default order on terms the court deemed proper in the interest of justice. It was the operative act lifting the default order and thereby reinstating the position of the original defendant whom respondent is representing, founded on the court's discretionary power to set aside orders of default. It is noteworthy that a motion to lift a default order requires no hearing; it need be under oath only and accompanied by an affidavit of merits showing a meritorious defense. And it can be filed "at any time after notice thereof and before judgment." Thus, the act of the court in entertaining the motions to file a responsive pleading during the pre-trial stage of the proceedings effectively meant that respondent has acquired a *locus standi* in this case. That he filed a motion for a bill of particulars instead of an answer does not pose an issue because he, as party defendant representing the estate, is allowed to do so under the Rules of Court to be able to file an intelligent answer. It follows that petitioner's filing of a bill of particulars in this case is merely a condition precedent to the filing of an answer. Indeed, failure to file a motion to lift a default order is not procedurally fatal as a defaulted party can even avail of other remedies mentioned above. As default judgments are frowned upon, we have been advising the courts below to be liberal in setting aside default orders to give both parties every

chance to present their case fairly without resort to technicality. Judicial experience shows, however, that resort to motions for bills of particulars is sometimes intended for delay or, even if not so intended, actually result in delay since the reglementary period for filing a responsive pleading is suspended and the subsequent proceedings are likewise set back in the meantime. As understood under Section 1 of Rule 12, mentioned above, a motion for a bill of particulars must be filed within the reglementary period for the filing of a responsive pleading to the pleading sought to be clarified. This contemplates pleadings which are *required* by the Rules to be answered under pain of procedural sanctions, such as default or implied admission of the facts not responded to.

4. **ID.; ID.; VIRATA-MAPA DOCTRINE PRESCRIBES A MOTION FOR A BILL OF PARTICULARS AS THE REMEDY FOR PERCEIVED AMBIGUITY OR VAGUENESS OF A COMPLAINT FOR THE RECOVERY OF ILL-GOTTEN WEALTH; CLARIFIED.—** The 1991 Virata-Mapa Doctrine prescribes a motion for a bill of particulars, not a motion to dismiss, as the remedy for perceived ambiguity or vagueness of a complaint for the recovery of ill-gotten wealth, which was similarly worded as the complaint in this case. That doctrine provided protective precedent in favor of respondent when he filed his motion for a bill of particulars. x x x Lastly, the allowance of the motion for a more definite statement rests with the sound discretion of the court. As usual in matters of a discretionary nature, the ruling of the trial court will not be reversed unless there has been a palpable abuse of discretion or a clearly erroneous order. This Court has been liberal in giving the lower courts the widest latitude of discretion in setting aside default orders justified under the right to due process principle. Plain justice demands and the law requires no less that defendants must know what the complaint against them is all about. What is important is that this case against the Marcoses and their alleged crony and dummy be decided by the anti-graft court on the merits, not merely on some procedural *faux pas*. In the interest of justice, we need to dispel the impression in the individual respondents' minds that they are being railroaded out of their rights and properties without due process of law.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Roberto A.C. Sison for I. Marcos, I. Marcos and I. Marcos.

Marcos Ochoa Serapio & Tan Law Firm for F. R. Marcos, Jr.

R E S O L U T I O N

QUISUMBING, *J.*:

The propriety of filing and granting of a motion for a bill of particulars filed for the estate of a defaulting and deceased defendant is the main issue in this saga of the protracted legal battle between the Philippine government and the Marcoses on alleged ill-gotten wealth.

This special civil action for *certiorari*[1] assails two resolutions of the Sandiganbayan ("anti-graft court" or "court") issued during the preliminary legal skirmishes in this 20-year case:[2] (1) the January 31, 2000 Resolution[3] which granted the motion for a bill of particulars filed by executor Ferdinand R. Marcos, Jr. (respondent) on behalf of his father's estate and (2) the March 27, 2001 Resolution[4] which denied the government's motion for reconsideration.

From the records, the antecedent and pertinent facts in this case are as follows:

The administration of then President Corazon C. Aquino successively sued former President Ferdinand E. Marcos and former First Lady Imelda Romualdez-Marcos (Mrs. Marcos),

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[1] *Rollo*, pp. 2-33.

[2] *Id*. at 5; Records, Vol. 1, p. 42. Civil Case No. 0006, titled "*Republic of the Philippines v. Roman A. Cruz, Jr., Ferdinand E. Marcos and Imelda R. Marcos*," for reconveyance, reversion, accounting, restitution and damages. There were 39 such complaints filed against the Marcoses by the PCGG.

[3] Records, Vol. 4, pp. 1,754-1,760.

[4] *Id*. at 1,919-1,920.

and their alleged cronies or dummies before the anti-graft court to recover the alleged ill-gotten wealth that they amassed during the former president's 20-year rule. Roman A. Cruz, Jr. (Cruz), then president and general manager of the Government Service Insurance System (GSIS); president of the Philippine Airlines (PAL); chairman and president of the Hotel Enterprises of the Philippines, Inc., owner of Hyatt Regency Manila; chairman and president of Manila Hotel Corporation; and chairman of the Commercial Bank of Manila (CBM), is the alleged crony in this case.

On July 21, 1987, the Presidential Commission on Good Government (PCGG), through the Office of the Solicitor General, filed a Complaint[5] for reconveyance, reversion, accounting, restitution and damages alleging that Cruz and the Marcoses stole public assets and invested them in several institutions here and abroad. Specifically, Cruz allegedly purchased, in connivance with the Marcoses, assets whose values are disproportionate to their legal income, to wit: two residential lots and two condominiums in Baguio City; a residential building in Makati; a parcel of land and six condominium units in California, USA; and a residential land in Metro Manila. The PCGG also prayed for the payment of moral damages of ₱50 billion and exemplary damages of ₱1 billion.

On September 18, 1987, Cruz filed an Omnibus Motion to Dismiss, strike out averments in the complaint, and for a bill of particulars.[6]

On April 18, 1988, the court ordered that alias summonses be served on the Marcoses who were then in exile in Hawaii.[7] The court likewise admitted the PCGG's Expanded Complaint[8] dated April 25, 1988, then denied Cruz's omnibus motion on July 28, 1988 after finding that the expanded complaint sufficiently states causes of action and that the matters alleged are specific

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[5] Records, Vol. 1, pp. 1-24.

[6] *Id*. at 68-89.

[7] *Id*. at 175-188; 196-198.

[8] *Id*. at 210-232.

enough to allow Cruz to prepare a responsive pleading and for trial.[9] On September 15, 1988, Cruz filed his answer *ad cautelam*.[10]

On November 10, 1988, the alias summonses on the Marcoses were served at 2338 Makiki Heights, Honolulu, Hawaii.[11] The Marcoses, however, failed to file an answer and were accordingly declared in default by the anti-graft court on April 6, 1989.[12] In *Imelda R. Marcos, et al. v. Garchitorena*, *et al.*,[13] this Court upheld the validity of the Marcoses' default status for failure to file an answer within 60 days from November 10, 1988 when the alias summonses were validly served in their house address in Hawaii.

On September 29, 1989, former President Marcos died in Hawaii. He was substituted by his estate, represented by Mrs. Marcos and their three children, upon the motion of the PCGG.[14]

On July 13, 1992, Mrs. Marcos filed a Motion to Set Aside Order of Default,[15] which was granted by the anti-graft court on October 28, 1992.[16] In *Republic v. Sandiganbayan*,[17] this Court affirmed the resolution of the anti-graft court, ruling that Mrs. Marcos had a meritorious defense, and that failure of a party to properly respond to various complaints brought about by the occurrence of circumstances which ordinary prudence could not have guarded against, such as being barred from returning to the Philippines, numerous civil and criminal suits in the United States, deteriorating health of her husband, and the complexities

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[9] *Id*. at 255-264.

[10] *Id*. at 282-293.

[11] *Id*. at 306; *Imelda R. Marcos, et al. v. Garchitorena, et al.,* G.R. Nos. 90110-43, February 22, 1990 (Unsigned Resolution).

[12] *Id*. at 364.

[13] G.R. Nos. 90110-43, February 22, 1990 (Unsigned Resolution).

[14] Records, Vol. 1, pp. 397-399; 415-418.

[15] *Id*. at 946-960.

[16] *Id*. at 987-1,014.

[17] G.R. Nos. 109430-43, December 28, 1994, 239 SCRA 529.

of her legal battles, is considered as due to fraud, accident and excusable negligence.[18]

On September 6, 1995, Mrs. Marcos filed her answer,[19] arguing that the former President Marcos' wealth is not ill-gotten and that the civil complaints and proceedings are void for denying them due process. She also questioned the legality of the PCGG's acts and asked for ₱20 billion moral and exemplary damages and ₱10 million attorney's fees.

On January 11, 1999, after pre-trial briefs had been filed by Cruz, the PCGG, and Mrs. Marcos, the court directed former President Marcos' children to appear before it or it will proceed with pre-trial and subsequent proceedings.[20]

On March 16, 1999, respondent filed a Motion for Leave to File a Responsive Pleading as executor of his late father's estate.[21] The PCGG opposed the motion, citing as ground the absence of a motion to set aside the default order or any order lifting the default status of former President Marcos.[22]

On May 28, 1999, the court granted respondent's motion:

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The Court concedes the plausibility of the stance taken by the Solicitor General that the default Order binds the estate and the executor for they merely derived their right, if any, from the decedent. Considering however the complexities of this case, and so that the case as against the other defendants can proceed smoothly as the stage reached to date is only a continuation of the pre-trial proceedings, the Court, in the interest of justice and conformably with the discretion granted to it under Section 3 of Rule 9 of the Rules of Court hereby accords affirmative relief to the prayer sought in the motion.

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[18] *Id.* at 534-535.

[19] Records, Vol. 3, pp. 1,161-1,182.

[20] Records, Vol. 4, p. 1,589.

[21] *Id.* at 1,609-1,611.

[22] *Id.* at 1,614-1,617.

Accordingly, Ferdinand R. Marcos, Jr.[,] as executor of the [estate of] deceased defendant Ferdinand E. Marcos[,] is granted a period of ten (10) days from receipt of this Resolution within which to submit his Responsive Pleading.

xxx xxx xxx[23]

Respondent asked for three extensions totaling 35 days to file an answer. The court granted the motions and gave him until July 17, 1999 to file an answer. But instead of filing an answer, respondent filed on July 16, 1999, a Motion For Bill of Particulars,[24] praying for clearer statements of the allegations which he called "mere conclusions of law, too vague and general to enable defendants to intelligently answer."

The PCGG opposed the motion, arguing that the requested particulars were evidentiary matters; that the motion was dilatory; and that it contravened the May 28, 1999 Resolution granting respondent's Motion for Leave to File a Responsive Pleading.[25]

The anti-graft court, however, upheld respondent, explaining that the allegations against former President Marcos were vague, general, and were mere conclusions of law. It pointed out that the accusations did not specify the ultimate facts of former President Marcos' participation in Cruz's alleged accumulation of ill-gotten wealth, effectively preventing respondent from intelligently preparing an answer. It noted that this was not the first time the same issue was raised before it, and stressed that this Court had consistently ruled in favor of the motions for bills of particulars of the defendants in the other ill-gotten wealth cases involving the Marcoses.

The *fallo* of the assailed January 31, 2000 Resolution reads:

WHEREFORE, the defendant-movant's motion for bill of particulars is hereby GRANTED.

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[23] *Id*. at 1,633-1,634.

[24] *Id*. at 1,665-1,672.

[25] *Id*. at 1,705-1,712.

Accordingly, the plaintiff is hereby ordered to amend pars. 9 and Annex "A", 12 (a) to (e), and 19 in relation to par-3 of the PRAYER, of the Expanded Complaint, to allege the ultimate facts indicating the nature, manner, period and extent of participation of Ferdinand E. Marcos in the acts referred to therein, and the amount of damages to be proven during trial, respectively, within fifteen (15) days from receipt of this resolution[.]

SO ORDERED.[26]

Not convinced by petitioner's Motion for Reconsideration,[27] the court ruled in the assailed March 27, 2001 Resolution that the motion for a bill of particulars was not dilatory considering that the case was only at its pre-trial stage and that Section 1,[28] Rule 12 of the 1997 Rules of Civil Procedure allows its filing.

In urging us to nullify now the subject resolutions, petitioner, through the PCGG, relies on two grounds:

I.

THE MOTION FOR BILL OF PARTICULARS CONTRAVENES SECTION 3, RULE 9 OF THE 1997 RULES [OF] CIVIL PROCEDURE.

II.

THE MOTION FOR BILL OF PARTICULARS IS PATENTLY DILATORY AND BEREFT OF ANY BASIS.[29]

Invoking Section 3,[30] Rule 9 of the 1997 Rules of Civil Procedure, petitioner argues that since the default order against

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[26] *Id*. at 1,760.

[27] *Id*. at 1,764-1,781.

[28] **SECTION 1.** *When applied for; purpose*. – Before responding to a pleading, a party may move for a definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading. If the pleading is a reply, the motion must be filed within ten (10) days from service thereof. Such motion shall point out the defects complained of, the paragraphs wherein they are contained, and the details desired.

[29] *Rollo*, p. 13.

[30] **SEC 3.** *Default; declaration of*. – If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming

former President Marcos has not been lifted by any court order, respondent cannot file a motion for a bill of particulars. Petitioner stresses that respondent did not file a motion to lift the default order as executor of his father's estate; thus, he and the estate cannot take part in the trial.

Petitioner also contends that respondent was granted leave to file an answer to the expanded complaint, not a motion for a bill of particulars. The anti-graft court should not have accepted the motion for a bill of particulars after he had filed a motion for leave to file responsive pleading and three successive motions for extension as the motion for a bill of particulars is dilatory. Petitioner insists that respondent impliedly admitted that the complaint sufficiently averred factual matters with definiteness to enable him to properly prepare a responsive pleading because he was able to prepare a draft answer, as stated in his second and third motions for extension. Petitioner adds that the factual matters in the expanded complaint are clear and sufficient as Mrs. Marcos and Cruz had already filed their respective answers.

Petitioner also argues that if the assailed Resolutions are enforced, the People will suffer irreparable damage because petitioner will be forced to prematurely divulge evidentiary matters, which is not a function of a bill of particulars. Petitioner maintains that paragraph 12, subparagraphs a to e,[31] of the

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party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

(a) Effect of order of default. – A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.

(b) Relief from order of default. – A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice. . . .

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[31] Records, Vol. 1, pp. 218-222.

expanded complaint "illustrate the essential acts pertaining to the conspirational acts" between Cruz and former President Marcos. Petitioner argues that respondent erroneously took out of context the phrase "unlawful concert" from the rest of the averments in the complaint.

Respondent, for his part, counters that this Court had compelled petitioner in several ill-gotten wealth cases involving the same issues and parties to comply with the motions for bills of particulars filed by other defendants on the ground that most, if not all, of the allegations in the similarly worded complaints for the recovery of alleged ill-gotten wealth consisted of mere conclusions of law and were too vague and general to enable the defendants to intelligently parry them.

Respondent adds that it is misleading for the Government to argue that the default order against his father stands because the May 28, 1999 Resolution effectively lifted it; otherwise, he would not have been called by the court to appear before it and allowed to file a responsive pleading. He stresses that the May 28, 1999 Resolution remains effective for all intents and purposes because petitioner did not file a motion for reconsideration.

Respondent likewise denies that his motion for a bill of particulars is dilatory as it is petitioner's continued refusal to submit a bill of particulars which causes the delay and it is petitioner who is "hedging, flip-flopping and delaying in its prosecution" of Civil Case No. 0006. His draft answer turned out "not an intelligent" one due to the vagueness of the allegations. He claims that petitioner's actions only mean one thing: it has no specific information or evidence to show his father's participation in the acts of which petitioner complains.

In its Reply,[32] petitioner adds that the acts imputed to former President Marcos were acts that Cruz committed in conspiracy with the late dictator, and which Cruz could not have done without the participation of the latter. Petitioner further argues that conspiracies need not be established by direct evidence of

[32] *Rollo*, pp. 206-207.

the acts charged but by a number of indefinite acts, conditions and circumstances.

In a nutshell, the ultimate issue is: Did the court commit grave abuse of discretion amounting to lack or excess of jurisdiction in granting respondent's motion for a bill of particulars as executor of former President Marcos' estates considering that the deceased defendant was then a defaulting defendant when the motion was filed?

We rule in the negative, and dismiss the instant petition for utter lack of merit.

Under the Rules of Court, a defending party may be declared in default, upon motion and notice, for failure to file an answer within the allowable period. As a result, the defaulting party cannot take part in the trial albeit he is entitled to notice of subsequent proceedings.[33]

The remedies against a default order are: (1) a motion to set aside the order of default at any time after discovery thereof and before judgment on the ground that the defendant's failure to file an answer was due to fraud, accident, mistake or excusable neglect and that the defendant has a meritorious defense; (2) a motion for new trial within 15 days from receipt of judgment by default, if judgment had already been rendered before the defendant discovered the default, but before said judgment has become final and executory; (3) an appeal within 15 days from receipt of judgment by default; (4) a petition for relief from judgment within 60 days from notice of judgment and within 6 months from entry thereof; and (5) a petition for *certiorari* in exceptional circumstances.[34]

In this case, former President Marcos was declared in default for failure to file an answer. He died in Hawaii as an exile while this case was pending, since he and his family fled to Hawaii in February 1986 during a people-power revolt in Metro

[33] *Supra* note 31.

[34] *Lina v. Court of Appeals*, No. L-63397, April 9, 1985, 135 SCRA 637, 641-642; See *The Mechanics of Lifting an Order of Default*, December 14, 1981, 110 SCRA 223, 227-232.

Manila. His representatives failed to file a motion to lift the order of default. Nevertheless, respondent, as executor of his father's estate, filed a motion for leave to file a responsive pleading, three motions for extensions to file an answer, and a motion for bill of particulars all of which were granted by the anti-graft court.

Given the existence of the default order then, what is the legal effect of the granting of the motions to file a responsive pleading and bill of particulars? In our view, the effect is that the default order against the former president is deemed lifted.

Considering that a motion for extension of time to plead is not a litigated motion but an *ex parte* one, the granting of which is a matter addressed to the sound discretion of the court; that in some cases we have allowed defendants to file their answers even after the time fixed for their presentation; that we have set aside orders of default where defendants' failure to answer on time was excusable; that the pendency of the motion for a bill of particulars interrupts the period to file a responsive pleading; and considering that no real injury would result to the interests of petitioner with the granting of the motion for a bill of particulars, the three motions for extensions of time to file an answer, and the motion with leave to file a responsive pleading, the anti-graft court has validly clothed respondent with the authority to represent his deceased father. The only objection to the action of said court would be on a technicality. But on such flimsy foundation, it would be erroneous to sacrifice the substantial rights of a litigant. Rules of procedure should be liberally construed to promote their objective in assisting the parties obtain a just, speedy and inexpensive determination of their case.[35]

While it is true that there was no positive act on the part of the court to lift the default order because there was no motion nor order to that effect, the anti-graft court's act of granting respondent the opportunity to file a responsive pleading meant the lifting of the default order on terms the court deemed proper in the interest of justice. It was the operative act lifting the default order and thereby reinstating the position of the original

[35] *Amante v. Suñga*, No. L-40491, May 28, 1975, 64 SCRA 192, 195-197.

defendant whom respondent is representing, founded on the court's discretionary power to set aside orders of default.

It is noteworthy that a motion to lift a default order requires no hearing; it need be under oath only and accompanied by an affidavit of merits showing a meritorious defense.[36] And it can be filed "at any time after notice thereof and before judgment." Thus, the act of the court in entertaining the motions to file a responsive pleading during the pre-trial stage of the proceedings effectively meant that respondent has acquired a *locus standi* in this case. That he filed a motion for a bill of particulars instead of an answer does not pose an issue because he, as party defendant representing the estate, is allowed to do so under the Rules of Court to be able to file an intelligent answer. It follows that petitioner's filing of a bill of particulars in this case is merely a condition precedent to the filing of an answer.

Indeed, failure to file a motion to lift a default order is not procedurally fatal as a defaulted party can even avail of other remedies mentioned above.

As default judgments are frowned upon, we have been advising the courts below to be liberal in setting aside default orders to give both parties every chance to present their case fairly without resort to technicality.[37] Judicial experience shows, however, that resort to motions for bills of particulars is sometimes intended for delay or, even if not so intended, actually result in delay since the reglementary period for filing a responsive pleading is suspended and the subsequent proceedings are likewise set back in the meantime. As understood under Section 1 of Rule 12, mentioned above, a motion for a bill of particulars must be filed within the reglementary period for the filing of a responsive pleading to the pleading sought to be clarified. This contemplates pleadings which are *required* by the Rules to be answered under pain of procedural sanctions, such as default or implied admission of the facts not responded to.[38]

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[36] RULES OF COURT, Rule 9, Sec. 3, par. (b).

[37] *Santos v. Samson*, No. L-46371, December 14, 1981, 110 SCRA 215, 220.

[38] 1 F. REGALADO, *REMEDIAL LAW COMPENDIUM*, 198-199 (7th rev. ed., 1999).

But as defaulted defendants are not actually thrown out of court because the Rules see to it that judgments against them must be in accordance with the law and competent evidence, this Court prefers that the lifting of default orders be effected before trial courts could receive plaintiffs' evidence and render judgments. This is so since judgments by default may result in considerable injustice to defendants, necessitating careful and liberal examination of the grounds in motions seeking to set them aside. The inconvenience and complications associated with rectifying resultant errors, if defendant justifies his omission to seasonably answer, far outweigh the gain in time and dispatch of immediately trying the case.[39] The fact that former President Marcos was in exile when he was declared in default, and that he later died still in exile, makes the belated filing of his answer in this case understandably excusable.

The anti-graft court required the Marcos siblings through its January 11, 1999 Order[40] to substitute for their father without informing them that the latter was already declared in default. They were unaware, therefore, that they had to immediately tackle the matter of default. Respondent, who stands as the executor of their father's estate, could assume that everything was in order as far as his standing in court was concerned. That his motion for leave to file a responsive pleading was granted by the court gave him credible reason not to doubt the validity of his legal participation in this case. Coupled with his intent to file an answer, once his motion for a bill of particulars is sufficiently answered by petitioner, the circumstances abovementioned warrant the affirmation of the anti-graft court's actions now being assailed.

As to the propriety of the granting of the motion for a bill of particulars, we find for respondent as the allegations against former President Marcos appear obviously couched in general terms. They do not cite the ultimate facts to show how the Marcoses acted "in unlawful concert" with Cruz in illegally

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[39] *Lim Tanhu v. Ramolete*, No. L-40098, August 29, 1975, 66 SCRA 425, 453-454.

[40] *Rollo*, p. 89.

amassing assets, property and funds in amounts disproportionate to Cruz's lawful income, except that the former President Marcos was the president at the time.

The pertinent allegations in the expanded complaint subject of the motion for a bill of particulars read as follows:

> 11. Defendant Roman A. Cruz, Jr. served as public officer during the Marcos administration. During his . . . incumbency as public officer, he acquired assets, funds and other property grossly and manifestly disproportionate to his salaries, lawful income and income from legitimately acquired property.
>
> 12. . . . Cruz, Jr., in blatant abuse of his position as Chairman and General Manager of the Government Service Insurance System (GSIS), as President and Chairman of the Board of Directors of the Philippine Airlines (PAL), and as Executive Officer of the Commercial Bank of Manila, by himself and/or in unlawful concert with defendants Ferdinand E. Marcos and Imelda R. Marcos, among others:
>
> (a) purchased through Arconal N.V., a Netherland-Antilles Corporation, a lot and building located at 212 Stockton St., San Francisco, California, for an amount much more than the value of the property at the time of the sale to the gross and manifest disadvantageous (*sic*) to plaintiff.
>
> GSIS funds in the amount of $10,653,350.00 were used for the purchase when under the right of first refusal by PAL contained in the lease agreement with Kevin Hsu and his wife, the owners of the building, a much lower amount should have been paid.
>
> For the purchase of the building, defendant Cruz allowed the intervention of Sylvia Lichauco as broker despite the fact that the services of such broker were not necessary and even contrary to existing policies of PAL to deal directly with the seller. The broker was paid the amount of $300,000.00 resulting to the prejudice of GSIS and PAL.
>
> (b) Converted and appropriated to . . . own use and benefit funds of the Commercial Bank of Manila, of which he was Executive Officer at the time.
>
> He caused the disbursement from the funds of the bank of among others, the amount of ₱81,152.00 for personal services rendered to him by one Brenda Tuazon.

(c) Entered into an agency agreement on behalf of the Government Service Insurance System with the Integral Factors Corporation (IFC), to solicit insurance, and effect reinsurance on behalf of the GSIS, pursuant to which agreement, IFC effected a great part of its reinsurance with INRE Corporation, which, was a non-insurance company registered in London[,] with defendant . . . Cruz, Jr., as one of its directors.

IFC was allowed to service accounts emanating from government agencies like the Bureau of Buildings, Philippine National Oil Corporation, National Power Corporation, Ministry of Public Works and Highways which under the laws are required to insure with and deal directly with the GSIS for their insurance needs. The intervention of IFC to service these accounts caused the reduction of premium paid to GSIS as a portion thereof was paid to IFC.

(d) Entered into an agreement with the Asiatic Integrated Corporation (AIC) whereby the GSIS ceded, transferred, and conveyed property consisting of five (5) adjoining parcels of land situated in Manila covered by Transfer Certificates of Title (TCT) Nos. 49853, 49854, 49855 and 49856 to AIC in exchange for AIC property known as the Pinugay Estate located at Tanay, Rizal, covered by TCT No. 271378, under terms and conditions grossly and manifestly disadvantageous to the government.

The appraised value of the GSIS parcels of land was ₱14,585,600.00 as of June 25, 1971 while the value of the Pinugay Estate was ₱2.00 per square meter or a total amount of ₱15,219,264.00. But in the barter agreement, the Pinugay Estate was valued at ₱5.50 per square meter or a total of ₱41,852,976.00, thus GSIS had to pay AIC ₱27,287,976.00, when it was GSIS which was entitled to payment from AIC for its failure to pay the rentals of the GSIS property then occupied by it.

(e) purchased three (4) (*sic*) additional Airbus 300 in an amount much more than the market price at the time when PAL was in deep financial strain, to the gross and manifest disadvantage of Plaintiff.

On October 29, 1979, defendant Cruz, as President and Chairman of the Board of Directors of . . . (PAL) authorized the payment of non-refundable deposit of U.S. $200,000.00 even before a meeting of the Board of Directors of PAL could deliberate and approve the purchase.[41]

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[41] *Id*. at 65-69.

In his motion for a bill of particulars, respondent wanted clarification on the specific nature, manner and extent of participation of his father in the acquisition of the assets cited above under Cruz; particularly whether former President Marcos was a beneficial owner of these properties; and the specific manner in which he acquired such beneficial control.

Also, respondent wanted to know the specific nature, manner, time and extent of support, participation and collaboration of his father in (1) Cruz's alleged "blatant abuse" as GSIS president and general manager, PAL president and chairman of the board, and executive officer of the CBM; (2) the purchase of a lot and building in California using GSIS funds and Cruz's allowing Lichauco as broker in the sale of the lot and building contrary to PAL policies; (3) Cruz's appropriating to himself CBM funds; (4) Cruz's disbursement of ₱81,152 CBM funds for personal services rendered to him by Tuazon; (5) Cruz's entering into an agency agreement for GSIS with IFC to solicit, insure, and effect reinsurance of GSIS, as result of which IFC effected a great part of its reinsurance with INRE Corporation, a London-registered non-insurance company, of which Cruz was one of the directors; (6) Cruz's allowing IFC to service the accounts emanating from government agencies which were required under the law to insure and deal directly with the GSIS for their insurance needs; (7) the GSIS-AIC agreement wherein GSIS ceded and conveyed to AIC five parcels of land in Manila in exchange for AIC's Pinugay Estate in Tanay, Rizal; (8) PAL's purchase of three Airbus 300 jets for a higher price than the market price; and (9) if former President Marcos was connected in any way to IFC and INRE Corporation. Respondent likewise asked, what is the specific amount of damages demanded?

The 1991 Virata-Mapa Doctrine[42] prescribes a motion for a bill of particulars, not a motion to dismiss, as the remedy for

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[42] *Virata v. Sandiganbayan*, G.R. Nos. 86926 & 86949, October 15, 1991, 202 SCRA 680; Justice Hugo Gutierrez, Jr. dissented, saying the motion to dismiss should have been granted because the complaint consisted of mere inferences and general conclusions, with no statement of ultimate facts to support the sweeping and polemical charges, which cannot substitute for a cause of action.

perceived ambiguity or vagueness of a complaint for the recovery of ill-gotten wealth,[43] which was similarly worded as the complaint in this case. That doctrine provided protective precedent in favor of respondent when he filed his motion for a bill of particulars.

While the allegations as to the alleged specific acts of Cruz were clear, they were vague and unclear as to the acts of the Marcos couple who were allegedly "in unlawful concert with" the former. There was no factual allegation in the original and expanded complaints on the collaboration of or on the kind of support extended by former President Marcos to Cruz in the commission of the alleged unlawful acts constituting the alleged plunder. All the allegations against the Marcoses, aside from being maladroitly laid, were couched in general terms. The alleged acts, conditions and circumstances that could show the conspiracy among the defendants were not particularized and sufficiently set forth by petitioner.

That the late president's co-defendants were able to file their respective answers to the complaint does not necessarily mean that his estate's executor will be able to file an equally intelligent answer, since the answering defendants' defense might be personal to them.

In dismissing this petition, *Tantuico, Jr. v. Republic*[44] also provides us a cogent jurisprudential guide. There, the allegations against former President Marcos were also conclusions of law unsupported by factual premises. The particulars prayed for in the motion for a bill of particulars were also not evidentiary in nature. In that case, we ruled that the anti-graft court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying an alleged crony's motion for a bill of particulars on a complaint with similar tenor and wordings as in the case at bar.

Likewise we have ruled in *Virata v. Sandiganbayan*[45] (1993) that *Tantuico*'s applicability to that case was "ineluctable," and

[43] *Id.* at 694-695.

[44] G.R. No. 89114, December 2, 1991, 204 SCRA 428.

[45] G.R. No. 106527, April 6, 1993, 221 SCRA 52.

the propriety of the motion for a bill of particulars under Section 1, Rule 12 of the Revised Rules of Court was beyond dispute.[46]

In 1996, in the similar case of *Republic v. Sandiganbayan (Second Division)*,[47] we also affirmed the resolutions of the Sandiganbayan granting the motion for a bill of particulars of Marcos' alleged crony, business tycoon Lucio Tan.[48]

Phrases like "in flagrant breach of public trust and of their fiduciary obligations as public officers with grave and scandalous abuse of right and power and in brazen violation of the Constitution and laws," "unjust enrichment," "embarked upon a systematic plan to accumulate ill-gotten wealth," "arrogated unto himself all powers of government," are easy and easy to read; they have potential media quotability and they evoke passion with literary flair, not to mention that it was populist to flaunt those statements in the late 1980s. But they are just that, accusations by generalization. Motherhood statements they are, although now they might be a politically incorrect expression and an affront to mothers everywhere, although they best describe the accusations against the Marcoses in the case at bar.

In Justice Laurel's words, "the administration of justice is not a matter of guesswork."[49] The name of the game is fair play, not foul play. We cannot allow a legal skirmish where, from the start, one of the protagonists enters the arena with one arm tied to his back.[50] We must stress anew that the administration of justice entails a painstaking, not haphazard, preparation of pleadings.

The facile verbosity with which the legal counsel for the government flaunted the accusation of excesses against the Marcoses in general terms must be soonest refurbished by a bill of particulars, so that respondent can properly prepare an

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[46] *Id.* at 62.

[47] G.R. No. 115748, August 7, 1996, 260 SCRA 411.

[48] *Id.* at 419.

[49] *Go Occo & Co. v. De la Costa and Reyes*, 63 Phil. 445, 449 (1936).

[50] *Republic v. Sandiganbayan*, *supra* note 17, at 538.

intelligent responsive pleading and so that trial in this case will proceed as expeditiously as possible. To avoid a situation where its pleadings may be found defective, thereby amounting to a failure to state a cause of action, petitioner for its part must be given the opportunity to file a bill of particulars. Thus, we are hereby allowing it to supplement its pleadings now, considering that amendments to pleadings are favored and liberally allowed especially before trial.

Lastly, the allowance of the motion for a more definite statement rests with the sound discretion of the court. As usual in matters of a discretionary nature, the ruling of the trial court will not be reversed unless there has been a palpable abuse of discretion or a clearly erroneous order.[51] This Court has been liberal in giving the lower courts the widest latitude of discretion in setting aside default orders justified under the right to due process principle. Plain justice demands and the law requires no less that defendants must know what the complaint against them is all about.[52]

What is important is that this case against the Marcoses and their alleged crony and dummy be decided by the anti-graft court on the merits, not merely on some procedural *faux pas*. In the interest of justice, we need to dispel the impression in the individual respondents' minds that they are being railroaded out of their rights and properties without due process of law.

WHEREFORE, finding no grave abuse of discretion on the part of the Sandiganbayan in granting respondent's Motion for Bill of Particulars, the petition is *DISMISSED*. The Resolutions of the Sandiganbayan dated January 31, 2000 and March 27, 2001 in Civil Case No. 0006 are *AFFIRMED*. Petitioner is ordered to prepare and file a bill of particulars containing the ultimate facts as prayed for by respondent within twenty (20) days from notice.

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[51] *Santos v. Liwag*, No. L-24238, November 28, 1980, 101 SCRA 327, 329.

[52] *Virata v. Sandiganbayan*, G.R. No. 114331, May 27, 1997, 272 SCRA 661, 688.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, Velasco, Jr., and *Reyes,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 170735. December 17, 2007]

IMMACULADA L. GARCIA, *petitioner, vs.* **SOCIAL SECURITY COMMISSION LEGAL AND COLLECTION, SOCIAL SECURITY SYSTEM,** *respondents.*

SYLLABUS

1. **STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; AS A RULE, EVERY PART OF THE STATUTE MUST BE INTERPRETED WITH REFERENCE TO THE CONTEXT; APPLICATION IN CASE AT BAR.—** It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.,* that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The liability imposed as contemplated under the foregoing Section 28 (f) of the Social Security Law does not preclude the liability for the unremitted amount. Relevant to Section 28 (f) is Section 22 of the same law. x x x Under Section 22 (a), *every employer is required to deduct and remit such contributions* penalty refers to the 3% penalty that automatically attaches to the delayed SSS premium contributions. The spirit, rather than the letter of a law determines construction of a provision of law. It is a cardinal rule in statutory construction that in interpreting the meaning

[*] Additional member due to the inhibition of Associate Justice Antonio T. Carpio and pursuant to Administrative Circular No. 84-2007.

and scope of a term used in the law, a careful review of the *whole law* involved, as well as the intendment of the law, must be made. Nowhere in the provision or in the Decision can it be inferred that the persons liable are absolved from paying the unremitted premium contributions.

2. **ID.; ID.; WHEN THE LAW OR RULES ARE CLEAR, APPLICATION AND NOT INTERPRETATION IS IMPERATIVE.—** Elementary is the rule that when laws or rules are clear, it is incumbent upon the judge to apply them regardless of personal belief or predilections — when the law is unambiguous and unequivocal, application not interpretation thereof is imperative. However, where the language of a statute is vague and ambiguous, an interpretation thereof is resorted to. An interpretation thereof is necessary in instances where a literal interpretation would be either impossible or absurd or would lead to an injustice. A law is deemed ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses. The fact that a law admits of different interpretations is the best evidence that it is vague and ambiguous.

3. **LABOR AND SOCIAL LEGISLATION; SOCIAL SECURITY LAW; FAILURE TO REMIT SSS PREMIUM CONTRIBUTION; PENALTY, EXPLAINED.—** The situation of petitioner, as a director of Impact Corporation when said corporation failed to remit the SSS premium contributions falls exactly under the fourth situation. Section 28 (f) of the Social Security Law imposes a civil liability for any act or omission pertaining to the violation of the Social Security Law, to wit: (f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense. In fact, criminal actions for violations of the Social Security Law are also provided under the Revised Penal Code. The Social Security Law provides, in Section 28 thereof, to wit: (h) Any employer who, after deducting the monthly contributions or loan amortizations from his employees' compensation, fails to remit the said deductions to the SSS within thirty (30) days from the date they became due shall be presumed to have misappropriated such contributions or loan amortizations and shall suffer the penalties provided in Article Three hundred

fifteen of the Revised Penal Code. (i) Criminal action arising from a violation of the provisions of this Act may be commenced by the SSS or the employee concerned either under this Act or in appropriate cases under the Revised Penal Code: x x x. Section 28 (f) of the Social Security Law imposes penalty on: (1) the managing head; (2) directors; or (3) partners, for offenses committed by a juridical person. The said provision does not qualify that the director or partner should likewise be a "managing director" or "managing partner." The law is clear and unambiguous.

4. **MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; GENERALLY THE OBLIGATIONS INCURRED BY THE CORPORATION ARE ITS SOLE LIABILITY; EXCEPTION, EXPLAINED.—** Basic is the rule that a corporation is invested by law with a personality separate and distinct from that of the persons composing it as well as from that of any other legal entity to which it may be related. A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Following this, the general rule applied is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. A director, officer, and employee of a corporation are generally not held personally liable for obligations incurred by the corporation. Being a mere fiction of law, however, there are peculiar situations or valid grounds that can exist to warrant the disregard of its independent being and the lifting of the corporate veil. This situation might arise when a corporation is used to evade a just and due obligation or to justify a wrong, to shield or perpetrate fraud, to carry out other similar unjustifiable aims or intentions, or as a subterfuge to commit injustice and so circumvent the law. Thus, Section 31 of the Corporation Law provides: x x x The sympathy of the law on social security is toward its beneficiaries. This Court will not turn a blind eye on the perpetration of injustice. This Court cannot and will not allow itself to be made an instrument nor be privy to any attempt at the perpetration of injustice. Following the doctrine laid down in *Laguna Transportation Co., Inc. v. Social Security System,* this Court rules that although a corporation once formed is conferred a juridical personality separate and distinct from the persons comprising it, it is but a legal fiction introduced for purposes of convenience and to

subserve the ends of justice. The concept cannot be extended to a point beyond its reasons and policy, and when invoked in support of an end subversive of this policy, will be disregarded by the courts.

5. **ID.; ID.; ID.; INSTANCES WHEN A CORPORATE DIRECTOR, A TRUSTEE OR AN OFFICER MAY BE HELD SOLIDARILY LIABLE WITH THE CORPORATION.—** A corporate director, a trustee or an officer, may be held solidarily liable with the corporation in the following instances: 1. When directors and trustees or, in appropriate cases, the officers of a corporation — (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons. 2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto. 3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the Corporation. 4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.

APPEARANCES OF COUNSEL

Quisumbing Ignacio Guia & Lambino Law Offices for petitioner.

Amador M. Montiero, Joselito A. Vivit & Gwendolyn C. Barrios for SSS.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is petition for review on *Certiorari* under Rule 45 of the Rules of Court is assailing the 2 June 2005 Decision[1] and 8 December 2005 Resolution[2] both of the Court of Appeals in

[1] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Eliezer R. De Los Santos and Arturo D. Brion, concurring; *rollo*, pp. 32-43.

[2] *Id.* at 44.

CA-G.R. SP No. 85923. the appellate court affirmed the — Order and — Resolution both of the Social Security Commission (SSC) in SSC Case No. 10048, finding Immaculada L. Garcia (Garcia), the sole surviving director of Impact Corporation, petitioner herein, liable for unremitted, albeit collected, SSS contributions.

Petitioner Immaculada L. Garcia, Eduardo de Leon, Ricardo de Leon, Pacita Fernandez, and Consuelo Villanueva were directors[3] of Impact Corporation. The corporation was engaged in the business of manufacturing aluminum tube containers and operated two factories. One was a "slug" foundry-factory located in Cuyapo, Nueva Ecija, while the other was an Extrusion Plant in Cainta, Metro Manila, which processed the "slugs" into aluminum collapsible tubes and similar containers for toothpaste and other related products.

Records show that around 1978, Impact Corporation started encountering financial problems. By 1980, labor unrest besieged the corporation.

In March 1983, Impact Corporation filed with the Securities and Exchange Commission (SEC) a Petition for Suspension of Payments,[4] docketed as SEC Case No. 02423, in which it stated that:

> [Impact Corporation] has been and still is engaged in the business of manufacturing aluminum tube containers x x x.
>
> xxx xxx xxx
>
> In brief, it is an on-going, viable, and profitable enterprise.

On 8 May 1985, the union of Impact Corporation filed a Notice of Strike with the Ministry of Labor which was followed by a declaration of strike on 28 July 1985. Subsequently, the Ministry of Labor certified the labor dispute for compulsory arbitration to the National Labor Relations Commission (NLRC) in an Order[5] dated 25 August 1985. The Ministry of Labor, in

[3] General Information Sheet of Impact Corporation Corporation, as of 31 December 1974.

[4] Records, pp. 265-283.

the same Order, noted the inability of Impact Corporation to pay wages, 13th month pay, and SSS remittances due to cash liquidity problems. A portion of the order reads:

> On the claims of unpaid wages, unpaid 13th month pay and non-remittance of loan amortization and SSS premiums, we are for directing the company to pay the same to the workers and to remit loan amortizations and SSS premiums previously deducted from their wages to the Social Security System. Such claims were never contested by the company both during the hearing below and in our office. In fact, such claims were admitted by the company although it alleged cash liquidity as the main reason for such non-payment.
>
> WHEREFORE, the dispute at Impact Corporation is hereby certified to the National Labor Relations Commission for compulsory arbitration in accordance with Article 264 (g) of the Labor Code, as amended.
>
> xxx xxx xxx
>
> The company is directed to pay all the entitled workers unpaid wages, unpaid 13th month pay and to remit to the Social Security System loan amortizations and SSS premiums previously deducted from the wages of the workers.[6]

On 3 July 1985, the Social Security System (SSS), through its Legal and Collection Division (LCD), filed a case before the SSC for the collection of unremitted SSS premium contributions withheld by Impact Corporation from its employees. The case which impleaded Impact Corporation as respondent was docketed as SSC Case No. 10048.[7]

Impact Corporation was compulsorily covered by the SSS as an employer effective 15 July 1963 and was assigned Employer I.D. No. 03-2745100-21.

In answer to the allegations raised in SSC Case No. 10048, Impact Corporation, through its then Vice President Ricardo de Leon, explained in a letter dated 18 July 1985 that it had been confronted with strikes in 1984 and layoffs were effected

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[5] *Id*. at 390-393.

[6] *Id*. at 392.

thereafter. It further argued that the ₱402,988.93 is erroneous. It explained among other things, that its operations had been suspended and that it was waiting for the resolution on its Petition for Suspension of Payments by the SEC under SEC Case No. 2423. Despite due notice, the corporation failed to appear at the hearings. The SSC ordered the investigating team of the SSS to determine if it can still file its claim for unpaid premium contributions against the corporation under the Petition for Suspension of Payments.

In the meantime, the Petition for Suspension of Payments was dismissed which was pending before the SEC in an Order[8] dated 12 December 1985. Impact Corporation resumed operations but only for its winding up and dissolution.[9] Due to Impact Corporation's liability and cash flow problems, all of its assets, namely, its machineries, equipment, office furniture and fixtures, were sold to scrap dealers to answer for its arrears in rentals.

On 1 December 1995, the SSS-LCD filed an amended Petition[10] in SSC Case No. 10048 wherein the directors of Impact Corporation were directly impleaded as respondents, namely: Eduardo de Leon, Ricardo de Leon,[11] Pacita Fernandez, Consuelo Villanueva, and petitioner. The amounts sought to be collected totaled ₱453,845.78 and ₱10,856.85 for the periods August 1980 to December 1984 and August 1981 to July 1984, respectively, and the penalties for late remittance at the rate of 3% per month from the date the contributions fell due until fully paid pursuant to Section 22(a) of the Social Security Law,[12] as amended, in the amounts of ₱49,941.67 and ₱2,474,662.82.

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[7] *Id*. at 1-3.

[8] *Id*. at 395-400.

[9] *Id*. at 192-196.

[10] *Id*. at 223-233.

[11] Summons were served on Ricardo de Leon; See records, p. 259.

[12] SEC. 22. *Remittance of Contributions.* — (a) The contribution imposed in the preceding Section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required

Period	Unremitted Amount	Penalties (3% Interest Per Month)	Total
August 1980 to December 1984	₱ 453,845.78	₱49,941.67	503,787.45
August 1981 to July 1984	₱ 10,856.85	₱2,474,662.82	2, 485, 519.67

Summonses were not served upon Eduardo de Leon, Pacita Fernandez, and Consuelo Villanueva, their whereabouts unknown. They were all later determined to be deceased. On the other hand, due to failure to file his responsive pleading, Ricardo de Leon was declared in default.

Petitioner filed with the SSC a Motion to Dismiss[13] on grounds of prescription, lack of cause of action and cessation of business, but the Motion was denied for lack of merit.[14] In her Answer with Counterclaim[15] dated 20 May 1999, petitioner averred that Impact Corporation had ceased operations in 1980. In her defense, she insisted that she was a mere director without managerial functions, and she ceased to be such in 1982. Even as a stockholder and director of Impact Corporation, petitioner contended that she cannot be made personally liable for the corporate obligations of Impact Corporation since her liability extended only up to the extent of her unpaid subscription, of which she had none since her subscription was already fully

to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: *Provided,* That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer.

[13] Dated 17 January 1996.

[14] Order issued by the SSC on 27 April 1999; record*s,* pp. 320-325.

[15] Records*,* pp. 336-345.

paid. The petitioner raised the same arguments in her Position Paper.[16]

On 23 January 1998, Ricardo de Leon died following the death, too, of Pacita Fernandez died on 7 February 2000. In an Order dated 11 April 2000, the SSC directed the System to check if Impact Corporation had leviable properties to which the investigating team of respondent SSS manifested that the Impact Corporation had already been dissolved and its assets disposed of.[17]

In a Resolution dated 28 May 2003, the Social Security Commission ruled in favor of SSS and declared petitioner liable to pay the unremitted contributions and penalties, stating the following:

> WHEREFORE, premises considered, this Commission finds, and so holds, that respondents Impact Corporation and/or Immaculada L. Garcia, as director and responsible officer of the said corporation, is liable to pay the SSS the amounts of P442,988.93, representing the unpaid SS contributions of their employees for the period August 1980 to December 1984, not inclusive, and P10,856.85, representing the balance of the unpaid SS contributions in favor of Donato Campos, Jaime Mascarenas, Bonifacio Franco and Romeo Fullon for the period August 1980 to December 1984, not inclusive, as well as the 3% per month penalty imposed thereon for late payment in the amounts of ₱3,194,548.63 and ₱78,441.33, respectively, computed as of April 30, 2003. This is without prejudice to the right of the SSS to collect the penalties accruing after April 30, 2003 and to institute other appropriate actions against the respondent corporation and/or its responsible officers.
>
> Should the respondents pay their liability for unpaid SSS contributions within sixty (60) days from receipt of a copy of this Resolution, the 3% per month penalty for late payment thereof shall be deemed condoned pursuant to SSC Res. No. 397-S.97, as amended by SSC Res. Nos. 112-S.98 and 982-S.99, implementing the provision on condonation of penalty under Section 30 of R.A. No. 8282.

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[16] *Id.* at 493-501.

[17] Order dated 11 April 2000.

In the event the respondents fail to pay their liabilities within the aforestated period, let a writ of execution be issued, pursuant to Section 22 (c) [2] of the SS Law, as amended, for the satisfaction of their liabilities to the SSS.[18]

Petitioner filed a Motion for Reconsideration[19] of the afore-quoted Decision but it was denied for lack of merit in an Order[20] dated 4 August 2004, thus:

Nowhere in the questioned Resolution dated May 28, 2003 is it stated that the other directors of the defunct Impact Corporation are absolved from their contribution and penalty liabilities to the SSS. It is certainly farthest from the intention of the petitioner SSS or this Commission to pin the entire liability of Impact Corporation on movant Immaculada L. Garcia, to the exclusion of the directors of the corporation namely: Eduardo de Leon, Ricardo de Leon, Pacita Fernandez and Conzuelo Villanueva, who were all impleaded as parties-respondents in this case.

The case record shows that there was failure of service of summonses upon respondents Eduardo de Leon, Pacita Fernandez and Conzuelo Villanueva, who are all deceased, for the reason that their whereabouts are unknown. Moreover, neither the legal heirs nor the estate of the defaulted respondent Ricardo de Leon were substituted as parties-respondents in this case when he died on January 23, 1998. Needless to state, the Commission did not acquire jurisdiction over the persons or estates of the other directors of Impact Corporation, hence, it could not validly render any pronouncement as to their liabilities in this case.

Furthermore, the movant cannot raise in a motion for reconsideration the defense that she was no longer a director of Impact Corporation in 1982, when she was allegedly eased out by the managing directors of Impact Corporation as purportedly shown in the Deed of Sale and Assignment of Shares of Stock dated January 22, 1982. This defense was neither pleaded in her Motion

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[18] *Rollo,* pp. 66-67.

[19] Dated 16 June 2003.

[20] Adopted/promulgated by the SSC *en banc* under its Resolution No. 474 on 4 August 2004; Penned by Commissioner Aurora R. Arnaez; *rollo,* pp. 68-69.

to Dismiss dated January 17, 1996 nor in her Answer with Counterclaim dated May 18, 1999 and is, thus, deemed waived pursuant to Section 1, Rule 9 of the 1997 Rules of Civil Procedure, which has suppletory application to the Revised Rules of Procedure of the Commission.

Finally, this Commission has already ruled in the Order dated April 27, 1999 that since the original Petition was filed by the SSS on July 3, 1985, and was merely amended on December 1, 1995 to implead the responsible officers of Impact Corporation, without changing its causes of action, the same was instituted well within the 20-year prescriptive period provided under Section 22 (b) of the SS Law, as amended, considering that the contribution delinquency assessment covered the period August 1980 to December 1984.

In view thereof, the instant Motion for Reconsideration is hereby denied for lack of merit.

Petitioner elevated her case to the Court of Appeals via a Petition for Review. Respondent SSS filed its Comment dated 20 January 2005, and petitioner submitted her Reply thereto on 4 April 2005.

The Court of Appeals, applying Section 28(f) of the Social Security Law,[21] again ruled against petitioner. It dismissed the petitioner's Petition in a Decision dated 2 June 2005, the dispositive portion of which reads:

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[21] SEC. 28. *Penal Clause*. – x x x.

(e) Whoever fails or refuses to comply with the provisions promulgated by the Commission, shall be punished by a fine of not less than Five thousand pesos (₱5,000.00) nor more than Twenty thousand pesos (₱20,000.00), or imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years, or both, at the discretion of the court: *Provided,* That where the violation consists in failure or refusal to register employees or himself, in case of the covered self-employed or to deduct contributions from employees' compensation and remit the same to the SSS, the penalty shall be a fine of not less Five thousand pesos (₱5,000.00) nor more than Twenty thousand pesos (₱20,000.00) and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years.

(f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense.

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit. The assailed Resolution dated 28 May 2003 and the Order dated 4 August 2004 of the Social Security Commission are AFFIRMED *in toto*.[22]

Aggrieved, petitioner filed a Motion for Reconsideration of the appellate court's Decision but her Motion was denied in a Resolution dated 8 December 2005.

Hence, the instant Petition in which petitioner insists that the Court of Appeals committed grave error in holding her solely liable for the collected but unremitted SSS premium contributions and the consequent late penalty payments due thereon. Petitioner anchors her Petition on the following arguments:

I. SECTION 28(F) OF THE SSS LAW PROVIDES THAT A MANAGING HEAD, DIRECTOR OR PARTNER IS LIABLE ONLY FOR THE PENALTIES OF THE EMPLOYER CORPORATION AND NOT FOR UNPAID SSS CONTRIBUTIONS OF THE EMPLOYER CORPORATION.

II. UNDER THE SSS LAW, IT IS THE MANAGING HEADS, DIRECTORS OR PARTNERS WHO SHALL BE LIABLE TOGETHER WITH THE CORPORATION. IN THIS CASE, PETITIONER HAS CEASED TO BE A STOCKHOLDER OF IMPACT CORPORATION IN 1982. EVEN WHILE SHE WAS A STOCKHOLDER, SHE NEVER PARTICIPATED IN THE DAILY OPERATIONS OF IMPACT CORPORATION.

III. UNDER SECTION 31 OF THE CORPORATION CODE, ONLY DIRECTORS, TRUSTEES OR OFFICERS WHO PARTICIPATE IN UNLAWFUL ACTS OR ARE GUILTY OF GROSS NEGLIGENCE AND BAD FAITH SHALL BE PERSONALLY LIABLE. OTHERWISE, BEING A MERE STOCKHOLDER, SHE IS LIABLE ONLY TO THE EXTENT OF HER SUBSCRIPTION.

IV. IMPACT CORPORATION SUFFERED IRREVERSIBLE ECONOMIC LOSSES, EVENTS WHICH WERE NEITHER DESIRED NOR CAUSED BY ANY ACT OF THE PETITIONER. THUS, BY REASON OF FORTUITOUS

[22] *Rollo*, pp. 41-42; citations omitted.

EVENTS, THE PETITIONER SHOULD BE ABSOLVED FROM LIABILITY.

V. RESPONDENT SOCIAL SECURITY SYSTEM FAILED MISERABLY IN EXERTING EFFORTS TO ACQUIRE JURISDICTION OVER THE LEVIABLE ASSETS OF IMPACT CORPORATION, PERSON/S AND/OR ESTATE/S OF THE OTHER DIRECTORS OR OFFICERS OF IMPACT CORPORATION.

VI. THE HONORABLE COMMISSION SERIOUSLY ERRED IN NOT RENDERING A JUDGMENT BY DEFAULT AGAINST THE DIRECTORS UPON WHOM IT ACQUIRED JURISDICTION.

Based on the foregoing, petitioner prays that the Decision dated 2 June 2005 and the Resolution dated 8 December 2005 of the Court of Appeals be reversed and set aside, and a new one be rendered absolving her of any and all liabilities under the Social Security Law.

In sum, the core issue to be resolved in this case is whether or not petitioner, as the only surviving director of Impact Corporation, can be made solely liable for the corporate obligations of Impact Corporation pertaining to unremitted SSS premium contributions and penalties therefore.

As a covered employer under the Social Security Law, it is the obligation of Impact Corporation under the provisions of Sections 18, 19 and 22 thereof, as amended, to deduct from its duly covered employee's monthly salaries their shares as premium contributions and remit the same to the SSS, together with the employer's shares of the contributions to the petitioner, for and in their behalf.

From all indications, the corporation has already been dissolved. Respondents are now going after petitioner who is the only surviving director of Impact Corporation.

A cursory review of the alleged grave errors of law committed by the Court of Appeals above reveals there seems to be no dispute as to the assessed liability of Impact Corporation for

the unremitted SSS premiums of its employees for the period January 1980 to December 1984.

There is also no dispute as to the fact that the employees' SSS premium contributions have been deducted from their salaries by Impact Corporation.

Petitioner in assailing the Court of Appeals Decision, distinguishes the penalties from the unremitted or unpaid SSS premium contributions. She points out that although the appellate court is of the opinion that the concerned officers of an employer corporation are liable for the *penalties* for non-remittance of premiums, it still affirmed the SSC Resolution holding petitioner liable for the *unpaid SSS premium contributions* in addition to the penalties.

Petitioner avers that under the *aforesaid provision*, the liability does not include liability for the unremitted SSS premium contributions.

Petitioner's argument is ridiculous. The interpretation petitioner would like us to adopt finds no support in law or in jurisprudence. While the Court of Appeals Decision provided that Section 28(f) refers to the liabilities pertaining to penalty for the non-remittance of SSS employee contributions, holding that it is distinct from the amount of the supposed SSS remittances, petitioner mistakenly concluded that Section 28(f) is applicable only to penalties and not to the liability of the employer for the unremitted premium contributions. Clearly, a simplistic interpretation of the law is untenable. It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[23] The liability imposed as contemplated under the foregoing Section 28(f) of the Social Security Law does not preclude the liability for the unremitted amount. Relevant to Section 28(f) is Section 22 of the same law.

SEC. 22. *Remittance of Contributions.* — (a) The contributions imposed in the preceding Section shall be remitted to the SSS within

[23] *Paras v. COMELEC,* 332 Phil. 56, 64 (1996).

the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: *Provided,* That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer.

Under Section 22(a), *every employer is required to deduct and remit such contributions* penalty refers to the 3% penalty that automatically attaches to the delayed SSS premium contributions. The spirit, rather than the letter of a law determines construction of a provision of law. It is a cardinal rule in statutory construction that in interpreting the meaning and scope of a term used in the law, a careful review of the ***whole law*** involved, as well as the intendment of the law, must be made.[24] Nowhere in the provision or in the Decision can it be inferred that the persons liable are absolved from paying the unremitted premium contributions.

Elementary is the rule that when laws or rules are clear, it is incumbent upon the judge to apply them regardless of personal belief or predilections - when the law is unambiguous and unequivocal, application not interpretation thereof is imperative.[25] However, where the language of a statute is vague and ambiguous, an interpretation thereof is resorted to. An interpretation thereof is necessary in instances where a literal interpretation would be either impossible or absurd or would lead to an injustice. A law is deemed ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more

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[24] *Alpha Investigation and Security Agency, Inc. v. National Labor Relations Commission,* 339 Phil. 40, 44 (1997).

[25] *De Guzman, Jr. v. Sison*, 407 Phil. 351, 368-369 (2001), as cited in *Villamor Golf Club v. Pehid,* G.R. No. 166152, 4 December 2005, 472 SCRA 36, 47-48.

senses.[26] The fact that a law admits of different interpretations is the best evidence that it is vague and ambiguous.[27] In the instant case, petitioner interprets Section 28(f) of the Social Security Law as applicable only to penalties and not to the liability of the employer for the unremitted premium contributions. Respondents present a more logical interpretation that is consistent with the provisions as a whole and with the legislative intent behind the Social Security Law.

This Court cannot be made to accept an interpretation that would defeat the intent of the law and its legislators.[28]

Petitioner also challenges the finding of the Court of Appeals that under Section 28(f) of the Social Security Law, a mere director or officer of an employer corporation, and not necessarily a "managing" director or officer, can be held liable for the unpaid SSS premium contributions.

Section 28(f) of the Social Security Law provides the following:

> (f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense.

This Court agrees in petitioner's observation that the SSS did not even deny nor rebut the claim that petitioner was not the "managing head" of Impact Corporation. However, the Court of Appeals rightly held that petitioner, as a director of Impact Corporation, is among those officers covered by Section 28(f) of the Social Security Law.

Petitioner invokes the rule in statutory construction called *ejusdem generic;* that is, where general words follow an

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[26] *Del Mar v. Phil. Amusement and Gaming Corp.,* 400 Phil. 307, 357 (2000).

[27] *Villamor Golf Club v. Pehid, supra* note 25; *Abello v. Commissioner of Internal Revenue,* 23 February 2005, 452 SCRA 162, 169; *Chartered Bank Employees Association v. Ople,* G.R. No. L-44717, 28 August 1985, 138 SCRA 273, 281.

[28] *Escosura v. San Miguel Brewery, Inc.*, 114 Phil. 225 (1962).

enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned. According to petitioner, to be held liable under Section 28(f) of the Social Security Law, one must be the "managing head," "managing director," or "managing partner." This Court though finds no need to resort to statutory construction. Section 28(f) of the Social Security Law imposes penalty on:

(1) the managing head;

(2) directors; or

(3) partners, for offenses committed by a juridical person

The said provision does not qualify that the director or partner should likewise be a "managing director" or "managing partner."[29] The law is clear and unambiguous.

Petitioner nonetheless raises the defense that under Section 31 of the Corporation Code, only directors, trustees or officers who participate in unlawful acts or are guilty of gross negligence and bad faith shall be personally liable, and that being a mere stockholder, she is liable only to the extent of her subscription.

Section 31 of the Corporation Code, stipulating on the liability of directors, trustees, or officers, provides:

> SEC. 31. *Liability of directors, trustees or officers*.— Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

Basic is the rule that a corporation is invested by law with a personality separate and distinct from that of the persons composing it as well as from that of any other legal entity to

[29] Decision, page 8.

which it may be related. A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Following this, the general rule applied is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities.[30] A director, officer, and employee of a corporation are generally not held personally liable for obligations incurred by the corporation.

Being a mere fiction of law, however, there are peculiar situations or valid grounds that can exist to warrant the disregard of its independent being and the lifting of the corporate veil. This situation might arise when a corporation is used to evade a just and due obligation or to justify a wrong, to shield or perpetrate fraud, to carry out other similar unjustifiable aims or intentions, or as a subterfuge to commit injustice and so circumvent the law.[31] Thus, Section 31 of the Corporation Law provides:

Taking a cue from the above provision, a corporate director, a trustee or an officer, may be held solidarily liable with the corporation in the following instances:

1. When directors and trustees or, in appropriate cases, the officers of a corporation—

(a) vote for or assent to patently unlawful acts of the corporation;

(b) act in bad faith or with gross negligence in directing the corporate affairs;

(c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons.

2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto.

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[30] *Uichico v. National Labor Relations Commission,* 339 Phil. 242, 252 (1997), citing *Santos v. National Labor Relations Commission*, 325 Phil. 145, 158 (1996).

[31] *Santos v. National Labor Relations Commission*, *id.*

3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the Corporation.

4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.[32]

The aforesaid provision states:

SEC. 31. *Liability of directors, trustees or officers*. - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

The situation of petitioner, as a director of Impact Corporation when said corporation failed to remit the SSS premium contributions falls exactly under the fourth situation. Section 28(f) of the Social Security Law imposes a civil liability for any act or omission pertaining to the violation of the Social Security Law, to wit:

(f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense.

In fact, criminal actions for violations of the Social Security Law are also provided under the Revised Penal Code. The Social Security Law provides, in Section 28 thereof, to wit:

(h) Any employer who, after deducting the monthly contributions or loan amortizations from his employees' compensation, fails to remit the said deductions to the SSS within thirty (30) days from the date they became due shall be presumed to have misappropriated such contributions or loan amortizations and shall suffer the penalties provided in Article Three hundred fifteen of the Revised Penal Code.

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[32] *Philex Gold Philippines, Inc. v. Philex Bulawan Supervisors Union*, G.R. No. 149758, 25 August 2005, 468 SCRA 111, 124.

(i) Criminal action arising from a violation of the provisions of this Act may be commenced by the SSS or the employee concerned either under this Act or in appropriate cases under the Revised Penal Code: x x x.

Respondents would like this Court to apply another exception to the rule that the persons comprising a corporation are not personally liable for acts done in the performance of their duties.

The Court of Appeals in the appealed Decision stated:

Anent the unpaid SSS contributions of Impact Corporation's employees, the officers of a corporation are liable in behalf of a corporation, which no longer exists or has ceased operations. Although as a rule, the officers and members of a corporation are not personally liable for acts done in performance of their duties, this rule admits of exception, one of which is when the employer corporation is no longer existing and is unable to satisfy the judgment in favor of the employee, the officers should be held liable for acting on behalf of the corporation. Following the foregoing pronouncement, petitioner, as one of the directors of Impact Corporation, together with the other directors of the defunct corporation, are liable for the unpaid SSS contributions of their employees.[33]

On the other hand, the SSC, in its Resolution, presented this discussion:

Although as a rule, the officers and members of a corporation are not personally liable for acts done in the performance of their duties, this rule admits of exceptions, one of which is when the employer corporation is no longer existing and is unable to satisfy the judgment in favor of the employee, the officers should be held liable for acting on behalf of the corporation. x x x.[34]

The *rationale* cited by respondents in the two preceding paragraphs need not have been applied because the personal liability for the unremitted SSS premium contributions and the late penalty thereof attaches to the petitioner as a director of Impact Corporation during the period the amounts became due and demandable by virtue of a direct provision of law.

[33] *Rollo,* p. 39.

[34] *Id.* at 66.

Petitioner's defense that since Impact Corporation suffered irreversible economic losses, and by reason of fortuitous events, she should be absolved from liability, is also untenable. The evidence adduced totally belies this claim. A reference to the copy of the Petition for Suspension of Payments filed by Impact Corporation on 18 March 1983 before the SEC contained an admission that:

> "[I]t has been and still is engaged in business" and "has been and still is engaged in the business of manufacturing aluminum tube containers" and "in brief, it is an on-going, viable, and profitable enterprise" which has "sufficient assets" and "actual and potential income-generation capabilities."

The foregoing document negates petitioner's assertion and supports the contention that during the period involved Impact Corporation was still engaged in business and was an ongoing, viable, profitable enterprise. In fact, the latest SSS form RIA submitted by Impact Corporation is dated 7 May 1984. The assessed SSS premium contributions and penalty are obligations imposed upon Impact Corporation by law, and should have been remitted to the SSS within the first 10 days of each calendar month following the month for which they are applicable or within such time as the SSC prescribes.[35]

This Court also notes the evident failure on the part of SSS to issue a judgment in default against Ricardo de Leon, who was the vice-president and officer of the corporation, upon his non-filing of a responsive pleading after summons was served on him. As can be gleaned from Section 11 of the SSS Revised Rules of Procedure, the Commissioner is mandated to render a decision either granting or denying the petition. Under the aforesaid provision, if respondent fails to answer within the time prescribed, the Hearing Commissioner may, upon motion of petitioner, or *motu proprio*, declare respondent in default and proceed to receive petitioner's evidence *ex parte* and thereafter recommend

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[35] "The contributions imposed in the preceding section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe..." (Section 22, R.A. No. 8282 – SSS Law).

to the Commission either the granting or denial of the petition as the evidence may warrant.[36]

On a final note, this Court sees it proper to quote verbatim respondents' prefatory statement in their *Comment*:

> The Social Security System is a government agency imbued with a salutary purpose to carry out the policy of the State to establish, develop, promote and perfect a sound and viable tax exempt social security system suitable to the needs of the people throughout the Philippines which shall promote social justice and provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old-age, death and other contingencies resulting in loss of income or financial burden.
>
> The soundness and viability of the funds of the SSS in turn depends on the contributions of its covered employee and employer members, which it invests in order to deliver the basic social benefits and privileges to its members. The entitlement to and amount of benefits and privileges of the covered members are contribution-based. Both the soundness and viability of the funds of the SSS as well as the entitlement and amount of benefits and privileges of its members are adversely affected to a great extent by the non-remittance of the much-needed contributions.[37]

The sympathy of the law on social security is toward its beneficiaries. This Court will not turn a blind eye on the perpetration of injustice. This Court cannot and will not allow itself to be made an instrument nor be privy to any attempt at the perpetration of injustice.

Following the doctrine laid down in *Laguna Transportation Co., Inc. v. Social Security System*,[38] this Court rules that although a corporation once formed is conferred a juridical personality separate and distinct from the persons comprising it, it is but a legal fiction introduced for purposes of convenience and to subserve the ends of justice. The concept cannot be extended to a point beyond its reasons and policy, and when

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[36] Section 11, SSS Rules of Procedure.

[37] *Rollo,* pp. 51-52.

[38] 107 Phil. 833 (1960).

invoked in support of an end subversive of this policy, will be disregarded by the courts.

WHEREFORE, pursuant to the foregoing, the **Decision** of the Court of Appeals dated 2 June 2005 in CA-G.R. SP No. 85923 is hereby **AFFIRMED WITH FINALITY.** Petitioner Immaculada L. Garcia, as sole surviving director of Impact Corporation is hereby **ORDERED** to pay for the collected and unremitted SSS contributions of Impact Corporation. The case is **REMANDED** to the SSS for computation of the exact amount and collection thereof.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 171713. December 17, 2007]

ESTATE OF ROGELIO G. ONG, *petitioner, vs.* **Minor JOANNE RODJIN DIAZ, Represented by Her Mother and Guardian, Jinky C. Diaz,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; PATERNITY AND FILIATION; PURPOSE OF FILIATION PROCEEDINGS, EXPLAINED.— Filiation proceedings are usually filed not just to adjudicate paternity but also to secure a legal right associated with paternity, such as citizenship, support (as in the present case), or inheritance. The burden of proving paternity is on the person who alleges that the putative father is the biological father of the child. There are four significant procedural aspects of a

traditional paternity action which parties have to face: a *prima facie* case, affirmative defenses, presumption of legitimacy, and physical resemblance between the putative father and child.

2. **ID.; ID.; ID.; THE LAW REQUIRES THAT EVERY REASONABLE PRESUMPTION BE MADE IN FAVOR OF LEGITIMACY; SUSTAINED.—** A child born to a husband and wife during a valid marriage is presumed legitimate. As a guaranty in favor of the child and to protect his status of legitimacy, Article 167 of the Family Code provides: Article 167. The children shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress. The law requires that every reasonable presumption be made in favor of legitimacy. We explained the rationale of this rule in the recent case of *Cabatania v. Court of Appeals*: The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. The presumption is grounded on the policy to protect the innocent offspring from the odium of illegitimacy.

3. **ID.; ID.; ID.; WHEN LEGITIMACY OF A CHILD MAY BE OVERTHROWN BY EVIDENCE TO THE CONTRARY.—** The presumption of legitimacy of the child, however, is not conclusive and consequently, may be overthrown by evidence to the contrary. Hence, Article 255 of the New Civil Code provides: Article 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate. Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child. This physical impossibility may be caused: 1) By the impotence of the husband; 2) By the fact that husband and wife were living separately in such a way that access was not possible; 3) By the serious illness of the husband. The relevant provisions of the Family Code provide as follows: ART. 172. The filiation of legitimate children is established by any of the following: (1) The record of birth appearing in the civil register or a final judgment; or (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by

the parent concerned. In the absence of the foregoing evidence, the legitimate filiation shall be proved by: (1) The open and continuous possession of the status of a legitimate child; or (2) Any other means allowed by the Rules of Court and special laws.

4. ID.; ID.; ID.; DNA TEST; EXPLAINED.— 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.

APPEARANCES OF COUNSEL

Manicad Ong De La Cruz & Fallarme Law Offices for petitioner.

Joselito L. Lim 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 Revised Rules of Civil Procedure assailing (1) the Decision[1] of the Court of Appeals dated 23 November 2005 and (2) the Resolution[2] of the same court dated 1 March 2006 denying petitioner's Motion for Reconsideration in CA-G.R. CV No. 70125.

A Complaint[3] for compulsory recognition with prayer for support pending litigation was filed by minor Joanne Rodjin Diaz (Joanne),

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[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao concurring. *Rollo,* p. 27-43.

[2] *Rollo*, pp. 44-46.

[3] Docketed as Civil Case No. 8799; *id.* at 47-50.

represented by her mother and guardian, Jinky C. Diaz (Jinky), against Rogelio G. Ong (Rogelio) before the Regional Trial Court (RTC) of Tarlac City. In her Complaint, Jinky prayed that judgment be rendered:

(a) Ordering defendant to recognize plaintiff Joanne Rodjin Diaz as his daughter.

(b) Ordering defendant to give plaintiff monthly support of ₱20,000.00 *pendente lite* and thereafter to fix monthly support.

(c) Ordering the defendant to pay plaintiff attorney's fees in the sum of ₱100,000.00.

(d) Granting plaintiff such other measure of relief as maybe just and equitable in the premises.[4]

As alleged by Jinky in her Complaint in November 1993 in Tarlac City, she and Rogelio got acquainted. This developed into friendship and later blossomed into love. At this time, Jinky was already married to a Japanese national, Hasegawa Katsuo, in a civil wedding solemnized on 19 February 1993 by Municipal Trial Court Judge Panfilo V. Valdez.[5]

From January 1994 to September 1998, Jinky and Rogelio cohabited and lived together at Fairlane Subdivision, and later at Capitol Garden, Tarlac City.

From this live-in relationship, minor Joanne Rodjin Diaz was conceived and on 25 February 1998 was born at the Central Luzon Doctors' Hospital, Tarlac City.

Rogelio brought Jinky to the hospital and took minor Joanne and Jinky home after delivery. Rogelio paid all the hospital bills and the baptismal expenses and provided for all of minor Joanne's needs – recognizing the child as his.

In September 1998, Rogelio abandoned minor Joanne and Jinky, and stopped supporting minor Joanne, falsely alleging that he is not the father of the child.

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[4] *Id.* at 48-49.

[5] *Id.* at 27.

Rogelio, despite Jinky's remonstrance, failed and refused and continued failing and refusing to give support for the child and to acknowledge her as his daughter, thus leading to the filing of the heretofore adverted complaint.

After summons had been duly served upon Rogelio, the latter failed to file any responsive pleading despite repeated motions for extension, prompting the trial court to declare him in default in its Order dated 7 April 1999. Rogelio's Answer with Counterclaim and Special and Affirmative Defenses was received by the trial court only on 15 April 1999. Jinky was allowed to present her evidence *ex parte* on the basis of which the trial court on 23 April 1999 rendered a decision granting the reliefs prayed for in the complaint.

In its Decision[6] dated 23 April 1999, the RTC held:

WHEREFORE, judgment is hereby rendered:

1. Ordering defendant to recognize plaintiff as his natural child;

2. Ordering defendant to provide plaintiff with a monthly support of ₱10,000.00 and further

3. Ordering defendant to pay reasonable attorney's fees in the amount of ₱5,000.00 and the cost of the suit.

On 28 April 1999, Rogelio filed a motion to lift the order of default and a motion for reconsideration seeking the court's understanding, as he was then in a quandary on what to do to find a solution to a very difficult problem of his life.[7]

On 29 April 1999, Rogelio filed a motion for new trial with prayer that the decision of the trial court dated 23 April 1999 be vacated and the case be considered for trial *de novo* pursuant to the provisions of Section 6, Rule 37 of the 1997 Rules of Civil Procedure.[8]

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[6] Penned by Acting Presiding Judge Victor T. Llamas, Jr.; *rollo*, p. 57-60.

[7] *Id*. at 28-29.

[8] SEC. 6. *Effect of granting of motion for new trial*. – If a new trial is granted in accordance with the provisions of this Rule, the original judgment or final order shall be vacated, and the action shall stand for trial *de novo;*

On 16 June 1999, the RTC issued an Order granting Rogelio's Motion for New Trial:

> WHEREFORE, finding defendant's motion for new trial to be impressed with merit, the same is hereby granted.
>
> The Order of this court declaring defendant in default and the decision is this court dated April 23, 1999 are hereby set aside but the evidence adduced shall remain in record, subject to cross-examination by defendant at the appropriate stage of the proceedings.
>
> In the meantime defendant's answer is hereby admitted, subject to the right of plaintiff to file a reply and/or answer to defendant's counterclaim within the period fixed by the Rules of Court.
>
> Acting on plaintiff's application for support *pendente lite* which this court finds to be warranted, defendant is hereby ordered to pay to plaintiff immediately the sum of ₱2,000.00 a month from January 15, 1999 to May 1999 as support *pendente lite* in arrears and the amount of ₱4,000.00 every month thereafter as regular support *pendente lite* during the pendency of this case.[9]

The RTC finally held:

> The only issue to be resolved is whether or not the defendant is the father of the plaintiff Joanne Rodjin Diaz.
>
> Since it was duly established that plaintiff's mother Jinky Diaz was married at the time of the birth of Joanne Rodjin Diaz, the law presumes that Joanne is a legitimate child of the spouses Hasegawa Katsuo and Jinky Diaz (Article 164, Family Code). The child is still presumed legitimate even if the mother may have declared against her legitimacy (Article 167, Ibid).
>
> The legitimacy of a child may be impugned only on the following grounds provided for in Article 166 of the same Code. Paragraph 1 of the said Article provides that there must be physical impossibility for the husband to have sexual intercourse with the wife within the first 120 days of the 300 days following the birth of the child because of –

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but the recorded evidence taken upon the former trial, in so far as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same.

[9] *Rollo*, p. 31.

a) physical incapacity of the husband to have sexual intercourse with his wife;

b) husband and wife were living separately in such a way that sexual intercourse was not possible;

c) serious illness of the husband which prevented sexual intercourse.

It was established by evidence that the husband is a Japanese national and that he was living outside of the country (TSN, Aug. 27, 1999, page 5) and he comes home only once a year. Both evidence of the parties proved that the husband was outside the country and no evidence was shown that he ever arrived in the country in the year 1997 preceding the birth of plaintiff Joanne Rodjin Diaz.

While it may also be argued that plaintiff Jinky had a relationship with another man before she met the defendant, there is no evidence that she also had sexual relations with other men on or about the conception of Joanne Rodjin. Joanne Rodjin was her second child (see Exh. "A"), so her first child, a certain Nicole (according to defendant) must have a different father or may be the son of Hasegawa K[u]tsuo.

The defendant admitted having been the one who shouldered the hospital bills representing the expenses in connection with the birth of plaintiff. It is an evidence of admission that he is the real father of plaintiff. Defendant also admitted that even when he stopped going out with Jinky, he and Jinky used to go to motels even after 1996. Defendant also admitted that on some instances, he still used to see Jinky after the birth of Joanne Rodjin. Defendant was even the one who fetched Jinky after she gave birth to Joanne.

On the strength of this evidence, the Court finds that Joanne Rodjin is the child of Jinky and defendant Rogelio Ong and it is but just that the latter should support plaintiff.[10]

On 15 December 2000, the RTC rendered a decision and disposed:

WHEREFORE, judgment is hereby rendered declaring Joanne Rodjin Diaz to be the illegitimate child of defendant Rogelio Ong with plaintiff Jinky Diaz. The Order of this Court awarding support

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[10] *Id*. at 61-62.

pendente lite dated June 15, 1999, is hereby affirmed and that the support should continue until Joanne Rodjin Diaz shall have reached majority age.[11]

Rogelio filed a Motion for Reconsideration, which was denied for lack of merit in an Order of the trial court dated 19 January 2001.[12] From the denial of his Motion for Reconsideration, Rogelio appealed to the Court of Appeals. After all the responsive pleadings had been filed, the case was submitted for decision and ordered re-raffled to another Justice for study and report as early as 12 July 2002.[13]

During the pendency of the case with the Court of Appeals, Rogelio's counsel filed a manifestation informing the Court that Rogelio died on 21 February 2005; hence, a Notice of Substitution was filed by said counsel praying that Rogelio be substituted in the case by the Estate of Rogelio Ong,[14] which motion was accordingly granted by the Court of Appeals.[15]

In a Decision dated 23 November 2005, the Court of Appeals held:

WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed Decision dated December 15, 2000 of the Regional Trial Court of Tarlac, Tarlac, Branch 63 in Civil Case No. 8799 is hereby SET ASIDE. The case is hereby REMANDED to the court *a quo* for the issuance of an order directing the parties to make arrangements for DNA analysis for the purpose of determining the paternity of plaintiff minor Joanne Rodjin Diaz, upon consultation and in coordination with laboratories and experts on the field of DNA analysis.

No pronouncement as to costs.[16]

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[11] *Id*. at 62.

[12] *Id*. at 35.

[13] *Id*. at 37.

[14] *Id*. at 135.

[15] *Id*. at 38.

[16] *Id*. at 42-43.

Petitioner filed a Motion for Reconsideration which was denied by the Court of Appeals in a Resolution dated 1 March 2006.

In disposing as it did, the Court of Appeals justified its Decision as follows:

In this case, records showed that the late defendant-appellant Rogelio G. Ong, in the early stage of the proceedings volunteered and suggested that he and plaintiff's mother submit themselves to a DNA or blood testing to settle the issue of paternity, as a sign of good faith. However, the trial court did not consider resorting to this modern scientific procedure notwithstanding the repeated denials of defendant that he is the biological father of the plaintiff even as he admitted having actual sexual relations with plaintiff's mother. We believe that DNA paternity testing, as current jurisprudence affirms, would be the most reliable and effective method of settling the present paternity dispute. Considering, however, the untimely demise of defendant-appellant during the pendency of this appeal, the trial court, in consultation with out laboratories and experts on the field of DNA analysis, can possibly avail of such procedure with whatever remaining DNA samples from the deceased defendant alleged to be the putative father of plaintiff minor whose illegitimate filiations is the subject of this action for support.[17]

Hence, this petition which raises the following issues for resolution:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DID NOT DISMISS RESPONDENT'S COMPLAINT FOR COMPULSORY RECOGNITION DESPITE ITS FINDING THAT THE EVIDENCE PRESENTED FAILED TO PROVE THAT ROGELIO G. ONG WAS HER FATHER.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DID NOT DECLARE RESPONDENT AS THE LEGITIMATE CHILD OF JINKY C. DIAZ AND HER JAPANESE HUSBAND, CONSIDERING THAT RESPONDENT FAILED TO REBUT THE PRESUMPTION OF HER LEGITIMACY.

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[17] *Id*. at 42.

III

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT REMANDED THE CASE TO THE COURT *A QUO* FOR DNA ANALYSIS DESPITE THE FACT THAT IT IS NO LONGER FEASIBLE DUE TO THE DEATH OF ROGELIO G. ONG.[18]

Petitioner prays that the present petition be given due course and the Decision of the Court of Appeals dated November 23, 2005 be modified, by setting aside the judgment remanding the case to the trial court for DNA testing analysis, by dismissing the complaint of minor Joanne for compulsory recognition, and by declaring the minor as the legitimate child of Jinky and Hasegawa Katsuo.[19]

From among the issues presented for our disposition, this Court finds it prudent to concentrate its attention on the third one, the propriety of the appellate court's decision remanding the case to the trial court for the conduct of DNA testing. Considering that a definitive result of the DNA testing will decisively lay to rest the issue of the filiation of minor Joanne, we see no reason to resolve the first two issues raised by the petitioner as they will be rendered moot by the result of the DNA testing.

As a whole, the present petition calls for the determination of filiation of minor Joanne for purposes of support in favor of the said minor.

Filiation proceedings are usually filed not just to adjudicate paternity but also to secure a legal right associated with paternity, such as citizenship, support (as in the present case), or inheritance. The burden of proving paternity is on the person who alleges that the putative father is the biological father of the child. There are four significant procedural aspects of a traditional paternity action which parties have to face: a *prima facie* case, affirmative defenses, presumption of legitimacy, and physical resemblance between the putative father and child.[20]

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[18] *Id.* at 125.

[19] *Id.* at 23.

[20] *Herrera v. Alba,* G.R. No. 148220, 15 June 2005, 460 SCRA 197, 204.

A child born to a husband and wife during a valid marriage is presumed legitimate.[21] As a guaranty in favor of the child and to protect his status of legitimacy, Article 167 of the Family Code provides:

Article 167. The children shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

The law requires that every reasonable presumption be made in favor of legitimacy. We explained the rationale of this rule in the recent case of *Cabatania v. Court of Appeals*[22]:

> The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. The presumption is grounded on the policy to protect the innocent offspring from the odium of illegitimacy.

The presumption of legitimacy of the child, however, is not conclusive and consequently, may be overthrown by evidence to the contrary. Hence, Article 255 of the New Civil Code[23] provides:

Article 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.

Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.

This physical impossibility may be caused:

1) By the impotence of the husband;

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[21] Art. 164 of the Family Code.

[22] G.R. No. 124814, 21 October 2004, 441 SCRA 96, 104-105; *Concepcion v. Court of Appeals,* G.R. 123450, 31 August 2005, 468 SCRA 438, 447-448.

[23] Article 166 of the Family Code has a similar provision.

2) By the fact that husband and wife were living separately in such a way that access was not possible;

3) By the serious illness of the husband.[24]

The relevant provisions of the Family Code provide as follows:

ART. 172. The filiation of legitimate children is established by any of the following:

(1) The record of birth appearing in the civil register or a final judgment; or

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws.

ART. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

There had been divergent and incongruent statements and assertions bandied about by the parties to the present petition. But with the advancement in the field of genetics, and the availability of new technology, it can now be determined with reasonable certainty whether Rogelio is the biological father of the minor, through DNA testing.

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.[25]

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[24] *Liyao, Jr. v. Tanhoti-Liyao,* 428 Phil. 628, 640-641 (2002).

[25] *Herrera v. Alba, supra* note 20 at 209.

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.

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 make up. 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). 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; DNA 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.[26]

In the newly promulgated rules on DNA evidence it is provided:

SEC. 3 *Definition of Terms.* – For purposes of this Rule, the following terms shall be defined as follows:

xxx xxx xxx

(c) "DNA evidence" constitutes the totality of the DNA profiles, results and other genetic information directly generated from DNA testing of biological samples;

(d) "DNA profile" means genetic information derived from DNA testing of a biological sample obtained from a person, which biological sample is clearly identifiable as originating from that person;

(e) "DNA testing" means verified and credible scientific methods which include the extraction of DNA from biological samples, the generation of DNA profiles and the comparison

[26] *Id.* at 204-211.

of the information obtained from the DNA testing of biological samples for the purpose of determining, with reasonable certainty, whether or not the DNA obtained from two or more distinct biological samples originates from the same person (direct identification) or if the biological samples originate from related persons (kinship analysis); and

(f) "Probability of Parentage" means the numerical estimate for the likelihood of parentage of a putative parent compared with the probability of a random match of two unrelated individuals in a given population.

Amidst the protestation of petitioner against the DNA analysis, the resolution thereof may provide the definitive key to the resolution of the issue of support for minor Joanne. Our articulation in *Agustin v. Court of Appeals*[27] is particularly relevant, thus:

Our faith in DNA testing, however, was not quite so steadfast in the previous decade. In *Pe Lim v. Court of Appeals* (336 Phil. 741, 270 SCRA 1), promulgated in 1997, we cautioned against the use of DNA because "DNA, being a relatively new science, (had) not as yet been accorded official recognition by our courts. Paternity (would) still have to be resolved by such conventional evidence as the relevant incriminating acts,verbal and written, by the putative father."

In 2001, however, we opened the possibility of admitting DNA as evidence of parentage, as enunciated in *Tijing v. Court of Appeals* [G.R. No. 125901, 8 March 2001, 354 SCRA 17]:

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

[27] G.R. No. 162571, 15 June 2005, 460 SCRA 315, 325-327.

> 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 results is to deny progress.

The first real breakthrough of DNA as admissible and authoritative evidence in Philippine jurisprudence came in 2002 with out *en banc* decision in *People v. Vallejo* [G.R. No. 144656, 9 May 2002, 382 SCRA 192] where the rape and murder victim's DNA samples from the bloodstained clothes of the accused were admitted in evidence. We reasoned that "the purpose of DNA testing (was) to ascertain whether an association exist(ed) between the evidence sample and the reference sample. The samples collected (were) subjected to various chemical processes to establish their profile.

A year later, in *People v. Janson* [G.R. No. 125938, 4 April 2003, 400 SCRA 584], we acquitted the accused charged with rape for lack of evidence because "doubts persist(ed) in our mind as to who (were) the real malefactors. Yes, a complex offense (had) been perpetrated but who (were) the perpetrators? How we wish we had DNA or other scientific evidence to still our doubts."

In 2004, in *Tecson, et al. v. COMELEC* [G.R. Nos. 161434, 161634 and 161824, 3 March 2004, 424 SCRA 277], where the Court *en banc* was faced with the issue of filiation of then presidential candidate Fernando Poe, Jr., we stated:

> In 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. A positive match would clear up filiation or paternity. In *Tijing v. Court of Appeals,* this Court has acknowledged the strong weight of DNA testing...
>
> Moreover, in our *en banc* decision in *People v. Yatar* [G.R. No. 150224, 19 May 2004, 428 SCRA 504], we affirmed the conviction of the accused for rape with homicide, the principal evidence for which included DNA test results. x x x.

Coming now to the issue of remand of the case to the trial court, petitioner questions the appropriateness of the order by the Court of Appeals directing the remand of the case to the RTC for DNA testing given that petitioner has already died. Petitioner argues that a remand of the case to the RTC for DNA analysis is no longer feasible due to the death of Rogelio. To our mind, the alleged impossibility of complying with the order of remand for purposes of DNA testing is more ostensible than real. Petitioner's argument is without basis especially as the New Rules on DNA Evidence[28] allows the conduct of DNA testing, either *motu proprio* or upon application of any person who has a legal interest in the matter in litigation, 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.

From the foregoing, it can be said that the death of the petitioner does not *ipso facto* negate the application of DNA testing for as long as there exist appropriate biological samples of his DNA.

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[28] A.M. No. 06-11-5-SC, 15 October 2007.

As defined above, the term "biological sample" means any organic material originating from a person's body, even if found in inanimate objects, that is susceptible to DNA testing. This includes blood, saliva, and other body fluids, tissues, hairs and bones.[29]

Thus, even if Rogelio already died, any of the biological samples as enumerated above as may be available, may be used for DNA testing. In this case, petitioner has not shown the impossibility of obtaining an appropriate biological sample that can be utilized for the conduct of DNA testing.

And even the death of Rogelio cannot bar the conduct of DNA testing. In *People v. Umanito*,[30] citing *Tecson v. Commission on Elections,*[31] this Court held:

> The 2004 case of *Tecson v. Commission on Elections* [G.R. No. 161434, 3 March 2004, 424 SCRA 277] 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 t**o."
>
> 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. (Emphasis supplied.)

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[29] Section 3(a) of the Rules on DNA Evidence, id.

[30] G.R. No. 172607, 26 October 2007.

[31] 468 Phil. 421 (2004).

As we have declared in the said case of *Agustin v. Court of Appeals*[32]:

> x x x [F]or too long, illegitimate children have been marginalized by fathers who choose to deny their existence. The growing sophistication of DNA testing technology finally provides a much needed equalizer for such ostracized and abandoned progeny. We have long believed in the merits of DNA testing and have repeatedly expressed as much in the past. This case comes at a perfect time when DNA testing has finally evolved into a dependable and authoritative form of evidence gathering. We therefore take this opportunity to forcefully reiterate our stand that DNA testing is a valid means of determining paternity.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated 23 November 2005 and its Resolution dated 1 March 2006 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177749. December 17, 2007]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL AGUILAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; PRINCIPLES GUIDING THE REVIEW OF DECISIONS INVOLVING CONVICTION OF

[32] *Supra* note 27 at 339.

RAPE.— A rape charge is a serious matter with pernicious consequences both for the appellant and the complainant; hence, utmost care must be taken in the review of a decision involving conviction of rape. Thus, in the disposition and review of rape cases, the Court is guided by certain principles. *First*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction. *Second*, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense. *Third*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal. *Fourth*, an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove. And *fifth*, in view of the intrinsic nature of the crime of rape, in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.

2. **ID.; ID.; CONVICTION BASED SOLELY ON THE TESTIMONY OF THE VICTIM; WHEN ALLOWED; RATIONALE.—** It is well-settled that the **appellant may be convicted of rape based solely on the testimony of the victim, as long as the same is competent and credible.** This is primarily because the crime of rape is usually committed in a private place where only the aggressor and the rape victim are present. Moreover, even the trial court mentioned in its Decision that **even in the absence of the corroborative testimonies of the prosecution's other witnesses, the testimony of AAA can stand on its ground and is enough to convict the appellant.**

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON CARRY GREAT WEIGHT AND RESPECT; RATIONALE.—** Accordingly, the primordial consideration in a determination concerning the crime of rape is the credibility of complainant's testimony. Time and again, we have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or

circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.

4. **ID.; ID.;ID.; THE TESTIMONY OF A CHILD RAPE VICTIM IS NORMALLY GIVEN FULL WEIGHT AND CREDIT IN THE ABSENCE OF IMPROPER MOTIVE ON THE PART OF THE VICTIM TO FALSELY TESTIFY AGAINST THE ACCUSED; PRESENT IN CASE AT BAR.—** This Court, upon examining the records of the present case, fully agrees in the findings of both the trial court and the appellate court that **the testimony of AAA is credible and enough to convict the appellant even without the corroborating testimonies of the other prosecution witnesses.** Her testimony on how she was raped by the appellant on 24 June 1997 was characterized by the trial court and affirmed by the Court of Appeals as clear, straightforward and bereft of any material or significant inconsistencies. **Further, we note that while testifying, AAA broke down in tears. The crying of a victim during her testimony is eloquent evidence of the credibility of the rape charge with the verity borne out of human nature and experience.** Similarly, **no woman, least of all a child**, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. It is also highly

inconceivable for a girl to provide details of a rape and ascribe such wickedness to her "stepfather" just because she resents being disciplined by him since, by thus charging him, she would also expose herself to extreme humiliation, even stigma. Testimonies of child-victims are normally given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity could indeed be badges of truth. This observation is a matter of judicial cognizance borne out by human nature and experience. There could not have been a more powerful testament to the truth than this "public baring of unspoken grief." More so, it is an accepted doctrine that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence. And in this case, it was never shown that the complainant had an ill motive in filing a case against the appellant other than seeking justice for what had happened to her.

5. **ID.; ID.; DENIAL; A NEGATIVE SELF-SERVING ASSERTION THAT DESERVES NO WEIGHT IN LAW IF UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE.—** Denial, being an intrinsically weak defense, must be buttressed by strong evidence of non-culpability in order to merit credibility. It is a negative self-serving assertion that deserves no weight in law if unsubstantiated by clear and convincing evidence. **The appellant's barefaced denial of the charge cannot prevail over the positive, spontaneous and straightforward identification by the victim of the appellant as the malefactor.** A rape victim can easily identify her assailant especially if he is known to her because during the rape, she is physically close to her assailant, enabling her to have a good look at the latter's physical features.

6. **CRIMINAL LAW; RAPE; HYMENAL LACERATION IS NOT AN ELEMENT OF THE CRIME OF RAPE.—** The **presence of old healed lacerations in the victim's hymen is irrelevant to appellant's defense. In the same way that their presence does not mean the victim was not raped recently, the absence of fresh lacerations does not negate rape either. Indeed hymenal laceration is not an element of the crime of rape.**

7. **ID.; ID.; IMPOSABLE PENALTY.—** As regards the penalty to

be imposed upon the appellant, it must be noted that the rape was committed prior to the effectivity of Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997." Applicable then is the old provision of Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659. From the aforesaid provision of law, both minority and actual relationship must be alleged and proved in order to convict the appellant for qualified rape; otherwise, a conviction for rape in its qualified form will be barred.

8. **ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY AND MORAL DAMAGES; WHEN PROPER.—** Finally, this Court agrees in the amount of civil indemnity and moral damages which the court *a quo* and the appellate court awarded to the victim. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape. Case law also requires automatic award of moral damages to a rape victim without need of proof because from the nature of the crime, it can be assumed that she has suffered moral injuries entitling her to such award. Such award is separate and distinct from civil indemnity.

9. **ID.; ID.; ID.; EXEMPLARY DAMAGES; AWARDED.—** As regards exemplary damages, we held in *People v. Catubig* that the presence of an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to an award of exemplary damages. The Revised Rules of Criminal Procedure which took effect on 1 December 2000 now provides that aggravating circumstances must be alleged in the information to be validly appreciated by the court. In the case at bar, the crime of rape and the filing of the information against the appellant occurred before the effectivity of the said Rules. In *People v. Catubig*, we held that **the retroactive application of the Revised Rules of Criminal Procedure cannot adversely affect the rights of a private offended party that have become vested prior to the effectivity of the said Rules. Thus, aggravating circumstances which were not alleged in the information but proved during the trial may be appreciated for the limited purpose of determining the appellant's liability for exemplary damages.**

APPEARANCES OF COUNSEL

*The Solicitor General f*or plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision[1] dated 28 February 2007 of the Court of Appeals in CA-G.R. CR H.C. No. 00743, which affirmed *in toto* the Decision[2] dated 27 December 2004 of the Regional Trial Court (RTC) of Muntinlupa City, Branch 207, in Criminal Case No. 13545, finding herein appellant Manuel Aguilar guilty beyond reasonable doubt of the crime of simple rape committed against AAA,[3] the daughter of his common-law wife BBB, and sentencing him to suffer the penalty of *reclusion perpetua*, and to indemnify the victim in the amount of ₱50,000.00 as civil

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[1] Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas-Peralta, concurring; *rollo*, pp. 2-17.

[2] Penned by Judge Philip A. Aguinaldo, CA *rollo*, pp. 39-48.

[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* [G.R. No. 167693, 19 September 2006, 502 SCRA 419], wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA", "BBB", "CCC", and so on. Addresses shall appear as "xxx" as in "No. xxx Street, xxx District, City of xxx."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of R.A. No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of R.A. No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective November 15, 2004.

indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

Appellant Manuel Aguilar was charged with the crime of rape before Branch 42 of the RTC of Dumaguete City, committed as follows:

> That on [24 June 1997] at about 5:00 o'clock in the afternoon, at Sitio xxx, Brgy. xxx, [Municipality of] xxx, [Province of] xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], with lewd designs and by means of force and intimidation, with abuse of confidence, willfully, unlawfully and feloniously did lie and succeeded in having carnal knowledge with AAA, **below thirteen (13) years old and the stepdaughter of the said [appellant]**.[4] (Emphasis supplied.)

The case was docketed as Criminal Case No. 13545. When arraigned on 12 July 2000, appellant, assisted by counsel *de oficio*, pleaded NOT GUILTY to the crime charged. Thereafter, trial ensued.

The prosecution presented the following witnesses: (1) Atty. Rolando A. Piñero, the Branch Clerk of Court of RTC, Branch 31, Dumaguete City; (2) Dr. Rosita A. Muñoz, the Municipal Health Officer of Sta. Catalina Rural Health Unit; (3) Joven Acabal, the Medical Technologist at Bayawan District Hospital; (4) Dr. Lydia Villaflores, physician from Bayawan District Hospital; (5) Police Senior Inspector Cresenciano Valiente Pagnanawon, Chief of Police of Sta. Catalina, Negros Oriental; (6) SPO1 Wenifredo Jamandron, a member of the Philippine National Police (PNP) of Sta. Catalina, Negros Oriental; (7) BBB, the mother of the victim; and (8) AAA, the victim herself.

Atty. Rolando A. Piñero testified that the appellant has a pending criminal case for rape before Branch 31 of the RTC of Dumaguete City. The same was entitled *People of the Philippines v. Manuel Aguilar*, docketed as Criminal Case No. 13546, allegedly committed against AAA on 4 February 1998. He further stated that a Medical Certificate[5] issued by Dr. Rosita A. Muñoz

[4] Amended Information; records, p. 49.

[5] *Id*. at 281.

in favor of AAA was presented therein as evidence to prove that AAA was physically examined after the reported rape of 4 February 1998.[6]

During her testimony, Dr. Rosita A. Muñoz disclosed that on 5 February 1998, while she was exercising her official function, AAA came to her clinic at Sta. Catalina Rural Health Unit and reported to her that she was raped. However, considering that there was no facility for spermatozoa examination in the said clinic, she referred AAA to the Bayawan District Hospital. She said that she did not conduct any medical examination on AAA and left it to the Bayawan District Hospital to conduct the same. The medical examination was conducted by Joven Acabal and Dr. Lydia Villaflores of the Bayawan District Hospital. The result of the medical examination revealed the presence of spermatozoa. She declared that she was given a copy of the said result. By virtue thereof, she issued a Medical Certificate[7] with the following findings:

> This is to certify that per examination results of the cervical smear, spermatozoa were present taken from [AAA], 13 yrs. old, female from xxx, xxx, xxx.[8]

The testimony of Dr. Rosita A. Muñoz was corroborated by Joven Acabal and Dr. Lydia Villaflores. Joven Acabal avowed that he was the one who conducted the examination of the cervical smear which was taken by Dr. Lydia Villaflores from AAA on 5 February 1998. The result of the same indicates the presence of spermatozoa from a male seminal fluid.[9] Dr. Lydia Villaflores confirmed that she was the one who took the cervical smear from AAA on 5 February 1998 and after the examination of the specimen, she was able to determine the presence of spermatozoa. The Laboratory Examination Sheet was filled up

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[6] TSN, 7 November 2000, pp. 6-10.

[7] TSN, 8 March 2001, pp. 4-11.

[8] Records, p. 281.

[9] TSN, 17 April 2001, pp. 6-14.

by the nurse whom she personally knows. She also issued a Medical Certificate[10] as requested by the Sta. Catalina Police.[11]

Police Senior Inspector Cresenciano Valiente Pagnanawon and SPO1 Wenifredo Jamandron testified that the rape incident that happened on 4 February 1998 was reported to the Sta. Catalina, Negros Oriental Police Station, and the same was recorded in the police blotter on 5 February 1998. SPO1 Wenifredo Jamandron averred that he interviewed and investigated AAA at the Sta. Catalina Police Station on the aforesaid date as regards the rape incident.[12]

BBB, the mother of AAA, declared that she was previously married to deceased CCC with whom she had three children namely: DDD, EEE and herein victim, AAA. She affirmed that AAA was born on 26 January 1985. [13] She said that the appellant was her common-law husband, they had been living together since 1989, and they had four children, namely: FFF, GGG, HHH and III.[14]

BBB courageously divulged in court that on the evening of 4 February 1998, she and appellant, together with their daughters HHH and III, slept in a room upstairs, while AAA slept in a room downstairs together with her half-brothers. At around midnight, she woke up to answer the call of nature. BBB, with a kerosene lamp, proceeded to a room downstairs, where AAA and her half-brothers were sleeping, to get the chamber pot. When she reached out for the chamber pot, she was taken aback when her hands touched instead the bare buttocks of the appellant. She discovered that the appellant was lying naked, face down and on top of AAA who was then wearing nothing but her shirt. BBB repeatedly asked the appellant what he was doing but the latter did not give an answer and just kept silent. She then brought the lamp closer to the appellant who was

[10] Records, pp. 287-288.

[11] TSN, 17 April 2001, pp. 29-35.

[12] TSN, 21 August 2001, pp. 4-9; TSN, 20 September 2001, pp. 4-9.

[13] As evidenced by AAA's Certificate of Live Birth; records, p. 291.

[14] TSN, 11 October 2001, pp. 5-7.

already seated but still naked. AAA, on the other hand, stood up. BBB again asked the appellant what was he really doing, but still the appellant did not answer which made her hit the appellant with a scythe. After that, she asked AAA what the appellant did to her. At first, AAA did not give any answer but when BBB asked her for the second time, AAA replied that the appellant had sexual intercourse with her. AAA immediately ran away and went to the nearby house of her aunt named JJJ. BBB followed AAA. While BBB and AAA were at the house of JJJ, the latter asked AAA what had happened. AAA responded that she was raped by the appellant. It was also at the house of JJJ where AAA tearfully revealed to her mother, BBB, that she had been raped several times by the appellant beginning 24 June 1997, when she was still 12 years old, in their house at Sitio xxx, Barangay xxx, Municipality of xxx, Province of xxx,[15] during the time when BBB was in Bayawan to attend the birthday celebration of Nang Emang and returned only in the afternoon of 25 June 1997.[16] Immediately, after that rape incident on 4 February 1998, the appellant escaped.[17]

BBB further testified that she, together with JJJ and the husband of the latter, went to the Sta. Catalina Police Station where they reported the rape incident. It was recorded in the police blotter. BBB also stated that AAA was brought to the doctor at Sta. Catalina as well as in Bayawan where AAA was examined.[18] Resultantly, two separate charges were filed against the appellant, to wit: (1) Criminal Case No. 13546 for the rape which happened on 4 February 1998, and was raffled to Branch 31 of RTC, Dumaguete City; and (2) Criminal Case No. 13545, the instant case, for the rape incident which occurred on 24 June 1997 and raffled to Branch 42 of RTC, Dumaguete City.

The final witness presented by the prosecution was AAA, the victim herself. She was already 15 years old when she testified

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[15] *Id.* at 8-17.

[16] TSN, 8 November 2001, p. 4.

[17] TSN, 11 October 2001, p. 18.

[18] *Id.* at 15-16, 19.

in court. During her testimony, she confirmed that she was born on 26 January 1985. She also admitted that the appellant is her stepfather, being the common-law husband of her mother, BBB, and she calls him "papa." AAA disclosed that in the afternoon of 24 June 1997, while she was cooking food for supper and doing several household chores in their house at Sitio xxx, Barangay xxx, Municipality of xxx, Province of xxx, the appellant asked her younger siblings to go out and fetch water from a place 700 meters away from their house. Her mother at that time was in Bayawan to attend the birthday celebration of her *lola*. With only AAA and the appellant in their house, appellant pulled her, undressed her, made her lie down on the kitchen floor and pinned her on the ground. The appellant then undressed himself, lay on top of her until he finally inserted his penis into her vagina. AAA felt pain. She cried hard and tried to defend herself but appellant was much stronger than her. She likewise failed to shout because the appellant threatened to kill her and her mother if she did. She felt pain and continuously had bleeding during and after the rape. The appellant similarly warned her not to tell anyone what had happened because if she did, he would kill her and her mother. Out of fear, AAA never told her mother about her harrowing experience in the hands of the appellant. AAA also revealed that the rape incident that happened on 24 June 1997 was continuously repeated until it was discovered by her mother on 4 February 1998.[19] The rape incidents that happened on 24 June 1997 and 4 February 1998 were reported to the police authorities at Sta. Catalina Police Station. She further stated that she was instructed to go to the Bayawan District Hospital for medical examination.[20]

For its part, the defense presented the lone testimony of the appellant. The appellant admitted that AAA is his stepdaughter as she is the daughter of his common-law wife BBB. He also asserted that he and BBB were never married and they just live together without the benefit of marriage.[21] In his testimony, he

[19] TSN, 28 November 2001, pp. 6-21.

[20] *Id.* at 27-31.

[21] TSN, 2 October 2002, pp. 4-6.

vehemently denied the rape accusations against him. He claimed that there was no rape incident that happened in the kitchen of their house on 24 June 1997, but he admitted that BBB was really not present in their house on the aforesaid date and the latter came back only on 25 June 1997. He likewise avowed his innocence and assailed that the charges against him were a mere scheme, concocted by AAA and her aunt JJJ and the husband of the latter because they never wanted him to be with BBB. In fact, they tried to send him away many times but he did not leave because of his children with BBB. Similarly, the appellant averred that AAA was just making up stories because she never respected him. She neither followed his orders nor his instructions and all these started when AAA realized that he was not her real father. AAA was barely four years old when they first met. The appellant further declared that while he was detained at the provincial jail, BBB and AAA visited him twice and they even brought him bread and soap. He also maintained that he tried to convince BBB not to pursue the case but BBB told him that JJJ and the husband of the latter would sue her and have her put in jail if she withdrew the case against him.[22]

After trial on the merits, Criminal Case No. 13545, the instant case, was considered submitted for decision on 11 February 2004, by the RTC, Branch 42, Dumaguete City. This Court, however, had issued a Resolution[23] dated 27 January 2004, in G.R. No. 154848 entitled, *People of the Philippines v. Manuel Aguilar*, directing the Judge of the RTC of Dumaguete City, Branch 31, who tried and heard Criminal Case No. 13546, to commit the appellant to the New Bilibid Prisons in Muntinlupa City, having convicted appellant for raping AAA on 4 February 1998. In view of this, this Court issued Resolutions dated 27 July 2004[24] and 17 August 2004[25] directing the RTC of Muntinlupa City, Branch 207, being the lone family court in Muntinlupa City, to resolve Criminal Case No. 13545.

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[22] *Id.* at 9-17; TSN, 28 November 2002, pp. 4-6.

[23] Records, p. 348.

[24] *Id.* at 364.

[25] *Id.* at 368.

On 27 December 2004,[26] the RTC of Muntinlupa City rendered a judgment of conviction against the appellant. The dispositive portion of the Decision reads:

> WHEREFORE, [appellant] is found guilty beyond reasonable doubt of the crime of simple rape and is sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to pay the victim [AAA] ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.[27]

Dissatisfied, the appellant appealed the 27 December 2004 Decision of the RTC of Muntinlupa City before the Court of Appeals. In his brief, the appellant's lone assignment of error was:

> THE TRIAL COURT GRAVELY ERRED IN FINDING THE [APPELANT] GUILTY OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[28]

On 28 February 2007, the Court of Appeals rendered a Decision affirming *in toto* the Decision of the RTC of Muntinlupa City, the decretal portion of which reads:

> WHEREFORE, premises considered, the ***Decision***, dated [27 December 2004], of the [RTC] of Muntinlupa City, in Criminal Case No. 13545 is hereby **AFFIRMED** *in toto*. Costs against the [appellant].[29]

Intending to appeal the aforesaid Decision of the appellate court, the appellant filed a Notice of Appeal. In view thereof, the Court of Appeals forwarded to this Court the records of this case.

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[26] The Decision was dated 27 December 2004, but it was promulgated on 27 January 2005 because 27 December 2004 was proclaimed by the Office of the President as a public holiday. (Order dated 3 January 2005; records, p. 367.)

[27] CA *rollo*, p. 48.

[28] *Id.* at 81.

[29] *Rollo*, p. 17.

In this Court's Resolution dated 16 July 2007,[30] the parties were required to submit their respective supplemental briefs. Both the Office of the Solicitor General and the appellant manifested that they were adopting their respective briefs filed before the Court of Appeals as their supplemental briefs.

After a careful review of the records of this case, this Court affirms appellant's conviction.

A rape charge is a serious matter with pernicious consequences both for the appellant and the complainant; hence, utmost care must be taken in the review of a decision involving conviction of rape.[31] Thus, in the disposition and review of rape cases, the Court is guided by certain principles. *First*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction. *Second*, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense. *Third*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal. *Fourth*, an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove. And *fifth*, in view of the intrinsic nature of the crime of rape, in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.[32]

It is well-settled that the **appellant may be convicted of rape based solely on the testimony of the victim**, **as long as the same is competent and credible.** This is primarily because the crime of rape is usually committed in a private place where only the aggressor and the rape victim are present.[33] Moreover, even the trial court mentioned in its Decision that **even in the**

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[30] *Id.* at 21.

[31] *People v. Malones*, G.R. Nos. 124388-90, 11 March 2004, 425 SCRA 318, 329.

[32] *People v. Lou*, 464 Phil. 413, 421 (2004).

[33] *People v. Guambor*, 465 Phil. 671, 678 (2004).

absence of the corroborative testimonies of the prosecution's other witnesses, the testimony of AAA can stand on its ground and is enough to convict the appellant.[34]

Accordingly, the primordial consideration in a determination concerning the crime of rape is the credibility of complainant's testimony.[35] Time and again, we have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case.[36] This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court.[37] Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying.[38]

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[34] CA *rollo*, p. 46.

[35] *People v. Quiachon*, G.R. No. 170236, 31 August 2006, 500 SCRA 704, 714.

[36] *People v. Blancaflor*, 466 Phil. 86, 96 (2004).

[37] *People v. Antivola*, 466 Phil. 394, 413 (2004).

[38] *People v. Belga*, 402 Phil. 734, 742-743 (2001).

The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[39]

This Court, upon examining the records of the present case, fully agrees in the findings of both the trial court and the appellate court that the **testimony of AAA is credible and enough to convict the appellant even without the corroborating testimonies of the other prosecution witnesses.** Her testimony on how she was raped by the appellant on 24 June 1997 was characterized by the trial court and affirmed by the Court of Appeals as clear, straightforward and bereft of any material or significant inconsistencies. **Further, we note that while testifying, AAA broke down in tears.**[40] **The crying of a victim during her testimony is eloquent evidence of the credibility of the rape charge with the verity borne out of human nature and experience.**[41] Similarly, **no woman, least of all a child**, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her.[42] It is also highly inconceivable for a girl to provide details of a rape and ascribe such wickedness to her "stepfather" just because she resents being disciplined by him since, by thus charging him, she would also expose herself to extreme humiliation, even stigma.[43] Testimonies of child-victims are normally given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[44] Youth and immaturity could indeed be badges of truth. This observation is a matter of judicial cognizance borne out by human nature and experience. There could not have been a more powerful testament to the truth than this

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[39] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[40] TSN, 16 January 2002, p. 7.

[41] *People v. Pacheco*, 468 Phil. 289, 299-300 (2004).

[42] *People v. Guambor*, *supra* note 33.

[43] *People v. Quiachon*, *supra* note 35.

[44] *People v. Guambor*, *supra* note 33.

"public baring of unspoken grief."[45] More so, it is an accepted doctrine that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.[46] And in this case, it was never shown that the complainant had an ill motive in filing a case against the appellant other than seeking justice for what had happened to her.

The appellant further alleges that the trial court failed to note that the testimonies of the prosecution witnesses merely pertained to the presence of spermatozoa without even verifying that the said spermatozoa found in AAA belonged to the appellant. Furthermore, AAA alleged that she had been repeatedly raped by the appellant without, however, presenting evidence showing the presence of old lacerations to sustain the aforesaid allegations of AAA. This argument of the appellant is specious.

In this regard, this Court deems it necessary to quote the wordings of the Court of Appeals in connection with this matter, thus:

> *Thirdly*, [appellant's] arguments that the prosecution failed to prove that he has been raping [AAA] since [24 June 1997] because no evidence was adduced showing that [AAA's] hymen had old lacerations; and, that the spermatozoa found belonged to him, **lose substance when faced by the principle that the testimony of a rape victim alone, if found credible, is competent to convict the accused**. To reiterate, [AAA's] testimony is credible.
>
> In this regard, worth noting are the Supreme Court's pronouncement that, *a medical examination and report is not indispensable to a conviction for rape*. Thus, eventhough there was no evidence that [AAA's] hymen had old lacerations or that the spermatozoa found therein belonged to [appellant], still, the latter's conviction can still be sustained in that a medical report is even not necessary to prove that the crime of rape was committed.[47] (Emphasis supplied.)

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[45] *People v. Andales*, 466 Phil. 873, 889 (2004).

[46] *People v. Managbanag*, 423 Phil. 97, 110 (2001).

[47] *Rollo*, pp. 13-14.

At any rate, the **presence of old healed lacerations in the victim's hymen is irrelevant to appellant's defense. In the same way that their presence does not mean the victim was not raped recently, the absence of fresh lacerations does not negate rape either**. Indeed **hymenal laceration is not an element of the crime of rape.**[48]

The appellant also argues that although the defense of denial is, indeed, a weak defense, being a negative averment, nonetheless, it was not for the appellant to prove that he did not rape AAA, but for the prosecution to prove that the appellant did rape her.

To repeat, the evidence of the prosecution has clearly established the guilt of the appellant beyond reasonable doubt. Denial, being an intrinsically weak defense, must be buttressed by strong evidence of non-culpability in order to merit credibility. It is a negative self-serving assertion that deserves no weight in law if unsubstantiated by clear and convincing evidence.[49] **The appellant's barefaced denial of the charge cannot prevail over the positive, spontaneous and straightforward identification by the victim of the appellant as the malefactor.** A rape victim can easily identify her assailant especially if he is known to her because during the rape, she is physically close to her assailant, enabling her to have a good look at the latter's physical features.[50] And in the present case, it cannot be doubted, as it can be clearly gleaned from the records that AAA positively identified the appellant as the person who raped her.[51]

It is also bears stressing that the appellant in the case at bar has evaded the law for almost three years. To this the Court of Appeals said:

> [I]t has long been settled that the flight of the [appellant] from the scene of the crime is proof of guilt or of a guilty mind. Accordingly, there is flight when the [appellant] evades the course

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[48] *People v. Esteves*, 438 Phil. 687, 699 (2002).

[49] *People v. Antonio*, 447 Phil. 731, 742 (2003).

[50] *People v. Antivola*, *supra* note 37.

[51] TSN, 28 November 2001.

of justice by voluntarily withdrawing one's self in order to avoid arrest or detention or the institution or continuance of criminal proceedings. In this case, [appellant] has evaded the law for almost three (3) years. Indisputably, his flight evidenced guilt.[52]

As regards the penalty to be imposed upon the appellant, it must be noted that the rape was committed prior to the effectivity of Republic Act No. 8353, otherwise known as "The Anti-Rape Law of 1997."[53] Applicable then is the old provision of Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659,[54] which states in part:

Section 11. Article 335 of the same Code is hereby amended to read as follows:

"Art. 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. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

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

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The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age **and** the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim. x x x. (Emphasis supplied.)

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[52] *Rollo*, p. 15.

[53] It was approved on 30 September 1997 and took effect on 22 October 1997 (*People v. Valindo*, 429 Phil. 114, 121 (2002).

[54] "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES."

From the aforesaid provision of law, both minority and actual relationship must be alleged and proved in order to convict the appellant for qualified rape; otherwise, a conviction for rape in its qualified form will be barred.[55]

In this case, while the minority of the victim was properly alleged in the Information, her relationship with appellant was not properly stated therein because what appears in the information is that the victim is the *stepdaughter* of appellant. A stepdaughter is the daughter of one's spouse by a previous marriage. For appellant to be the stepfather of AAA, he must be legally married to AAA's mother.[56] And the best evidence to prove the marriage between the appellant and the mother of the complainant is their marriage contract.[57] But the records of this case failed to show that the appellant and the mother of AAA were legally married, there being no marriage certificate ever presented to prove the same. In fact, both the appellant and the mother of AAA admitted that they were not really married, and what they had was merely a common-law relationship. The Information thus failed to allege specifically that appellant was the common-law spouse of the victim's mother. Instead, the Information erroneously alleged the qualifying circumstance that appellant was the stepfather of the victim. Hence, the appellant is liable only for the crime of simple rape punishable by *reclusion perpetua*.

Finally, this Court agrees in the amount of civil indemnity and moral damages which the court *a quo* and the appellate court awarded to the victim. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[58] Case law also requires automatic award of moral damages to a rape victim without need of proof because from the nature of the crime, it can be

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[55] *People v. Latag*, 463 Phil. 492, 506 (2003).

[56] *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 668.

[57] *People v. Sumarago*, 466 Phil. 956, 980 (2004).

[58] *People v. Callos*, 424 Phil. 506, 516 (2002).

assumed that she has suffered moral injuries entitling her to such award. Such award is separate and distinct from civil indemnity.[59]

As regards exemplary damages, we held in *People v. Catubig*[60] that the presence of an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to an award of exemplary damages.[61] The Revised Rules of Criminal Procedure which took effect on 1 December 2000 now provides that aggravating circumstances must be alleged in the information to be validly appreciated by the court.[62] In the case at bar, the crime of rape and the filing of the information against the appellant occurred before the effectivity of the said Rules. In *People v. Catubig*,[63] we held that the **retroactive application of the Revised Rules of Criminal Procedure cannot adversely affect the rights of a private offended party that have become vested prior to the effectivity of the said Rules**. **Thus, aggravating circumstances which were not alleged in the information but proved during the trial may be appreciated for the limited purpose of determining the appellant's liability for exemplary damages.**[64]

In the present case, the information filed against the appellant improperly alleged that AAA was his stepdaughter because what was proven during trial was the fact that the appellant was merely a common-law husband of the mother of the victim. This being the case, AAA cannot be the stepdaughter of the appellant. Although the relationship alleged in the information was different from that proven during trial, this Court is not precluded from awarding exemplary damages to the private

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[59] *People v. Orilla*, 467 Phil. 253, 286 (2004).

[60] 416 Phil. 102, 120 (2001).

[61] *People v. Cayabyab*, G.R. No. 167147, 3 August 2005, 465 SCRA 681, 693.

[62] *People v. Calongui*, G.R. No. 170566, 3 March 2006, 484 SCRA 76, 88.

[63] *Supra* note 60.

[64] *People v. Calongui*, *supra* note 62 at 89.

complainant because the aggravating circumstance of "common-law spouse" was duly proven.[65] In conformity with our ruling in *People v. Catubig*[66] that aggravating circumstances which were not alleged in the information but proved during the trial may be appreciated for the limited purpose of determining the appellant's liability for exemplary damages, this Court likewise agrees in the court *a quo* and in the appellate court in awarding exemplary damages to the victim.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR H.C. No. 00743, finding herein appellant Manuel Aguilar *GUILTY* beyond reasonable doubt of the crime of simple rape committed against AAA, the daughter of his common-law wife, BBB, is hereby *AFFIRMED*. Costs against appellant.

SO ORDERED.

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

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[65] Article 335 as amended by Section 11 of Republic Act No. 7659.

[66] *Supra* note 60.

FIRST DIVISION

[G.R. No. 163445. December 18, 2007]

ASIA INTERNATIONAL AUCTIONEERS, INC. and SUBIC BAY MOTORS CORPORATION, *petitioners, vs.* **HON. GUILLERMO L. PARAYNO, JR., in his capacity as Commissioner of the Bureau of Internal Revenue (BIR), THE REGIONAL DIRECTOR, BIR, Region III, THE REVENUE DISTRICT OFFICER, BIR, Special Economic Zone, and OFFICE OF THE SOLICITOR GENERAL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION, DEFINED.—** Jurisdiction is defined as the power and authority of a court to hear, try and decide a case. The issue is so basic that it may be raised at any stage of the proceedings, even on appeal. In fact, courts may take cognizance of the issue even if not raised by the parties themselves. There is thus no reason to preclude the CA from ruling on this issue even if allegedly, the same has not yet been resolved by the trial court.

2. **ID.; SPECIAL CIVIL ACTIONS; CERTIORARI; FILING OF MOTION FOR RECONSIDERATION, NOT ALWAYS *SINE QUA NON* TO THE REMEDY OF *CERTIORARI*.—** It is now settled that the filing of a motion for reconsideration is not always *sine qua non* before availing of the remedy of *certiorari*. Hence, the general rule of requiring a motion for reconsideration finds no application in a case where what is precisely being assailed is lack of jurisdiction of the respondent court. And considering also the urgent necessity for resolving the issues raised herein, where further delay could prejudice the interests of the government, the haste with which the Solicitor General raised these issues before this Court becomes understandable.

3. **TAXATION; COURT OF TAX APPEALS HAS THE EXCLUSIVE JURISDICTION TO REVIEW BY APPEAL DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE.—** R.A. No. 1125, as amended, states: Sec. 7. Jurisdiction. — The Court of Tax Appeals shall exercise

exclusive appellate jurisdiction to review by appeal, as herein provided — (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments,** refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue.**

4. **POLITICAL LAW; ADMINISTRATIVE LAW; PREMATURE INVOCATION OF THE COURT'S INTERVENTION IS FATAL TO ONE'S CAUSE OF ACTION.—** It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.

APPEARANCES OF COUNSEL

Estanislao L. Cesa, Jr. Marc Raymund S. Cesa Maria Rosario S. Cesa for petitioners.

The Solicitor General for respondents.

D E C I S I O N

PUNO, *C.J.*:

At bar is a petition for review on *certiorari* seeking the reversal of the decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 79329 declaring the Regional Trial Court (RTC) of Olongapo City, Branch 74, without jurisdiction over Civil Case No. 275-0-2003.

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[1] Promulgated on March 31, 2004 and penned by CA Justice Rosalinda Asuncion-Vicente; *rollo*, pp. 37-48.

The facts are undisputed.

Congress enacted Republic Act (R.A.) No. 7227 creating the Subic Special Economic Zone (SSEZ) and extending a number of economic or tax incentives therein. Section 12 of the law provides:

(a) Within the framework and subject to the mandate and limitations of the Constitution and the pertinent provisions of the Local Government Code, the [SSEZ] shall be developed into a self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments;

(b) The [SSEZ] shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the [SSEZ], as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. **However, exportation or removal of goods from the territory of the [SSEZ] to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines;**

(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the [SSEZ]. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprise within the [SSEZ] shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all business and enterprise within the [SSEZ] to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the [SSEZ], the same shall be resolved in favor of the latter;

(d) No exchange control policy shall be applied and free markets for foreign exchange, gold, securities and future shall be allowed and maintained in the [SSEZ]; (*emphasis supplied*)

On January 24, 1995, then Secretary of Finance Roberto F. De Ocampo, through the recommendation of then Commissioner of Internal Revenue (CIR) Liwayway Vinzons-Chato, issued Revenue Regulations [Rev. Reg.] No. 1-95[2], providing the "Rules and Regulations to Implement the Tax Incentives Provisions Under Paragraphs (b) and (c) of Section 12, [R.A.] No. 7227, [o]therwise known as the Bases Conversion and Development Act of 1992." Subsequently, Rev. Reg. No. 12-97[3] was issued providing for the "Regulations Implementing Sections 12(c) and 15 of [R.A.] No. 7227 and Sections 24(b) and (c) of [R.A.] No. 7916 Allocating Two Percent (2%) of the Gross Income Earned by All Businesses and Enterprises Within the Subic, Clark, John Hay, Poro Point Special Economic Zones and other Special Economic Zones under PEZA." On September 27, 1999, Rev. Reg. No. 16-99[4] was issued "Amending [RR] No. 1-95, as amended, and other related Rules and Regulations to Implement the Provisions of paragraphs (b) and (c) of Section 12 of [R.A.] No. 7227, otherwise known as the 'Bases Conversion and Development Act of 1992' Relative to the Tax Incentives Granted to Enterprises Registered in the Subic Special Economic and Freeport Zone."

On June 3, 2003, then CIR Guillermo L. Parayno, Jr. issued Revenue Memorandum Circular (RMC) No. 31-2003 setting the "Uniform Guidelines on the Taxation of Imported Motor Vehicles through the Subic Free Port Zone and Other Freeport Zones that are Sold at Public Auction." The assailed portions of the RMC read:

> II. Tax treatments on the transactions involved in the importation of motor vehicles through the SSEFZ and other legislated Freeport zones and subsequent sale thereof through public auction.—Pursuant to existing revenue issuances, the following are the uniform tax treatments that are to be adopted on the different transactions involved in the importation of

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[2] *Id.* at 198-209.

[3] *Id.* at 210-216.

[4] *Id.* at 218-221.

motor vehicles through the SSEFZ and other legislated Freeport zones that are subsequently sold through public auction:

A. Importation of motor vehicles into the freeport zones

1. Motor vehicles that are imported into the Freeport zones for exclusive use within the zones are, as a general rule, exempt from customs duties, taxes and other charges, provided that the importer-consignee is a registered enterprise within such freeport zone. However, should these motor vehicles be brought out into the customs territory without returning to the freeport zones, the customs duties, taxes and other charges shall be paid to the BOC before release thereof from its custody.

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3. For imported motor vehicles that are imported by persons that are not duly registered enterprises of the freeport zones, or that the same are intended for public auction within the freeport zones, the importer-consignee/ auctioneer shall pay the value-added tax (VAT) and excise tax to the BOC before the registration thereof under its name with the LTO and/or the conduct of the public auction.

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B. Subsequent sale/public auction of the motor vehicles

1. Scenario One – The public auction is conducted by the consignee of the imported motor vehicles within the freeport zone

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1.2. In case the consignee-auctioneer is a registered enterprise and/or locator not entitled to the preferential tax treatment or if the same is entitled from such incentive but its total income from the customs territory exceeds 30% of its entire income derived from the customs territory and the freeport zone, the income derived from the public auction shall be subjected to the regular internal revenue taxes imposed by the Tax Code.

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1.4. In the event that the winning bidder shall bring the motor vehicles into the customs territory, the winning bidder shall be deemed the importer thereof and shall be liable to pay the VAT and excise tax, if applicable, based on the winning bid price. However, in cases where the consignee-auctioneer has already paid the VAT and excise tax on the motor vehicles before the registration thereof with LTO and the conduct of public auction, the additional VAT and excise tax shall be paid by winning bidder resulting from the difference between the winning bid price and the value used by the consignee-auctioneer in payment of such taxes. For excise tax purposes, in case the winning bid price is lower than the total costs to import, reconditioning/rehabilitation of the motor vehicles, and other administrative and selling expenses, the basis for the computation of the excise tax shall be the total costs plus ten percent (10%) thereof. The additional VAT and excise taxes shall be paid to the BIR before the auctioned motor vehicles are registered with the LTO.

1.5 In case the services of a professional auctioneer is employed for the public auction, the final withholding tax of 25%, in case he/she is a non-resident citizen or alien, or the expanded withholding tax of 20%, in case he/she is a resident citizen or alien, shall be withheld by the consignee-auctioneer from the amount of consideration to be paid to the professional auctioneer and shall be remitted accordingly to the BIR.

This was later amended by RMC No. 32-2003,[5] to wit:

II. The imported motor vehicles after its release from Customs custody are sold through public auction/negotiated sale by the consignee within or outside of the Freeport Zone:

A. The gross income earned by the consignee-seller from the public auction/negotiated sale of the imported vehicles

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[5] "Revised Uniform Guidelines on the Imposition of Value Added Tax on the Sale Through the Public Auction/Negotiated Sale of Motor Vehicles Imported Through the Subic Freeport Zone and other Freeport Zones," issued on June 5, 2003.

shall be subject to the preferential tax rate of five percent (5%) in lieu of the internal revenue taxes imposed by the National Internal Revenue Code of 1997, provided that the following conditions are present:

1. That the consignee-seller is a duly registered enterprise entitled to such preferential tax rate as well as a registered taxpayer with the Bureau of Internal Revenue (BIR).

2. That the total income generated by the consignee-seller from sources within the customs territory does not exceed thirty percent (30%) of the total income derived from all sources.

B. In case the consignee-seller is a registered enterprise and/ or locator not entitled to the preferential tax treatment or if the same is entitled from such incentive but its total income from the customs territory exceeds thirty percent (30%) of its entire income derived from the customs territory and the freeport zone, the sales or income derived from the public auction/negotiated sale shall be subjected to the regular internal revenue taxes imposed by the Tax Code. The consignee-seller shall also observe the compliance requirements prescribed by the Tax Code. When public auction or negotiated sale is conducted within or outside of the freeport zone, the following tax treatment shall be observed:

1. Value Added Tax (VAT)/ Percentage Tax (PT) – VAT or PT shall be imposed on every public auction or negotiated sale.

2. Excise Tax – The imposition of excise tax on public auction or negotiated sale shall be held in abeyance pending verification that the importer's selling price used as a basis by the Bureau of Customs in computing the excise tax is correctly determined.

Petitioners Asia International Auctioneers, Inc. (AIAI) and Subic Bay Motors Corporation are corporations organized under Philippine laws with principal place of business within the SSEZ. They are engaged in the importation of mainly secondhand or used motor vehicles and heavy transportation or construction equipment which they sell to the public through auction.

Petitioners filed a complaint before the RTC of Olongapo City, praying for the nullification of RMC No. 31-2003 for being unconstitutional and an *ultra vires* act. The complaint was docketed as Civil Case No. 275-0-2003 and raffled to Branch 74. Subsequently, petitioners filed their "First Amended Complaint to Declare Void, *Ultra Vires*, and Unconstitutional [RMC] No. 31-2003 dated June 3, 2003 and [RMC] No. 32-2003 dated June 5, 2003, with Application for a Writ of Temporary Restraining Order and Preliminary Injunction"[6] to enjoin respondents from implementing the questioned RMCs while the case is pending. Particularly, they question paragraphs II(A)(1) and (3), II(B)(1.2), (1.4) and (1.5) of RMC No. 31-2003 and paragraphs II(A)(2) and (B) of RMC No. 32-2003. Before a responsive pleading was filed, petitioners filed their Second Amended Complaint[7] to include Rev. Reg. Nos. 1-95, 12-97 and 16-99 dated January 24, 1995, August 7, 1997 and September 27, 1999, respectively, which allegedly contain some identical provisions as the questioned RMCs, but without changing the cause of action in their First Amended Complaint.

The Office of the Solicitor General (OSG) submitted its "Comment (In Opposition to the Application for Issuance of a Writ of Preliminary Injunction)."[8] Respondents CIR, Regional Director and Revenue District Officer submitted their joint "Opposition (To The Prayer for Preliminary Injunction and/or Temporary Restraining Order by Petitioners)."[9]

Then Secretary of Finance Jose Isidro N. Camacho filed a Motion to Dismiss the case against him, alleging that he is not a party to the suit and petitioners have no cause of action against him.[10] Respondents CIR, BIR Regional Director and BIR Revenue District Officer also filed their joint Motion to Dismiss on the grounds that "[t]he trial court has no jurisdiction over

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[6] CA *rollo*, pp. 44-57.

[7] *Rollo*, pp. 305-317.

[8] Dated August 5, 2003; CA *rollo*, pp. 59-71.

[9] Dated July 11, 2003; *id.* at 73-96.

[10] Dated July 7, 2003; *id.* at 98-100.

the subject matter of the complaint" and "[a] condition precedent, that is, exhaustion of administrative remedies, has not been complied with."[11] Petitioners filed their "Motion to Expunge from the Records the Respondents['] Motion to Dismiss"[12] for allegedly failing to comply with Section 4, Rule 15 of the Rules of Court. To this, the respondents filed their Opposition.[13]

Meantime, BIR Revenue District Officer Rey Asterio L. Tambis sent a 10-Day Preliminary Notice[14] to the president of petitioner AIAI for unpaid VAT on auction sales conducted on June 6-8, 2003, as per RMC No. 32-2003.

On August 1, 2003, the trial court issued its order[15] granting the application for a writ of preliminary injunction. The dispositive portion of the order states:

> WHEREFORE, premises considered, petitioners' application for the issuance of a writ of preliminary injunction is hereby GRANTED. Let the writ issue upon the filing and approval by the court of an injunction bond in the amount of Php 1 Million.
>
> SO ORDERED.[16]

Consequently, respondents CIR, the BIR Regional Director of Region III, the BIR Revenue District Officer of the SSEZ, and the OSG filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to enjoin the trial court from exercising jurisdiction over the case.[17]

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[11] Dated July 21, 2003; *rollo*, pp. 50-56.

[12] Dated August 5, 2003; *id.* at 58-59.

[13] Dated August 6, 2003; *id.* at 63-64.

[14] Dated July 28, 2003; *id.* at 66.

[15] *Id.* at 372-373.

[16] *Id.* at 373.

[17] Dated September 19, 2003; CA *rollo*, pp. 1-29.

Meantime, BIR Regional Director Danilo A. Duncano sent a Preliminary Assessment Notice[18] to the President of AIAI, informing him of the VAT due from the company for the auction sales conducted on June 6-8, 2003 as per RMC No. 32-2003, plus surcharge, interest and compromise penalty. Thereafter, a Formal Letter of Demand[19] was sent to the President of petitioner AIAI by the Officer-in-Charge of the BIR Office of the Regional Director.

On March 31, 2004, the CA issued its assailed decision, the dispositive portion of which states:

> WHEREFORE, the petition is *GRANTED*. Public respondent Regional Trial Court, Branch 74, of Olongapo City is hereby declared bereft of jurisdiction to take cognizance of Civil Case No. 275-0-2003. Accordingly, said Civil Case No. 275-0-2003 is hereby *DISMISSED* and the assailed Order dated August 1, 2003, *ANNULLED* and *SET ASIDE*.
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> SO ORDERED.[20]

Hence, this Petition for Review on *Certiorari*[21] with an application for a temporary restraining order and a writ of preliminary injunction to enjoin respondents "from pursuing sending letters of assessments to petitioners." Petitioners raise the following issues:

> [a] [W]hether a petition for *certiorari* under Rule 65 of the New Rules is proper where the issue raised therein has not yet been resolved at the first instance by the Court where the original action was filed, and, necessarily, without first filing a motion for reconsideration;
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> [b] [W]hich Court- the regular courts of justice established under Batas Pambansa Blg. 129 or the Court of Tax Appeals – is the proper court of jurisdiction to hear a case to declare Revenue Memorandum Circulars unconstitutional and against an existing law where the challenge does not involve the rate and figures of the imposed taxes;

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[18] Dated October 7, 2003; *rollo*, p. 67.

[19] Dated November 5, 2003; *id.* at 68.

[20] *Id.* at 48.

[21] *Id.* at 10-23.

[c] [D]ependent on an affirmative resolution of the second issue in favor of the regular courts of justice, whether the writ of preliminary injunction granted by the Court at Olongapo City was properly and legally issued.[22]

Petitioners contend that there were fatal procedural defects in respondents' petition for *certiorari* with the CA. They point out that the CA resolved the issue of jurisdiction without waiting for the lower court to first rule on the issue. Also, respondents did not file a motion for reconsideration of the trial court's order granting the writ of preliminary injunction before filing the petition with the CA.

The arguments are unmeritorious.

Jurisdiction is defined as the power and authority of a court to hear, try and decide a case.[23] The issue is so basic that it may be raised at any stage of the proceedings, even on appeal.[24] In fact, courts may take cognizance of the issue even if not raised by the parties themselves.[25] There is thus no reason to preclude the CA from ruling on this issue even if allegedly, the same has not yet been resolved by the trial court.

As to respondents' failure to file a motion for reconsideration, we agree with the ruling of the CA, which states:

It is now settled that the filing of a motion for reconsideration is not always sine *qua non* before availing of the remedy of

[22] *Id.* at 11-12.

[23] *Veneracion v. Mancilla*, G.R. No. 158238, July 20, 2006, 495 SCRA 712, 726; *Platinum Tours and Travel, Inc. v. Panlilio*, G.R. No. 133365, September 16, 2003, 411 SCRA 142, 146; *United BF Homeowner's Association v. BF Homes, Inc.*, G.R. No. 124873, July 14, 1999, 310 SCRA 304, 317; *Zamora v. CA*, G.R. No. 78206, March 19, 1990, 183 SCRA 279, 283.

[24] *Dy v. NLRC*, G.R. No. 68544, October 27, 1986, 145 SCRA 211, 220 *citing Calimlim v. Ramirez*, G.R. No. L-34362, November 19, 1982, 118 SCRA 399.

[25] *See* Section 1, Rule 9, Revised Rules of Civil Procedure; *Atuel v. Valdez*, G.R. No. 139561, June 10, 2003, 403 SCRA 517, 524; *Salera v. A-1 Investors, Inc.*, G.R. No. 141238, February 15, 2002, 377 SCRA 201, 213.

certiorari.[26] Hence, the general rule of requiring a motion for reconsideration finds no application in a case where what is precisely being assailed is lack of jurisdiction of the respondent court.[27] And considering also the urgent necessity for resolving the issues raised herein, where further delay could prejudice the interests of the government,[28] the haste with which the Solicitor General raised these issues before this Court becomes understandable.[29]

Now, to the main issue: does the trial court have jurisdiction over the subject matter of this case?

Petitioners contend that jurisdiction over the case at bar properly pertains to the regular courts as this is "an action to declare as unconstitutional, void and against the provisions of [R.A. No.] 7227" the RMCs issued by the CIR. They explain that they "do not challenge the rate, structure or figures of the imposed taxes, rather they challenge the authority of the respondent Commissioner to impose and collect the said taxes." They claim that the challenge on the authority of the CIR to issue the RMCs does not fall within the jurisdiction of the Court of Tax Appeals (CTA).

Petitioners' arguments do not sway.

R.A. No. 1125, as amended, states:

Sec. 7. Jurisdiction.—The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided—

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue**

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[26] *Citing Chas Realty and Development Corp. v. Talavera*, G.R. No. 151925, February 6, 2003, 397 SCRA 84.

[27] *Citing Hamilton v. Levy*, G.R. No. 139283, November 15, 2000, 344 SCRA 821.

[28] *Citing Marawi Marantao General Hospital, Inc. v. CA*, G.R. No. 141008, January 16, 2001, 349 SCRA 321.

[29] *Rollo*, p. 45.

Code or other laws or part of law administered by the Bureau of Internal Revenue; x x x (*emphases supplied*)

We have held that RMCs are considered administrative *rulings* which are issued from time to time by the CIR.[30]

Rodriguez v. Blaquera[31] is in point. This case involves Commonwealth Act No. 466, as amended by R.A. No. 84, which imposed upon firearm holders the duty to pay an initial license fee of ₱15 and an annual fee of ₱10 for each firearm, with the exception that in case of "bona fide and active members of duly organized gun clubs and accredited by the Provost Marshal General," the annual fee is reduced to ₱5 for each firearm. Pursuant to this, the CIR issued General Circular No. V-148 which stated that "bona fide and active members of duly organized gun clubs and accredited by the Provost Marshal General… shall pay an initial fee of fifteen pesos and an annual fee of five pesos for each firearm held on license except caliber .22 revolver or rifle." The General Circular further provided that "[m]ere membership in the gun club does not, as a matter of right, entitle the member to the reduced rates prescribed by law. The licensee must be accredited by the Chief of Constabulary… [and] the firearm covered by the license of the member must be of the target model in order that he may be entitled to the reduced rates." Rodriguez, as manager of the Philippine Rifle and Pistol Association, Inc., a duly accredited gun club, in behalf of the members who have paid under protest the regular annual fee of ₱10, filed an action in the Court of First Instance (now RTC) of Manila for the nullification of the circular and the refund of ₱5. On the issue of jurisdiction, plaintiff similarly contended that the action was not an appeal from a ruling of the CIR but merely an attempt to nullify General Circular No. V-148, hence, not within the jurisdiction of the CTA. The Court, in finding this argument unmeritorious, explained:

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[30] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999, 302 SCRA 241, 252.

[31] 109 Phil. 598 (1960).

We find no merit in this pretense. General Circular No. V-148 directs the officers charged with the collection of taxes and license fees to adhere strictly to the interpretation given by the defendant to the statutory provision above mentioned, as set forth in the circular. The same incorporates, therefore, a decision of the Collector of Internal Revenue (now Commissioner of Internal Revenue) on the manner of enforcement of said statute, the administration of which is entrusted by law to the Bureau of Internal Revenue. As such, it comes within the purview of [R.A.] No. 1125, Section 7 of which provides that the [CTA] "shall exercise exclusive appellate jurisdiction to review by appeal * * * decisions of the Collector of Internal Revenue in * * * matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue." Besides, it is plain from plaintiff's original complaint that one of its main purposes was to secure an order for the refund of the sums collected in excess of the amount he claims to be due by way of annual fee from the gun club members, regardless of the class of firearms they have. Although the prayer for reimbursement has been eliminated from his amended complaint, it is only too obvious that the nullification of General Circular No. V-148 is merely a step preparatory to a claim for refund.

Similarly, in **CIR v. Leal,**[32] pursuant to Section 116 of Presidential Decree No. 1158 (The National Internal Revenue Code, as amended) which states that "[d]ealers in securities shall pay a tax equivalent to six (6%) per centum of their gross income. Lending investors shall pay a tax equivalent to five (5%) per cent, of their gross income," the CIR issued Revenue Memorandum Order (RMO) No. 15-91 imposing 5% lending investor's tax on pawnshops based on their gross income and requiring all investigating units of the BIR to investigate and assess the lending investor's tax due from them. The issuance of RMO No. 15-91 was an offshoot of the CIR's finding that the pawnshop business is akin to that of "lending investors" as defined in Section 157(u) of the Tax Code. Subsequently, the CIR issued RMC No. 43-91 subjecting pawn tickets to documentary stamp tax. Respondent therein, Josefina Leal, owner and operator of Josefina's Pawnshop, asked for a reconsideration of both RMO No. 15-91 and RMC No. 43-91,

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[32] G.R. No. 113459, November 18, 2002, 392 SCRA 9.

but the same was denied by petitioner CIR. Leal then filed a petition for prohibition with the RTC of San Mateo, Rizal, seeking to prohibit petitioner CIR from implementing the revenue orders. The CIR, through the OSG, filed a motion to dismiss on the ground of lack of jurisdiction. The RTC denied the motion. Petitioner filed a petition for *certiorari* and prohibition with the CA which dismissed the petition "for lack of basis." In reversing the CA, dissolving the Writ of Preliminary Injunction issued by the trial court and ordering the dismissal of the case before the trial court, the Supreme Court held that "[t]he questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops." They were issued pursuant to the CIR's power under Section 245[33] of the Tax Code "to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes." The Court held that under R.A. No. 1125 (An Act Creating the Court of Tax Appeals), as amended, such rulings of the CIR are appealable to the CTA.

In the case at bar, the assailed revenue regulations and revenue memorandum circulars are actually rulings or opinions of the CIR on the tax treatment of motor vehicles sold at public auction within the SSEZ to implement Section 12 of R.A. No. 7227 which provides that "exportation or removal of goods from the territory of the [SSEZ] to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines." They were issued pursuant to the power of the CIR under Section 4 of the National Internal Revenue Code,[34] *viz*:

Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.— **The power to interpret the provisions**

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[33] Now Section 244 of the National Internal Revenue Code, as amended by R.A. No. 8424, which provides that "[t]he Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code."

[34] As amended by R.A. No. 8424, otherwise known as the "Tax Reform Act of 1997," which took effect on January 1, 1998.

of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.** (*emphases supplied)*

Petitioners point out that the CA based its decision on Section 7 of R.A. No. 1125 that the CTA "shall exercise exclusive appellate jurisdiction to review *by appeal*…" decisions of the CIR. They argue that in the instant case, there is no decision of the respondent CIR on any disputed assessment to speak of as what is being questioned is purely the authority of the CIR to impose and collect value-added and excise taxes.

Petitioners' failure to ask the CIR for a reconsideration of the assailed revenue regulations and RMCs is another reason why the instant case should be dismissed. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought.[35] The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to

[35] *National Irrigation Administration v. Enciso*, G.R. No. 142571, May 5, 2006, 489 SCRA 570, 576; *Metro Drug Distribution, Inc. v. Metro Drug Corporation Employees Association-Federation of Free Workers*, G.R. No. 142666, September 26, 2005, 471 SCRA 45, 58 *citing Ambil, Jr. v. Commission on Elections*, G.R. No. 143398, 25 October 2000, 344 SCRA 372.

decide the matter itself correctly and prevent unnecessary and premature resort to the court.[36]

Petitioners' insistence for this Court to rule on the merits of the case would only prove futile. Having declared the court *a quo* without jurisdiction over the subject matter of the instant case, any further disquisition would be *obiter dictum*.

IN VIEW WHEREOF, the petition is *DENIED*.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

EN BANC

[G.R. No. 164542. December 18, 2007]

ZENAIDA R. LARAÑO, in her own behalf and as attorney-in-fact of Metropolitan Waterworks and Sewerage System Retirees, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; LAW ON PUBLIC OFFICERS; EXECUTIVE ORDER NO. 286 REORGANIZED THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM AND LOCAL WATER UTILITIES ADMINISTRATION (LWUA); PAYMENT OF BENEFITS, RECOGNIZED.— Sec. 7 of RA No. 8041 authorized the

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[36] *Zabat v. CA*, G.R. No. 122089, August 23, 2000, 338 SCRA 551, 560 *citing Jariol v. Commission on Elections*, G.R. No. 127456, March 20, 1997, 270 SCRA 255, 262.

President of the Republic to reorganize MWSS and LWUA. Pursuant to this mandate, then President Ramos issued **EO No. 286** to reorganize MWSS and LWUA wherein **Sec. 6** thereof provided for the **payment of "such benefits as may be determined by existing laws" to any official or employee who may be phased out by reason of the reorganization.** The same provision directed MWSS, LWUA and DBM "to study and propose **schemes or measures to provide personnel who shall voluntarily resign from the service incentives and other benefits,** including the possibility of accelerating the application of the revised compensation package under the Salary Standardization Law, Republic Act No. 6758." Pursuant to the directive that included a provision that the recommendation be submitted to the President within thirty (30) days from the effectivity of EO No. 286, MWSS submitted to then Executive Secretary Torres on April 17, 1996 its Revised ERIP for approval of the President.

2. ID.; ID.; ID.; REVISED EARLY RETIREMENT INCENTIVE PACKAGE (ERIP); OFFICIALS AND EMPLOYEES WHO MAY BE AFFECTED BY REORGANIZATION SHALL BE ENTITLED TO SEPARATION PAY; CLARIFIED.— Under item A of the proposed Revised ERIP, it is clear that s**eparation pay** shall be paid to **officials and employees who may be affected by the reorganization** at the rates of 1.0, 1.5 and 2.0 times basic pay for services rendered from the corresponding number of years: 1-20, 21-30, and 31 and above, respectively. In addition, Item C authorizes payment of premium of 0.5 month per year of service to **affected regular officials and employees,** with emphasis on allowance for other GOCCs and GFIs in adopting their own **separation packages** with incentives and premium over and above the existing **retirement benefits.** Both premiums under Items A and C refer to **separation pay for affected regular officials and employees.** This proposed Revised ERIP was recommended for approval by then Executive Secretary Torres on July 10, 1996 and approved by then President Ramos on July 19, 1996. The words of recommendation as approved were categorical, thus: 8. After review, taking into consideration the **similar incentive/ separation benefits** granted by the NPC, DBP, CB and PNB, we find the within ERIP proposal of MWSS to be in order. Hence, we recommend its approval by the President. Indubitably,

the proposed Revised ERIP of MWSS, as recommended by the Executive Secretary and approved by the President insofar as it concerned petitioners, referred **only to separation benefits to affected officials and employees of MWSS.** Consequently, officials and employees **entitled to be paid their retirement benefits** are those (1) affected by the reorganization of MWSS who had availed themselves of and paid the Revised ERIP and (2) qualified to retire under existing laws such as RA No. 1616. That the guidelines implementing the Revised ERIP contained a provision that "[t]he ERIP to be paid by MWSS to officials and employees qualified to retire shall be the difference between the incentive package and the retirement benefit under any existing retirement law (RA 1616, 1146 or 660)" is not contrary to this pronouncement. The provision applies to MWSS officials and employees **qualified to retire but not affected by the reorganization,** in consonance with the directive in EO No. 286 "to study and propose schemes or measures **to provide personnel who shall voluntarily resign from the service incentives and other benefits.**" Nevertheless, even assuming otherwise, it must be emphasized that, as guidelines, they should not and could not change the correct and clear import of the provisions of the law from which they are based. Well-settled is the rule that implementing guidelines cannot expand or limit the provision of the law it seeks to implement. Otherwise, it shall be considered *ultra vires*. In fine, officials and employees of MWSS who were affected by its reorganization and qualified to retire under existing laws such as RA No. 1616 are entitled to claim retirement benefits, notwithstanding their receipt of benefits under the Revised ERIP of MWSS. Whereas, officials and employees of MWSS who were not affected by its reorganization but voluntarily retired, being qualified for retirement, are entitled to receive the incentive under the Revised ERIP to the extent of its difference from the retirement benefit under any existing retirement law such as RA No. 1616. This does not run contrary to the provision on Exclusiveness of Benefits under the GSIS law: Whenever other laws provide similar benefits for the same contingencies covered by this Act, the member who qualifies to the benefits shall have the option to choose which benefits will be paid to him. However, if the benefits provided by the law chosen are less than the benefits provided under this Act, the GSIS shall pay only the difference. The provision applies to the second category of

MWSS officials and employees, *i.e.*, those who were qualified to retire but not affected by its reorganization. Verily, petitioners affected by the reorganization who are claiming retirement benefits under RA No. 1616 must hereafter submit their claims to the GSIS with proper bases; *i.e.,* that their positions in MWSS were phased out or otherwise affected by the reorganization and that, through the presentation of their service records, they are entitled to retirement benefits under RA No. 1616.

APPEARANCES OF COUNSEL

Donardo S. Donato for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PUNO, *C.J.*:

This petition on *certiorari* assails Decision No. 2003-082 dated May 22, 2003[1] and Resolution No. 2004-015 dated June 24, 2004[2] of respondent Commission on Audit (COA) that denied the claim for retirement benefits under Republic Act No. 1616[3] (RA No. 1616) of petitioners Zenaida R. Laraño and other Metropolitan Waterworks and Sewerage System (MWSS) retirees after receiving their benefits under the Revised Early Retirement Incentive Package (Revised ERIP) of MWSS.

The facts of the case are not disputed.

On June 7, 1995, Republic Act No. 8041 (RA No. 8041), otherwise known as the "*National Water Crisis Act of 1995,*" was signed into law. It provided, *inter alia* —

[1] Penned by Chairman Guillermo N. Carague and concurred in by Commissioners Raul C. Flores and Emmanuel M. Dalman, Annex "A", *rollo*, pp. 29-34.

[2] Penned by Chairman Guillermo N. Carague and concurred in by Commissioner Emmanuel M. Dalman, Annex "B", *ibid.*, pp. 35-36.

[3] An Act Further Amending Section Twelve of Commonwealth Act Numbered One Hundred Eighty-Six, As Amended, By Prescribing Two Other Modes of Retirement And For Other Purposes.

Section 7. *Reorganization of the Metropolitan Waterworks and Sewerage System (MWSS) and the Local Waterworks and Utilities Administration (LWUA).* – Within six (6) months from the approval of this Act, the President of the Republic is hereby empowered to revamp the executive leadership and reorganize the MWSS and the LWUA, including the privatization of any or all segments of these agencies, operations or facilities if necessary, to make them more effective and innovative to address the looming water crisis. For this purpose, the President may abolish or create offices, transfer functions, equipment, properties, records and personnel; institute drastic cost-cutting and other related measures to carry out the said objectives. Moreover, in the implementation of this provision, the prescriptions of Republic Act No. 7430, otherwise known as the "Attrition Law," shall not apply. Nothing in this section shall result in the dimunition of the present salaries and benefits of the personnel of the MWSS and the LWUA: *Provided,* That any official or employee of the said agencies who may be phased out by reason of the reorganization authorized herein shall be entitled to such benefits as may be determined by existing laws. x x x

On December 6, 1995, then President Fidel V. Ramos, issued Executive Order No. 286 (EO No. 286), reorganizing the MWSS and the LWUA. Section 6 thereof provides, thus:

Section 6. *Separation Pay.* – Any official or employee of the MWSS and LWUA who may be phased out by reason of the reorganization shall be entitled to such benefits as may be determined by existing laws. For this purpose, the MWSS, LWUA and DBM are hereby directed to study and propose schemes or measures to provide personnel who shall voluntarily retire from the service incentives and other benefits, including the possibility of accelerating the application of the revised compensation package under the Salary Standardization Law, Republic Act No. 6758. The recommendation should be submitted to the President not later than thirty (30) days from the date hereof.

On April 17, 1996, MWSS submitted to then Executive Secretary Ruben Torres the following Revised ERIP[4] for approval by the President.

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[4] Annex "E", *rollo*, pp. 174-176.

April 17, 1996

Hon. RUBEN D. TORRES
Executive Secretary
Office of the President
Malacanang, Manila

Dear Secretary Torres:

After consultations with the Department of Budget and Management required under Executive Order No. 286 (Reorganization of MWSS and LWUA and pursuant to the National Water Crisis Act of 1995 (RA 8041), we are submitting for your approval the following revisions of the previously submitted MWSS Early Retirement Incentive Package (ERIP) with corresponding justifications to wit:

A. Officials and employees who may be affected by the Reorganization shall be paid the ERIP on the basis of the monthly basic salary at the designated salary step as of December 31, 1995 based on the full implementation of the salary rates authorized under Joint Senate and House of Representatives Resolution (JR) No. 1, s. 1994 (SSL II), computed in accordance with existing retirement laws as follows:

1-20 years	=	1.0 x Basic Pay
21-30 years	=	1.5 x Basic Pay
31 and above	=	2 x Basic Pay

The National Water Crisis Act expressly provides for payment of separation pay benefits as may be determined by existing laws to any official or employee who may be affected by the Reorganization

Full implementation of the Salary Standardization Law II (SSL II) on the designated salary step as of December 31, 1995 under JR No. 1 is hereby proposed as the basis of the ERIP. The National Power Corporation (NPC) was allowed to adopt its own separation package based on its new pay plan, way ahead of the SSL II implementation.

B. Regular employees who shall be affected by the reorganization and not qualified to retire under any of the existing retirement laws, shall be entitled to one (1) month basic salary for every year of service at the

designated salary step as of December 31, 1995 based on the full implementation of the SSL II.

This is consistent with Sec. 9 of RA 6656 otherwise known as the Reorganization Law, which provides that:

"xxx Unless also separated for cause, all officers and employees, including casuals and temporary employees, who have been separated pursuant to reorganization shall, if entitled thereto, be paid the appropriate separation pay and retirement benefit and other benefits under existing laws. Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of serv[ice]. xxx"

C. Additional premium of 0.50 month p[er] year of service based on standardized salary rate at the designated salary step as of December 31, 1995 shall be granted to affected regular officials and employees.

To ensure smooth implementation of their respective reorganization, other GOCCs and GFIs such as the National Power Corporation (NPC), Development Bank of the Philippines (DBP), Bangko Sentral ng Pilipinas (BSP), and Philippine National Bank (PNB) were earlier allowed to adopt their own separation packages with incentives and premium over and above the existing retirement benefits. (Copy of matrix attached).

D. Casual employees who shall be affected by the Reorganization shall be entitled to one (1) month basic salary for every year of service, at the designated salary step as of December 31, 1995 based on the full implementation of the SSL II salary rates.

This is also consistent with Section 9 of RA 6656 (Reorganization Law), which specifically provides a separation gratuity for casual and temporary employees in the amount equivalent to one (1) month salary for every year of service.

E. All allowances and benefits previously received with "subject to refund" colatilla shall not be deducted from the ERIP gratuity and other valid claims of affected officials and employees.

> Sec. 7 of RA 8041 (National Water Crisis Act) provides that "Nothing in this section shall result in the diminution of the present salaries and benefits of the personnel of the MWSS (and the LWUA).
>
> To deduct such benefits from the separation and compensation packages will be in violation of the aforementioned provision.

Further, pursuant to Executive Order No. 311 which revokes the listing of MWSS as a GOCC, and paves the way towards its privatization, we request the waiver of the provisions of DBM-Corporate Compensation Circular No. 11, s. of 1996, covering the implementation of the Revised Compensation and Classification Plan in Government Owned and/or Controlled Corporation[s] (GOCCs) and Government Financial Institutions (GFIs). The waiver shall enable the accelerated implementation of SSL II for MWSS, in conjunction with its reorganization.

In view thereof, the MWSS seeks authority to implement the new/revised rates of the Salary Schedule contained in Senate [and] House of Representatives Joint Resolution No. 1 (SSL II), in two tranches as follows:

> First – effective not earlier than July 1, 1995, an amount as may be determined by the governing Board of the MWSS, provided such amount shall in no case exceed 30% of the unimplemented balance of said Salary Schedule;
>
> Second – the remaining balance to be implemented not earlier than May 1, 1996 for personnel availing of the ERIP and upon reappointment for those to be retained in the reorganization.

We hope for your utmost support and priority attention on the above recommendations considering the timetable set forth in Executive Order No. 286, and to ensure the successful implementation of the MWSS Reorganization.

Very truly yours,

(signed)
ANGEL L. LAZARO III, Ph.D.
Administrator

In his Memorandum of July 10, 1996,[5] Executive Secretary Torres recommended to President Ramos the approval of the Revised ERIP of MWSS, *viz.*:

MEMORANDUM FOR THE PRESIDENT

SUBJECT : Revised Early Retirement Incentive Package (ERIP) of the Metropolitan Waterworks and Sewerage System (MWSS)

DATE : 10 July 1996

- -

1. MWSS Administrator Angel L. Lazaro III submits for the President's approval, the within revised ERIP of the agency's employees.

2. The said revised MWSS ERIP proposal has the following features:

   The basic salary, for purposes of computing separation/ retirement benefits shall be based on the equivalent salary grade/step assignment of the employee in the Salary Schedule prescribed under Joint Resolution (JR) No. 1;

   Service credit shall be in accordance with "Existing Retirement Laws;"

   On top of the above regular benefits, MWSS proposes a premium equivalent to 0.50 MONTH per year of service, based on salary rates per JR No. 1;

   Casual personnel who will be affected by said reorganization shall also be entitled to separation benefits;

   All allowances and benefits granted without appropriate legal basis and "subject to refund" shall not be deducted from the benefits due the employee;

   That the MWSS will be allowed to accelerate the full implementation of the Salary Schedule under JR No. 1 similar to what was authorized for other government financial institutions.

3. On the proposed premium equivalent to 0.50 month per year of service, DBM Secretary Enriquez opines that the same

[5] Annex "J", *ibid.*, pp. 126-128.

is not legally feasible adding that "the consequences of seeming adhocracy in matters as sensitive and as far reaching as separation benefits does not reflect well on government's overall sense of direction and fairness."

4. Similarly, on the issue of "non-deduction" or "non-refund" of all allowances and benefits previously granted to employees without legal basis, DBM is of the view that this will be a classic case of government corporation blatantly violating existing laws and regulation thereby causing irreparable doubt on government's enforcement ability. Worse, it would be totally unfair to those who have diligently followed the rules.

5. On the acceleration of the full implementation of Salary Schedule under JR No. 1, the DBM says that the MWSS failed to pass almost all of the conditions *sine qua non* prescribed therefor.

6. In view of the foregoing observations, the DBM, **recommends** the following:

   6.1 The computation of separation benefits may be allowed on the basis of the **fully accelerated salary rates** and only for those who will be separated from the corporation as a result of the reorganization.

   6.2 Illegal benefits and allowances granted by management may not be deducted from the benefits of those who will be separated from the service by virtue of the reorganization.

   6.3 In the case of those who choose to leave the service but those positions have been retained in the reorganized plantilla, they may be entitled to the same benefits as those reorganized out.

7. On the above objection of the DBM on the proposal to grant a premium equivalent of 0.50 month per year of service, we wish to inform the President that the following government corporations granted incentive/separation benefits to their employees who were affected by reorganization as follows:

   NPC - maximum of 1.5 months salary for every year of service

DBP - maximum of 1.75 month salary for every year of service plus P2,000.00 or service award for every year of service on top of regular retirement gratuity/annuity under existing laws.

CB - maximum of 1.22 months salary for every year of service plus 10% premium if availed within reckoning period

PNB - maximum of 1.75 months salary plus ₱2,000.00 for every year of service on top of regular retirement gratuity.

8. After review, taking into consideration the similar incentive/separation benefits granted by the NPC, DBP, CB and PNB, we find the within ERIP proposal of MWSS to be in order. Hence, we recommend its approval by the President.

(signed)
TORRES

On July 19, 1996, President Ramos approved the recommendation of Executive Secretary Torres.[6]

On July 24, 1996, Executive Secretary Torres informed the Secretary of Budget and Management, the Secretary of Public Works and Highways and the Administrator of MWSS of the approval by the President of the Revised ERIP of the MWSS.[7]

On July 25, 1996, MWSS issued its Guidelines[8] for the Implementation of the Revised ERIP pursuant to EO No. 286. The Guidelines provided, *inter alia*, that the Revised ERIP for affected permanent officials and employees of the MWSS who had served at least one (1) year shall be computed as follows:

Years of Service	Equivalent ERIP Gratuity
First 20 years	1.5 per year x Basic Monthly Pay
20 to 30 years	2.0 per year x Basic Monthly Pay
Over 30 years	2.5 per year x Basic Monthly Pay

[6] *Id.,* see stamp of approval with signature of the President on p. 128.

[7] Memorandum, *rollo*, p. 125.

[8] Memorandum Circular No. 26-96, Annex "K", *ibid.*, p. 129.

On August 21, 1996, the MWSS issued *Memorandum Circular No. 26-96B*[9] providing for the payment of the Revised ERIP and Terminal Leave with detailed procedure[10] in processing the claims.

MWSS was thereafter reorganized and affected employees were paid their corresponding benefits under the Revised ERIP.

Subsequently, petitioner Zenaida Laraño and other retirees who had availed themselves of the benefits under the Revised ERIP and who had rendered more than twenty (20) years of service filed their claims for payment of retirement benefits under RA No. 1616.

MWSS referred the matter of their claims to the Office of the Government Corporate Counsel (OGCC) for legal opinion. In its Opinion No. 224, Series of 2000, and Opinion No. 113, Series of 2001 dated October 11, 2000 and June 25, 2001, respectively, the OGCC advised MWSS that petitioner and other retirees were entitled to the payment of gratuity benefits under RA No. 1616 over and above the benefits granted under the Revised ERIP. It submitted that the benefits under the Revised ERIP received by the affected officials and employees were pure and simple separation pay, totally different and distinct from the retirement gratuity under RA No. 1616.

Relying on the OGCC legal opinions and after due deliberations between MWSS Management and its Board of Trustees, MWSS approved the initial payment under RA No. 1616 of gratuity benefits equivalent to fifteen percent (15%) to petitioner and other retirees who had previously availed themselves of the benefits under the Revised ERIP.[11]

On March 4, 2002, the COA Resident Auditor of MWSS disallowed[12] the payments of gratuity benefits on the following grounds:

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[9] Annex "L", *id.*, pp. 132-133.

[10] *Rollo*, pp. 134-136.

[11] MWSS Board of Trustees, Board Resolution No. 595-2001, dated November 30, 2001.

[12] Notice of Disallowance No. 2002-001-05(02), Atty. Janet Dubaldo Nacion, State Auditor V.

(1) The MWSS-ERIP is the retirement plan at the time of the separation/retirement of affected employees as a result of the MWSS privatization pursuant to Section 6 of Executive Order No. 286 dated December 16, 1995 and such includes an incentive over and above the gratuity benefits under RA 1616;

(2) The affected MWSS employees could not invoke the principle of "equal protection clause" citing the double gratuity granted by the GSIS to its retiring employees;

(3) There were no available funds for the purpose since the payment of gratuity benefits was not included in the approved Corporate Operating Budget (COB) for 2002, thus the payment would run counter to Section 4 of Presidential Decree No. 1445 (State Audit Code of the Philippines) and Section 1 (c) of RA 1616 which require that such retirement benefits shall be paid out of appropriation or of its savings;

(4) Utilizing the P380 Million short-term loan with PNB and LBP for the payment of the disallowed benefits constitutes technical malversation; and

(5) The deduction equivalent to ten percent (10%) of the gross claim representing administrative/legal expenses incurred in favor of one Mrs. Zenaida Larano, by virtue of special power of attorney, is illegal

On May 15, 2002, MWSS moved for reconsideration[13] of the Notice of Disallowance arguing that (1) there was no double payment of the gratuity benefits under RA No. 1616 to concerned MWSS officers and employees; (2) there were available funds for the purpose and charging the same against the P380 million short-term loan with the PNB and LBP was not technical malversation; (3) the deduction of 10% from each gross claim as administrative/legal expenses was with proper legal basis, and its propriety or legality was beyond the powers and functions of the COA; and (4) it was fully convinced of the legality of subject payments after due consultation with the OGCC, its statutory counsel.

On May 22, 2002, the COA Resident Auditor of MWSS referred the motion for reconsideration to the COA Director,

[13] Annex "B", *id.*, pp. 76-91.

Corporate Audit Office II, reiterating her bases for the disallowance and recommending that the motion be denied for lack of merit.[14]

In his letter of June 10, 2002, Government Corporate Counsel Amado D. Valdez informed the COA Resident Auditor that the OGCC considered the latter's referral of MWSS' motion for reconsideration to the COA Director, Corporate Audit Office II, as denial of the motion and as an appeal before the Office of the Director; thus, it was filing its Notice of Appeal to obviate any technicality.[15]

On June 28, 2002, COA Director Gloria S. Cornejo, Corporate Audit Office II, denied the motion for reconsideration/appeal and affirmed the disallowance by the COA Resident Auditor.[16]

On September 27, 2002, MWSS appealed the decision of COA Director Cornejo before respondent COA, by way of petition for review.[17]

In its May 22, 2003 Decision No. 2203-082,[18] respondent COA denied the appeal on the basis of a cursory examination of EO No. 286 and MWSS Memorandum Circular No. 26-96 dated July 25, 1996 that "clearly indicate that the MWSS – Early Retirement Incentive Package was intended to supplement the benefits the separated employee may receive from the GSIS." Respondent COA emphasized the provisions of Sec. 6 of EO No. 286:

> Sec. 6. Separation pay. – Any official and employee of the MWSS and LWUA who may be phased out by reason of the reorganization shall be entitled to such <u>benefits as may be determined by existing laws</u>.

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[14] 1st Indorsement, Atty. Janet Dublado Nacion, State Auditor V, Corporate Auditor, Annex "C", *id.*, pp. 92-98.

[15] Sec. 2, Rule IV, 1997 Revised Rules of Procedure, Commission on Audit.

[16] 2nd Indorsement, Gloria S. Cornejo, Director, Annex "G", *rollo*, pp. 102-107.

[17] Annex "D", *id.*, pp. 47-69.

[18] See note 1.

and MWSS Memorandum Circular No. 26-96:

> The ERIP to be paid by MWSS to officials or employees qualified to retire shall be the difference between the incentive package and the retirement benefit under any existing retirement law (RA 1616, 1146 or 660).

Respondent COA held that taking the pertinent provisions together led to but one interpretation, *i.e.*, affected employees had the option to retire under existing retirement laws or under the Revised ERIP of the MWSS. In addition, respondent COA stressed that retirement/separation benefits extended by MWSS to its separated employees were covered by the provision on Exclusiveness of Benefits under the GSIS law:

> Whenever other laws provide similar benefits for the same contingencies covered by this Act, the member who qualifies to the benefits shall have the option to choose which benefits will be paid to him. However, if the benefits provided by the law chosen are less than the benefits provided under this Act, the GSIS shall pay only the difference.[19]

On June 30, 2003, MWSS moved for reconsideration.[20]

Meanwhile, on September 11, 2003, Genaro C. Bautista, and petitioner Zenaida Laraño in her personal capacity and in behalf of other claimants under RA No. 1616 moved for intervention as beneficiaries thereof.[21]

On June 24, 2004, respondent COA in its Resolution No. 2004-015[22] disposed:

> WHEREFORE, premises considered, there being no new and material evidence that would warrant a reversal or modification of COA Decision No. 2003-082, the instant motion for reconsideration has to be, as it is hereby denied with FINALITY.

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[19] Sec. 45, Presidential Decree No. 1146, as amended by Republic Act No. 8291.

[20] Annex "F", *id.*, pp. 160-168.

[21] Annex "E", *id.*, pp. 156-159.

[22] See note 2.

The motion for intervention filed was not acted upon.

On July 12, 2004, MWSS Administrator wrote petitioner Laraño,[23] thus:

Subject: COA Resolution No. 2004-015

Dear Ms. Larano:

Relative to the above mentioned case please be advised that we officially received copy of COA Resolution No. 2004-015 on July 8, 2004.

When the matter was brought to the attention of the MWSS Board of Trustees, the Board posed that, to wit:

> *"the retirees concerned to secure their own counsel and file the necessary action/certiorari case in the Supreme Court if they are still interested to pursue the case"*

With the said development, MWSS can no longer pursue the case. However, we are not unmindful of the repercussion of the said Resolution to you and your members' interests. It is for this reason that MWSS poses no objection to your bringing the matter to the Supreme Court for the final adjudication thereof. As your former employer, MWSS will assist in whatever way legally feasible under the circumstances.

Very truly yours,

(signed)
ORLANDO C. HONDRADE
Administrator

On August 6, 2004, petitioner Laraño, in her own behalf and as attorney-in-fact of the MWSS retirees, filed before the Court this petition assailing the decision and resolution of respondent COA that the payment by the MWSS of retirement benefits under RA No. 1616 to petitioner and other retirees who were previously paid their benefits under the Revised ERIP of MWSS constitutes double compensation.

Pertinent to the determination of petitioners' right or entitlement to their retirement benefits under RA No. 1616 over and above

[23] Annex "G", *id.*, p. 181.

the benefits they already received from the Revised ERIP of MWSS are (1) Sec. 7 of RA No. 8041, (2) Sec. 6 of EO No. 286, (3) the April 17, 1996 Revised ERIP submitted by MWSS and (4) the July 10, 1996 Memorandum by then Executive Secretary Torres as approved by then President Ramos on July 19, 1996. It is emphasized here that what must be established are the rights of a specific class of claimants, *i.e.*, officials and employees of MWSS who are qualified to retire under RA No. 1616.

Sec. 7 of RA No. 8041 authorized the President of the Republic to reorganize MWSS and LWUA. Pursuant to this mandate, then President Ramos issued **EO No. 286** to reorganize MWSS and LWUA wherein **Sec. 6** thereof provided for the **payment of "such benefits as may be determined by existing laws" to any official or employee who may be phased out by reason of the reorganization**. The same provision directed MWSS, LWUA and DBM "to study and propose **schemes or measures to provide personnel who shall voluntarily resign from the service incentives and other benefits**, including the possibility of accelerating the application of the revised compensation package under the Salary Standardization Law, Republic Act No. 6758."

Pursuant to the directive that included a provision that the recommendation be submitted to the President within thirty (30) days from the effectivity of EO No. 286, MWSS submitted to then Executive Secretary Torres on April 17, 1996 its Revised ERIP for approval of the President. The relevant provisions thereof state:

xxx xxx xxx

A. **Officials and employees who may be affected by the Reorganization shall be paid the ERIP** on the basis of the monthly basic salary at the designated salary step as of December 31, 1995 based on the full implementation of the salary rates authorized under Joint Senate and House of Representatives Resolution (JR) No. 1, s. 1994 (SSL II), computed in accordance with existing retirement laws as follows:

1-20 years = 1.0 x Basic Pay

21-30 years	=	1.5 x Basic Pay
31 and above	=	2 x Basic Pay

The National Water Crisis Act expressly provides for **payment of separation pay benefits** as may be determined by existing laws to any official or employee who may be affected by the Reorganization

Full implementation of the Salary Standardization Law II (SSL II) on the designated salary step as of December 31, 1995 under JR No. 1 is hereby proposed as the basis of the ERIP. The National Power Corporation (NPC) was allowed to adopt its own separation package based on its new pay plan, way ahead of the SSL II implementation.

xxx xxx xxx

C. **Additional premium of 0.50 month p[er] year of service** based on standardized salary rate at the designated salary step as of December 31, 1995 **shall be granted to affected regular officials and employees**.

To ensure smooth implementation of their respective reorganization, **other GOCCs and GFIs** such as the National Power Corporation (NPC), Development Bank of the Philippines (DBP), Bangko Sentral ng Pilipinas (BSP), and Philippine National Bank (PNB) **were earlier allowed to adopt their own separation packages with incentives and premium over and above the existing retirement benefits**. (Copy of matrix attached).

Under item A of the proposed Revised ERIP, it is clear that **separation pay** shall be paid to **officials and employees who may be affected by the reorganization** at the rates of 1.0, 1.5 and 2.0 times basic pay for services rendered from the corresponding number of years: 1-20, 21-30, and 31 and above, respectively. In addition, Item C authorizes payment of premium of 0.5 month per year of service to **affected regular officials and employees**, with emphasis on allowance for other GOCCs and GFIs in adopting their own **separation packages** with incentives and premium **over and above** the *existing retirement benefits*.

Both premiums under Items A and C refer to **separation pay for affected regular officials and employees.**

This proposed Revised ERIP was recommended for approval by then Executive Secretary Torres on July 10, 1996 and approved by then President Ramos on July 19, 1996. The words of recommendation as approved were categorical, thus:

> 8. After review, taking into consideration the **similar incentive/separation benefits** granted by the NPC, DBP, CB and PNB, we find the within ERIP proposal of MWSS to be in order. Hence, we recommend its approval by the President.

Indubitably, the proposed Revised ERIP of MWSS, as recommended by the Executive Secretary and approved by the President insofar as it concerned petitioners, referred **only** to **separation benefits to affected officials and employees of MWSS**. Consequently, officials and employees **entitled to be paid their retirement benefits** are those (1) affected by the reorganization of MWSS who had availed themselves of and paid the Revised ERIP and (2) qualified to retire under existing laws such as RA No. 1616.

That the guidelines implementing the Revised ERIP contained a provision that "[t]he ERIP to be paid by MWSS to officials and employees qualified to retire shall be the difference between the incentive package and the retirement benefit under any existing retirement law (RA 1616, 1146 or 660)" is not contrary to this pronouncement. The provision applies to MWSS officials and employees **qualified to retire but not affected by the reorganization**, in consonance with the directive in EO No. 286 "to study and propose schemes or measures **to provide personnel who shall voluntarily resign from the service incentives and other benefits**." Nevertheless, even assuming otherwise, it must be emphasized that, as guidelines, they should not and could not change the correct and clear import of the provisions of the law from which they are based. Well-settled is the rule that implementing guidelines cannot expand or limit the provision of the law it seeks to implement. Otherwise, it shall be considered *ultra vires*.

In fine, officials and employees of MWSS who were affected by its reorganization and qualified to retire under existing laws such as RA No. 1616 are entitled to claim retirement benefits, notwithstanding their receipt of benefits under the Revised ERIP of MWSS. Whereas, officials and employees of MWSS who were not affected by its reorganization but voluntarily retired, being qualified for retirement, are entitled to receive the incentive under the Revised ERIP to the extent of its difference from the retirement benefit under any existing retirement law such as RA No. 1616. This does not run contrary to the provision on Exclusiveness of Benefits under the GSIS law:

> Whenever other laws provide similar benefits for the same contingencies covered by this Act, the member who qualifies to the benefits shall have the option to choose which benefits will be paid to him. However, if the benefits provided by the law chosen are less than the benefits provided under this Act, the GSIS shall pay only the difference.[24]

The provision applies to the second category of MWSS officials and employees, *i.e.*, those who were qualified to retire but not affected by its reorganization.

Petitioners herein alleged that they already received their benefits under the Revised ERIP of the MWSS. Necessarily, what must be determined now is what the records do not show — who among them were affected by the reorganization of the MWSS, and who were not affected but nonetheless opted to retire. In other words, what must be shown through competent documents/evidence are the positions phased out by reason of the reorganization, and who among herein petitioners were holding the positions. This must be done, notwithstanding that subsequent to its reorganization, MWSS ceased to exist. Petitioners, at the time of the reorganization, acquired rights that had attained vested status – rights that may not be lawfully taken away from them.

Verily, petitioners affected by the reorganization who are claiming retirement benefits under RA No. 1616 must hereafter

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[24] See note 19.

submit their claims to the GSIS with proper bases; *i.e.*, that their positions in MWSS were phased out or otherwise affected by the reorganization and that, through the presentation of their service records, they are entitled to retirement benefits under RA No. 1616.

IN VIEW WHEREOF, the petition is partially *GRANTED*. Petitioners who were affected by the reorganization of Metropolitan Waterworks and Sewerage System and qualified to retire under Republic Act No. 1616 are entitled to receive their retirement benefits thereunder.

The Government Service Insurance System is DIRECTED (1) to EXPEDITE the payment of the claims of petitioners affected by the reorganization and qualified to retire under RA No. 1616; and (2) to SUBMIT to this Court its REPORT of compliance within ten (10) days therefrom.

SO ORDERED.

Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and *Leonardo-de Castro, JJ.,* concur.

Carpio, J., on official leave.

FIRST DIVISION

[G.R. No. 166878. December 18, 2007]

CITIBANK, N.A., *petitioner, vs.* **RUFINO C. JIMENEZ, SR.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT IF AFFIRMED BY THE COURT OF APPEALS, BINDING UPON THE SUPREME COURT; SUSTAINED.—** Basic is the rule that factual findings of the trial court, affirmed by the Court of Appeals, are binding and conclusive upon this Court. As elucidated in **Sta. Ana, Jr. v. Hernandez,** *viz.*: The credibility of witnesses and the weighing of conflicting evidence are matters within the exclusive authority of the Court of Appeals xxx Both the Judiciary Act [now The Judiciary Reorganization Act of 1980] xxx and the Rules of Court xxx only allow a review of decisions of the Court of Appeals on questions of law; and numerous decisions of this Court have invariably and repeatedly held that findings of fact by the Court of Appeals are conclusive and not reviewable by the Supreme Court xxx Barring, therefore, a showing that the findings complained of are totally devoid of support in the record, and that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand, for this Court is not expected or required to examine and contrast the oral and documentary evidence submitted by the parties. As pointed out by former Chief Justice Moran in his Comments on the Rules of Court xxx, the law creating the Court of Appeals was intended mainly to take away from the Supreme Court the work of examining the evidence, and confine its task for the determination of questions which do not call for the reading and study of transcripts containing the testimony of witnesses.
2. **ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; ISSUE THEREOF MUST DEAL WITH QUESTIONS OF LAW; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.—** An issue is factual when the doubt or difference arises as to the truth or falsehood of alleged facts, or when

the query invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation. On the other hand, an issue is one of law when the doubt or difference arises as to what the law is on a certain state of facts. The issues of whether petitioner received respondent's request for transfer by facsimile transmission or not and whether it was negligent in allowing the pretermination by Basilia Templa notwithstanding such receipt, are factual.

3. **CIVIL LAW; DAMAGES; PRESENCE OF NEGLIGENCE CANNOT EXCUSE A BANK FROM LIABILITY; UPHELD.—** Petitioner cannot be excused from negligence in disregarding the faxed transmission. xxx xxx ***T*here are now advanced facilities for communication especially in computerized systems of accounts. Ways and means, like fax transmissions, are available which make it very easy for one bank to communicate with a foreign branch. This notwithstanding, defendant Citibank did not care to do anything further regarding the fax message.** xxx The Court of Appeals added: xxx [B]y the nature of its functions, a bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. xxx [I]n dealing with its depositors, a bank should exercise its functions not only with the diligence of a good father of a family but it should do so with the highest degree of care. The banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be very high, if not the highest, degree of diligence.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.

Prospero A. Aname for respondent.

DECISION

PUNO, *C.J.*:

Before us is a petition for review of the decision dated September 14, 2004[1] of the Court of Appeals in CA-G.R. CV No. 58840 affirming with modification that of the Regional Trial Court (RTC) of Marikina City, Branch 273, dated December 29, 1997[2] in Civil Case No. 95-130-MK.[3] The RTC-Marikina City ordered petitioner to pay respondent $10,921.85 or its peso equivalent, representing the value of respondent's Foreign Currency Time Deposit and ₱20,000.00 as attorney's fees. The Court of Appeals deleted the award for attorney's fees.

The antecedent facts are:

In 1991, spouses Rufino C. Jimenez, Sr. and Basilia B. Templa opened a Foreign Currency Time Deposit with petitioner in the amount of $10,000.00 for 360 days with a "roll-over" provision[4] and interest at 5.25% per annum. The corresponding certificate of time deposit was issued to "Jimenez, Rufino C. and/or Jimenez, Basilia T.," with address at 600 Huron Avenue, San Francisco, California.

In 1993, respondent opened an account with Citibank F.S.B., San Francisco, California (Citibank San Francisco). Respondent requested the manager, Mr. Robert S. Ostrovsky, to cause the transfer of the proceeds of the time deposit in Manila, upon its maturity, to his account in San Francisco. A letter requesting the transfer, dated March 24, 1993,[5] was sent by Mr. Ostrovsky to petitioner by mail. Respondent alleged that the letter was likewise faxed to petitioner on April 27, 1993.

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[1] *Rollo*, pp. 108-115.

[2] *Id.* at 319-326.

[3] Entitled *Rufino Jimenez, Sr., represented by Attorney-in-Fact Joselito E. Jimenez v. Citibank N.A. and Basilia B. Templa*.

[4] Under a "roll-over" arrangement, the principal amount and earned interest of the time deposit shall, unless terminated, be automatically "rolled-over" for another 360-day term upon maturity; *rollo*, p. 109.

[5] Exhibit "H" of respondent; *id.* at 132.

In a letter-reply dated May 5, 1993, petitioner informed Mr. Ostrovsky that it cannot comply with the request. Basilia Templa preterminated the time deposit two days previously or on May 3, 1993, and had the proceeds transferred to her newly-opened dollar savings account with petitioner.

On April 3, 1995, respondent sued petitioner and Basilia Templa for damages before the RTC-Marikina City.[6] Respondent alleged that he and Basilia Templa divorced in January 1993; that the transfer of the subject Foreign Currency Time Deposit by his former wife to her personal account with petitioner was fraudulent and malicious since Basilia's share was already given to her prior to the divorce; and that petitioner is jointly and severally liable with Basilia for such fraudulent and malicious transfer considering petitioner's prior receipt of respondent's request for transfer of the same Foreign Currency Time Deposit, by facsimile transmission on April 27, 1993, coursed through Citibank San Francisco.

Petitioner denied receiving the request for transfer by facsimile transmission. On the contrary, petitioner alleged receipt of the request only on May 4, 1993 by mail. By then, Basilia Templa had already preterminated the time deposit. Petitioner claimed that it was justified in allowing the pretermination considering the "and/or" nature of the account which presupposes the authority of either of the joint depositors to deposit or withdraw from the account without the knowledge, consent or signature of the other.

The case against Basilia Templa was archived for failure of the trial court to acquire jurisdiction over her person. Trial ensued against petitioner. During trial, respondent was represented by his son and attorney-in-fact, Joselito E. Jimenez.

On December 29, 1997, decision was rendered in favor of the respondent. The trial court gave credence to respondent's claim that the letter-request for transfer dated March 24, 1993 was sent and received by petitioner by facsimile transmission on April 27, 1993. Petitioner's reason for not acting on the

[6] Docketed as Civil Case No. 95-130-MK; *id.* at 143.

letter-request, as disclosed to Joselito E. Jimenez in a letter dated February 2, 1995[7] in response to the formal inquiry posed by his legal counsel regarding the subject pretermination, was not considered enough to exculpate petitioner from liability. Allegedly, petitioner does not act on faxed transmissions from customers. However, the trial court reasoned that petitioner could have verified the genuineness of the facsimile and deferred action on Basilia Templa's request for pretermination pending such verification. Petitioner was thus adjudged negligent in handling respondent's account and ordered to pay the value of the Foreign Currency Time Deposit, with interests, as well as ₱20,000.00 for attorney's fees.[8]

Petitioner appealed to the Court of Appeals. On September 14, 2004, the Court of Appeals modified the decision of the trial court.[9] The award for attorney's fees was deleted on the ground that no premium should be placed on the right to litigate. Petitioner's motion for reconsideration was denied.[10] Hence, this petition for review.

Petitioner contends that —

I.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT OVERCAME THE BURDEN OF PROOF TO SHOW THAT CITIBANK WAS NEGLIGENT IN ALLOWING THE PRETERMINATION OF THE SUBJECT "AND/OR" ACCOUNT CONSIDERING THAT:

A. CONTRARY TO THE JURISPRUDENTIAL REQUIREMENT LAID DOWN BY THIS HONORABLE COURT, THE COURT OF APPEALS DID NOT CITE ANY SPECIFIC EVIDENCE TO SUPPORT ITS CONCLUSION THAT CITIBANK HAD, IN ANY FORM WHATSOEVER, "PRIOR NOTICE" OF AN "EARLIER REQUEST" TO TRANSFER THE FUNDS FROM THE SUBJECT "AND/

[7] *Id.* at 138-139.

[8] *Supra* note 2.

[9] *Supra* note 1.

[10] Resolution dated January 17, 2005; *rollo*, p. 118.

OR" ACCOUNT TO A NEWLY OPENED CHECKING ACCOUNT IN SAN FRANCISCO.

B. THE COURT OF APPEALS' FINDING OF NEGLIGENCE IS MISTAKENLY PREMISED ON FACTS ALLEGED BUT NOT ESTABLISHED BY THE EVIDENCE ON RECORD, *I.E.*, THAT THE LETTER-REQUEST WAS MADE ON INSTRUCTIONS OF THE RESPONDENT, THAT THE SAME LETTER-REQUEST WAS SENT BY FAX TO CITIBANK ON 27 APRIL 1993, AND THAT THE SAME LETTER-REQUEST WAS RECEIVED BY CITIBANK PRIOR TO THE QUESTIONED PRETERMINATION.

1. NO EVIDENCE, TESTIMONIAL, DOCUMENTARY OR OTHERWISE, WAS OFFERED TO ESTABLISH THAT THE LETTER-REQUEST WAS MADE ON INSTRUCTIONS OF RESPONDENT.

2. NO EVIDENCE, TESTIMONIAL, DOCUMENTARY OR OTHERWISE, WAS OFFERED TO ESTABLISH THAT THE LETTER-REQUEST WAS SENT BY FAX TO, AND RECEIVED BY, CITIBANK ON 27 APRIL 1993.

C. CONTRARY TO THE SETTLED JURISPRUDENTIAL RULINGS LAID DOWN BY THIS HONORABLE COURT, THE COURT OF APPEALS ERRONEOUSLY RELIED, AND THEREBY SANCTIONED THE TRIAL COURT'S ERRONEOUS RELIANCE ON HEARSAY AND INADMISSIBLE EVIDENCE – A HANDWRITTEN NOTATION INTERCALATED IN THE PRINTED LETTER-REQUEST WHICH WAS NOT IDENTIFIED, AUTHENTICATED OR EVEN TESTIFIED ON BY ANY WITNESS.

II.

THE COURT OF APPEALS GRAVELY ERRED, IF NOT ACTED IN EXCESS OF ITS JURISDICTION, WHEN IT SANCTIONED THE TRIAL COURT'S DEPARTURE FROM SETTLED RULES OF PROCEDURE IN ALLOWING, ADMITTING INTO EVIDENCE AND RELYING ON CLEARLY HEARSAY, INCOMPETENT AND UNRELIABLE EVIDENCE—THE "TESTIMONY BY PROXY" OF RESPONDENT'S ATTORNEY-IN-FACT AND SOLE WITNESS

AND UNIDENTIFIED AND UNAUTHENTICATED LETTER-REQUEST. SUCH ALLOWANCE, ADMISSION INTO EVIDENCE AND RELIANCE BY THE TRIAL COURT AND THE COURT OF APPEALS EFFECTIVELY RENDERED NUGATORY AND BREACHED CITIBANK'S RIGHTS OF EFFECTIVE CROSS-EXAMINATION AND DUE PROCESS.

III.

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO CONSIDER THAT THE TRIAL COURT ERRONEOUSLY SHIFTED THE BURDEN OF PROOF TO CITIBANK WHICH BURDEN, AS HELD BY THIS HONORABLE COURT, NECESSARILY LAY WITH RESPONDENT AS PLAINTIFF THEREIN.

IV.

THE WELL-SETTLED JURISPRUDENTIAL RULE IS THAT, IN THE ABSENCE OF ADMISSIBLE, COMPETENT AND CREDIBLE EVIDENCE, THE BURDEN OF GOING FORWARD WITH EVIDENCE DOES NOT SHIFT TO THE DEFENDANT AND, IN SUCH A CASE, THE DEFENDANT IS UNDER NO OBLIGATION TO PROVE HIS EXCEPTION OR DEFENSE. CONTRARY TO SAID PRINCIPLE OF EVIDENCE, THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT, NOTWITHSTANDING THE ABSENCE OF ANY ADMISSIBLE, COMPETENT AND CREDIBLE EVIDENCE TO PROVE TRANSMISSION OF THE LETTER-REQUEST BY FACSIMILE, THE ONUS OF PROVING THAT IT DID NOT RECEIVE THE LETTER-REQUEST BY FAX LAY ON CITIBANK.

V.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT CITIBANK WAS NEGLIGENT IN PRETERMINATING THE SUBJECT "AND/OR" ACCOUNT, CONSIDERING THAT:

A. IT IS UNDISPUTED THAT CITIBANK RECEIVED THE LETTER-REQUEST ONLY BY MAIL AND ONLY AFTER THE PRETERMINATION OF THE SUBJECT "AND/OR" ACCOUNT.

B. GIVEN THE "AND/OR" NATURE OF THE SUBJECT ACCOUNT, CITIBANK WAS UNDER A LEGAL AND

CONTRACTUAL OBLIGATION TO RELEASE THE FUNDS UPON DEMAND OF BASILIA T. JIMENEZ, ONE OF THE CO-ACCOUNT HOLDERS, AND WOULD HAVE BEEN LIABLE FOR BREACH THEREOF HAD IT NOT DONE SO.

VI.

ASSUMING *ARGUENDO* THAT NEGLIGENCE MAY BE ATTRIBUTED TO CITIBANK, THE COURT OF APPEALS GRAVELY ERRED IN NOT MITIGATING DAMAGES IN THIS INSTANCE CONSIDERING THAT RESPONDENT HIMSELF WAS UNDENIABLY GUILTY OF NEGLIGENCE THAT CONTRIBUTED TO, OR EVEN PROXIMATELY CAUSED, THE DAMAGES HE HAD ALLEGEDLY INCURRED.

In sum, the issue involved is whether petitioner bank was guilty of negligence in allowing the pretermination of the Foreign Currency Time Deposit by Basilia Templa and should be held liable for damages to respondent. Resolution of the issue, in turn, hinges on whether petitioner actually received respondent's request for transfer by facsimile transmission *before* the request for pretermination by Basilia.

Both the trial court and the Court of Appeals ruled in favor of the respondent. They concluded that petitioner received respondent's letter-request for transfer *prior* to the request for pretermination by Basilia Templa, hence, was negligent in allowing the pretermination without first verifying the genuineness of the request.

We affirm.

Basic is the rule that factual findings of the trial court, affirmed by the Court of Appeals, are binding and conclusive upon this Court.[11] As elucidated in **Sta. Ana, Jr. v. Hernandez**,[12] *viz.*:

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[11] *Security Bank and Trust Company v. Eric Gan*, G.R. No. 150464, June 27, 2006, 493 SCRA 239 citing *Pleyto v. Lomboy*, G.R. 148737, June 16, 2004, 432 SCRA 329; *Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc.*, G.R. No. 159831, October 14, 2005, 473 SCRA 151.

[12] No. L- 16394, December 17, 1966, 18 SCRA 973.

The credibility of witnesses and the weighing of conflicting evidence are matters within the exclusive authority of the Court of Appeals x x x. Both the Judiciary Act [now The Judiciary Reorganization Act of 1980] x x x and the Rules of Court x x x only allow a review of decisions of the Court of Appeals on questions of law; and numerous decisions of this Court have invariably and repeatedly held that findings of fact by the Court of Appeals are conclusive and not reviewable by the Supreme Court x x x x Barring, therefore, a showing that the findings complained of are totally devoid of support in the record, and that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand, for this Court is not expected or required to examine and contrast the oral and documentary evidence submitted by the parties. As pointed out by former Chief Justice Moran in his Comments on the Rules of Court x x x, the law creating the Court of Appeals was intended mainly to take away from the Supreme Court the work of examining the evidence, and confine its task for the determination of questions which do not call for the reading and study of transcripts containing the testimony of witnesses.[13]

An issue is factual when the doubt or difference arises as to the truth or falsehood of alleged facts, or when the query invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[14] On the other hand, an issue is one of law when the doubt or difference arises as to what the law is on a certain state of facts.[15] The issues of whether petitioner received respondent's request for transfer by facsimile transmission or not and whether it was negligent in allowing the pretermination by Basilia Templa notwithstanding such receipt, are factual.

We find evidentiary support for the factual conclusion of the lower courts. In a letter dated February 2, 1995 addressed to

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[13] *Id.* at 978-979.

[14] *Cheesman v. Intermediate Appellate Court*, G.R. No. 74833, January 21, 1991, 193 SCRA 93, 101.

[15] *Id.* at 100.

Joselito E. Jimenez, marked as Exhibit "F",[16] petitioner impliedly admitted having received respondent's letter-request for transfer by facsimile transmission before the pretermination by Basilia Templa, *viz*:

x x x we regret our inability to effect the request of Mr. Jimenez through Mr. Robert S. Ostrovsky of Citibank San Francisco since we received the **original** letter on May 4, 1993, a day after Mrs. Basilia T. Jimenez preterminated the account. For your information, **we do not act on faxed instructions from customers as we cannot verify faxed signatures**. This control measure is in place to prevent unauthorized transactions and for the protection of bank customers against fraud. (*emphases ours*)

Petitioner denies the admission now. However, its protestation cannot prevail over the clear import of Exhibit "F". Exhibit "F" was written by petitioner's Assistant Vice President for Citiphone Banking, Ms. Gina Marina P. Ordonez, in response to the formal inquiry regarding the questioned pretermination posed by the legal counsel of Joselito E. Jimenez before the civil action for damages was filed in court.

Petitioner cannot be excused from negligence in disregarding the faxed transmission. As the trial court correctly observed—

x x x **the sender was the Branch Manager himself, Mr. Robert S. Ostrovsky, of** x x x **Citibank San Francisco, and not** x x x **a client.** x x x Citibank cannot deny having received said fax message considering that **it was a bank to bank fax transmission between 2 same banks**. x x x x

x x x x **There are now advanced facilities for communication especially in computerized systems of accounts. Ways and means, like fax transmissions, are available which make it very easy for one bank to communicate with a foreign branch. This notwithstanding, defendant Citibank did not care to do anything further regarding the fax message**.

x x x [I]f indeed it had doubts on the fax message, **simple prudence would require defendant Citibank not to entertain and/or to hold in abeyance any other transaction involving the time deposit**

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[16] *Supra* note 7.

in question until the fax message has been verified. To allow Basilia Templa to preterminate the subject time deposit despite the fax message sent by Citibank San Francisco is indeed sheer negligence which could have easily been avoided if defendant Citibank exercised due negligence (*sic*) **and circumspection in the pre-termination of plaintiff's time deposit**. (*emphases ours*)[17]

The Court of Appeals added:

x x x [B]y the nature of is (sic) functions, a 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 [I]n dealing with its depositors, a bank should exercise its functions not only with the diligence of a good father of a family but it should do so with the highest degree of care. The banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be very high, if not the highest, degree of diligence.[18]

IN VIEW WHEREOF, the petition is *DENIED*. The assailed Decision dated September 14, 2004 of the Court of Appeals, as well as its Resolution dated January 17, 2005, in CA-G.R. CV No. 58840 affirming with modification that of the Regional Trial Court of Marikina City, Branch 273, in Civil Case No. 95-130-MK, is *AFFIRMED*.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[17] *Rollo*, pp. 324-325.

[18] *Id*. at 113.

FIRST DIVISION

[G.R. No. 169875. December 18, 2007]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANILO JOCSON *y* BAUTISTA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; VIOLATION OF COMPREHENSIVE DANGEROUS DRUGS ACT(R.A. NO. 9165); AS A RULE, CREDENCE IS GIVEN TO PROSECUTION WITNESSES WHO ARE POLICE OFFICERS; RATIONALE.—** Settled is the rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties.

2. **ID.; ID.; BUY-BUST OPERATION AS A FORM OF ENTRAPMENT; JUSTIFIED.—** A buy-bust operation is one form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of the commission of an offense. Entrapment has received judicial sanction when undertaken with due regard for constitutional and legal safeguards. Where the criminal intent originates in the mind of the accused and the criminal offense is completed, the fact that a person, acting as a decoy for the state, or that public officials furnished the accused an opportunity for commission of the offense, or that the accused is aided in the commission of the crime in order to secure the evidence necessary to prosecute him, there is permissible entrapment and the accused must be convicted. What the law forbids is the inducing of another to violate the law, the "seduction" of an otherwise innocent person into a criminal career. Where the criminal intent originates in the mind of the state decoy, such as an undercover agent, and the accused is lured into the commission of the offense charged in order to prosecute him, there is instigation, as we call it in our jurisprudence, and no conviction may be had. In instigation, the instigator practically induces the would-be accused into the commission of the offense and

himself becomes a co-principal. In entrapment, the peace officer resorts to ways and means to trap and capture the lawbreaker in the execution of the latter's criminal plan. Instigation is illegal and contrary to public policy. Entrapment is not.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS AND CONCLUSION OF THE TRIAL COURT THEREON, ENTITLED TO GREAT RESPECT; RATIONALE.—** The findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect because the trial courts have the advantage of observing the demeanor of witnesses as they testify. In the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the translated words.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellant.

D E C I S I O N

PUNO, *C.J.*:

On appeal are the Decision[1] dated April 29, 2005 and the Resolution[2] dated September 13, 2005 of the Court of Appeals, in CA-G.R. CR-H.C. No. 00245. The Court of Appeals affirmed the decision of the Regional Trial Court of Caloocan City in Criminal Case No. C-66034, convicting accused-appellant Danilo Jocson of violation of Sections 5 and 11, Art. II of R.A. No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

On the evening of August 7, 2002, an informant reported to the office of the Station Drug Enforcement Unit, Caloocan City, a person referred to by the alias "*Manong*," who was allegedly selling *shabu* at the vicinity of B.M.B.A., 2nd Ave., East Caloocan

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[1] *Rollo,* pp. 3-13.

[2] CA *rollo*, p. 129.

City. With this information, Police Chief Senior Inspector Jose Valencia formed a team to conduct a buy-bust operation, in which SPO1 Joseph delos Santos was designated as the poseur-buyer. That same night, the team proceeded to the reported area. The informant, upon seeing "*Manong*," approached the latter and introduced Delos Santos as a customer. Delos Santos then told "*Manong*," "*Pare, pabili ng piso*," and handed him the marked 100-peso bill with serial number UM856594. Upon receipt of the marked money, "*Manong*" took out from his pocket and handed Delos Santos a plastic sachet containing white crystalline granules. Delos Santos then scratched his left ear, signaling a positive bust. SPO3 Rodrigo Antonio responded to the signal and came to the aid of Delos Santos. They frisked "*Manong*" and found four more plastic sachets of white crystalline granules on his body. They also recovered the marked money from "Manong." They then brought "*Manong*" to the police station for investigation. It was only then that the police learned that "*Manong*" is Danilo Jocson, herein accused-appellant. SPO1 Delos Santos and SPO3 Antonio also turned over to Police Investigator Ferdinand Moran the plastic sachets and the marked money recovered from "*Manong*" upon arriving at the police station. Moran, in turn, marked the pieces of evidence. Then, the marked pieces of evidence were turned over to the Northern Police District (NPD) crime laboratory for chemical analysis. Police Inspector Juanita Sioson, a Forensic Chemical Engineer, found the white crystalline granules, contained in five heat-sealed transparent plastic sachets, to be positive for methylamphetamine hydrochloride, a dangerous drug. Further, four of the five sachets weighed 0.05 gram each, and one sachet weighed 0.04 gram.

Accused-appellant Jocson was charged with violations of Sections 5 and 11, Art. II of R.A. No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, in two separate Informations:

CRIMINAL CASE NO. 66034

That on or about the 7th day of August 2002 in Caloocan City, M.M. and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and

there willfully, unlawfully and feloniously sell and deliver to one PO1 JOSEPH DELOS SANTOS, who posed as buyer, 0.05 gram of Methylamphetamine Hydrochloride (*Shabu*), for One Hundred Pesos with SN UM856594 knowing the same to be a dangerous drug.

CONTRARY TO LAW.

CRIMINAL CASE NO. 66035

That on or about the 7th day of August 2002 in Caloocan City, M.M. and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control four (4) pcs. of heat-sealed transparent plastic sachet containing Methylamphetamine Hydrochloride (*Shabu*) with a total weight [of] 0.19 gram, knowing the same to be a dangerous drug.

CONTRARY TO LAW.[3]

The two criminal cases against accused-appellant were consolidated, and trial ensued.

Accused-appellant Jocson denied the accusations against him. He testified that on the night of his arrest, he was at his residence at No. 192 2nd Avenue, Grace Park, Caloocan City. While watching a late-night television show with his mother and his 11-year old niece, SPO3 Antonio entered his house, and upon seeing him, shouted "Positive!" Thereafter, five other policemen entered the house, forced accused-appellant out of his bed and handcuffed him. The police officers then brought him to the police station without informing him of the charges. In his testimony, accused-appellant denied selling *shabu* to the police poseur-buyer or possessing more quantities of *shabu*. He alleged that the charges against him were fabricated.

Eleven-year old April Jane Buenaobra, niece of accused-appellant, corroborated the latter's testimony. Buenaobra testified that on August 7, 2002, at around eleven o'clock in the evening, while watching television, her grandmother answered a knock

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

on the door. Suddenly, policemen barged into the house, grabbed her uncle and forcibly took him away.

On April 8, 2003, the Regional Trial Court of Caloocan City convicted the accused-appellant. The dispositive portion of the decision reads:

THEREFORE, premises considered and the prosecution having established to a moral certainty the guilt of Accused DANILO JOCSON *y* BAUTISTA of the crimes charged, this Court hereby renders judgment as follows:

1. In Crim. Case No. 66034 for Violation of Sec. 5, Art. 11 of RA 9165, this Court in the absence of any aggravating circumstance hereby sentences the aforenamed Accused to LIFE IMPRISONMENT; and to pay the fine of ₱500,000.00 without any subsidiary imprisonment in case of insolvency;
2. In Crim. Case No. 66035 for Violation of Sec. 11, Art. 11 of same Act, this Court in the absence of any modifying circumstance hereby sentences common Accused to a prison term of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay the fine of three hundred thousand pesos (₱300,000.00), without any subsidiary imprisonment in case of insolvency.

Subject drug in both cases are hereby declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.

xxx xxx xxx

SO ORDERED.[4]

Accused-appellant Jocson appealed to this Court, with the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE SELF-SERVING TESTIMONIES OF POLICE OFFICERS RODRIGO ANTONIO AND JOSEPH DE LOS SANTOS.

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[4] *Rollo*, p. 30.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[5]

This Court, however, referred the case to the Court of Appeals in conformity with the ruling in **People v. Mateo**.[6]

The Court of Appeals affirmed the decision of the Regional Trial Court. It also denied accused-appellant's motion for reconsideration.

We affirm the decision of the Court of Appeals.

The testimony of SPO1 Delos Santos was spontaneous, straightforward and categorical. Further, SPO3 Antonio, back-up security of SPO1 Delos Santos, corroborated the latter's testimony on its material points. On the other hand, we find no reason to believe the denials and self-serving allegation of accused-appellant that his arrest was concocted out of thin air by the police officers. No evidence was presented to show any antagonism between him and the police officers to explain why the police officers allegedly picked on him. Settled is the rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties.[7] None was presented in the instant case.

Neither will the testimony of his 11-year old niece exculpate accused-appellant from the crimes charged against him. On cross-examination, April Jane admitted that her grandmother impressed on her that her uncle was arrested by the police even when he had done nothing wrong. As observed by the trial

[5] *Id.* at 46.

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

[7] *People v. Dulay*, G.R. No. 150624, February 24, 2004, 423 SCRA 652.

court, April Jane appeared to be a rehearsed witness. Further, being a close kin of accused-appellant, her credibility is highly suspect. A portion of her testimony is as follows:

CROSS-EXAMINATION

Q Are you saying now Madam Witness that you [were] also discussing this case to (*sic*) your mother?

A Yes, sir.

Q When you discussed this case, Madam Witness, do I get you right that they were talking to you with respect [to] how your uncle was arrested?

A Yes, sir.

Q And, they [were] also discussing to (*sic*) you that your uncle has not committed any wrong?

A Yes, sir.

Q And, they were also discussing with you Madam Witness, that what was done by the policeman is also wrong?

A Yes, sir.[8]

The findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect because the trial courts have the advantage of observing the demeanor of witnesses as they testify. In the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the translated words.[9]

In the instant case, the police arrested accused-appellant in a buy-bust operation. A buy-bust operation is one form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of the commission of an offense.[10] Entrapment has received judicial sanction when

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[8] CA *rollo*, pp. 28-29.

[9] *People v. Gamiao*, G.R. No. 91492, January 19, 1995, 240 SCRA 254.

[10] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, *citing People v. Basilgo*, 235 SCRA 191 (1994); *People v. Yap*, G.R.

undertaken with due regard for constitutional and legal safeguards.[11] Where the criminal intent originates in the mind of the accused and the criminal offense is completed, the fact that a person, acting as a decoy for the state, or that public officials furnished the accused an opportunity for commission of the offense, or that the accused is aided in the commission of the crime in order to secure the evidence necessary to prosecute him, there is permissible entrapment and the accused must be convicted.[12] What the law forbids is the inducing of another to violate the law, the "seduction" of an otherwise innocent person into a criminal career.[13] Where the criminal intent originates in the mind of the state decoy, such as an undercover agent, and the accused is lured into the commission of the offense charged in order to prosecute him, there is instigation, as we call it in our jurisprudence, and no conviction may be had.[14] In instigation, the instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal. In entrapment, the peace officer resorts to ways and means to trap and capture the lawbreaker in the execution of the latter's criminal plan. Instigation is illegal and contrary to public policy. Entrapment is not.[15]

In the case at bar, the details of the transaction were clearly and adequately shown, *viz.*: (a) the initial contact between the poseur-buyer and the pusher; (b) the offer to buy; (c) the promise or payment of the consideration; and (d) the delivery of the illegal drug subject of the sale. The initial contact was made

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Nos. 98262-63, January 10, 1994, 229 SCRA 787; *People v. Macasa*, G.R. No. 105283, January 21, 1994, 229 SCRA 422.

[11] *Supra, citing People v. Herrera*, 247 SCRA 433 (1995); *People v. Tadepa*, G.R. No. 100354, May 26, 1995, 244 SCRA 339; *People v. Basilgo*, G.R. No. 107327, August 5, 1994, 235 SCRA 191.

[12] *Supra, citing Hoy v. State*, 53 Ariz 440, 90 P2d 623, 628-629 (1939)—bribery; *see* 21 Am Jur 2d, *supra*, Sec. 202.

[13] *Supra, citing People v. Outten*, 147 NE 2d 284, 286, 13 Ill 2d 21 (1958).

[14] *Supra, citing Sorrells v. United States*, 287 U.S. 435, 442, 451-452 (1932).

[15] *People v. Tiu Ua*, 96 Phil. 738, 741 (1955).

through an informant. On the day of the operation, the informant approached accused-appellant Jocson, a.k.a. "*Manong*," and introduced him to SPO1 Delos Santos, the poseur-buyer. Delos Santos then offered to buy when he told "*Manong*," *Pare, pabili ng piso."* The sale was consummated after payment and delivery when SPO1 Delos Santos handed "*Manong*" the marked 100-peso bill, and "*Manong*" took out from his pocket and handed SPO1 Delos Santos a plastic sachet containing shabu. From the moment SPO1 Delos Santos received the prohibited drug from "*Manong*," the illegal sale of the dangerous drug was consummated.[16] "*Manong*" was at once apprehended, and four more sachets of shabu were found in his possession.

Having established that the illegal sale took place between the poseur-buyer and the seller, the prosecution likewise presented the dangerous drug, *i.e.*, the *corpus delicti*, as evidence in court. The illegal substance sold, including the four other sachets recovered from the pocket of accused-appellant, was offered as evidence during the trial and properly identified by the prosecution witnesses. The prosecution also accounted for the chain of custody of the subject substances. From accused-appellant's possession, police officers Delos Santos and Antonio seized the sachets of *shabu* and turned them over to Police Investigator Moran who marked the pieces of evidence. Then, Moran turned them over to the NPD crime laboratory for chemical analysis, where Police Inspector Juanita Sioson, a Forensic Chemical Engineer, found the white crystalline granules contained in five heat-sealed transparent plastic sachets to be positive for methylamphetamine hydrochloride, a dangerous drug.

IN VIEW WHEREOF, the petition is *DENIED* and the Decision and Resolution of the Court of Appeals in CA-G.R. CR-H.C. No. 00245, dated April 29, 2005 and September 13, 2005, respectively, are *AFFIRMED*.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[16] *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555.

FIRST DIVISION

[A.M. No. P-04-1817. December 19, 2007]
(Formerly OCA IPI No. 03-1748-P)

ZENAIDA D. JUNTO, *complainant, vs*. **ALICIA BRAVO-FABIA, former Clerk of Court VI, Regional Trial Court, Office of the Clerk of Court, Dagupan City, Pangasinan,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; NO POSITION IN THE GOVERNMENT SERVICE EXACTS A GREATER DEMAND FOR MORAL RIGHTEOUSNESS AND UPRIGHTNESS FROM AN INDIVIDUAL THAN IN THE JUDICIARY.—** Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary. The conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work therein, from the judge to the lowest of its personnel.

2. **ID.; ID.; ADMINISTRATIVE PROCEEDINGS; ONLY SUBSTANTIAL EVIDENCE IS REQUIRED TO PROVE THE ALLEGATIONS IN THE COMPLAINT; PRESENT IN CASE AT BAR.—** In administrative proceedings, only substantial evidence, *i.e*., that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. In their pleadings and during the trial, the complainant and respondent gave conflicting versions of what happened. Judge Castillo found that on November 5, 2001, respondent dropped by complainant's property and in her anger uttered the offending words. We find his findings of facts to be a result of a fair and dispassionate analysis of the testimonies of the parties as well as their respective witnesses.

3. **LEGAL ETHICS; COURT PERSONNEL; THE CONDUCT OF COURT PERSONNEL MUST BE FREE FROM ANY**

WHIFF OF IMPROPRIETY; EXPLAINED.— We disagree with Judge Castillo's declaration that respondent should not be held liable for her passionate outburst since she was just reacting as a property owner and not as a public officer. The Code of Judicial Ethics mandates that the conduct of court personnel must be free from any whiff of impropriety, not only with respect to their duties in the judicial **branch but also to their behavior outside the court as private individuals.** It is in this way that the integrity and the good name of the courts of justice can be preserved. A clerk of court, in particular, as an essential and ranking officer of our judicial system, who performs delicate administrative functions vital to the prompt and proper administration of justice, must be free from any taint of impropriety.

4. **ID.; ID.; WHEN FOUND GUILTY OF AN ADMINISTRATIVE COMPLAINT; RETIREMENT FROM OFFICE DOES NOT RENDER THE PENALTY MOOT AND ACADEMIC.—** Respondent's retirement from office did not render the recommended penalty moot and academic. It did not free her from liability. Complainant filed this case on August 29, 2003, before respondent retired from office. As such, the Court retains the authority to resolve the administrative complaint against her. Cessation from office because of retirement does not per se justify the dismissal of the administrative complaint filed against a judicial employee while still in the service. The fine imposed can be deducted from the proceeds of her retirement benefits. Given that it was her first offense, a fine in the amount of ₱1,000 is reasonable.

APPEARANCES OF COUNSEL

M.M. Lazaro & Associates for complainant.
Ma. Victoria D. Cabrera for respondent.

R E S O L U T I O N

CORONA, *J.*:

In a letter-complaint dated April 28, 2003, complainant Zenaida D. Junto charged respondent Atty. Alicia Bravo-Fabia, former clerk of court VI of the Regional Trial Court (RTC), Office of

the Clerk of Court, Dagupan City, Pangasinan,[1] with discourtesy, conduct unbecoming of a clerk of court and/or conduct prejudicial to the best interest of the service.[2]

Complainant's house and lot located at Barangay Tebag, Mangaldan, Pangasinan was adjacent to respondent's property where bamboo groves were planted. Their properties were separated by a 1½-meter feeder road.[3] Complainant was new in the area while the respondent had been the owner of the property for 30 years. Noticing that some of the bamboos were already protruding and encroaching on the feeder road and touching her house's roof gutter, she requested the barangay captain, municipal engineer and mayor to have the encroaching bamboos cut.[4]

On November 5, 2001, complainant directed her laborers to cut the protruding bamboos and burn them. She alleged in her complaint that upon learning of this, respondent who was extremely angry entered her property at around 6:00 p.m. and shouted at her and her laborers. She yelled and cursed "*Mga tarantado kayo, putang ina ninyo, bakit pinakikialaman ninyo ang hindi sa inyo?!*" ("You bastards, why are you meddling with what is not yours?!") She threatened that she would ask her friends from the New People's Army to "liquidate" complainant if the latter would not stop cutting her bamboos. She also demanded from complainant ₱1.5 million in damages. [5]

The following day, on November 6, 2001, respondent returned and again warned the complainant not to cut the bamboos since she was not the owner. From then on, whenever she saw the complainant or her house, she would utter or shout insulting words such as "*kabit*" ("mistress") to refer to the complainant.[6]

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[1] Respondent compulsorily retired on November 7, 2003.

[2] The Office of the Court Administrator received the complaint on August 29, 2003; *rollo*, p. 1.

[3] The parties referred to it as the *callejon.*

[4] *Rollo*, p. 1.

[5] *Id.*, p. 48.

[6] Resolution/Recommendation of Judge Silverio Q. Castillo, p. 3; *id.*, p. 2.

It appears that it was only after the incident, in a letter dated November 14, 2001, that complainant asked permission from the Community Environment and Natural Resources Officer (CENRO), Region I to cut the bamboos.[7] In a letter dated December 5, 2001, the CENRO responded that she should coordinate with the barangay officials.[8]

Respondent denied the accusations of complainant. She alleged that it was only on November 7, 2001 or after her birthday party that her husband, Daniel R. Fabia, informed her about the cutting and burning of the bamboos. According to her, at the time mentioned in the complaint, she was in several stores to buy items she needed for her birthday celebration.[9]

Respondent asserted that their tenant-overseer, Juan Antenor, reported to her husband at around 7:00 p.m. of November 5, 2001 that some of their bamboos had been cut and burned by the laborers of complainant. The next day, on November 6, 2001, her husband reported the matter to the police and the barangay officials. During their "confrontation" in the barangay, they failed to reach a settlement.[10]

Thereafter, respondent's husband filed a criminal case of malicious mischief against complainant. This was dismissed by the provincial prosecutor's office but he asked the Department of Justice to review the dismissal.[11] On December 12, 2001, she and her husband filed a case for damages against the complainant[12] in the Municipal Trial Court, Mangaldan, Pangasinan. Respondent claimed that this administrative case

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

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

[9] Resolution/Recommendation of Judge Silverio Q. Castillo, p. 4.

[10] *Id*., p. 2.

[11] As of the time respondent filed her rejoinder in January 13, 2004. The provincial prosecutor ruled that the complainant's liability was merely civil; *rollo*, p. 40.

[12] Included as defendants were complainant's co-owner of the property, Mariano Chan, and her laborers, Angel Lomibao and Romulo Aquino. The case was docketed as Civil Case No. 1677; *id*., p. 15.

was filed purely for harassment and malicious motives especially since complainant knew she was about to retire.[13]

Complainant furthermore averred that during a hearing of the civil case in the court of Judge Genoveva Maramba, respondent shouted at her and insultingly pointed a finger at her face, uttering "*sayang ang pagmumukha mo*" ("your face will become a waste").[14]

In a resolution of this Court dated May 19, 2004, the complaint was referred to Judge Silverio Q. Castillo, executive judge of RTC, Dagupan City, Pangasinan for investigation, report and recommendation. A full-blown trial followed. The complainant testified and also presented Renato de Guzman as witness. The latter had been hired by complainant to fumigate her mango trees. He was supposedly present when respondent stormed the house of complainant on November 5, 2001. He corroborated complainant's testimony.

For her defense, respondent testified on her own behalf. She also presented as witnesses her husband, their tenant-overseer and Judge Maramba. The first two corroborated her story that she learned about the incident only on November 7, 2001; Judge Maramba testified that no finger-pointing incident ever happened in her courtroom.[15]

Judge Castillo submitted his resolution/recommendation dated November 22, 2004 with the following findings and recommendation:

> The Court believes that, indeed, the respondent went to Tebag, Mangaldan, Pangasinan and uttered those remarks on November 5, 2001 against the complainant in her fit of anger upon discovering that the bamboo grooves which her husband planted and which they nurtured with their marriage were cut and burned without her and her husband's knowledge and permission.

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[13] *Id.*, pp. 41-42.

[14] Resolution/Recommendation of Judge Silverio Q. Castillo, p. 3.

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

Even if the respondent first went to the market in Dagupan City after office hours, by strategic location and distance, it is not impossible for her to [have] dropped by the place of the incident where she saw the cut and burned bamboos.

It is not likewise impossible for her to be mad and furious with what she discovered and consequently utter the remarks "*Mga tarantado kayo, putang ina [ninyo], bakit pinakikialaman [ninyo] ang hindi sa inyo?!*" and the threat that she will have them liquidated by the NPAs.

However, this Court believes that these remarks are made in a fit of anger and product of uncontrolled rage and passionate outburst of emotions which is not actuated by [ill will] or conscious desire to do any wrong. It is neither obstinate, premeditated nor intentional.

The act of the respondent, suffice to say, does not [concern] the administration of justice which is prejudicial to the interests of the service of the respondent as a government employee nor it is related to the discharge of the respondent's duties and obligations as a Clerk of Court.

At that precise moment, she is just a plain land owner. Her actuations are just the natural reactions of a property owner whose rights have been transgressed. Right at the moment that the respondent saw what happened to her bamboo grooves and eventually uttered those remarks, she was just reacting as a property owner and not as the public officer or a government employee. The remarks she made have nothing to do with the respondent being a Clerk of Court.

For administrative liability to attach, it must be proven that the respondent was moved by bad faith, dishonesty, hatred or some other like motive. Anger cannot be equated with the above enumerations and cannot be considered as tantamount to the like as to make the respondent administratively liable because the above enumerations connote premeditation.

Anger is just a passionate outburst, in other words.

There was no furtive design or ill will for ulterior motives operating in the mind of the respondent at that time. There was no deliberate intent on the part of the respondent to do wrong or [cause] damage but merely to vindicate her right. There was no criminal intent on her part.

WHEREFORE, in view of the above, the administrative case leveled against the respondent Atty. Alicia Bravo Fabia is hereby respectfully recommended DISMISSED.

It is, however, recommended that the same respondent be admonished not to repeat the said outburst. But in as much as she has already retired from the service effective November 7, 2003, this recommendation has now become moot and academic.

SO ORDERED.[16]

The Office of the Court Administrator (OCA), in its memorandum dated June 2, 2005, agreed with the findings of the investigating judge. But it concluded that respondent was guilty of conduct unbecoming of a public official. It disagreed that no penalty could be imposed on respondent after she retired. It recommended that she be fined ₱1,000:[17]

After careful evaluation of the records of the case[,] the undersigned concurs with the investigation report of Investigating Judge Silverio Q. Castillo. However[,] we differ from the submission that a penalty can no longer be imposed upon respondent as she had already retired from the service. The retirement of [respondent] from the service does not militate against the imposition of [the] proper penalty for acts committed by the latter during her incumbency. x x x

Considering that respondent was found guilty of acts unbecoming of a public official[,] an administrative penalty can still be imposed if only to maintain the [people's] faith [in] the judiciary and demonstrate that this Court will not tolerate any act which falls short of the norms of public accountability.

WHEREFORE, premises considered[,] the undersigned respectfully recommends that [respondent], former Clerk of Court, Office of the Clerk of Court, [RTC], Dagupan City be FINED in the amount of ONE THOUSAND PESOS (₱1,000.00) for acts unbecoming of a public official.[18]

The findings and evaluation of the OCA are well-taken.

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[16] *Id.*, pp. 5-7.

[17] OCA's memorandum dated June 2, 2005, p. 5.

[18] *Id.*

Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary.[19] The conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work therein, from the judge to the lowest of its personnel.[20]

In administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required.[21] In their pleadings and during the trial, the complainant and respondent gave conflicting versions of what happened. Judge Castillo found that on November 5, 2001, respondent dropped by complainant's property and in her anger uttered the offending words. We find his findings of facts to be a result of a fair and dispassionate analysis of the testimonies of the parties as well as their respective witnesses. We therefore affirm the same.[22]

We agree with the OCA that the facts, as found by Judge Castillo, constituted acts unbecoming of a public official which respondent should be penalized for. We disagree with Judge Castillo's declaration that respondent should not be held liable for her passionate outburst since she was just reacting as a property owner and not as a public officer. The Code of Judicial

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[19] *Salazar v. Limeta*, A.M. No. P-04-1908, 16 August 2005, 467 SCRA 27, 32, citing *Rabe v. Flores*, A.M. No. P-97-1247, 14 May 1997, 272 SCRA 415.

[20] *Gabriel v. Atty. Abella*, 450 Phil. 14, 21(2003), citations omitted.

[21] *Re: (1) Lost Checks Issued to the Late Roderick Roy P. Melliza and (2) Dropping from the Rolls of Ms. Esther T. Andres*, A.M. No. 2005-26-SC, 22 November 2006, 507 SCRA 478, 496, citing *Inocencio D. Ebero and Juanito D. Ebero v. Makati City Sheriffs Raul T. Camposano and Bayani T. Acle*, A.M. No. P-04-1792, 12 March 2004, 425 SCRA 420; *Francisco Reyno v. Manila Electric Company*, G.R. No. 148105, 22 July 2004, 434 SCRA 660.

[22] *Resngit-Marquez v Llamas*, *Jr.*, A.M. No. RTJ-02-1708, 23 July 2002, 385 SCRA 6, 21.

Ethics mandates that the conduct of court personnel must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch **but also to their behavior outside the court as private individuals**.[23] It is in this way that the integrity and the good name of the courts of justice can be preserved.[24] A clerk of court, in particular, as an essential and ranking officer of our judicial system, who performs delicate administrative functions vital to the prompt and proper administration of justice, must be free from any taint of impropriety.[25]

Respondent's retirement from office did not render the recommended penalty moot and academic. It did not free her from liability. Complainant filed this case on August 29, 2003, before respondent retired from office. As such, the Court retains the authority to resolve the administrative complaint against her. Cessation from office because of retirement does not *per se* justify the dismissal of the administrative complaint filed against a judicial employee while still in the service.[26] The fine imposed can be deducted from the proceeds of her retirement benefits. Given that it was her first offense, a fine in the amount of ₱1,000 is reasonable.

WHEREFORE, Atty. Alicia Bravo-Fabia, former clerk of court of the Regional Trial Court, Office of the Clerk of Court, Dagupan City, Pangasinan is hereby found *GUILTY* of conduct unbecoming of a public official. She is ordered to pay a *FINE* of ₱1,000, to be deducted from her retirement benefits.

SO ORDERED.

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

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[23] *Burgos v. Aquino*, 319 Phil. 622, 628 (1995), citing *Imbing v. Tiongson*, A.M. No. MTJ-91-595, 7 February 1994, 229 SCRA 690.

[24] *Salazar v. Limeta*, *supra* note 19 at 33, citing *Albano-Madrid v. Apolonio*, A.M. No. P-01-1517, 7 February 2003, 397 SCRA 120.

[25] *Id*.

[26] *Rivera v. Mirasol*, A.M. No. RTJ-04-1885, 14 July 2004, 434 SCRA 315, 321, citing *Cabarloc v. Cabusora*, A.M. No. MTJ-00-1256, 15 December 2000, 348 SCRA 217, 226.

FIRST DIVISION

[A.M. No. P-07-2333. December 19, 2007.]
(formerly OCA IPI No. 07-2510-P)

ANONYMOUS, *complainant, vs.* **MA. VICTORIA P. RADAM, Utility Worker, Office of the Clerk of Court, Regional Trial Court of Alaminos City, Pangasinan,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE LAWS; "DISGRACEFUL AND IMMORAL BEHAVIOR"; DISCUSSED.—** In *Estrada v. Escritor,* we emphasized that in determining whether the acts complained of constitute "disgraceful and immoral behavior" under civil service laws, the distinction between public and secular morality on the one hand, and religious morality, on the other should be kept in mind. The distinction between public and secular morality as expressed – albeit not exclusively – in the law, on the one hand, and religious morality, on the other, is important because the jurisdiction of the Court extends only to public and secular morality. Thus, government action, including its proscription of immorality as expressed in criminal law like adultery or concubinage, must have a secular purpose. For a particular conduct to constitute "disgraceful and immoral" behavior under civil service laws, it must be regulated on account of the concerns of public and secular morality. It cannot be judged based on personal bias, specifically those colored by particular mores. Nor should it be grounded on "cultural" values not convincingly demonstrated to have been recognized in the realm of public policy expressed in the Constitution and the laws. At the same time, the constitutionally guaranteed rights (such as the right to privacy) should be observed to the extent that they protect behavior that may be frowned upon by the majority.

2. **ID.; ID.; ID.; ID.; ON GIVING BIRTH OUT OF WEDLOCK; DISCUSSED.—** For purposes of determining administrative responsibility, giving birth out of wedlock is not *per se* immoral under civil service laws. For such conduct to warrant disciplinary

action, the same must be "grossly immoral," that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree. Two things may be concluded from the fact that an unmarried woman gives birth out of wedlock: (1) if the father of the child is himself unmarried, the woman is not ordinarily administratively liable for disgraceful and immoral conduct. It may be a not-so-ideal situation and may cause complications for both mother and child but it does not give cause for administrative sanction. There is no law which penalizes an unmarried mother under those circumstances by reason of her sexual conduct or proscribes the consensual sexual activity between two unmarried persons. Neither does the situation contravene any fundamental state policy as expressed in the Constitution, a document that accommodates various belief systems irrespective of dogmatic origins. (2) if the father of the child born out of wedlock is himself married to a woman other than the mother, then there is a cause for administrative sanction against either the father or the mother. In such a case, the "disgraceful and immoral conduct" consists of having extramarital relations with a married person. The sanctity of marriage is constitutionally recognized and likewise affirmed by our statutes as a special contract of permanent union. Accordingly, judicial employees have been sanctioned for their dalliances with married persons or for their own betrayals of the marital vow of fidelity.

3. **ID.; ID.; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; WANTING WHERE CHARGED EMPLOYEE WAS NOT INFORMED OF THE ACCUSATION AND THUS NOT GIVEN THE OPPORTUNITY TO BE HEARD.—** Respondent was indicted only for alleged immorality for giving birth out of wedlock. It was the only charge of which she was informed. Judge Abella's investigation focused solely on that matter. Thus, the recommendation of the OCA that she be held administratively liable in connection with an entry in the birth certificate of Christian Jeon came like a thief in the night. It was unwarranted. Respondent was neither confronted with it nor given the chance to explain it. To hold her liable for a totally different charge of which she was totally unaware will violate her right to due process. The essence of due process in an administrative proceeding is the opportunity to explain one's side, whether written or verbal. This presupposes that

one has been previously apprised of the accusation against him or her. Here, respondent was deprived of both with regard to her alleged unbecoming conduct in relation to a certain statement in the birth certificate of her child. An employee must be informed of the charges proferred against him, and . . . the normal way by which the employee is so informed is by furnishing him with a copy of the charges against him. This is a basic procedural requirement that . . . cannot [be] dispense[d] with and still remain consistent with the constitutional provision on due process. The second minimum requirement is that the employee charged with some misfeasance or malfeasance must have a reasonable opportunity to present his side of the matter, that is to say, his defenses against the charges levelled against him and to present evidence in support of his defense(s). One's employment is not merely a specie of property rights. It is also the means by which he and those who depend on him live. It is therefore protected by the guarantee of security of tenure. And in the civil service, this means that no government employee may be removed, suspended or disciplined unless for cause provided by law and after due process. Unless the constitutional guarantee of due process is a mere platitude, it is the Court's duty to insist on its observance in all cases involving a deprivation, denigration or dilution of one's right to life, liberty and property.

R E S O L U T I O N

CORONA, *J.*:

In an anonymous letter-complaint dated September 30, 2005,[1] respondent Ma. Victoria Radam, utility worker in the Office of the Clerk of Court of the Regional Trial Court of Alaminos City in Pangasinan, was charged with immorality. The unnamed complainant alleged that respondent was unmarried but got pregnant and gave birth sometime in October 2005.[2] The complainant claimed that respondent's behavior tainted the image of the judiciary.

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[1] *Rollo*, p. 8.

[2] Respondent actually gave birth on November 3, 2005. (*See* respondent's verified comment [*id*., p. 22] and her child's certificate of live birth [*id*., p. 24].)

In connection with the complaint, Judge Elpidio N. Abella[3] conducted a discreet investigation to verify the allegations against respondent.

In his report dated March 8, 2006,[4] Judge Abella made the following findings:

On March 1, 2006, respondent submitted a letter addressed to the Honorable Court Administrator, thru the undersigned, duly subscribed and sworn to before the Clerk of Court VI of the Court, alleging among others, the following:

1) She admitted that she is single/unmarried, and indeed she was pregnant and actually gave birth to a baby boy named Christian Jeon Radam on 03 November 2005 at the Western Pangasinan District Hospital, Alaminos City;

2) The reason why she did not yet marry the father of her child Christian Jeon was that she and the child's father have pending application[s] [to migrate to Canada] as in fact they have [a] mutual plan to remain unmarried [and]

3) Nevertheless, she expressed her remorse and promised not to commit the same mistake and indiscretion in the future.

Further investigation reveal[ed] the following:

1) That respondent was appointed as Utility Worker on September 4, 2000;

2) The father of Christian Jeon Radam is unknown, as shown by the child's Certificate of Live Birth, hereto attached;[5]

3) It was verbally admitted by the respondent that she had given birth to two (2) other children before Christian Jeon, but they were conceived and born while respondent was working abroad

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[3] Executive Judge of the RTC of Alaminos City in Pangasinan.

[4] *Rollo*, pp. 19-21.

[5] A copy of the child's certificate of live birth was procured by Judge Abella (without the knowledge of respondent) through an order dated December 8, 2005 requiring the City Civil Registrar of Alaminos City, Pangasinan to furnish his office a certified copy of said birth certificate. (*See* order dated December 8, 2005, *id*., p. 25.)

and before she was employed in the [Office of the Clerk of Court of the Regional Trial Court of] Alaminos City.[6]

In this connection, Judge Abella made the following recommendation:

Since respondent admitted that she is single and that she got pregnant and gave birth to a baby boy without being married to the father of the child, albeit she advanced the reason for her remaining unmarried, it being that she and her boyfriend had a mutual plan to migrate to Canada, this Investigating Judge considers that such conduct of the respondent fell short of the strict standards of Court personnel and contrary to the Code of Judicial Ethics and the Civil Service Rules. A place in the judiciary demands upright men and women who must carry on with dignity, hence respondent is guilty of disgraceful and immoral conduct which cannot be countenanced by the Court. Certainly, the image of the Judiciary has been affected by such conduct of the respondent.

Premises considered, it is hereby respectfully recommended that respondent MA. VICTORIA RADAM be accordingly found GUILTY of IMMORAL CONDUCT or ACT UNBECOMING A COURT EMPLOYEE. A suspension of one (1) month or a fine of Php5,000.00 is respectfully recommended, with warning that a repetition of the same or similar act in the future will be dealt with more severely.[7]

After reviewing the findings and recommendation of Judge Abella, the Office of the Court Administrator (OCA) recommended that, in accordance with *Villanueva v. Milan*,[8] respondent be absolved of the charge of immorality because her alleged misconduct (that is, giving birth out of wedlock) did not affect the character and nature of her position as a utility worker.[9] It observed:

[T]here is no indication that the relationship of respondent to her alleged boyfriend has caused prejudice to any person or has

[6] *Id.*

[7] *Id.*

[8] 438 Phil. 560 (2002).

[9] *See* memorandum dated April 16, 2007 of the Office of the Court Administrator. *Rollo*, pp. 1-4.

adversely affected the performance of her function as utility worker to the detriment of the public service.

However, it proposed that she be held liable for conduct unbecoming a court employee and imposed a fine of ₱5,000 for stating in the birth certificate of her child Christian Jeon that the father was "unknown" to her.[10]

The OCA correctly exonerated respondent from the charge of immorality. However, its recommendation to hold her liable for a charge of which she was not previously informed was wrong.

For purposes of determining administrative responsibility, giving birth out of wedlock is not *per se* immoral under civil service laws. For such conduct to warrant disciplinary action, the same must be "grossly immoral," that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree.[11]

In *Estrada v. Escritor*,[12] we emphasized that in determining whether the acts complained of constitute "disgraceful and immoral behavior" under civil service laws, the distinction between public and secular morality on the one hand, and religious morality, on the other should be kept in mind.[13] The distinction between public and secular morality as expressed — albeit not exclusively — in the law, on the one hand, and religious morality, on the other, is important because the jurisdiction of the Court extends only to public and secular morality.[14] Thus, government action, including its proscription of immorality as expressed in criminal law like adultery or concubinage, must have a secular purpose.[15]

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[10] *Id*. The Office of the Court Administrator referred to the entry "UNKNOWN" in the portion of the certificate of live birth of Christian Jeon Radam corresponding to the name of the child's father. (*See* Christian Jeon's certificate of live birth [*id*., p. 24].)

[11] *Ui v. Atty. Bonifacio*, 388 Phil. 691 (2000).

[12] 455 Phil. 411 (2003).

[13] *Id*.

[14] *Id*.

[15] *Id*.

For a particular conduct to constitute "disgraceful and immoral" behavior under civil service laws, it must be regulated on account of the concerns of public and secular morality. It cannot be judged based on personal bias, specifically those colored by particular mores. Nor should it be grounded on "cultural" values not convincingly demonstrated to have been recognized in the realm of public policy expressed in the Constitution and the laws.[16] At the same time, the constitutionally guaranteed rights (such as the right to privacy) should be observed to the extent that they protect behavior that may be frowned upon by the majority.[17]

Under these tests, two things may be concluded from the fact that an unmarried woman gives birth out of wedlock:

(1) if the father of the child is himself unmarried, the woman is not ordinarily administratively liable for disgraceful and immoral conduct.[18] It may be a not-so-ideal situation and may cause complications for both mother and child but it does not give cause for administrative sanction. There is no law which penalizes an unmarried mother under those circumstances by reason of her sexual conduct or proscribes the consensual sexual activity between two unmarried persons. Neither does the situation contravene any fundamental state policy as expressed in the Constitution, a document that accommodates various belief systems irrespective of dogmatic origins.[19]

(2) if the father of the child born out of wedlock is himself married to a woman other than the mother, then there is a cause for administrative sanction against either the father or the mother.[20] In such a case, the "disgraceful and immoral conduct" consists of having extramarital

[16] *Concerned Employee v. Mayor*, A.M. No. P-02-1564, 23 November 2004, 443 SCRA 448.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*.

> relations with a married person.[21] The sanctity of marriage is constitutionally recognized[22] and likewise affirmed by our statutes as a special contract of permanent union.[23] Accordingly, judicial employees have been sanctioned for their dalliances with married persons or for their own betrayals of the marital vow of fidelity.

In this case, it was not disputed that, like respondent, the father of her child was unmarried. Therefore, respondent cannot be held liable for disgraceful and immoral conduct simply because she gave birth to the child Christian Jeon out of wedlock.

Respondent was indicted only for alleged immorality for giving birth out of wedlock. It was the only charge of which she was informed. Judge Abella's investigation focused solely on that matter. Thus, the recommendation of the OCA that she be held administratively liable in connection with an entry in the birth certificate of Christian Jeon came like a thief in the night. It was unwarranted. Respondent was neither confronted with it nor given the chance to explain it. To hold her liable for a totally different charge of which she was totally unaware will violate her right to due process.

The essence of due process in an administrative proceeding is the opportunity to explain one's side, whether written or verbal.[24] This presupposes that one has been previously apprised of the accusation against him or her. Here, respondent was deprived of both with regard to her alleged unbecoming conduct in relation to a certain statement in the birth certificate of her child.

> An employee must be informed of the charges proferred against him, and … the normal way by which the employee is so informed is by furnishing him with a copy of the charges against him. This is a basic procedural requirement that … cannot [be] dispense[d] with

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[21] *Id*.

[22] *See* Section 2, Article XV, CONSTITUTION.

[23] *See* Article 1, FAMILY CODE.

[24] *Garcia v. Pajaro*, 433 Phil. 470 (2002).

and still remain consistent with the constitutional provision on due process. The second minimum requirement is that the employee charged with some misfeasance or malfeasance must have a reasonable opportunity to present his side of the matter, that is to say, his defenses against the charges levelled against him and to present evidence in support of his defense(s).[25]

One's employment is not merely a specie of property rights. It is also the means by which he and those who depend on him live.[26] It is therefore protected by the guarantee of security of tenure. And in the civil service, this means that no government employee may be removed, suspended or disciplined unless for cause provided by law[27] and after due process. Unless the constitutional guarantee of due process is a mere platitude, it is the Court's duty to insist on its observance in all cases involving a deprivation, denigration or dilution of one's right to life, liberty and property.

WHEREFORE, the administrative complaint against respondent Ma. Victoria P. Radam is hereby *DISMISSED*. She is, however, strongly advised to be more circumspect in her personal and official actuations in the future.

SO ORDERED.

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

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[25] *Government Service Insurance System v. Court of Appeals*, G.R. No. 86083, 24 September 1991, 201 SCRA 661.

[26] As Shylock declared, "you take my life, when you do take the means whereby I live." (Shakespeare, *The Merchant of Venice*)

[27] *See* Section 2(3), Article IX-B, CONSTITUTION.

THIRD DIVISION

[G.R. No. 127980. December 19, 2007]

DE LA SALLE UNIVERSITY, INC., EMMANUEL SALES, RONALD HOLMES, JUDE DELA TORRE, AMPARO RIO, CARMELITA QUEBENGCO, AGNES YUHICO and JAMES YAP, *petitioners, vs.* **THE COURT OF APPEALS, HON. WILFREDO D. REYES, in his capacity as Presiding Judge of Branch 36, Regional Trial Court of Manila, THE COMMISSION ON HIGHER EDUCATION, THE DEPARTMENT OF EDUCATION CULTURE AND SPORTS, ALVIN AGUILAR, JAMES PAUL BUNGUBUNG, RICHARD REVERENTE and ROBERTO VALDES, JR.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF PROCEDURE; LIBERAL APPLICATION OF THE RULES PROPER IN THE INTEREST OF SUBSTANTIAL JUSTICE. —** There is merit in the observation of petitioners that while CHED Resolution No. 181-96 disapproved the expulsion of other private respondents, it nonetheless authorized their exclusion from petitioner DLSU. However, because of the dismissal of the CA case, petitioner DLSU is now faced with the spectacle of having two different directives from the CHED and the respondent Judge – CHED ordering the exclusion of private respondents Bungubung, Reverente, and Valdes, Jr., and the Judge ordering petitioner DLSU to allow them to enroll and complete their degree courses until their graduation. This is the reason We opt to decide the whole case on the merits, brushing aside technicalities, in order to settle the substantial issues involved. This Court has the power to take cognizance of the petition at bar due to compelling reasons, and the nature and importance of the issues raised warrant the immediate exercise of Our jurisdiction. This is in consonance with our case law now accorded near-religious reverence that rules of procedure are but tools designed to facilitate the attainment of justice, such that when its rigid application tends to frustrate rather than promote substantial justice, this Court has the duty to suspend their operation.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; COMMISSION ON HIGHER EDUCATION (CHED); POWERS AND FUNCTIONS; SUPERVISION AND REVIEW OVER DISCIPLINARY CASES DECIDED BY INSTITUTIONS OF HIGHER LEARNING.—** On May 18, 1994, Congress approved R.A. No. 7722, otherwise known as "An Act Creating the Commission on Higher Education, Appropriating Funds Thereof and for other purposes." Section 3 of the said law, which paved the way for the creation of the CHED provides: Section 3. *Creation of the Commission on Higher Education*. – In pursuance of the abovementioned policies, the Commission on Higher Education is hereby created, hereinafter referred to as Commission. The Commission shall be independent and separate from the Department of Education, Culture and Sports (DECS) and attached to the office of the President for administrative purposes only. Its coverage shall be both public and private institutions of higher education as well as degree-granting programs in all post secondary educational institutions, public and private. The powers and functions of the CHED are enumerated in Section 8 of R.A. No. 7722. They include the following: Sec. 8. *Powers and functions of the Commission*. – The Commission shall have the following powers and functions: x x x n) promulgate such rules and regulations and exercise such other powers and functions as may be necessary to carry out effectively the purpose and objectives of this Act; and o) perform such other functions as may be necessary for its effective operations and for the continued enhancement of growth or development of higher education. Clearly, there is no merit in the contention of petitioners that R.A. No. 7722 did not transfer to the CHED the DECS' power of supervision/review over expulsion cases involving institutions of higher learning.

3. **ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; STANDARDS ON ADMINISTRATIVE CASE INVESTIGATING STUDENTS FOUND VIOLATING SCHOOL DISCIPLINES; CROSS EXAMINATION, NOT INCLUDED.—** The Due Process Clause in Article III, Section 1 of the Constitution embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our entire history. The constitutional behest that no person shall be deprived of life, liberty or property without due process of law is solemn and

inflexible. In administrative cases, such as investigations of students found violating school discipline, "[t]here are withal minimum standards which must be met before to satisfy the demands of procedural due process and these are: that (1) the students must be informed in writing of the nature and cause of any accusation against them; (2) they shall have the right to answer the charges against them and with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case." x x x Private respondents cannot claim that they were denied due process when they were not allowed to cross-examine the witnesses against them. This argument was already rejected in *Guzman v. National University* where this Court held that "x x x the imposition of disciplinary sanctions requires observance of procedural due process. And it bears stressing that due process in disciplinary cases involving students does not entail proceedings and hearings similar to those prescribed for actions and proceedings in courts of justice. The proceedings in student discipline cases may be summary; and cross examination is not, x x x an essential part thereof."

4. **ID.; ID.; ID.; ID.; ADMINISTRATIVE CASES; DUE PROCESS AFFORDED WHERE PARTY GIVEN THE OPPORTUNITY TO BE HEARD; ELUCIDATED. —** Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process. Notice and hearing is the bulwark of administrative due process, the right to which is among the primary rights that must be respected even in administrative proceedings. 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 reconsideration of the action or ruling complained of. So long as the party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process. A formal trial-type hearing is not, at all times and in all instances, essential to due process – it is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present supporting evidence on which a fair decision can be based. "To be heard" does not

only mean presentation of testimonial evidence in court – one may also be heard through pleadings and where the opportunity to be heard through pleadings is accorded, there is no denial of due process.

5. **ID.; ID.; EDUCATION; ALL INSTITUTIONS OF HIGHER LEARNING GUARANTEED ACADEMIC FREEDOM; DISCIPLINARY STANDARDS, INCLUDED.—** Section 5(2), Article XIV of the Constitution guaranties all institutions of higher learning academic freedom. This institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public interest calls for some restraint. According to present jurisprudence, academic freedom encompasses the independence of an academic institution to determine for itself (1) who may teach, (2) what may be taught, (3) how it shall teach, and (4) who may be admitted to study. It cannot be gainsaid that "the school has an interest in teaching the student discipline, a necessary, if not indispensable, value in any field of learning. By instilling discipline, the school teaches discipline. Accordingly, the right to discipline the student likewise finds basis in the freedom "what to teach." Indeed, while it is categorically stated under the Education Act of 1982 that students have a right "to freely choose their field of study, subject to existing curricula and to continue their course therein up to graduation," such right is subject to the established academic and disciplinary standards laid down by the academic institution. Petitioner DLSU, therefore, can very well exercise its academic freedom, which includes its free choice of students for admission to its school.

6. **REMEDIAL LAW; EVIDENCE; ALIBI; WEAK DEFENSE THAT CANNOT PREVAIL OVER POSITIVE TESTIMONIES.—** Private respondents interposed the common defense of alibi. However, in order that alibi may succeed as a defense, "the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime." On the other hand, the defense of alibi may not be successfully invoked where the identity of the assailant has been established by witnesses. Positive identification of accused where categorical and consistent,

without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of appellants whose testimonies are not substantiated by clear and convincing evidence. Well-settled is the rule that denial and alibi, being weak defenses, cannot overcome the positive testimonies of the offended parties. Courts reject alibi when there are credible eyewitnesses to the crime who can positively identify the accused. Alibi is an inherently weak defense and courts must receive it with caution because one can easily fabricate an alibi. Jurisprudence holds that denial, like alibi, is inherently weak and crumbles in light of positive declarations of truthful witnesses who testified on affirmative matters that accused were at the scene of the crime and were the victim's assailants. As between categorical testimonies that ring of truth on one hand and a bare denial on the other, the former must prevail. Alibi is the weakest of all defenses for it is easy to fabricate and difficult to disprove, and it is for this reason that it cannot prevail over the positive identification of accused by the witnesses.

7. ID.; ID.; ID.; APPRECIATED WHERE THE SAME WAS AMPLY CORROBORATED BY CREDIBLE AND DISINTERESTED WITNESSSES AND THE PROSECUTION EVIDENCE IS WEAK AS IN CASE AT BAR.— As for private respondent Aguilar, however, we are inclined to give credence to his alibi that he was at Camp Crame in Quezon City at the time of the incident in question on March 29, 1995. This claim was amply corroborated by the duly signed certification that he submitted before the DLSU-CSB Joint Discipline Board. The rule is that alibi assumes significance or strength when it is amply corroborated by credible and disinterested witnesses. It is true that alibi is a weak defense which an accused can easily fabricate to escape criminal liability. But where the prosecution evidence is weak, and betrays lack of credibility as to the identification of defendant, alibi assumes commensurate strength. This is but consistent with the presumption of innocence in favor of accused. Alibi is not always undeserving of credit, for there are times when accused has no other possible defense for what could really be the truth as to his whereabouts at the crucial time, and such defense may, in fact, tilt the scales of justice in his favor.

8. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; SUBSTANTIAL EVIDENCE IS SUFFICIENT.— The required proof in administrative cases, such as in student discipline cases, is neither proof beyond reasonable doubt nor preponderance of evidence but only substantial evidence. According to *Ang Tibay v. Court of Industrial Relations*, it means "such reasonable evidence as a reasonable mind might accept as adequate to support a conclusion."

9. ID.; CONSTITUTIONAL LAW; EDUCATION; ALL INSTITUTIONS OF HIGHER LEARNING GUARANTEED ACADEMIC FREEDOM; DISCIPLINARY STANDARDS; LIMITATION; PENALTY MUST BE COMMENSURATE WITH THE GRAVITY OF THE MISDEED; CASE AT BAR.— It is true that schools have the power to instill discipline in their students as subsumed in their academic freedom and that "the establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival." This power, however, does not give them the untrammeled discretion to impose a penalty which is not commensurate with the gravity of the misdeed. If the concept of proportionality between the offense committed and the sanction imposed is not followed, an element of arbitrariness intrudes. That would give rise to a due process question. We agree with respondent CHED that under the circumstances, the penalty of expulsion is grossly disproportionate to the gravity of the acts committed by private respondents Bungubung, Reverente, and Valdes, Jr. Each of the two mauling incidents lasted only for few seconds and the victims did not suffer any serious injury. Disciplinary measures especially where they involve suspension, dismissal or expulsion, cut significantly into the future of a student. They attach to him for life and become a mortgage of his future, hardly redeemable in certain cases. Officials of colleges and universities must be anxious to protect it, conscious of the fact that, appropriately construed, a disciplinary action should be treated as an educational tool rather than a punitive measure. Accordingly, We affirm the penalty of exclusion only, not expulsion, imposed on them by the CHED. As such, pursuant to Section 77(b) of the MRPS, petitioner DLSU may exclude or drop the names of the said private respondents from its

rolls for being undesirable, and transfer credentials immediately issued.

APPEARANCES OF COUNSEL

Yorac Arroyo Chua Caedo & Coronel Law Firm for petitioners.
Villaraza and Angcangco for A.s. Aguilar.
Pedro Tanchuling for JP Bangubung.
Jose Atepurado for R.A. Valdez, Jr.

D E C I S I O N

REYES, R.T., *J.*:

NAGTATAGIS sa kasong ito ang karapatang mag-aral ng apat na estudyante na nasangkot sa away ng dalawang fraternity at ang karapatang akademiko ng isang pamantasan.

PRIVATE respondents Alvin Aguilar, James Paul Bungubung, Richard Reverente and Roberto Valdes, Jr. are members of Tau Gamma Phi Fraternity who were expelled by the De La Salle University (DLSU) and College of Saint Benilde (CSB)[1] Joint Discipline Board because of their involvement in an offensive action causing injuries to petitioner James Yap and three other student members of Domino Lux Fraternity. This is the backdrop of the controversy before Us pitting private respondents' right to education *vis-a-vis* the University's right to academic freedom.

ASSAILED in this Petition for *Certiorari*, Prohibition and *Mandamus* under Rule 65 of the Rules of Court are the following: (1) Resolution of the Court of Appeals (CA) dated July 30, 1996 dismissing DLSU's petition for *certiorari* against respondent Judge and private respondents Aguilar, Bungubung, Reverente, and Valdes, Jr.;[2] (2) Resolution of the CA dated October 15,

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[1] College of Saint Benilde is an educational institution which is part of the De La Salle System.

[2] *Rollo,* pp. 107-111. Penned by Associate Justice Bernardo LL. Salas, with Associate Justices Gloria C. Paras and Ma. Alicia Austria-Martinez (now a member of this Court), *concurring*.

1996 denying the motion for reconsideration;[3] (3) Order dated January 7, 1997 of the Regional Trial Court (RTC), Branch 36 Manila granting private respondent Aguilar's motion to reiterate writ of preliminary injunction;[4] and (4) Resolution No. 181-96 dated May 14, 1996 of the Commission on Higher Education (CHED) exonerating private respondent Aguilar and lowering the penalties for the other private respondents from expulsion to exclusion.[5]

Factual Antecedents

Gleaned from the May 3, 1995 Decision of the DLSU-CSB Joint Discipline Board, two violent incidents on March 29, 1995 involving private respondents occurred:

x x x From the testimonies of the complaining witnesses, it appears that one week prior to March 29, 1995, Mr. James Yap was eating his dinner alone in Manang's Restaurant near La Salle, when he overheard two men bad-mouthing and apparently angry at Domino Lux. He ignored the comments of the two. When he arrived at his boarding house, he mentioned the remarks to his two other brods while watching television. These two brods had earlier finished eating their dinner at Manang's. Then, the three, together with four other persons went back to Manang's and confronted the two who were still in the restaurant. By admission of respondent Bungubung in his testimony, one of the two was a member of the Tau Gamma Phi Fraternity. There was no rumble or physical violence then.

After this incident, a meeting was conducted between the two heads of the fraternity through the intercession of the Student Council. The Tau Gamma Phi Fraternity was asking for an apology. "*Kailangan ng apology*" in the words of respondent Aguilar. But no apology was made.

Then, 5 members of the Tau Gamma Phi Fraternity went to the *tambayan* of the Domino Lux Fraternity in the campus. Among them were respondents Bungubung, Reverente and Papio. They were looking for a person whose description matched James Yap. According to them, this person supposedly "*nambastos ng brod*."

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[3] *Id*. at 104-105.

[4] *Id*. at 111-113.

[5] *Id*. at 125-126.

As they could not find Mr. Yap, one of them remarked "*Paano ba iyan. Pasensiya na lang*."

Came March 29, 1995 and the following events.

Ten minutes before his next class at 6:00 p.m., Mr. James Yap went out of the campus using the Engineering Gate to buy candies across Taft Avenue. As he was about to re-cross Taft Avenue, he heard heavy footsteps at his back. Eight to ten guys were running towards him. He panicked. He did not know what to do. Then, respondent Bungubung punched him in the head with something heavy in his hands – "*parang knuckles*." Respondents Reverente and Lee were behind Yap, punching him. Respondents Bungubung and Valdes who were in front of him, were also punching him. As he was lying on the street, respondent Aguilar kicked him. People shouted; guards arrived; and the group of attackers left.

Mr. Yap could not recognize the other members of the group who attacked him. With respect to respondent Papio, Mr. Yap said "*hindi ko nakita ang mukha niya, hindi ko nakita sumuntok siya*." What Mr. Yap saw was a long haired guy also running with the group.

Two guards escorted Mr. Yap inside the campus. At this point, Mr. Dennis Pascual was at the Engineering Gate. Mr. Pascual accompanied Yap to the university clinic; reported the incident to the Discipline Office; and informed his fraternity brods at their *tambayan*. According to Mr. Pascual, their head of the Domino Lux Fraternity said: "*Walang gagalaw. Uwian na lang*."

Mr. Ericson Cano, who was supposed to hitch a ride with Dennis Pascual, saw him under the clock in Miguel Building. However, they did not proceed directly for home. With a certain Michael Perez, they went towards the direction of Dagonoy Street because Mr. Pascual was supposed to pick up a book for his friend from another friend who lives somewhere in the area.

As they were along Dagonoy Street, and before they could pass the Kolehiyo ng Malate Restaurant, Mr. Cano first saw several guys inside the restaurant. He said not to mind them and just keep on walking. However, the group got out of the restaurant, among them respondents Reverente, Lee and Valdes. Mr. Cano told Mr. Lee: "*Ayaw namin ng gulo*." But, respondent Lee hit Mr. Cano without provocation. Respondent Reverente kicked Mr. Pascual and respondent Lee also hit Mr. Pascual. Mr. Cano and Mr. Perez managed to run from the mauling and they were chased by respondent Lee and two others.

Mr. Pascual was left behind. After respondent Reverente first kicked him, Mr. Pascual was ganged-upon by the rest. He was able to run, but the group was able to catch up with him. His shirt was torn and he was hit at the back of his head with a lead pipe. Respondent Lee who was chasing Cano and Perez, then returned to Mr. Pascual.

Mr. Pascual identified respondents Reverente and Lee, as among those who hit him. Although Mr. Pascual did not see respondent Valdes hit him, he identified respondent Valdez (*sic*) as also one of the members of the group.

In fact, Mr. Cano saw respondent Valdes near Mr. Pascual. He was almost near the corner of Leon Guinto and Estrada; while respondent Pascual who managed to run was stopped at the end of Dagonoy along Leon Guinto. Respondent Valdes shouted: "*Mga putang-ina niyo*." Respondent Reverente hit Mr. Pascual for the last time. Apparently being satisfied with their handiwork, the group left. The victims, Cano, Perez and Pascual proceeded to a friend's house and waited for almost two hours, or at around 8:00 in the evening before they returned to the campus to have their wounds treated. Apparently, there were three cars roaming the vicinity.[6]

The mauling incidents were a result of a fraternity war. The victims, namely: petitioner James Yap and Dennis Pascual, Ericson Cano, and Michael Perez, are members of the "Domino Lux Fraternity," while the alleged assailants, private respondents Alvin Aguilar, James Paul Bungubung, Richard Reverente and Roberto Valdes, Jr. are members of "Tau Gamma Phi Fraternity," a rival fraternity.

The next day, March 30, 1995, petitioner Yap lodged a complaint[7] with the Discipline Board of DLSU charging private respondents with "direct assault." Similar complaints[8] were also filed by Dennis Pascual and Ericson Cano against Alvin Lee and private respondents Valdes and Reverente. Thus, cases entitled "*De La Salle University and College of St. Benilde v. Alvin Aguilar (AB-BSM/9152105), James Paul Bungubung (AB-PSM/9234403), Robert R. Valdes, Jr. (BS-BS-APM/9235086),*

[6] *Id*. at 140-143.

[7] *Id*. at 127.

[8] *Id*. at 128-129.

Alvin Lee (EDD/9462325), Richard Reverente (AB-MGT/ 9153837) and Malvin A. Papio (AB-MGT/9251227)" were docketed as Discipline Case No. 9495-3-25121.

The Director of the DLSU Discipline Office sent separate notices to private respondents Aguilar, Bungubung and Valdes, Jr. and Reverente informing them of the complaints and requiring them to answer. Private respondents filed their respective answers.[9]

As it appeared that students from DLSU and CSB[10] were involved in the mauling incidents, a joint DLSU-CSB Discipline Board[11] was formed to investigate the incidents. Thus, petitioner Board Chairman Emmanuel Sales sent notices of hearing[12] to private respondents on April 12, 1995. Said notices uniformly stated as follows:

> Please be informed that a joint and expanded Discipline Board had been constituted to hear and deliberate the charge against you for violation of CHED Order No. 4 arising from the written complaints of James Yap, Dennis C. Pascual, and Ericson Y. Cano.
>
> You are directed to appear at the hearing of the Board scheduled on April 19, 1995 at 9:00 a.m. at the Bro. Connon Hall for you and your witnesses to give testimony and present evidence in your behalf. You may be assisted by a lawyer when you give your testimony or those of your witnesses.
>
> On or before April 18, 1995, you are further directed to provide the Board, through the Discipline Office, with a list of your witnesses as well as the sworn statement of their proposed testimony.
>
> Your failure to appear at the scheduled hearing or your failure to submit the list of witnesses and the sworn statement of their proposed

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[9] *Id.* at 130-133.

[10] *Id.* at 8. Aguilar, Bungubung, and Valdes, Jr. are students of DLSU, while Reverente is a student of CSB.

[11] The composition of the DLSU-CSB Joint Discipline Board are petitioner Atty. Emmanuel Sales (Chairman), petitioner Atty. Jude La Torre (Faculty Representative/CSB), petitioner Ronald Holmes (Faculty Representative/DLSU), Amparo Rio (Student Representative) and Peter Paul Liggayu (Student Representative).

[12] *Rollo,* pp. 134-137.

testimony will be considered a waiver on your part to present evidence and as an admission of the principal act complained of.

For your strict compliance.[13]

During the proceedings before the Board on April 19 and 28, 1995, private respondents interposed the common defense of alibi, summarized by the DLSU-CSB Joint Discipline Board as follows:

First, in the case of respondent Bungubung, March 29, 1995 was one of the few instances when he was picked-up by a driver, a certain Romeo S. Carillo. Most of the time, respondent Bungubung goes home alone sans driver. But on this particular date, respondent Bungubung said that his dad asked his permission to use the car and thus, his dad instructed this driver Carillo to pick-up his son. Mr. Carillo is not a family driver, but works from 8:00 a.m. to 5:00 p.m. for the Philippine Ports Authority where the elder Bungubung is also employed.

Thus, attempting to corroborate the alibi of respondent Bungubung, Mr. Carillo said that he arrived at La Salle at 4:56 p.m.; picked-up respondent at 5:02 p.m.; took the Roxas Blvd. route towards respondent's house in BF Parañaque (on a Wednesday in Baclaran); and arrived at the house at 6:15 p.m. Respondent Bungubung was dropped-off in his house, and taking the same route back, Mr. Carillo arrived at the South Harbor at 6:55 p.m. the Philippine Ports Authority is located at the South Harbor.[14]

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Secondly, respondent Valdes said that he was with his friends at McDonald's Taft just before 6:00 p.m. of March 29, 1995. He said that he left McDonald at 5:50 p.m. together to get some medicine at the university clinic for his throat irritation. He said that he was at the clinic at 5:52 p.m. and went back to McDonald, all within a span of 3 or even 4 minutes.

Two witnesses, a certain Sharon Sia and the girlfriend of respondent Valdes, a certain Jorgette Aquino, attempted to corroborate Valdez' alibi.[15]

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[13] *Id.* at 134.

[14] *Id.* at 144-145.

[15] *Id.* at 145.

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Third, respondent Reverente told that (*sic*) the Board that he was at his home at 5:00 p.m. of March 29, 1995. He said that he was given the responsibility to be the paymaster of the construction workers who were doing some works in the apartment of his parents. Although he had classes in the evening, the workers according to him would wait for him sometimes up to 9:00 p.m. when he arrives from his classes. The workers get paid everyday.

Respondent Reverente submitted an affidavit, unsigned by the workers listed there, supposedly attesting to the fact that he paid the workers at the date and time in question. [16]

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Fourth, respondent Aguilar "solemnly sw[ore] that [he] left DLSU at 5:00 p.m. for Camp Crame for a meeting with some of the officers that we were preparing."[17]

On May 3, 1995, the DLSU-CSB Joint Discipline Board issued a Resolution[18] finding private respondents guilty. They were meted the supreme penalty of automatic expulsion,[19] pursuant to CHED Order No. 4.[20] The dispositive part of the resolution reads:

[16] *Id.* at 146.

[17] *Id.* at 147.

[18] *Id.* at 139-150.

[19] Manual of Regulations for Private Schools (1992), Sec. 77(c) provides that **expulsion** is "an extreme penalty of an erring pupil or student consisting of his exclusion from admission to any public or private school in the Philippines and which requires the prior approval of the Secretary. The penalty may be imposed for acts or offenses constituting gross misconduct, dishonesty, hazing, carrying deadly weapons, immorality, selling and/or possession of prohibited drugs such as marijuana, drug dependency, drunkenness, hooliganism, vandalism, and other serious school offenses such as assaulting a pupil or student or school personnel, instigating or leading illegal strikes or similar concerned activities resulting in the stoppage of classes, preventing or threatening any pupil or student or school personnel from entering the school premises or attending classes or discharging their duties, forging or tampering with school records or school forms, and securing or using forged school records, forms and documents."

[20] *Rollo,* pp. 151-153.

WHEREFORE, considering all the foregoing, the Board finds respondents ALVIN AGUILAR (AB-BSM/9152105), JAMES PAUL BUNGUBUNG (AB-PSM/9234403), ALVIN LEE (EDD/94623250) and RICHARD V. REVERENTE (AB-MGT/9153837) guilty of having violated CHED Order No. 4 and thereby orders their automatic expulsion.

In the case of respondent MALVIN A. PAPIO (AB-MGT/9251227), the Board acquits him of the charge.

SO ORDERED.[21]

Private respondents separately moved for reconsideration[22] before the Office of the Senior Vice-President for Internal Operations of DLSU. The motions were all denied in a Letter-Resolution[23] dated June 1, 1995.

On June 5, 1995, private respondent Aguilar filed with the RTC, Manila, against petitioners a petition for *certiorari* and injunction under Rule 65 of the Rules of Court with prayer for temporary restraining order (TRO) and/or writ of preliminary injunction. It was docketed as Civil Case No. 95-74122 and assigned to respondent Judge of Branch 36. The petition essentially sought to annul the May 3, 1995 Resolution of the DLSU-CSB Joint Discipline Board and the June 1, 1995 Letter-Resolution of the Office of the Senior Vice-President for Internal Affairs.

The following day, June 6, 1995, respondent Judge issued a TRO[24] directing DLSU, its subordinates, agents, representatives and/or other persons acting for and in its behalf to refrain and desist from implementing Resolution dated May 3, 1995 and Letter-Resolution dated June 1, 1995 and to immediately desist from barring the enrollment of Aguilar for the second term of school year (SY) 1995.

Subsequently, private respondent Aguilar filed an *ex parte* motion to amend his petition to correct an allegation in paragraph

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[21] *Id.* at 150.

[22] *Id.* at 1284-1304.

[23] *Id.* at 172-178.

[24] *Id.* at 180.

3.21[25] of his original petition. Respondent Judge amended the TRO[26] to conform to the correction made in the amended petition.[27]

On June 7, 1995, the CHED directed DLSU to furnish it with copies of the case records of Discipline Case No. 9495-3-25121,[28] in view of the authority granted to it under Section 77(c) of the Manual of Regulations for Private Schools (MRPS).

On the other hand, private respondents Bungubung and Reverente, and later, Valdes, filed petitions-in-intervention[29] in Civil Case No. 95-74122. Respondent Judge also issued corresponding temporary restraining orders to compel petitioner DLSU to admit said private respondents.

On June 19, 1995, petitioner Sales filed a motion to dismiss[30] in behalf of all petitioners, except James Yap. On June 20, 1995, petitioners filed a supplemental motion to dismiss[31] the petitions-in-intervention.

On September 20, 1995, respondent Judge issued an Order[32] denying petitioners' (respondents there) motion to dismiss and its supplement, and granted private respondents' (petitioners there) prayer for a writ of preliminary injunction. The pertinent part of the Order reads:

> For this purpose, respondent, its agents, representatives or any and all other persons acting for and in its behalf is/are restrained and enjoined from —

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[25] Private respondent (petitioner there) Aguilar claimed that, through inadvertence, his petition erroneously alleged that he was being prevented from enrolling for the "second term of SY 1995," when, in truth, he was being barred/prohibited from enrolling for the "first term of SY 1995-1996."

[26] *Rollo,* pp. 206-207.

[27] *Id.* at 181-205.

[28] *Id.* at 208.

[29] *Id.* at 210-236.

[30] *Id.* at 237-246.

[31] *Id.* at 247-275.

[32] *Id.* at 1116-1124.

1. Implementing and enforcing the Resolution dated May 3, 1995 ordering the automatic expulsion of petitioner and the petitioners-in-intervention from the De La Salle University and the letter-resolution dated June 1, 1995, affirming the Resolution dated May 3, 1995; and

2. Barring the enrolment of petitioner and petitioners-in-intervention in the courses offered at respondent De La Salle University and to immediately allow them to enroll and complete their respective courses/degrees until their graduation thereat in accordance with the standards set by the latter.

WHEREFORE, the ancillary remedy prayed for is granted. Respondent, its agents, representatives, or any and all persons acting for and its behalf are hereby restrained and enjoyed from:

1. Implementing and enforcing the Resolution dated May 3, 1995 ordering the automatic expulsion of petitioner and petitioners-in-intervention and the Letter-Resolution dated June 1, 1995; and

2. Barring the enrollment of petitioner and petitioners-in-intervention in the courses offered at respondent (De La Salle University) and to forthwith allow all said petitioner and petitioners-in-intervention to enroll and complete their respective courses/degrees until their graduation thereat.

The Writ of Preliminary Injunction shall take effect upon petitioner and petitioners-in-intervention posting an injunctive bond in the amount of ₱15,000.00 executed in favor of respondent to the effect that petitioner and petitioners-in-intervention will pay to respondent all damages that the latter may suffer by reason of the injunction if the Court will finally decide that petitioner and petitioners-in-intervention are not entitled thereto.

The motion to dismiss and the supplement thereto is denied for lack of merit. Respondents are directed to file their Answer to the Petition not later than fifteen (15) days from receipt thereof.

SO ORDERED.[33]

Despite the said order, private respondent Aguilar was refused enrollment by petitioner DLSU when he attempted to enroll on September 22, 1995 for the second term of SY 1995-1996. Thus, on September 25, 1995, Aguilar filed with respondent

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[33] *Id*. at 1123-1124.

Judge an urgent motion to cite petitioners (respondents there) in contempt of court.[34] Aguilar also prayed that petitioners be compelled to enroll him at DLSU in accordance with respondent Judge's Order dated September 20, 1995. On September 25, 1995, respondent Judge issued[35] a writ of preliminary injunction, the relevant portion of which reads:

> IT IS HEREBY ORDERED by the undersigned of the REGIONAL TRIAL COURT OF MANILA that until further orders, you the said DE LA SALLE University as well as your subordinates, agents, representatives, employees and any other person assisting or acting for or on your behalf, to immediately desist from implementing the Resolution dated May 3, 1995 ordering the automatic expulsion of petitioner and the intervenors in DLSU, and the letter-resolution dated June 1, 1995 affirming the said Resolution of May 3, 1995 and to immediately desist from barring the enrolment of petitioner and intervenors in the courses offered at DLSU and to allow them to enroll and complete their degree courses until their graduation from said school.[36]

On October 16, 1995, petitioner DLSU filed with the CA a petition for *certiorari*[37] (CA-G.R. SP No. 38719) with prayer for a TRO and/or writ of preliminary injunction to enjoin the enforcement of respondent Judge's September 20, 1995 Order and writ of preliminary injunction dated September 25, 1995.

On April 12, 1996, the CA granted petitioners' prayer for preliminary injunction.

On May 14, 1996, the CHED issued its questioned Resolution No. 181-96, summarily disapproving the penalty of expulsion for all private respondents. As for Aguilar, he was to be reinstated, while other private respondents were to be excluded.[38] The Resolution states:

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[34] *Id.* at 1563-1571.

[35] *Id.* at 114-115.

[36] *Id.* at 115.

[37] *Id.* at 336-392.

[38] Manual of Regulations for Private Schools (1992), Sec. 77(b) provides that **exclusion** is "a penalty in which the school is allowed to exclude or drop

RESOLUTION 181-96

RESOLVED THAT THE REQUEST OF THE DE LA SALLE UNIVERSITY (DLSU), TAFT AVENUE, MANILA FOR THE APPROVAL OF THE PENALTY OF EXPULSION IMPOSED ON MR. ALVIN AGUILAR, JAMES PAUL BUNGUBUNG, ROBERT R. VALDES, JR., ALVIN LEE AND RICHARD V. REVERENTE BE, AS IT IS HEREBY IS, DISAPPROVED.

RESOLVED FURTHER, THAT THE COMMISSION DIRECT THE DLSU TO IMMEDIATELY EFFECT THE REINSTATEMENT OF MR. AGUILAR AND THE LOWERING OF THE PENALTY OF MR. JAMES PAUL BUNGUBUNG, MR. ROBER R. VALDEZ, JR., (*sic*) MR. ALVIN LEE AND MR. RICHARD V. REVERENTE FROM EXPULSION TO EXCLUSION.[39]

Despite the directive of CHED, petitioner DLSU again prevented private respondent Aguilar from enrolling and/or attending his classes, prompting his lawyer to write several demand letters[40] to petitioner DLSU. In view of the refusal of petitioner DLSU to enroll private respondent Aguilar, CHED wrote a letter dated June 26, 1996 addressed to petitioner Quebengco requesting that private respondent Aguilar be allowed to continue attending his classes pending the resolution of its motion for reconsideration of Resolution No. 181-96. However, petitioner Quebengco refused to do so, prompting CHED to promulgate an Order dated September 23, 1996 which states:

Acting on the above-mentioned request of Mr. Aguilar through counsel enjoining De La Salle University (DLSU) to comply with CHED Resolution 181-96 (*Re: Expulsion Case of Alvin Aguilar, et al. v. DLSU*) directing DLSU to reinstate Mr. Aguilar and finding the urgent request as meritorious, there being no other plain and speedy remedy available, considering the set deadline for enrollment this current TRIMESTER, and in order to prevent further prejudice to his rights as a student of the institution, DLSU, through the proper school authorities, is hereby directed to allow Mr. Alvin Aguilar to provisionally enroll, pending the Commission's Resolution of the instant Motion for Reconsideration filed by DLSU.

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the name of the erring pupil or student from the school rolls for being undesirable, and transfer credentials immediately issued."

[39] *Rollo,* pp. 125-126.

[40] *Id.* at 1599-1606.

SO ORDERED.[41]

Notwithstanding the said directive, petitioner DLSU, through petitioner Quebengco, still refused to allow private respondent Aguilar to enroll. Thus, private respondent Aguilar's counsel wrote another demand letter to petitioner DLSU.[42]

Meanwhile, on June 3, 1996, private respondent Aguilar, using CHED Resolution No. 181-96, filed a motion to dismiss[43] in the CA, arguing that CHED Resolution No. 181-96 rendered the CA case moot and academic.

On July 30, 1996, the CA issued its questioned resolution granting the motion to dismiss of private respondent Aguilar, disposing thus:

THE FOREGOING CONSIDERED, dismissal of herein petition is hereby directed.

SO ORDERED.[44]

On October 15, 1996, the CA issued its resolution denying petitioners' motion for reconsideration, as follows:

It is obvious to Us that CHED Resolution No. 181-96 is immediately executory in character, the pendency of a Motion for Reconsideration notwithstanding.

After considering the Opposition and for lack of merit, the Motion for Reconsideration is hereby denied.

SO ORDERED.[45]

On October 28, 1996, petitioners requested transfer of case records to the Department of Education, Culture and Sports (DECS) from the CHED.[46] Petitioners claimed that it is the

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[41] *Id*. at 608.

[42] *Id*. at 1605-1606.

[43] *Id*. at 435-438.

[44] *Id*. at 110.

[45] *Id*. at 105.

[46] *Id*. at 518-522.

DECS, not CHED, which has jurisdiction over expulsion cases, thus, necessitating the transfer of the case records of Discipline Case No. 9495-3-25121 to the DECS.

On November 4, 1996, in view of the dismissal of the petition for *certiorari* in CA-G.R. SP No. 38719 and the automatic lifting of the writ of preliminary injunction, private respondent Aguilar filed an urgent motion to reiterate writ of preliminary injunction dated September 25, 1995 before respondent RTC Judge of Manila.[47]

On January 7, 1997, respondent Judge issued its questioned order granting private respondent Aguilar's urgent motion to reiterate preliminary injunction. The pertinent portion of the order reads:

> In light of the foregoing, petitioner Aguilar's urgent motion to reiterate writ of preliminary injunction is hereby granted, and respondents' motion to dismiss is denied.
>
> The writ of preliminary injunction dated September 25, 1995 is declared to be in force and effect.
>
> Let a copy of this Order and the writ be served personally by the Court's sheriff upon the respondents at petitioners' expense.
>
> SO ORDERED.[48]

Accordingly, private respondent Aguilar was allowed to conditionally enroll in petitioner DLSU, subject to the continued effectivity of the writ of preliminary injunction dated September 25, 1995 and to the outcome of Civil Case No. 95-74122.

On February 17, 1997, petitioners filed the instant petition.

On June 15, 1998, We issued a TRO[49] as prayed for by the urgent motion for the issuance of a TRO[50] dated June 4, 1998

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[47] *Id.* at 523-530.

[48] *Id.* at 113.

[49] *Id.* at 1140-1142.

[50] *Id.* at 1128-1132. It was alleged there that private respondent Aguilar had apparently completed all the necessary units for graduation and was

of petitioners, and enjoined respondent Judge from implementing the writ of preliminary injunction dated September 25, 1995 issued in Civil Case No. 95-74122, effective immediately and until further orders from this Court.

On March 27, 2006, private respondent Aguilar filed his manifestation[51] stating that he has long completed his course at petitioner DLSU. He finished and passed all his enrolled subjects for the second trimester of 1997-1998, as indicated in his transcript of records[52] issued by DLSU. However, despite having completed all the academic requirements for his course, DLSU has not issued a certificate of completion/graduation in his favor.

Issues

We are tasked to resolve the following issues:

1. Whether it is the DECS or the CHED which has legal authority to review decisions of institutions of higher learning that impose disciplinary action on their students found violating disciplinary rules.

2. Whether or not petitioner DLSU is within its rights in expelling private respondents.

   2.a Were private respondents accorded due process of law?

   2.b Can petitioner DLSU invoke its right to academic freedom?

   2.c Was the guilt of private respondents proven by substantial evidence?

3. Whether or not the penalty imposed by DLSU on private respondents is proportionate to their misdeed.

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demanding that his academic records be evaluated by the office of the university registrar with a view to graduation.

[51] *Id*. at 1162-1167.

[52] *Id*. at 1647-1650.

Our Ruling

Prefatorily, there is merit in the observation of petitioners[53] that while CHED Resolution No. 181-96 disapproved the expulsion of other private respondents, it nonetheless authorized their exclusion from petitioner DLSU. However, because of the dismissal of the CA case, petitioner DLSU is now faced with the spectacle of having two different directives from the CHED and the respondent Judge – CHED ordering the exclusion of private respondents Bungubung, Reverente, and Valdes, Jr., and the Judge ordering petitioner DLSU to allow them to enroll and complete their degree courses until their graduation.

This is the reason We opt to decide the whole case on the merits, brushing aside technicalities, in order to settle the substantial issues involved. This Court has the power to take cognizance of the petition at bar due to compelling reasons, and the nature and importance of the issues raised warrant the immediate exercise of Our jurisdiction.[54] This is in consonance with our case law now accorded near-religious reverence that rules of procedure are but tools designed to facilitate the attainment of justice, such that when its rigid application tends to frustrate rather than promote substantial justice, this Court has the duty to suspend their operation.[55]

I. It is the CHED, not DECS, which has the power of supervision and review over disciplinary cases decided by institutions of higher learning.

Ang CHED, hindi ang DECS, ang may kapangyarihan ng pagsubaybay at pagrepaso sa mga desisyong pandisiplina ng mga institusyon ng mas mataas na pag-aaral.

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[53] *Id*. at 92.

[54] See *Del Mar v. Philippine Amusement and Gaming Corporation,* 400 Phil. 307, 326-327 (2000), citing *Fortich v. Corona,* G.R. No. 131457, April 24, 1998, 289 SCRA 624.

[55] *Id*., citing *Ramos v. Court of Appeals,* G.R. No. 99425, March 3, 1997, 269 SCRA 34.

Petitioners posit that the jurisdiction and duty to review student expulsion cases, even those involving students in secondary and tertiary levels, is vested in the DECS not in the CHED. In support of their stance, petitioners cite Sections 4,[56] 15(2) & (3),[57] 54,[58] 57(3)[59] and 70[60] of Batas Pambansa (B.P.) Blg. 232, otherwise known as the "Education Act of 1982."

According to them, Republic Act (R.A.) No. 7722 did not transfer to the CHED the DECS' power of supervision/review over expulsion cases involving institutions of higher learning. They say that unlike B.P. Blg. 232, R.A. No. 7722 makes no reference to the right and duty of learning institutions to develop moral character and instill discipline among its students. The clear concern of R.A. No. 7722 in the creation of the CHED was academic, *i.e.,* the formulation, recommendation, setting, and development of academic plans, programs and standards for institutions of higher learning. The enumeration of CHED's powers and functions under Section 8 does not include supervisory/review powers in student disciplinary cases. The

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[56] Batas Pambansa Blg. 232 (1982), Sec. 4 provides educational institutions "shall aim to inculcate love of country, teach the duties of citizenship, and develop moral character, personal discipline, and scientific, technological, and vocational efficiency."

[57] *Id.*, Sec. 15(2) & (3) essentially states that students have the obligation to "[u]phold the academic integrity of the school, endeavor to achieve academic excellence and abide by the rules and regulations governing his academic responsibilities and moral integrity," and "[p]romote and maintain the peace and tranquility of the school by observing the rules of discipline, and by exerting efforts to attain harmonious relationships with fellow students, the teaching and academic staff and other school personnel."

[58] *Id.*, Sec. 54 gives the Ministry of Education, Culture and Sports (now DECS) the power to administer the educational system and to supervise and regulate educational institutions, without prejudice to the provisions of the charter of any state college and university.

[59] *Id.*, Sec. 57(3) provides that the DECS shall "[p]romulgate rules and regulations necessary for the administration, supervision and regulation of the educational system in accordance with declared policy."

[60] *Id.*, Sec. 70 mandates that the "the Minister (now Secretary) of Education, Culture and Sports, charged with the administration and enforcement of this Act, shall promulgate the necessary implementing rules and regulations."

reference in Section 3 to CHED's "coverage" of institutions of higher education is limited to the powers and functions specified in Section 8. The Bureau of Higher Education, which the CHED has replaced and whose functions and responsibilities it has taken over, never had any authority over student disciplinary cases.

We cannot agree.

On May 18, 1994, Congress approved R.A. No. 7722, otherwise known as "An Act Creating the Commission on Higher Education, Appropriating Funds Thereof and for other purposes."

Section 3 of the said law, which paved the way for the creation of the CHED, provides:

> Section 3. *Creation of the Commission on Higher Education.*— In pursuance of the abovementioned policies, the Commission on Higher Education is hereby created, hereinafter referred to as Commission.
>
> The Commission shall be independent and separate from the Department of Education, Culture and Sports (DECS) and attached to the office of the President for administrative purposes only. Its coverage shall be both public and private institutions of higher education as well as degree-granting programs in all post secondary educational institutions, public and private.

The powers and functions of the CHED are enumerated in Section 8 of R.A. No. 7722. They include the following:

> Sec. 8. *Powers and functions of the Commission.*– The Commission shall have the following powers and functions:
>
> xxx xxx xxx
>
> n) promulgate such rules and regulations and exercise such other powers and functions as may be necessary to carry out effectively the purpose and objectives of this Act; and
>
> o) perform such other functions as may be necessary for its effective operations and for the continued enhancement of growth or development of higher education.

Clearly, there is no merit in the contention of petitioners that R.A. No. 7722 did not transfer to the CHED the DECS' power of supervision/review over expulsion cases involving institutions of higher learning.

First, the foregoing provisions are ***all-embracing***. They make no reservations of powers to the DECS insofar as institutions of higher learning are concerned. They show that the authority and supervision over all public and private institutions of higher education, as well as degree-granting programs in all post-secondary educational institutions, public and private, belong to the CHED, not the DECS.

Second, to rule that it is the DECS which has authority to decide disciplinary cases involving students on the tertiary level would ***render nugatory*** the coverage of the CHED, which is "both public and private institutions of higher education as well as degree granting programs in all post secondary educational institutions, public and private." That would be absurd.

It is of public knowledge that petitioner DLSU is a private educational institution which offers tertiary degree programs. Hence, it is under the CHED authority.

Third, the policy of R.A. No. 7722[61] is ***not only*** the protection, fostering and promotion of the right of all citizens to affordable quality education at all levels and the taking of appropriate steps

[61] Republic Act No. 7722 (approved May 18, 1994), Sec. 2 declares the policy of law as follows:

Section 2. *Declaration of Policy.* — The State shall protect, foster and promote the right of all citizens to affordable quality education at all levels and shall take appropriate steps to ensure that education shall be accessible to all. The state shall likewise ensure and protect academic freedom and shall promote its exercise and observance for the continuing intellectual growth, the advancement of learning and research, the development of responsible and effective leadership, the education of high level and middle-level professionals, and the enrichment of our historical and cultural heritage.

State-supported institutions of higher learning shall gear their programs to national, regional or local development plans. Finally, all institutions of higher learning shall exemplify through their physical and natural surroundings the dignity and beauty of, as well as their pride in, the intellectual and scholarly life.

to ensure that education shall be accessible to all. The law is ***likewise*** concerned with ensuring and protecting academic freedom and with promoting its exercise and observance for the continued intellectual growth of students, the advancement of learning and research, the development of responsible and effective leadership, the education of high-level and middle-level professionals, and the enrichment of our historical and cultural heritage.

It is thus safe to assume that when Congress passed R.A. No. 7722, its members were aware that disciplinary cases involving students on the tertiary level would continue to arise in the future, which would call for the invocation and exercise of institutions of higher learning of their right to academic freedom.

Fourth, petitioner DLSU cited no authority in its bare claim that the Bureau of Higher Education, which CHED replaced, never had authority over student disciplinary cases. In fact, the responsibilities of other government entities having functions similar to those of the CHED ***were transferred*** to the CHED.[62]

Section 77 of the MRPS[63] on the process of review in student discipline cases should therefore be ***read in conjunction*** with the provisions of R.A. No. 7722.

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[62] *Id.*, Sec. 18 also explicitly provides:

Sec. 18. *Transitory Provisions*. – Such personnel, properties, assets and liabilities, functions and responsibilities of the Bureau of Higher Education, including those for higher and tertiary education and degree granting vocational and technical programs in the regional offices, under the Department of Education, Culture and Sports, and other government entities having functions similar to those of the Commission are hereby transferred to the Commission.

[63] Manual of Regulations for Private Schools (1992), Sec. 77 aside from defining the penalties of suspension, exclusion and expulsion, also provides for the process of review over student discipline cases. Thus, the decision of the school on every case involving the **penalty of suspension** which exceeds twenty (20%) percent of the prescribed school days for a school year or term shall be forwarded to the Regional Office [i.e., any of the regional offices of the DECS which has jurisdiction over the school or institution concerned] concerned within ten days from the termination of the investigation of each case for its information. On the other hand, the decision of the school on every case involving the **penalty of exclusion** from the rolls, together with all the pertinent papers therefor, shall be filed in the school for a period of

Fifth, Section 18 of R.A. No. 7722 is very clear in stating that ***"[j]urisdiction over DECS-supervised or chartered state-supported post-secondary degree-granting vocational and tertiary institutions shall be transferred to the Commission [On Higher Education]."*** This provision ***does not limit or distinguish*** that what is being transferred to the CHED is merely the formulation, recommendation, setting and development of academic plans, programs and standards for institutions of higher learning, as what petitioners would have us believe as the only concerns of R.A. No. 7722. *Ubi lex non distinguit nec nos distinguere debemus:* Where the law does not distinguish, neither should we.

To Our mind, this provision, if ***not an explicit grant of jurisdiction*** to the CHED, ***necessarily includes*** the transfer to the CHED of any jurisdiction which the DECS might have possessed by virtue of B.P. Blg. 232 or any other law or rule for that matter.

IIa. Private respondents were accorded due process of law.

Ang mga private respondents ay nabigyan ng tamang proseso ng batas.

The Due Process Clause in Article III, Section 1 of the Constitution embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our entire history.[64] The constitutional behest that no person shall be deprived of life, liberty or property without due process of law is solemn and inflexible.[65]

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one year in order for the Department [*i.e.*, the DECS] the opportunity to review the case in the event an appeal is taken by the party concerned. Lastly, the decision of the school on every case involving the **penalty of expulsion**, together with the supporting papers shall be forwarded to the Regional Office concerned within ten days from the termination of the investigation of each case.

[64] *Agabon v. National Labor Relations Commission,* G.R. No. 158693, November 17, 2004, 442 SCRA 573, 611-612.

[65] *People v. Besonia,* 446 Phil. 822 (2004).

In administrative cases, such as investigations of students found violating school discipline, "[t]here are withal minimum standards which must be met before to satisfy the demands of procedural due process and these are: that (1) the students must be informed in writing of the nature and cause of any accusation against them; (2) they shall have the right to answer the charges against them and with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case."[66]

Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process.[67] Notice and hearing is the bulwark of administrative due process, the right to which is among the primary rights that must be respected even in administrative proceedings.[68] 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 reconsideration of the action or ruling complained of.[69] So long as the party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process.[70]

A formal trial-type hearing is not, at all times and in all instances, essential to due process – it is enough that the parties are given a fair and reasonable opportunity to explain their respective

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[66] *Guzman v. National University,* G.R. No. L-68288, July 11, 1986, 142 SCRA 699, 706-707.

[67] *Bautista v. Court of Appeals,* G.R. No. 157219, May 28, 2004, 430 SCRA 353.

[68] *Globe Telecom, Inc. v. National Telecommunications Commission,* G.R. No. 143964, July 26, 2004, 435 SCRA 110.

[69] *Valiao v. Court of Appeals,* G.R. No. 146621, July 30, 2004, 435 SCRA 543.

[70] *Barza v. Dinglasan, Jr.,* G.R. No. 136350, October 25, 2004, 441 SCRA 277.

sides of the controversy and to present supporting evidence on which a fair decision can be based.[71] "To be heard" does not only mean presentation of testimonial evidence in court – one may also be heard through pleadings and where the opportunity to be heard through pleadings is accorded, there is no denial of due process.[72]

Private respondents were duly informed in writing of the charges against them by the DLSU-CSB Joint Discipline Board through petitioner Sales. They were given the opportunity to answer the charges against them as they, in fact, submitted their respective answers. They were also informed of the evidence presented against them as they attended all the hearings before the Board. Moreover, private respondents were given the right to adduce evidence on their behalf and they did. Lastly, the Discipline Board considered all the pieces of evidence submitted to it by all the parties before rendering its resolution in Discipline Case No. 9495-3-25121.

Private respondents cannot claim that they were denied due process when they were not allowed to cross-examine the witnesses against them. This argument was already rejected in *Guzman v. National University*[73] where this Court held that "x x x the imposition of disciplinary sanctions requires observance of procedural due process. And it bears stressing that due process in disciplinary cases involving students does not entail proceedings and hearings similar to those prescribed for actions and proceedings in courts of justice. The proceedings in student discipline cases may be summary; and cross examination is not, x x x an essential part thereof."

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[71] *Seastar Marine Services, Inc. v. Bul-an, Jr.,* G.R. No. 142609, November 25, 2004, 444 SCRA 140.

[72] *Batul v. Bayron,* G.R. Nos. 157687 & 158959, February 26, 2004, 424 SCRA 26.

[73] *Supra* note 66, at 706.

IIb. Petitioner DLSU, as an institution of higher learning, possesses academic freedom which includes determination of who to admit for study.

Ang petitioner DLSU, bilang institusyon ng mas mataas na pag-aaral, ay nagtataglay ng kalayaang akademiko na sakop ang karapatang pumili ng mga mag-aaral dito.

Section 5(2), Article XIV of the Constitution guaranties all institutions of higher learning academic freedom. This institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public interest calls for some restraint.[74] According to present jurisprudence, academic freedom encompasses the independence of an academic institution to determine for itself (1) who may teach, (2) what may be taught, (3) how it shall teach, and (4) who may be admitted to study.[75]

It cannot be gainsaid that "the school has an interest in teaching the student discipline, a necessary, if not indispensable, value in any field of learning. By instilling discipline, the school teaches discipline. Accordingly, the right to discipline the student likewise finds basis in the freedom "what to teach."[76] Indeed, while it is categorically stated under the Education Act of 1982 that students have a right "to freely choose their field of study, subject to existing curricula and to continue their course therein up to graduation,"[77] such right is subject to the established academic and disciplinary

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[74] *Miriam College Foundation, Inc. v. Court of Appeals,* 401 Phil. 431, 455-456 (2000), citing *Tangonan v. Paño,* G.R. No. L-45157, June 27, 1985, 137 SCRA 245, 256-257.

[75] *Regino v. Pangasinan Colleges of Science and Technology,* G.R. No. 156109, November 18, 2004, 443 SCRA 56. The "four essential freedoms of a university" were formulated by Mr. Justice Felix Frankfurter of the United States Supreme Court in his concurring opinion in the leading case of *Sweezy v. New Hampshire*, 354 US 234, 1 L. Ed. 2d 1311, 77 S. Ct. 1203.

[76] *Miriam College Foundation, Inc. v. Court of Appeals, supra* note 74, at 285.

[77] *Batas Pambansa Blg.* 232 (effective September 11, 1982), Sec. 9(2).

standards laid down by the academic institution. Petitioner DLSU, therefore, can very well exercise its academic freedom, which includes its free choice of students for admission to its school.

IIc. The guilt of private respondents Bungubung, Reverente and Valdes, Jr. was proven by substantial evidence.

Ang pagkakasala ng private respondents na sina Bungubung, Reverente at Valdes, Jr. ay napatunayan ng ebidensiyang substansyal.

As has been stated earlier, private respondents interposed the common defense of alibi. However, in order that alibi may succeed as a defense, "the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime."[78]

On the other hand, the defense of alibi may not be successfully invoked where the identity of the assailant has been established by witnesses.[79] Positive identification of accused where categorical and consistent, without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of appellants whose testimonies are not substantiated by clear and convincing evidence.[80] Well-settled is the rule that denial and alibi, being weak defenses, cannot overcome the positive testimonies of the offended parties.[81]

Courts reject alibi when there are credible eyewitnesses to the crime who can positively identify the accused.[82] Alibi is an inherently weak defense and courts must receive it with caution because one can easily fabricate an alibi.[83] Jurisprudence holds that denial, like alibi, is inherently weak and crumbles in light

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[78] *People v. Obrique,* 465 Phil. 221 (2004).

[79] *People v. Santos,* 464 Phil. 941 (2004).

[80] *People v. Abes,* 465 Phil. 165 (2004).

[81] *People v. Arevalo, Jr.,* 466 Phil. 419 (2004).

[82] *People v. Sumalinog, Jr.,* 466 Phil. 467 (2004).

[83] *People v. Orilla,* 467 Phil. 253 (2004).

of positive declarations of truthful witnesses who testified on affirmative matters that accused were at the scene of the crime and were the victim's assailants. As between categorical testimonies that ring of truth on one hand and a bare denial on the other, the former must prevail.[84] Alibi is the weakest of all defenses for it is easy to fabricate and difficult to disprove, and it is for this reason that it cannot prevail over the positive identification of accused by the witnesses.[85]

The required proof in administrative cases, such as in student discipline cases, is neither proof beyond reasonable doubt nor preponderance of evidence but only substantial evidence. According to *Ang Tibay v. Court of Industrial Relations*,[86] it means "such reasonable evidence as a reasonable mind might accept as adequate to support a conclusion."

Viewed from the foregoing, We reject the alibi of private respondents Bungubung, Valdes Jr., and Reverente. They were unable to show convincingly that they were not at the scene of the crime on March 29, 1995 and that it was impossible for them to have been there. Moreover, their alibi cannot prevail over their positive identification by the victims.

We hark back to this Court's pronouncement affirming the expulsion of several students found guilty of hazing:

> No one can be so myopic as to doubt that the immediate reinstatement of respondent students who have been investigated and found guilty by the Disciplinary Board to have violated petitioner university's disciplinary rules and standards will certainly undermine the authority of the administration of the school. This we would be most loathe to do.
>
> More importantly, it will seriously impair petitioner university's academic freedom which has been enshrined in the 1935, 1973 and the present 1987 Constitution.[87]

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[84] *People v. Tagana,* G.R. No. 133027, March 4, 2004, 424 SCRA 620.

[85] *People v. Medina,* G.R. No. 155256, July 30, 2004, 435 SCRA 610.

[86] 69 Phil. 635 (1940).

[87] *Ateneo de Manila University v. Capulong,* G.R. No. 99327, May 27, 1993, 222 SCRA 644, 659-660.

Certainly, private respondents Bungubung, Reverente and Valdes, Jr. do not deserve to claim a venerable institution as their own, for they may foreseeably cast a malevolent influence on the students currently enrolled, as well as those who come after them.[88] It must be borne in mind that universities are established, not merely to develop the intellect and skills of the studentry, but to inculcate lofty values, ideals and attitudes; nay, the development, or flowering if you will, of the total man.[89]

As for private respondent Aguilar, however, We are inclined to give credence to his alibi that he was at Camp Crame in Quezon City at the time of the incident in question on March 29, 1995. This claim was amply corroborated by the certification that he submitted before the DLSU-CSB Joint Discipline Board, to wit:

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

TO WHOM THIS MAY CONCERN:

> We, the undersigned, hereby declare and affirm by way of this Certification that sometime on March 29, 1995, at about and between 4:30 P.M. and 5:30 P.M., we were together with Alvin A. Aguilar, at Kiangan Hall, inside Camp Crame, Quezon City, meeting in connection with an affair of our class known as Class 7, Batch 89 of the Philippine Constabulary discussing on the proposed sponsorship of TAU GAMMA PHI from said Batch '89 affair.

That the meeting was terminated at about 6:30 P.M. that evening and Alvin Aguilar had asked our permission to leave and we saw him leave Camp Crame, in his car with the driver.

April 18, 1995, Camp Crame, Quezon City.[90]

The said certification was duly signed by PO3 Nicanor R. Faustino (Anti-Organized Crime CIC, NCR), PO3 Alejandro D. Deluviar (ODITRM, Camp Crame, Quezon City), PO2

[88] See *id.* at 664.

[89] *Id.*

[90] *Rollo,* p. 138.

Severino C. Filler (TNTSC, Camp Crame, Quezon City), and PO3 Ireneo M. Desesto (Supply Center, PNPLSS). The rule is that alibi assumes significance or strength when it is amply corroborated by credible and disinterested witnesses.[91] It is true that alibi is a weak defense which an accused can easily fabricate to escape criminal liability. But where the prosecution evidence is weak, and betrays lack of credibility as to the identification of defendant, alibi assumes commensurate strength. This is but consistent with the presumption of innocence in favor of accused.[92]

Alibi is not always undeserving of credit, for there are times when accused has no other possible defense for what could really be the truth as to his whereabouts at the crucial time, and such defense may, in fact, tilt the scales of justice in his favor.[93]

III. The penalty of expulsion imposed by DLSU on private respondents is disproportionate to their misdeed.

Ang parusang expulsion na ipinataw ng DLSU sa private respondents ay hindi angkop sa kanilang pagkakasala.

It is true that schools have the power to instill discipline in their students as subsumed in their academic freedom and that "the establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival."[94] This power, however, does not give them the untrammeled discretion to impose a penalty which is not commensurate with the gravity of the misdeed. If the concept of proportionality between the offense committed and the sanction imposed is not followed, an element of

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[91] See *People v. Estoya,* G.R. No. 153538, May 19, 2004, 428 SCRA 544.

[92] *People v. Peruelo,* G.R. No. 50631, June 29, 1981, 105 SCRA 226, 238.

[93] *People v. Manambit,* 338 Phil. 57, 96 (1997), citing *People v. Maongco,* G.R. Nos. 108963-65, March 1, 1994, 230 SCRA 562, 575.

[94] See note 87, at 663-664.

arbitrariness intrudes. That would give rise to a due process question.[95]

We agree with respondent CHED that under the circumstances, the penalty of expulsion is grossly disproportionate to the gravity of the acts committed by private respondents Bungubung, Reverente, and Valdes, Jr. Each of the two mauling incidents lasted only for few seconds and the victims did not suffer any serious injury. Disciplinary measures especially where they involve suspension, dismissal or expulsion, cut significantly into the future of a student. They attach to him for life and become a mortgage of his future, hardly redeemable in certain cases. Officials of colleges and universities must be anxious to protect it, conscious of the fact that, appropriately construed, a disciplinary action should be treated as an educational tool rather than a punitive measure.[96]

Accordingly, We affirm the penalty of exclusion[97] only, not expulsion,[98] imposed on them by the CHED. As such, pursuant to Section 77(b) of the MRPS, petitioner DLSU may exclude or drop the names of the said private respondents from its rolls for being undesirable, and transfer credentials immediately issued.

WHEREFORE, the petition is *PARTIALLY GRANTED.* The Court of Appeals Resolutions dated July 30, 1996 and dated October 15, 1996, and Regional Trial Court of Manila, Branch 36, Order dated January 7, 1997 are *ANNULLED AND SET ASIDE*, while CHED Resolution 181-96 dated May 14, 1996 is *AFFIRMED*.

Petitioner DLSU is ordered to issue a certificate of completion/ graduation in favor of private respondent Aguilar. On the other hand, it may exclude or drop the names of private respondents Bungubung, Reverente, and Valdes, Jr. from its rolls, and their transfer credentials immediately issued.

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[95] *Malabanan v. Ramento,* 214 Phil. 319, 330 (1984).

[96] *Rollo,* p. 515.

[97] See note 38.

[98] See note 19.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, and *Velasco, Jr.,*[**] *JJ.,* concur.

Quisumbing,[*] *J.,* concurs in the result.

THIRD DIVISION

[G.R. No. 155033. December 19, 2007]

ALICE A.I. SANDEJAS, ROSITA A.I. CUSI, PATRICIA A.I. SANDEJAS and BENJAMIN A.I. ESPIRITU, *petitioners, vs.* **SPS. ARTURO IGNACIO, JR. and EVELYN IGNACIO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI TO THE SUPREME COURT UNDER RULE 45; QUESTIONS OF FACT, NOT PROPER; EXCEPTIONS.—** Only questions of law are entertained in petitions for review on *certiorari* under Rule 45 of the Rules of Court. The trial court's findings of fact, which the Court of Appeals affirmed, are generally binding and conclusive upon this court. There are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave

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[*] Vice Associate Justice Ma. Alicia Austria-Martinez, per Raffle dated November 28, 2007. Justice Austria-Martinez concurred with the CA decision under consideration when she was still a member of that Court (see note 2).

[**] Vice Associate Justice Antonio Eduardo B. Nachura, per Raffle dated November 19, 2007. Justice Nachura previously participated in this case as Solicitor General.

abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. In the instant case, petitioners failed to demonstrate that their petition falls under any one of the above exceptions.

2. **CIVIL LAW; FAMILY CODE; THE FAMILY; THAT EARNEST EFFORTS TOWARD COMPROMISE BE MADE BEFORE SUIT BE FILED AGAINST FAMILY MEMBERS; EXTRA-LEGAL MEASURES, NOT INCLUDED.—** It is true that Article 151 of the Family Code requires that earnest efforts towards a compromise be made before family members can institute suits against each other. However, nothing in the law sanctions or allows the commission of or resort to any extra-legal or illegal measure or remedy in order for family members to avoid the filing of suits against another family member for the enforcement or protection of their respective rights.

3. **ID.; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF *IN PARI DELICTO*; APPLICATION IN THE CASE AT BAR.—** The principle of *pari delicto* provides that when two parties are equally at fault, the law leaves them as they are and denies recovery by either one of them. Indeed, one who seeks equity and justice must come to court with clean hands. However, in the present case, petitioners were not able to establish that respondents are also at fault. Thus, the principle of *pari delicto* cannot apply. In any case, the application of the *pari delicto* principle is not absolute, as there are exceptions to its application. One of these exceptions is where the application of the *pari delicto* rule would violate well-established public policy. The prevention of lawlessness and the maintenance of peace and order are established public policies. In the instant case, to deny respondents relief on the ground of *pari delicto* would put a premium on the illegal act of petitioners in taking from respondents what the former claim to be rightfully theirs.

4. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; COUNTERCLAIM; GUIDELINES WHETHER THE SAME IS PERMISSIVE OR COMPULSORY; CASE AT BAR.—** This Court has laid down the following tests to determine whether a counterclaim is compulsory or not, to wit: (1) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (2) Would *res judicata* bar a subsequent suit on defendant's claims, absent the compulsory counterclaim rule? (3) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and (4) Is there any logical relation between the claim and the counterclaim, such that the conduct of separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court? Tested against the above-mentioned criteria, Rosita's counterclaim for the recovery of her alleged share in the sale of the Morayta property is permissive in nature. The evidence needed to prove respondents' claim to recover the amount of ₱3,000,000.00 from petitioners is different from that required to establish Rosita's demands for the recovery of her alleged share in the sale of the subject Morayta property. The recovery of respondents' claim is not contingent or dependent upon the establishment of Rosita's counterclaim such that conducting separate trials will not result in the substantial duplication of the time and effort of the court and the parties.

5. **ID.; ID.; FILING FEES; RULES ON PAYMENT OF THE SAME.—** In *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*, this Court laid down the rules on the payment of filing fees, to wit: 1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period. 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period. 3. Where

the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.

6. **ID.; ID.; COUNTERCLAIM; PERMISSIVE AND COMPULSORY COUNTERCLAIM; ON PAYMENT OF DOCKET FEES THEREOF; CASE AT BAR.—** In order for the trial court to acquire jurisdiction over her permissive counterclaim, Rosita is bound to pay the prescribed docket fees. Since it is not disputed that Rosita never paid the docket and filing fees, the RTC did not acquire jurisdiction over her permissive counterclaim. Nonetheless, the trial court ruled on the merits of Rosita's permissive counterclaim by dismissing the same on the ground that she failed to establish that there is a sharing agreement between her and Arturo with respect to the proceeds of the sale of the subject Morayta property and that the amount of ₱3,000,000.00 represented by the check which Rosita and Alice encashed formed part of the proceeds of the said sale. It is settled that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. In the present case, considering that the trial court did not acquire jurisdiction over the permissive counterclaim of Rosita, any proceeding taken up by the trial court and any ruling or judgment rendered in relation to such counterclaim is considered null and void. In effect, Rosita may file a separate action against Arturo for recovery of a sum of money. However, Rosita's claims for damages and attorney's fees are compulsory as they necessarily arise as a result of the filing by respondents of their complaint. Being compulsory in nature, payment of docket fees is not required. Nonetheless, since petitioners are found to be liable to return to respondents the amount of ₱3,000,000.00 as well as to pay moral and exemplary damages and attorney's fees, it necessarily follows that Rosita's counterclaim for damages and attorney's fees should be dismissed as correctly done by the RTC and affirmed by the CA.

7. CIVIL LAW; DAMAGES; MORAL DAMAGES; PROPRIETY THEREOF.— While no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is nevertheless essential that the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. Moreover, additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, these being, social humiliation, wounded feelings, grave anxiety, *etc*. that resulted from the act being complained of. Further, in the absence of a wrongful act or omission, or of fraud or bad faith, moral damages cannot be awarded. 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. In the absence of malice and bad faith, the mental anguish suffered by a person for having been made a party in a civil case is not the kind of anxiety which would warrant the award of moral damages. A resort to judicial processes is not, *per se,* evidence of ill will upon which a claim for damages may be based.

8. ID.; ID.; ID.; RECOVERY THEREOF FOR WILLFUL INJURY DONE AGAINST ANOTHER; CASE AT BAR.— Article 20 of the Civil Code provides that every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same. In addition, Article 2219 (10) of the Civil Code provides that moral damages may be recovered in acts or actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34 and 35 of the same Code. More particularly, Article 21 of the said Code provides that any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs, or public policy shall compensate the latter for the damage. In the present case, the act of Alice and Rosita in fraudulently encashing the subject check to the prejudice of respondents is certainly a violation of law as well as of the public policy that no one should put the law into his own hands. As to SBTC and its officers, their negligence is so gross as to amount to a willfull injury to respondents. The banking system has become an indispensable

institution in the modern world and plays a vital role in the economic life of every civilized society. Whether as mere passive entities for the safe-keeping and saving of money or as active instruments of business and commerce, banks have attained a ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence. For this reason, banks should guard against injury attributable to negligence or bad faith on its part. There is no hard-and-fast rule in the determination of what would be a fair amount of moral damages since each case must be governed by its own peculiar facts. The yardstick should be that it is not palpably and scandalously excessive. Moreover, the social standing of the aggrieved party is essential to the determination of the proper amount of the award. Otherwise, the goal of enabling him to obtain means, diversions, or amusements to restore him to the *status quo ante* would not be achieved.

9. **ID.; ID.; EXEMPLARY DAMAGES; PROPRIETY THEREOF; CASE AT BAR.—** Under Article 2229 of the Civil Code, exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated, or compensatory damages. In the instant case, the award of exemplary damages in favor of respondents is in order for the purpose of deterring those who intend to enforce their rights by taking measures or remedies which are not in accord with law and public policy. On the part of respondent bank, the public relies on a bank's sworn profession of diligence and meticulousness in giving irreproachable service. Hence, the level of meticulousness must be maintained at all times by the banking sector. In the present case the award of exemplary damages is justified by the brazen acts of petitioners Rosita and Alice in violating the law coupled with the gross negligence committed by respondent bank and its officers in allowing the subject check to be deposited which later paved the way for its encashment.

10. **ID.; ID.; ATTORNEY'S FEES; WHEN RECOVERED.—** As to attorney's fees, Article 2208 of the same Code provides, among others, that attorney's fees may be recovered when exemplary damages are awarded or when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.

APPEARANCES OF COUNSEL

Renato G. Dela Cruz & Associates for petitioners.
Alfredo Sanz and Dante H. Cortez for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 62404 promulgated on August 27, 2002, which affirmed with modification the Decision of the Regional Trial Court (RTC) of Pasig City, Branch 158, in Civil Case No. 65146 dated December 18, 1998.

The facts of the case, as summarized by the RTC, are as follows:

It appears from the plaintiffs' [petitioners] evidence that Arturo [respondent] is the elder brother of Alice [petitioner] and Rosita [petitioner], Benjamin [petitioner] and Patricia [petitioner] are Arturo's nephew and niece. Arturo and his wife Evelyn [respondent] are residents of the United States. In October 1993, Arturo leased from Dr. Borja a condominium unit identified as Unit 28-C Gilmore Townhomes located at Granada St., Quezon City. The lease was for the benefit of Benjamin who is the occupant of the unit. The rentals were paid by Ignacio. The term of the lease is for one (1) year and will expire on October 15, 1994. It appears that Arturo was intending to renew the lease contract. As he had to leave for the U.S., Arturo drew up a check, UCPB Check No. GRH-560239 and wrote on it the name of the payee, Dr. Manuel Borja, but left blank the date and amount. He signed the check. The check was intended as payment for the renewal of the lease. The date and the amount were left blank because Arturo does not know when it will be renewed and the new rate of the lease. The check was left with Arturo's sister-in-law, who was instructed to deliver or give it to Benjamin.

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[1] Penned by Justice Amelita G. Tolentino with the concurrence of Justices Ruben T. Reyes (now a member of this Court) and Renato C. Dacudao; *rollo*, pp. 121-137.

The check later came to the possession of Alice who felt that Arturo cheated their sister in the amount of three million pesos (₱3,000,000.00). She believed that Arturo and Rosita had a joint "and/or" money market placement in the amount of P3 million with the UCPB branch at Ortigas Ave., San Juan and that Ignacio preterminated the placement and ran away with it, which rightfully belonged to Rosita. Alice then inquired from UCPB Greenhills branch if Arturo still has an account with them. On getting a confirmation, she together with Rosita drew up a scheme to recover the P3 million from Arturo. Alice filled up the date of the check with "March 17, 1995" and the amount with "three million only." Alice got her driver, Kudera, to stand as the payee of the check, Dr. Borja. Alice and Rosita came to SBC[2] Greenhills Branch together with a man (Kudera) who[m] they introduced as Dr. Borja to the then Assistant Cashier Luis. After introducing the said man as Dr. Borja, Rosita, Alice and the man who was later identified as Kudera opened a Joint Savings Account No. 271-410554-7. As initial deposit for the Joint Savings Account, Alice, Rosita and Kudera deposited the check. No ID card was required of Mr. Kudera because it is an internal policy of the bank that when a valued client opens an account, an identification card is no longer required (TSN, April 21, 1997, pp. 15-16). SBC also allowed the check to be deposited without the endorsement of the impostor Kudera. SBC officials stamped on the dorsal portion of the check "endorsement/lack of endorsement guaranteed" and sent the check for clearing to the Philippine Clearing House Corporation.

On 21 March 1995, after the check had already been cleared by the drawer bank UCPB, Rosita withdrew P1 million from Joint Savings Account and deposited said amount to the current account of Alice with SBC Greenhills Branch. On the same date, Alice caused the transfer of P2 million from the Joint Savings Account to two (2) Investment Savings Account[s] in the names of Alice, Rosita and/or Patricia. ...

On April 4, 1995, a day after Evelyn and Atty. Sanz inquired about the identity of the persons and the circumstances surrounding the deposit and withdrawal of the check, the three million pesos in the two investment savings account[s] and in the current account just opened with SBC were withdrawn by Alice and Rosita.[3]

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[2] Security Bank and Trust Company.

[3] RTC Decision, *rollo*, pp. 110-111.

On June 18, 1995, Arturo Ignacio, Jr. and Evelyn Ignacio (respondents) filed a verified complaint for recovery of a sum of money and damages against Security Bank and Trust Company (SBTC) and its officers, namely: Rene Colin D. Gray, Manager; and Sonia Ortiz-Luis, Cashier. The complaint also impleaded herein petitioner Benjamin A.I. Espiritu (Benjamin), a "John Doe," representing himself as Manuel N. Borja; and a "Jane Doe."

On November 7, 1995, the complaint was amended by additionally impleading herein petitioners Alice A.I. Sandejas (Alice), Rosita A.I. Cusi (Rosita) and Patricia A.I. Sandejas (Patricia) as defendants who filed their respective answers and counterclaims.

After trial, the RTC rendered judgment dated December 18, 1998 with the following dispositive portion:

> WHEREFORE, in view of the foregoing, judgment is rendered in favor of plaintiffs as against defendants Security Bank and Trust Co., Rene Colin Gray, Sonia Ortiz Luis, Alice A.I. Sandejas and Rosita A.I. Cusi, ordering them to pay jointly and severally the plaintiffs the following amounts:
>
> (1) ₱3,000,000.00 plus legal interest on it from March 17, 1995 until the entire amount is fully paid;
>
> (2) ₱500,000.00 as moral damages;
>
> (3) ₱200,000.00 as exemplary damages;
>
> (4) ₱300,000.00 as attorney's fees; plus
>
> (5) the cost of suit.
>
> In turn, plaintiffs are directed to pay Benjamin A.I. Espiritu the amount of ₱100,000.00 as moral damages, ₱50,000.00 as exemplary damages and another ₱50,000.00 as attorney's fees.
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> The counterclaims of Patricia A.I. Sandejas are dismissed.
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> SO ORDERED.[4]

Both parties appealed the RTC Decision to the CA.

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[4] *Rollo,* pp. 118-119.

On August 14, 1999, during the pendency of the appeal with the CA, herein respondent Arturo Ignacio, Jr. (Arturo) died. [5]

On August 27, 2002, the CA promulgated the presently assailed Decision, disposing as follows:

WHEREFORE, in view of the foregoing, the assailed decision of the trial court is hereby **AFFIRMED with the MODIFICATION** that the judgment shall read as follows:

The defendants-appellants Security Bank and Trust Company, Rene Colin D. Gray, Sonia Ortiz-Luis, Alice A.I. Sandejas, and Rosita A.I. Cusi, are hereby ordered to jointly and severally pay the plaintiffs the following amounts:

1. ₱3,000,000.00 plus legal interest computed from March 17, 1995 until the entire amount is fully paid;
2. ₱200,000.00 as moral damages;
3. ₱100,000.00 as exemplary damages;
4. ₱50,000.00 as attorney's fees; plus
5. the costs of suit.

The award of moral damages, exemplary damages, and attorney's fees in favor of Benjamin Espiritu is **DELETED.**

SO ORDERED. [6]

Petitioners and SBTC, together with Gray and Ortiz-Luis, filed their respective petitions for review before this Court.

However, the petition filed by SBTC, Gray and Ortiz-Luis, docketed as G.R. No. 155038, was denied in a Resolution[7] issued by this Court on November 20, 2002, for their failure to properly verify the petition, submit a valid certification of non-forum shopping, and attach to the petition the duplicate

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[5] CA *rollo*, pp. 100-102.

[6] *Id*. at 520.

[7] *Id*. at 539.

original or certified true copy of the assailed CA Decision. Said Resolution became final and executory on April 9, 2003.[8]

On the other hand, the instant petition was given due course. Petitioners enumerated the following grounds in support of their petition:

I. THE COURT OF APPEALS HAD DECIDED A QUESTION OF SUBSTANCE NOT HERETOFORE DECIDED BY THIS COURT AND/OR HAD DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH EQUITY, THE LAW AND THE APPLICABLE DECISIONS OF THIS COURT, SUCH AS:

(a) IN NOT HOLDING THAT AS BETWEEN SIBLINGS, THE AGGRIEVED SIBLING HAS THE RIGHT TO TAKE MEASURES OR STEPS TO PROTECT HIS OWN INTEREST OR PROPERTY RIGHTS FROM AN ACT OF THE GUILTY SIBLING;

(b) IN NOT HOLDING THAT THE ACT OF ROSITA AND ALICE IN FILLING OUT THE BLANK PORTIONS OF THE CHECK TO RECOVER WHAT ARTURO, JR. TOOK FROM AND DUE ROSITA, DID NOT GIVE RISE TO AN ACTIONABLE TORT;

(c) IN NOT HOLDING THAT THE CRIMINAL ACT OF ARTURO, JR. IN SUBMITTING AN AFFIDAVIT OF LOSS OF THE CERTIFICATE OF TIME DEPOSIT FOR ₱3,000,000 THAT RIGHTFULLY BELONGED TO ROSITA JUST TO BE ABLE TO PRE-TERMINATE THE TIME DEPOSIT AND GET ITS FACE VALUE, WHEN HE KNEW IT WAS NOT LOST BUT IN FACT INTACT AND IN THE POSSESSION OF ROSITA, IS A DISHONEST AND REPREHENSIBLE ACT THAT JUSTIFIED ROSITA AND ALICE IN TAKING MEANS TO REGAIN THE MONEY AND TO DENY ARTURO, JR. ANY RIGHT TO RECOVER THE SAID AMOUNT AS WELL AS TO AN AWARD OF DAMAGES;

(d) IN NOT HOLDING THAT THE CRIMINAL ACT OF ARTURO, JR. IN SUBMITTING AN AFFIDAVIT OF LOSS OF THE OWNER'S COPY OF THE TITLE IN MORAYTA AND IN TESTIFYING IN COURT AS TO SUCH, WHEN THAT IS NOT THE TRUTH AS HE KNEW THAT THE ORIGINAL OWNER'S COPY OF THE TITLE WAS WITH ROSITA, IS ANOTHER DISHONEST AND REPREHENSIBLE ACT THAT SHOULD NOT HAVE ENTITLED HIM TO ANY AWARD OF DAMAGES; AND

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[8] CA *rollo,* p. 542.

(e) IN NOT APPLYING THE RULE ON ***PARI DELICTO*** UNDER ART. 1412 OF THE CIVIL CODE.

II. THE COURT OF APPEALS HAD DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT FAILED TO RESOLVE IN THE APPEAL THE COUNTERCLAIM OF ROSITA AGAINST ARTURO, JR. FOR THE RECOVERY OF THE AMOUNTS LEGALLY HERS THAT SHOULD JUSTIFY ALICE'S BEING ABSOLVED FROM ANY LIABILITY FOR USING THE CHECK IN RECOVERING THE AMOUNT RIGHTFULLY BELONGING TO ROSITA;

III. THE COURT OF APPEALS HAD DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT REVERSED THE TRIAL COURT'S FINDING THAT RESPONDENT WAS GUILTY OF BAD FAITH AND MALICE THAT ENTITLED PETITIONER BENJAMIN A.I. ESPIRITU TO THE AWARD OF DAMAGES NOTWITHSTANDING THAT THERE WAS AMPLE EVIDENCE SHOWN THAT SUCH BAD FAITH AND MALICE WAS MADE AS A LEVERAGE TO COMPEL ARTURO'S SIBLINGS TO RETURN TO HIM THE ₱3,000,000 WHICH WAS NOT HIS; and,

IV. THE COURT OF APPEALS HAD DECIDED THE CASE NOT IN ACCORD WITH LAW WHEN IT DELETED THE AWARD OF DAMAGES TO PETITIONER ESPIRITU AND IN NOT HAVING RULED THAT HE WAS ENTITLED TO A HIGHER AWARD OF DAMAGES CONSIDERING THE CIRCUMSTANCES OF THE CASE AS WELL AS IN NOT HAVING RULED THAT PATRICIA WAS ENTITLED TO AN AWARD OF DAMAGES.[9]

Petitioners argue that the CA overlooked and ignored vital pieces of evidence showing that the encashment of the subject check was not fraudulent and, on the contrary, was justified under the circumstances; and that such encashment did not amount to an actionable tort and that it merely called for the application of the civil law rule on *pari delicto*.

In support of these arguments, petitioners contend that the principal adversaries in the present case are full blooded siblings; that the law recognizes the solidarity of family which is why it is made a condition that earnest efforts towards a compromise

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[9] Petition, *rollo*, pp. 17-18.

be exerted before one family member can institute a suit against the other; that even if Arturo previously defrauded Rosita and deprived her of her lawful share in the sale of her property, petitioners Rosita and Alice did not precipitately file suit against him and instead took extra-legal measures to protect Rosita's property rights and at the same time preserve the solidarity of their family and save it from public embarrassment. Petitioners also aver that Rosita's and Alice's act of encashing the subject check is not fraudulent because they did not have any unlawful intent and that they merely took from Arturo what rightfully belonged to Rosita. Petitioners contend that even granting that the act of Rosita and Alice amounted to an actionable tort, they could not be adjudged liable to return the amount to respondents or to pay damages in their favor, because the civil law rule on *pari delicto* dictates that, when both parties are at fault, neither of them could expect positive relief from courts of justice and, instead, are left in the state where they were at the time of the filing of the case.

Petitioners also contend that the CA erred in failing to award damages to Patricia even if the appellate court sustained the trial court's finding that she was not a party to the fraudulent acts committed by Rosita and Alice. Petitioners argue that even if Patricia did not bother to know the details of the cases against her and left everything to her mother, she did not even know the nature of the case against her, or her superiors in the bank where she worked did not know whether she was the plaintiff or defendant, these were not reasons to deny her award of damages. The fact remains that she had been maliciously dragged into the case, and that the suit had adversely affected her work and caused her mental worries and anguish, besmirched reputation, embarrassment and humiliation.

As to Benjamin, petitioners aver that the CA also erred in deleting the award of damages and attorney's fees in his favor. Petitioners assert that the trial court found that Benjamin suffered mental anguish, wounded feelings and moral shock as a result of the filing of the present case. Citing the credentials and social standing of Benjamin, petitioners claim that the award of damages and attorney's fees in his favor should be increased.

Lastly, petitioners contend that the award of damages and attorney's fees to respondents should be deleted for their failure to establish malice or bad faith on the part of petitioners Alice and Rosita in recovering the ₱3,000,000.00 which Arturo took from Rosita; and that it is Rosita who is entitled to damages and attorney's fees for Arturo's failure and refusal to give her share in the sale of her property in Morayta.

In their Memorandum, respondents simply contend that the issues raised by petitioners are factual in nature and that the settled rule is that questions of fact are not subject to review by the Supreme Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court. While there are exceptions to this rule, respondents assert that petitioners failed to show that the instant case falls under any of these exceptions.

The Court's Ruling

The Court finds the petition bereft of merit. There is no compelling reason for the Court to disturb the findings of facts of the lower courts.

The trial court's findings are as follows: (1) Rosita failed to establish that there is an agreement between her and Arturo that the latter will give her one-third of the proceeds of the sale of the Morayta property; (2) petitioners were not able to establish by clear and sufficient evidence that the ₱3,000,000.00 which they took from Arturo when they encashed the subject check was part of the proceeds of the sale of the Morayta property; (3) Rosita's counterclaim is permissive and she failed to pay the full docket and filing fees for her counterclaim.[10]

Petitioners challenge the findings of the RTC and insist that they should not be held liable for encashing the subject check because Arturo defrauded Rosita and that he committed deceitful acts which deprived her of her rightful share in the sale of her building in Morayta; that the amount of ₱3,000,000.00 represented by the check which they encashed formed part of the proceeds of the said sale; that Alice and Rosita were merely moved by

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[10] RTC Decision, *rollo*, pp. 117-118.

their desire to recover from Arturo, Rosita's supposed share in the sale of her property.

However, the Court agrees with respondents that only questions of law are entertained in petitions for review on *certiorari* under Rule 45 of the Rules of Court.[11] The trial court's findings of fact, which the Court of Appeals affirmed, are generally binding and conclusive upon this court.[12] There are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[13] In the instant case, petitioners failed to demonstrate that their petition falls under any one of the above exceptions.

Petitioners' assignments of errors boil down to the basic issue of whether or not Alice and Rosita are justified in encashing the subject check given the factual circumstances established in the present case.

Petitioners' posture is not sanctioned by law. If they truly believe that Arturo took advantage of and violated the rights of Rosita, petitioners should have sought redress from the courts and should not have simply taken the law into their own hands. Our laws are replete with specific remedies designed to provide

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[11] *Iron Bulk Shipping Phil. Co., Ltd. v. Remington Industrial Sales Corp.*, 462 Phil. 694, 703 (2003).

[12] *Id.* at 703-704.

[13] *Id.* at 704.

relief for the violation of one's rights. In the instant case, Rosita could have immediately filed an action for the nullification of the sale of the building she owns in light of petitioners' claim that the document bearing her conformity to the sale of the said building was taken by Arturo from her without her knowledge and consent. Or, in the alternative, as the CA correctly held, she could have brought a suit for the collection of a sum of money to recover her share in the sale of her property in Morayta. In a civilized society such as ours, the rule of law should always prevail. To allow otherwise would be productive of nothing but mischief, chaos and anarchy. As a lawyer, who has sworn to uphold the rule of law, Rosita should know better. She must go to court for relief.

It is true that Article 151 of the Family Code requires that earnest efforts towards a compromise be made before family members can institute suits against each other. However, nothing in the law sanctions or allows the commission of or resort to any extra-legal or illegal measure or remedy in order for family members to avoid the filing of suits against another family member for the enforcement or protection of their respective rights.

Petitioners invoke the rule of *pari delicto* to support their contention that respondents do not deserve any relief from the courts.

The principle of *pari delicto* provides that when two parties are equally at fault, the law leaves them as they are and denies recovery by either one of them.[14] Indeed, one who seeks equity and justice must come to court with clean hands.[15] However, in the present case, petitioners were not able to establish that respondents are also at fault. Thus, the principle of *pari delicto* cannot apply.

In any case, the application of the *pari delicto* principle is not absolute, as there are exceptions to its application.[16] One of these exceptions is where the application of the *pari delicto*

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[14] *Yu Bun Guan v. Ong*, 419 Phil. 845, 856 (2001).

[15] *Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank*, 441 Phil. 1, 45 (2002).

[16] *Pajuyo v. Court of Appeals*, G.R. No. 146364, June 3, 2004, 430 SCRA 492, 515, citing *Silagan v. Intermediate Appellate Court*, 274 Phil. 182, 193 (1991).

rule would violate well-established public policy.[17] The prevention of lawlessness and the maintenance of peace and order are established public policies. In the instant case, to deny respondents relief on the ground of *pari delicto* would put a premium on the illegal act of petitioners in taking from respondents what the former claim to be rightfully theirs.

Petitioners also question the trial court's ruling that their counterclaim is permissive. This Court has laid down the following tests to determine whether a counterclaim is compulsory or not, to wit: (1) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (2) Would *res judicata* bar a subsequent suit on defendant's claims, absent the compulsory counterclaim rule? (3) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and (4) Is there any logical relation between the claim and the counterclaim, such that the conduct of separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court?[18]

Tested against the above-mentioned criteria, this Court agrees with the view of the RTC that Rosita's counterclaim for the recovery of her alleged share in the sale of the Morayta property is permissive in nature. The evidence needed to prove respondents' claim to recover the amount of ₱3,000,000.00 from petitioners is different from that required to establish Rosita's demands for the recovery of her alleged share in the sale of the subject Morayta property. The recovery of respondents' claim is not contingent or dependent upon the establishment of Rosita's counterclaim such that conducting separate trials will not result in the substantial duplication of the time and effort of the court and the parties.

In *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*,[19] this Court laid down the rules on the payment of filing fees, to wit:

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[17] *Id*.

[18] *Tan v. Kaakbay Finance Corporation,* 452 Phil. 637, 647 (2003), citing *Intestate Estate of Dalisay v. Hon. Marasigan*, 327 Phil. 298, 301 (1996) and *Quintanilla v. Court of Appeals*, 344 Phil. 811, 819 (1997).

[19] G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274.

> 1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
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> 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.
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> 3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.[20]

In order for the trial court to acquire jurisdiction over her permissive counterclaim, Rosita is bound to pay the prescribed docket fees.[21] Since it is not disputed that Rosita never paid the docket and filing fees, the RTC did not acquire jurisdiction over her permissive counterclaim. Nonetheless, the trial court ruled on the merits of Rosita's permissive counterclaim by dismissing the same on the ground that she failed to establish that there is a sharing agreement between her and Arturo with respect to the proceeds of the sale of the subject Morayta property and that the amount of ₱3,000,000.00 represented by the check which Rosita and Alice encashed formed part of the proceeds of the said sale.

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[20] *Id.* at 285.

[21] *Suson v. Court of Appeals*, 343 Phil. 816, 825 (1997).

It is settled that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court.[22]

In the present case, considering that the trial court did not acquire jurisdiction over the permissive counterclaim of Rosita, any proceeding taken up by the trial court and any ruling or judgment rendered in relation to such counterclaim is considered null and void. In effect, Rosita may file a separate action against Arturo for recovery of a sum of money.

However, Rosita's claims for damages and attorney's fees are compulsory as they necessarily arise as a result of the filing by respondents of their complaint. Being compulsory in nature, payment of docket fees is not required. [23] Nonetheless, since petitioners are found to be liable to return to respondents the amount of ₱3,000,000.00 as well as to pay moral and exemplary damages and attorney's fees, it necessarily follows that Rosita's counterclaim for damages and attorney's fees should be dismissed as correctly done by the RTC and affirmed by the CA.

As to Patricia's entitlement to damages, this Court has held that while no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is nevertheless essential that the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendant's acts. [24] This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. [25] Moreover, additional facts must be pleaded and proven to warrant the grant of moral

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[22] *Lopez v. David, Jr.*, G.R. No. 152145, March 30, 2004, 426 SCRA 535, 543.

[23] *Tan v. Kaakbay*, *supra* note 18, at 648.

[24] *Mahinay v. Velasquez, Jr.,* 464 Phil. 146, 149 (2004), citing *Kierulf v. Court of Appeals,* 336 Phil. 414, 431-432 (1997).

[25] *Mahinay v. Velasquez, Jr.*, *id.* at 149-150; *Kierulf v. Court of Appeals*, *id.* at 432.

damages under the Civil Code, these being, social humiliation, wounded feelings, grave anxiety, *etc*. that resulted from the act being complained of.[26] In the present case, both the RTC and the CA were not convinced that Patricia is entitled to damages. Quoting the RTC, the CA held thus:

> With respect to Patricia, she did not even bother to know the details of the case against her, she left everything to the hands of her mother Alice. Her attitude towards the case appears weird, she being a banker who seems so concerned of her reputation.
>
> Aside from the parties to this case, her immediate superiors in the BPI knew that she is involved in a case. They did not however know whether she is the plaintiff or the defendant in the case. Further, they did not know the nature of the case that she is involved in. It appears that Patricia has not suffered any of the injuries enumerated in Article 2217 of the Civil Code, thus, she is not entitled to moral damages and attorney's fees.[27]

This Court finds no cogent reason to depart from the above-quoted findings as Patricia failed to satisfactorily show the existence of the factual basis for granting her moral damages and the causal connection of such fact to the act of respondents in filing a complaint against her.

In addition, and with respect to Benjamin, the Court agrees with the CA that in the absence of a wrongful act or omission, or of fraud or bad faith, moral damages cannot be awarded.[28] The adverse result of an action does not *per se* make the action wrongful, or the party liable for it.[29] One may err, but error alone is not a ground for granting such damages.[30] In the absence of malice and bad faith, the mental anguish suffered by a person

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[26] *Mahinay v. Velasquez, Jr.*, *id.* at 150; *Kierulf v. Court of Appeals*, *id*.

[27] CA *rollo*, p. 518.

[28] *Bank of the Philippine Islands v. Casa Montessori Internationale*, G.R. No. 149454, May 28, 2004, 430 SCRA 261, 293-294.

[29] *Id* at 294.

[30] *Id*.

for having been made a party in a civil case is not the kind of anxiety which would warrant the award of moral damages.[31]

A resort to judicial processes is not, *per se,* evidence of ill will upon which a claim for damages may be based. [32]

In *China Banking Corporation v. Court of Appeals*,[33] this Court held:

> Settled in our jurisprudence is the rule that moral damages cannot be recovered from a person who has filed a complaint against another in good faith, or without malice or bad faith *(Philippine National Bank v. Court of Appeals*, 159 SCRA 433 [1988]; *R & B Surety and Insurance v. Intermediate Appellate Court*, 129 SCRA 736 [1984]). If damage results from the filing of the complaint, it is *damnum absque injuria (Ilocos Norte Electrical Company v. Court of Appeals*, 179 SCRA 5 [1989]).[34]

In the present case, the Court agrees with the RTC and the CA that petitioners failed to establish that respondents were moved by bad faith or malice in impleading Patricia and Benjamin. Hence, Patricia and Benjamin are not entitled to damages.

The Court sustains the award of moral and exemplary damages as well as attorney's fees in favor of respondents.

As to moral damages, Article 20 of the Civil Code provides that every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same. In addition, Article 2219 (10) of the Civil Code provides that moral damages may be recovered in acts or actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34 and 35 of the same Code. More particularly, Article 21 of the said Code provides that any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs, or public policy shall compensate the latter for the damage. In the present

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[31] *Padillo v. Court of Appeals*, 422 Phil. 334, 356 (2001).

[32] *Ceballos v. Intestate Estate of the Late Emigdio Mercado*, G.R. No. 155856, May 28, 2004, 430 SCRA 323, 336.

[33] G.R. No. 94182, March 28, 1994, 231 SCRA 472.

[34] *Id.* at 478.

case, the act of Alice and Rosita in fraudulently encashing the subject check to the prejudice of respondents is certainly a violation of law as well as of the public policy that no one should put the law into his own hands. As to SBTC and its officers, their negligence is so gross as to amount to a willfull injury to respondents. The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society.[35] Whether as mere passive entities for the safe-keeping and saving of money or as active instruments of business and commerce, banks have attained a ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence.[36] For this reason, banks should guard against injury attributable to negligence or bad faith on its part.[37]

There is no hard-and-fast rule in the determination of what would be a fair amount of moral damages since each case must be governed by its own peculiar facts.[38] The yardstick should be that it is not palpably and scandalously excessive.[39] Moreover, the social standing of the aggrieved party is essential to the determination of the proper amount of the award.[40] Otherwise, the goal of enabling him to obtain means, diversions, or amusements to restore him to the *status quo ante* would not be achieved.[41] In the present case, the Court finds no cogent reason to modify the amount of moral damages granted by the CA.

Likewise, the Court finds no compelling reason to disturb the modifications made by the CA on the award of exemplary damages and attorney's fees.

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[35] *Cagungun v. Planters Development Bank*, G.R. No. 158674, October 17, 2005, 473 SCRA 259, 273-274.

[36] *Id.* at 274

[37] *Id.*

[38] *Id.* at 273.

[39] *Id.*

[40] *Samson, Jr. v. Bank of the Philippine Islands*, 453 Phil. 577, 585 (2003).

[41] *Id.* at 585.

Under Article 2229 of the Civil Code, exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated, or compensatory damages. In the instant case, the award of exemplary damages in favor of respondents is in order for the purpose of deterring those who intend to enforce their rights by taking measures or remedies which are not in accord with law and public policy. On the part of respondent bank, the public relies on a bank's sworn profession of diligence and meticulousness in giving irreproachable service.[42] Hence, the level of meticulousness must be maintained at all times by the banking sector.[43] In the present case the award of exemplary damages is justified by the brazen acts of petitioners Rosita and Alice in violating the law coupled with the gross negligence committed by respondent bank and its officers in allowing the subject check to be deposited which later paved the way for its encashment.

As to attorney's fees, Article 2208 of the same Code provides, among others, that attorney's fees may be recovered when exemplary damages are awarded or when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.

WHEREFORE, the instant petition is *DENIED*. The Decision of the Court of Appeals dated August 27, 2002 in CA-G.R. CV No. 62404 is *AFFIRMED*.

Costs against the petitioners.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio Morales[*], *Chico-Nazario,* and *Nachura, JJ.,* concur.

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[42] *Prudential Bank v. Court of Appeals*, 384 Phil. 817, 826 (2000).

[43] *Id*.

[*] Per raffle dated December 3, 2007.

SECOND DIVISION

[G.R. No. 156303. December 19, 2007]

PHILIPPINE LEISURE AND RETIREMENT AUTHORITY (formerly Philippine Retirement Authority), *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, THE HONORABLE REGIONAL TRIAL COURT, BRANCH 57, and PHILIPPINE RETIREMENT AUTHORITY ASSOCIATION (PRAMA),** *respondents.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; PURE AND CONDITIONAL OBLIGATIONS; RESCISSION OF CONTRACTS; SUBJECT TO JUDICIAL SCRUTINY WHEN CONTESTED AND BROUGHT TO COURT.—** The right to rescind is provided for in Article 1191 of the Civil Code, which states: ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period. Thus, even if a provision providing for a right to rescind is not in the agreement, a party may still rescind a contract should one obligor fail to comply with its obligations. While Philippine Leisure and Retirement Authority (PLRA) may have the right to rescind the MOA, treat the contract as cancelled, and communicate the rescission to Philippine Retirement Authority Members Association Foundation, Inc. (PRAMA), the cancellation of the Memorandum of Agreement (MOA) is still subject to judicial scrutiny, should the cancellation be contested and brought to court. In *University of the Philippines v. De Los Angeles*, this Court stressed and explained, thus: [T]he party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it **proceeds at its own risk. For it is only**

the final judgment of the corresponding court that will and finally settle whether the action taken was or was not correct in law. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party, injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages (Civil Code, Article 2203). In the instant case, PRAMA judicially questioned the unilateral rescission by PLRA, and the trial court still has to determine whether the unilateral rescission was justified. PLRA is wrong to say that the courts may not interfere with its decision to rescind in the exercise of its management prerogatives.

2. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PROPRIETY THEREOF.—** As to the regularity and propriety in the issuance of the writ of preliminary mandatory injunction, Sec. 3, Rule 58 of the 1997 Revised Rules of Civil Procedure provides that the issuance of a writ of preliminary injunction may be granted if the following requisites are met: (1) The applicant must have a clear and unmistakable right, that is a right *in esse*; (2) There is a material and substantial invasion of such right; and (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury. In numerous instances and recently in *Marquez v. The Presiding Judge (Hon. Ismael B. Sanchez), RTC Br. 58, Lucena City,* we explained that the writ of preliminary injunction is issued to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim is to preserve the status quo until the merits of the case can be heard fully. Thus, it will be issued only upon a showing of a clear and unmistakable right that is violated. Moreover, an urgent necessity for its issuance must be shown by the applicant. We held in *Marquez*: It is basic that the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court, conditioned on the existence of a clear and positive right of the applicant which should be

protected. It is an extraordinary, peremptory remedy available only on the grounds expressly provided by law, specifically Section 3, Rule 58 of the Rules of Court. Moreover, extreme caution must be observed in the exercise of such discretion. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it. The very foundation of the jurisdiction to issue a writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation, and the prevention of multiplicity of suits. Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused. The trial court while having sound discretion on its issuance must still satisfy the strict requirements of the law. We have consistently held that the exercise of sound judicial discretion by the lower court in injunctive matters should not be interfered with except in cases of manifest abuse.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
Gonzales Relova Muyco & De Guzman and *Verano Law Firm* for PRAMA.

D E C I S I O N

VELASCO, JR., *J.*:

Petitioner Philippine Leisure and Retirement Authority (PLRA), formerly Philippine Retirement Authority, is a government-owned and controlled corporation created by Executive Order No. 1037, entitled *Creating the Philippine Retirement Park System, Providing Funds Therefor and for Other Purposes*. The PLRA was created to develop and promote the Philippines as a retirement haven. PLRA implemented the Philippine Retirement Program (program) to attract former Filipinos, now foreigners (*balikbayans*), to invest in the Philippines. Under the program, all foreign nationals, except those classified as *restricted* by the Department of Foreign Affairs, and *balikbayans*, holders of foreign passports who are at least 35 years old, upon compliance with requirements, and payment of required fees,

may be granted Special Resident Retirees Visa by the Bureau of Immigration through applications processed by PLRA.

Sometime in 1989, 12 principal retirees of PLRA organized and registered with the Securities and Exchange Commission (SEC) the Philippine Retirement Authority Members Association, Inc. (PRAMAI). In 1994, Atty. Ramon M. Collado, a principal retiree of PLRA, registered with the SEC another association, the P.R.A. Members Association Foundation, Inc. (PRAMA). PRAMAI was one of the incorporators of PRAMA. Atty. Collado, then a consultant of PLRA for Special Projects and Investments, envisioned PRAMA as a non-governmental foundation to assist PLRA in implementing the PLRA's programs.

Initially, PRAMA held its office in the office of PLRA and shared its accounting and other office systems. Subsequently, on November 17, 1997, PRAMA transferred and set up its own office systems.

After its incorporation, PRAMA executed several Memoranda of Agreement (MOAs) with PLRA's short-listed banks to promote the banks' services among PRAMA members who were PLRA's principal retirees. In the MOAs, the banks agreed to pay PRAMA a marketing fee of one-half (½) of 1% of the total outstanding balance of the principal retirees' deposits in the listed banks.

In late December 1995, PLRA issued a resolution[1] requiring PLRA principal retirees to become PRAMA members. The resolution provided that PLRA would collect the annual membership fee of PhP 2,000. When PRAMA transferred offices, PLRA remitted to PRAMA the membership fees it collected in the amounts of PhP 114,000 for 1997, PhP 472,000 for 1998, PhP 858,000 for 1998, and PhP 1,444,000 for 2000,[2] all duly acknowledged and receipted by PRAMA.

Meanwhile, on December 9, 1997, the PLRA Board issued another resolution[3] approving the request of PRAMA to include

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[1] *Rollo*, pp. 146-147.

[2] *Id.* at 67-70.

[3] *Id.* at 76.

in their website PLRA retirement program materials and the creation of a committee composed of PLRA and PRAMA members to study all the aspects, possibilities, and the support PLRA can give PRAMA, at no cost to the government. It was aimed to enhance the program of the government, and grant authority to the Chief Executive Officer (CEO) and General Manager of PLRA to enter into a MOA with PRAMA. With the favorable opinion of the Office of the Government Corporate Counsel (OGCC), on May 28, 1999, the parties entered into a MOA.[4]

Subsequently, on March 31, 2000, after collecting PRAMA's annual membership fees since 1996, PLRA sent PRAMA a letter[5] to the effect that it would continue to collect PRAMA's membership fees for a five percent service fee based on total collections effective January 2000, in accordance with Section 44 of the Government Accounting and Auditing Manual, Vol. 1 and Administrative Order No. 197. PRAMA objected.

Thereafter, in its August 2000 issue of *PRAMA Updates*, Volume VI, Number 2, Special Health Care Issue, under the editorial column entitled *Notes from the President* and *What is PLRA up to?*[6], some derogatory allegations and pejorative remarks were leveled against PLRA. PLRA promptly complained and communicated its objections to PRAMA.

In a meeting on August 24, 2000, the officers of PLRA and PRAMA tried to iron out their differences such as discrepancies in their respective records on the number of principal retirees, and the actual annual membership fee collections. PRAMA claimed that its external auditor, Alba Romeo & Co., found that about 40% of its member-retirees had not paid their annual membership dues.

On September 26, 2000, PRAMA wrote PLRA to inform the latter that it was sending its accountant, Eleonora D. Gamaru, to the latter's office to reconcile the records of the member-

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[4] *Id*. at 71-75.

[5] *Id*. at 77.

[6] *Id*. at 83.

retirees with the remittances to PRAMA.[7] On September 27, 2000, PLRA sent PRAMA a letter[8] expressing both gratitude and exception to the two editorials in the *PRAMA Updates* August 2000 issue.

When Gamaru went to the PLRA office to reconcile records, she complained she was not given all the records. PLRA denied her allegations in a letter dated October 2, 2000,[9] explaining that it furnished Gamaru records pertaining only to the annual membership dues of the retirees which were the object of Gamaru's reconciliation. It did not furnish Gamaru records on visitorial and ID fees of the principal retirees as these payments concerned only PLRA.

On October 9, 2000, PLRA wrote another letter[10] to PRAMA concerning the amount of PhP 10,811,433 allegedly due to PRAMA based on PRAMA's schedule of membership fees for the years 1997 through August 23, 2000. PLRA also requested for photocopies of PRAMA's receipt books for these years to verify the figures and to identify the retirees who have not yet paid their membership fees.

Earlier, on October 6, 2000, in PRAMA's letter/reply, it explained that, among others, it still needed to reconcile and update their records. PRAMA said PLRA had not given it accurate data on the final figures of member-retirees and, consequently, it could not give accurate figures of their collections. In particular, PRAMA explained that Gamaru had worked only for two days, and after she reviewed the files for October 1996, she discovered that several retirees paid the annual membership dues but these were not remitted by PLRA. She also claimed that PLRA Acting Deputy General Manager Bernardino and PLRA CEO and General Manager Atty. Vernette Umali-Paco refused her access to the November and December 1996 files such that she could not continue her review of the files.

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[7] *Id*. at 84-86.

[8] *Id*. at 88-94.

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

[10] *Id*. at 105.

PRAMA also said that the discrepancies reflected in the records were increasing and had been unreported for years; hence, it informed PLRA of its resolution authorizing Atty. Collado to conduct an investigation on what seemed were anomalies and to take legal action.

Exchanges of letters between PRAMA and PLRA ensued.

Meanwhile, on November 8, 2000, PRAMA asked PLRA for an updated list of investor retiree-members with their addresses and nationality to offer them insurance development services, *e.g.,* comprehensive Philam health care, memorial plans, Philamlife and Golden Village finance management, *etc*.[11] PLRA explained PRAMA's request could not be acted upon since it did not have these data.

PRLA accused PRAMA of sowing seeds of discontent and suspicion among PLRA's principal retirees, and of breach of the MOA. PLRA referred the rescission of the MOA to the OGCC. The OGCC opined that PLRA through its Board of Trustees could unilaterally rescind the MOA because PRAMA violated the MOA. Consequently, in a meeting on December 11, 2000, the PLRA Board of Trustees resolved to terminate the MOA.

On January 25, 2001, PRAMA instituted a *Complaint for Specific Performance with Prayer for Preliminary Injunction*,[12] docketed as Civil Case No. 01-112, against PLRA before the Makati City Regional Trial Court (RTC). PRAMA alleged that the termination of the MOA was illegal and PLRA had yet to remit all membership fee collections covering 1996 to 2000.

The RTC granted preliminary injunction

After the hearings on the preliminary injunction, the RTC through its April 30, 2001 Order[13] granted PRAMA's prayer for an injunctive writ. The trial court found that the parties had

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[11] *Id.* at 113.

[12] *Id.* at 129-143.

[13] *Id.* at 406-408.

agreed verbally that PRAMA would acquire and develop the facilities and benefits for the retirees, while PLRA would remit to PRAMA PhP 2,000 per retiree as membership dues per year to fund expenses. The trial court also found that PLRA, without prior notice and without addressing the problem of reconciling the records, unilaterally terminated the MOA; terminated the appointment of Atty. Collado as consultant of PLRA for Special Projects and Investments; and rescinded the authorization for compulsory membership of PLRA retirees to the PRAMA. The trial court concluded that PRAMA had established its right *in esse* to be protected; PLRA had no legal cause to rescind the MOA; and the MOA did not contain any provision authorizing automatic cancellation of the MOA. The RTC concluded that court intervention was needed in the event that the terms of the MOA were violated. The RTC granted and issued the preliminary mandatory injunction against PLRA.

The April 30, 2001 Order disposed:

> WHEREFORE, upon posting a bond in the amount of PHP One (1) Million (P1,000,000.00), the same to be approved by the Court, let a writ of preliminary mandatory injunction issue compelling the defendant to reinstate the MOA and for the defendant to faithfully comply with the remittance of all monies due the plaintiff.
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> SO ORDERED.

Aggrieved, PLRA assailed the April 30, 2001 RTC Order before the Court of Appeals (CA).

On January 31, 2002, the CA rendered the assailed Decision[14] denying PLRA's petition for *certiorari*. The *fallo* reads:

> WHEREFORE, the petition is DENIED. The Order, dated 30 April 2001 issued by the public respondent is hereby AFFIRMED. Accordingly, let this case be remanded to the Regional Trial Court, Makati City, Branch 57 for further proceedings and proper disposition with dispatch. Needless to state, petitioner PRA's motion for the issuance of a writ of preliminary injunction is rendered moot and academic.

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[14] *Id.* at 55-62. Penned by Associate Justice Bienvenido L. Reyes and concurred in by Presiding Justice Ma. Alicia Austria-Martinez (now a member of this Court) and Associate Justice Roberto A. Barrios.

The appellate court said that the RTC did not commit grave abuse of discretion in granting the preliminary mandatory injunction as the injunction fulfilled all requirements and was well supported by sufficient evidence.

On February 14, 2002, the RTC issued an Order[15] resolving PRAMA's *Motion to Order Defendant to Comply with the Implementation of the Preliminary Mandatory Injunction and to Cite for Contempt* and *Motion to Implement the April 30, 2001 Order*, which were duly opposed by PLRA.

On March 4, 2002, PLRA concurrently filed its Motion for Reconsideration of the January 31, 2002 CA Decision, which was denied by the CA only on November 27, 2002.

On April 29, 2002, the RTC issued two orders. The First Order[16] denied PRAMA's motion to cite PLRA for contempt[17] for failure to comply with the February 14, 2002 Order. At the same time, it put PLRA on notice to comply within five (5) days from date of receipt; otherwise, it would be cited for contempt without further notice. The Second Order[18] denied PLRA's motion for reconsideration of the February 14, 2002 Order.

On May 8, 2002, PLRA filed a Manifestation informing the RTC that the reinstatement of the MOA and of Atty. Collado as consultant of PLRA was already included in the agenda of the next board meeting of the PLRA trustees, and that PLRA had already sent appropriate letters to the banks.

On June 13, 2002, the RTC issued an Order[19] granting PRAMA's Motion for Clarificatory Order, and disregarding PLRA's Comment to the motion. The dispositive portion reads:

> Above premises considered, this Court hereby GRANTS the Motion of the plaintiff [*in*] *toto* and reinstate the Order dated 14 February 2002 as follows:

[15] *Id.* at 456-459.

[16] *Id.* at 494.

[17] *Id.* at 460-463.

[18] *Id.* at 495.

[19] *Id.* at 520-522.

WHEREFORE, defendant through its Board of Trustees and General Manager and Chief Executive Officer is ordered to do the following:

1. Reinstate the Memorandum of Agreement (MOA) that was terminated on December 11, 2000;

2. Reinstate Mr. Ramon M. Collado as the Consultant of PRA for Special Projects and Investments;

3. Pay to PRAMA Foundation Inc. the one half percent (0.5%) of the commission received by PRA from the accredited banks since January 2001 up to today, representing the one half percent (0.5%) of the total deposit of the retiree-members; and

4. Give necessary instruction to the depositary banks, namely: Equitable PCI Bank, Solid Bank (now Metropolitan Bank and Trust Company), Bank of Commerce, and Chinatrust that from now on, to pay PRAMA Foundation Inc. the fee of one half percent (0.5%) per annum of the total average daily balance of funds deposited by foreign retirees under the program of PRA with the banks to be paid monthly.

Defendant's failure to comply with this Order upon receipt hereof shall be construed by the Court as deliberate disobedience to its processes and shall be cited for contempt. Defendant is therefore ordered to report to the Court on its compliance of this Order specifically the proof of the reinstatement of the MOA, proof of payment to PRAMA Foundation, Inc. and give necessary instruction to the depositary banks to pay PRAMA Foundation, Inc. the fee of one half percent (0.5%) per annum monthly, and the reinstatement of Mr. Ramon Collado as the Consultant of PRA for Special Projects and Investment on the next day from receipt of this Order.

SO ORDERED.

The following day, OIC Erlina P. Lozada filed a Motion with Manifestation.[20]

On June 18, 2002, the RTC issued an Order prompted by PRAMA's Manifestation[21] which asked the court to cite for contempt the PLRA Board of Trustees and PLRA officers Atty.

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[20] *Id.* at 523-526.

[21] *Id.* at 527-528.

Umali-Paco and OIC Lozada. The dispositive portion of the Order reads:

> WHEREFORE, pursuant to the Order of the Court dated 14 February 2002 as clarified in the Order dated 13 June 2002 and noting the Manifestation of the plaintiff with its attachments and the more than considerable lapse of time from the date of issuance of the original Order, the non-compliance of which is in utter disregard of this Court's Authority, the Court hereby cites in CONTEMPT Philippine Retirement Authority and the following officers, namely, MANUEL A. ROXAS III, RICHARD S. GORDON, ANDREA DOMINGO, RAFAEL B. BUENAVENTURA, and ERLINA P. LOZADA, as Officer-in-Charge, and particularly ATTY. VERNETTE UMALI-PACO and hereby orders said officers detained until they comply with the Order of this Court.
>
> SO ORDERED.[22]

On June 24, 2002, the RTC issued an Order giving due course to PLRA's Notice of Appeal and allowing its officers to post PhP 20,000 bail, while at the same time finding PLRA, its Board of Trustees, and officers guilty anew of Indirect Contempt for which they were each fined PhP 30,000.

Both appeals assailing the June 18, 2002 and June 24, 2002 Orders are now pending before the CA.

On October 27, 2006, PRAMA filed an *Ex-Parte* Urgent Motion for the Immediate Issuance of a Writ of Preliminary Mandatory Injunction[23] before the RTC which was granted through the November 8, 2006 Order,[24] and an Alias Writ of Preliminary Mandatory Injunction[25] was issued on November 9, 2006. This prompted PLRA to file before this Court on November 13, 2006 an Urgent Motion for Issuance of a Temporary Restraining Order (TRO) and/or Injunction[26] which we granted through

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[22] *Id*. at 37.

[23] *Id*. at 656-659.

[24] *Id*. at 652.

[25] *Id*. at 654-655.

[26] *Id*. at 646-651.

our November 15, 2006 Resolution[27] with the corresponding TRO[28] promptly issued.

PRAMA, however, filed before the RTC on November 13, 2006 a *Very Urgent Ex-Parte Motion for a Supplemental Order to Prevent Dissipation of Bank Deposits*[29] which was granted by the trial court through a Supplemental Order dated November 14, 2006, decreeing thus:

WHEREFORE, premises considered, the Court hereby orders all of Philippine Retirement Authority's depositary banks namely Land Bank of the Philippines, Equitable PCI Bank, and Development Bank of the Philippines not to allow any withdrawals from defendant's corresponding various accounts, and further orders all the accredited banks, namely: Allied Bank, Bank of Commerce, East West Bank, Equitable PCIBank, Export Bank, PS Bank, RCBC, Union Bank, Bank of China, KEB (Korean Bank), Maybank, Robinson's Bank, RCBC Savings Bank, Security Bank, and Tong Yang Bank to refrain from remitting to PRA the management fees until PRA has faithfully complied with the Alias Writ of Preliminary Mandatory Injunction date[d] November 9, 2006 in accordance with this Court's Orders of February 14, 2002 as clarified in the Order of June 13, 2002.

SO ORDERED.

Through a Manifestation and Motion dated November 28, 2006, PLRA informed the Court that the above supplemental order was promptly served on the concerned banks despite receipt by the RTC of the TRO we have issued on November 15, 2006.

The Issues

In this Petition for Review on *Certiorari* under Rule 45, PLRA raises the following issues:

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[27] *Id.* at 678.

[28] *Id.* at 680-681.

[29] Dated November 13, 2006, Annex "B" of the November 28, 2006 Manifestation and Motion of the PLRA in an additional folder to the *rollo*.

I

WHETHER OR NOT THE DECISION OF THE TRIAL COURT, AS AFFIRMED BY THE COURT OF APPEALS, IS IN ACCORD WITH LAW AND OBTAINING JURISPRUDENCE

II

WHETHER THE MANDATORY INJUNCTION ISSUED MAY INCLUDE RELIEFS NOT STATED OR PRAYED FOR IN THE COMPLAINT ITSELF OR EVEN TAKEN UP DURING THE HEARING CONDUCTED FOR THE PURPOSE.[30]

In gist, the issues are: (1) Was the preliminary mandatory injunction issued in accordance with law?; and (2) May the Court include reliefs not prayed for?

The Court's Ruling

The petition is meritorious.

Petitioner argues that the preliminary mandatory injunction affirmed by the CA was not in accord with law and jurisprudence as courts cannot compel a party to execute and/or renew a contract. Petitioner posits that the power to do so is in the full discretion of the Board of the corporation and the court cannot substitute its judgment to those of petitioner's officers and directors. Also, petitioner avers that the MOA may be unilaterally rescinded. Petitioner contends that the preliminary mandatory injunctive writ was issued with grave abuse of discretion, and that PRAMA had not shown that it would be irreparably injured if the writ was not issued, a legal requirement for the issuance of the writ. Petitioner asserts that even if the requisites were present, the writ was issued with grave abuse of discretion since the Orders dated February 14, 2002 and June 13, 2002 granted reliefs not taken up during the hearing for the issuance of the injunctive writ and the grant of which resulted in the resolution of the main case.

[30] *Rollo*, p. 40.

Judicial determination of unilateral rescission

Prefatorily, we find that petitioner is mistaken to say that the courts cannot interfere with the decision of a corporation's officers and Board of Trustees, nor can a party not be allowed to unilaterally rescind an agreement. The right to rescind is provided for in Article 1191 of the Civil Code, which states:

> ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

Thus, even if a provision providing for a right to rescind is not in the agreement, a party may still rescind a contract should one obligor fail to comply with its obligations.

While PLRA may have the right to rescind the MOA, treat the contract as cancelled, and communicate the rescission to PRAMA, the cancellation of the MOA is still subject to judicial scrutiny, should the cancellation be contested and brought to court. In *University of the Philippines v. De Los Angeles*, this Court stressed and explained, thus:

> [T]he party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it **proceeds at its own risk**. For **it is only the final judgment of the corresponding court that will and finally settle whether the action taken was or was not correct in law**. But the law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. Otherwise, the party, injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires

that he should exercise due diligence to minimize its own damages (Civil Code, Article 2203).[31] (Emphasis supplied.)

In the instant case, PRAMA judicially questioned the unilateral rescission by PLRA, and the trial court still has to determine whether the unilateral rescission was justified. PLRA is wrong to say that the courts may not interfere with its decision to rescind in the exercise of its management prerogatives.

Requisites for issuance of a mandatory injunctive writ

Now, as to the regularity and propriety in the issuance of the writ of preliminary mandatory injunction, Sec. 3, Rule 58 of the 1997 Revised Rules of Civil Procedure provides that the issuance of a writ of preliminary injunction may be granted if the following requisites are met:

(1) The applicant must have a clear and unmistakable right, that is a right *in esse*;

(2) There is a material and substantial invasion of such right; and

(3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

In numerous instances and recently in *Marquez v. The Presiding Judge (Hon. Ismael B. Sanchez), RTC Br. 58, Lucena City*,[32] we explained that the writ of preliminary injunction is issued to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully. Thus, it will be issued only upon a showing of a clear and unmistakable right that is violated. Moreover, an urgent necessity for its issuance must be shown by the applicant.

We held in *Marquez*:

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[31] G.R. No. L-28602, September 29, 1970, 35 SCRA 102, 107.

[32] G.R. No. 141849, February 13, 2007.

It is basic that the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court, conditioned on the existence of a clear and positive right of the applicant which should be protected. It is an extraordinary, peremptory remedy available only on the grounds expressly provided by law, specifically Section 3, Rule 58 of the Rules of Court. Moreover, extreme caution must be observed in the exercise of such discretion. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it. The very foundation of the jurisdiction to issue a writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation, and the prevention of multiplicity of suits. Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.

The trial court while having sound discretion on its issuance must still satisfy the strict requirements of the law. We have consistently held that the exercise of sound judicial discretion by the lower court in injunctive matters should not be interfered with except in cases of manifest abuse.[33]

PRAMA failed to show a right *in esse* to be protected

In the instant case, our review of the records shows that the trial court gravely abused its discretion in issuing the assailed preliminary mandatory injunction.

First, the requirement of a clear and unmistakable right, a right *in esse* that must be protected, is not met. PRAMA alleges in its complaint that the unilateral rescission of the subject MOA would well nigh paralyze its operations as the payment of the membership fees of its member-retirees would not be collected. The records show, however, that the parties had only verbally agreed on the manner of collection before 1996, when mandatory membership of PLRA principal retirees to PRAMA was imposed. Even as early as 1996, PLRA started collecting the membership dues. The MOA was executed only on May 28, 1999. Nowhere

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[33] *Id.*; citing *Searth Commodities Corporation v. Court of Appeals*, G.R. No. 64220, March 31, 1992, 207 SCRA 622; *Government Service Insurance System v. Florendo*, G.R. No. 48603, September 29, 1989, 178 SCRA 76; *Detective and Protective Bureau, Inc. v. Cloribel*, G.R. No. L-23428, November 29, 1968, 28 SCRA 255.

in the MOA does it show that PLRA was legally bound to collect the membership dues for PRAMA. In short, the arrangement to let PLRA collect the membership fees for PRAMA was merely an accommodation to PRAMA that PLRA could terminate at will. The collection scheme was not a contractual obligation. The membership fees are for the operations of PRAMA, not for the benefit of PLRA. One of the seeds of discord between PRAMA and PLRA was PLRA's demand for a 5% charge on the total collection of membership dues. As aptly pointed out, there is no reason why PRAMA could not collect the membership dues itself. While it is true that the collection of PRAMA annual membership dues and ID fees by PLRA was convenient both for PRAMA and the principal retirees, this reciprocal benefit was merely an accommodation, not a right *in esse* of PRAMA.

Second, the Orders of February 14, 2002 and June 13, 2002, clarifying the assailed April 30, 2001 Order, manifestly showed the trial court abused its discretion when it ordered: (1) the reinstatement of Atty. Collado as consultant to PLRA; (2) the payment to PRAMA of 0.5% commissions allegedly received by PLRA from its short-listed banks; and (3) instructions to said banks to remit the said 0.5% commission to PRAMA.

While only the April 30, 2001 Order granting the preliminary mandatory injunction is the principal subject of this petition, we cannot ignore the Orders of February 14, 2002 and June 13, 2002 which are mere clarificatory orders of the assailed April 30, 2001 Order. Indeed, the two orders expanded the preliminary mandatory injunction granted to PRAMA.

The reinstatement of Atty. Collado is not the subject of the MOA. Atty. Collado has been appointed PLRA *pro bono* consultant since 1994. He held that position on the confidence of PLRA Officers and Board of Trustees. Thus, the officers and board have the management prerogative to terminate him for whatever business reasons they may have. In this instance, the Court cannot interfere with a management decision of the board to terminate him. It cannot be the subject of an injunctive writ.

Further, PRAMA cannot order PLRA to remit the 0.5% commissions it allegedly received from short-listed banks. The 0.5% of the total outstanding balance of the principal retirees' deposits with the PLRA's short-listed banks is paid to PRAMA as marketing fee which is the subject of a separate MOA between PRAMA and the banks concerned. PLRA is not privy to this MOA. If the banks refuse to pay PRAMA the marketing fees starting 2001, PLRA cannot be forced to do so. The MOA between PRAMA and the banks has nothing to do with the MOA between PLRA and PRAMA.

Similarly, the trial court cannot order PLRA to give instructions to its short-listed banks to continue remitting to PRAMA the 0.5% commission. It has no legal foundation. PLRA, not privy to the MOA between PRAMA and the banks, cannot interfere with the contractual relation and obligations of PRAMA and the banks. In short, the MOA between PRAMA and the banks does not concern PLRA.

Third, the banks are not impleaded in Civil Case No. 01-112. We note the carefully worded directives in the Orders of February 14, 2002 and June 13, 2002, commanding PLRA to remit the 0.5% commission and to give instructions to the short-listed banks. The trial court cannot order the banks directly, as the latter have not been impleaded in the civil case.

Fourth, the April 30, 2001 Order of the trial court to remit the monies due to PRAMA was not only vague, but also resolved one of the main issues of the case precluded in a preliminary injunctive writ. While this was clarified by the trial court in its later Orders of February 14, 2002 and June 13, 2002, still the assailed April 30, 2001 Order was the one affirmed by the CA. The CA erred on this because the order to remit all the monies due to PRAMA was a subject of the main case. What precipitated the case before the trial court was the issue of the alleged non-remittance by PLRA of the membership dues it allegedly collected for PRAMA. The merits of this issue still have to be heard and resolved. It cannot be the subject of a preliminary mandatory injunction which is only an ancillary remedy.

The purpose of the ancillary relief is to keep things as they peaceably are while the court passes upon the merits. Where a preliminary prohibitory or mandatory injunction will result in a premature resolution of the case, or will grant the principal objective of the parties before merits can be passed upon, the prayer for the relief should be properly denied.[34] Allowing PRAMA to receive all monies remitted to it through a preliminary mandatory injunction would result in PRAMA obtaining what it prayed for without trial on its merits. The premature resolution of a major issue of the main case before the merits can be passed upon compels us to reject such grant and strike down the assailed April 30, 2001 Order.

Given the foregoing review, we so hold that the CA committed reversible error in upholding the assailed April 30, 2001 Order of the trial court, which gravely abused its discretion in granting said preliminary mandatory injunction.

WHEREFORE, the petition is *GRANTED*, and the January 31, 2002 Decision and November 17, 2002 Resolution of the CA in CA-G.R. SP No. 65479 are hereby *REVERSED* and *SET ASIDE.* Likewise, the April 30, 2001 Order of the Makati City RTC, Branch 57, and the clarificatory Orders of February 14, 2002 and June 13, 2002, are *REVERSED* and *SET ASIDE.* Let the trial court resolve with dispatch Civil Case No. 01-112. No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez[*], *Carpio, Carpio Morales,* and *Tinga, JJ.,* concur.

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[34] Cf. 42 Am Jur 2d, Injunctions, § 13.

[*] As per November 26, 2007 raffle.

THIRD DIVISION

[G.R. No. 158458. December 19, 2007]

ASIAN TERMINALS, INC. and ATTY. RODOLFO G. CORVITE, JR., *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, DOMINADOR SALUDARES, and ROMEO L. LABRAGUE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTS NOT DISPUTED BEFORE THE LOWER COURTS OR ALREADY SETTLED IN THEIR PROCEEDINGS, BARRED FOR REAPPRAISAL.—** It cannot be gainsaid that respondent was in detention during the entire period of his absence from work and, more importantly, that his situation was known to petitioners. It is of record that in the February 8, 1995 termination notice it issued, petitioners expressly acknowledged that respondent began incurring absences without leave "after [he was] put behind bars due to [his] involvement in a killing incident." It clearly indicates that petitioners knew early on of the situation of respondent. It also explains why in its reply before the LA, appeal before the NLRC and petition for *certiorari* before CA, petitioners never questioned the truth about respondent's detention. Petitioners skepticism about respondent's detention is a mere afterthought not proper for consideration in a petition for review under Rule 45, which bars reappraisal of facts not disputed before the lower courts or already settled in their proceedings, and unanimously at that.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; GROUNDS; ABANDONMENT; NOT PRESENT WHERE ABSENCES WERE INCURRED BY EMPLOYEE DUE TO DETENTION TO ANSWER SOME CRIMINAL CHARGE THAT TURNS OUT TO BE BASELESS.—** It is beyond dispute that the underlying reason for respondent's absences was his detention. The question is whether the CA erred in holding that such absences did not amount to abandonment as to furnish petitioners cause to dismiss respondent. To justify the dismissal of respondent for

abandonment, petitioners should have established by concrete evidence the concurrence of two elements: first, that respondent had the intention to deliberately and without justification abandon his employment or refuse to resume his work; and second, that respondent performed overt acts from which it may be deduced that he no longer intended to work. Petitioners failed to discharge such burden of proof. Respondent's absences, even after notice to return to work, cannot be equated with abandonment, especially when we take into account that the latter incurred said absences unwillingly and without fault. Absences incurred by an employee who is prevented from reporting for work due to his detention to answer some criminal charge is excusable if his detention is baseless, in that the criminal charge against him is not at all supported by sufficient evidence. In *Magtoto v. National Labor Relations Commission* as well as *Pedroso v. Castro*, we declared such absences as not constitutive of abandonment, and held the dismissal of the employee-detainee invalid. We recently reiterated this ruling in *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU*.

3. **ID.; ID.; ILLEGAL DISMISSAL; BACKWAGES PROPER AS A MATTER OF RIGHT EVEN WHEN NOT AWARDED EARLIER BY THE LABOR COURTS AND EMPLOYEE DID NOT APPEAL THEREFROM.—** His dismissal being illegal, respondent is entitled to backwages as a matter of right provided by law. The CA granted him backwages from July 1996, when he reported back for work but was informed of his dismissal, up to the date of finality of its decision. It is noted that the LA and NLRC decisions did not award backwages and respondent did not appeal from said decision. Nonetheless, such award of backwages may still be sustained consistent with our ruling in *St. Michael's Institute v. Santos*, to wit: x x x. **The fact that the NLRC did not award backwages to the respondents or that the respondents themselves did not appeal the NLRC decision does not bar the Court of Appeals from awarding backwages. While as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, 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. Article 279 of the Labor Code, as amended, mandates that an illegally dismissed employee is entitled to the twin reliefs of (a) either reinstatement or separation pay, if reinstatement is no longer viable, and (b) backwages. Both are distinct reliefs given to alleviate the economic damage suffered by an illegally dismissed employee and, thus, the award of one does not bar the other. Both reliefs are rights granted by substantive law which cannot be defeated by mere procedural lapses. **Substantive rights like the award of backwages resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules. The order of the Court of Appeals to award backwages being a mere legal consequence of the finding that respondents were illegally dismissed by petitioners, there was no error in awarding the same.** However, as to whether petitioner Atty. Corvite, Jr. should be held jointly and severally liable with petitioner Asian Terminals, Inc., we agree with the view that, absent a distinct finding of bad faith or evident malice on the part of petitioner Atty. Corvite, Jr. in terminating the employment of respondent, the former should not be held solidarily liable for the payment of whatever monetary award is due respondent.

APPEARANCES OF COUNSEL

Jimenez Gonzales Liwanag Bello Valdez Caluya and Fernandez for petitioners.
Ulpiano S. Madamba for private 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 from the January 23, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 53869,

[1] Penned by Associate Justice Salvador J. Valdez, Jr. with the concurrence of Associate Justices Edgardo P. Cruz and Mario L. Guariña III; *rollo*, p. 25.

affirming with modification the April 30, 1999 Decision[2] of the National Labor Relations Commission (NLRC); and the May 23, 2003 CA Resolution,[3] denying the motion for reconsideration.

The facts not in dispute are as follows:

Romeo Labrague (respondent) was a stevedore *antigo* employed with Asian Terminals, Inc. since the 1980's. Beginning September 9, 1993, respondent failed to report for work allegedly because he was arrested and placed in detention for reasons not related to his work.[4]

After respondent had been absent for more than one year, Asian Terminals, Inc., through Atty. Rodolfo G. Corvite, Jr., (petitioners) sent him (respondent) a letter, dated December 27, 1994, at his last known address at Area H, Parola, Tondo, Manila, requiring him to explain within 72 hours why he should not suffer disciplinary penalty for his prolonged absence.[5] The following month, petitioner sent respondent another notice of similar tenor.[6]

Finally, on February 8, 1995, petitioner issued a memorandum stating:

> For having incurred absence without official leave (AWOL) from 03 September 1993 up to the present after you were put behind bars due to your involvement in a killing incident, your employment is hereby terminated for cause effective IMMEDIATELY.[7]

Though addressed to respondent, the foregoing memorandum does not indicate whether it was sent to the latter at his last known address.

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[2] CA *rollo*, p. 22.

[3] *Rollo*, p. 35.

[4] CA decision, *rollo*, 25-26.

[5] *Id*. at 43.

[6] *Id*. at 44.

[7] *Id*. at 45.

Following his acquittal and release from detention, respondent reported for work on July 3, 1996 but was advised by petitioners to file a new application so that he may be rehired.[8] Thus, respondent filed with the NLRC a complaint for illegal dismissal, separation pay, non-payment of labor standard benefits, damages and attorney's fees.[9]

In a Decision dated September 29, 1998, the Labor Arbiter (LA) held:

> WHEREFORE, premises considered, judgment is hereby entered ordering respondents, jointly and severally, to pay the total sum of ₱152,700.00 as separation pay, 13th month and service incentive leave pay of complainant. Other issues or claims are hereby ordered DISMISSED for want of substantial evidence.
>
> SO ORDERED.[10]

Petitioners appealed but the NLRC issued the April 30, 1999 Decision which merely modified the LA decision, *viz.*:

> WHEREFORE, premises considered, the Decision appealed from is MODIFIED. Respondents are ordered to pay complainant his separation pay in the sum of ₱124,800.00. The awards representing 13th month pay and service incentive leave pay are DELETED.
>
> SO ORDERED.[11]

Petitioners' motion for reconsideration was denied by the NLRC in its Resolution[12] on June 15, 1999.

It should be noted that respondent did not appeal from the NLRC decision deleting from the LA decision the award of 13th month pay and service incentive leave pay.

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[8] Position Paper, CA *rollo*, p. 32.

[9] *Id*.

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

[11] *Id*. at 27.

[12] *Id*. at 29.

Petitioners went on to file a petition for *certiorari*[13] with the CA which, however, the latter denied in the January 23, 2003 Decision now assailed before us, to wit:

> WHEREFORE, the assailed decision of the NLRC is AFFIRMED with MODIFICATION in that:
>
> (a) Labrague's separation pay should be computed on the basis of the aforequoted Section 2 of the collective bargaining agreement (CBA); and
>
> (b) the petitioners are further ordered to pay Labrague his backwages from the time of his illegal dismissal in July 1996 up to the date of finality of this decision, computed also in accordance with Section 2 of the same CBA.
>
> SO ORDERED.[14]

Respondent did not question the recomputation of his separation pay. Only petitioners filed a motion for reconsideration but the CA denied the same.

Hence, the present petition on the sole ground that:

> The Honorable Court of Appeals erred in declaring the dismissal of respondent Romeo L. Labrague from employment illegal notwithstanding his long and unauthorized absences from work which is contrary to law and existing jurisprudence.[15]

The petition lacks merit.

In declaring the dismissal of respondent illegal, the concurrent view of the CA, NLRC and LA is that the latter's prolonged absence was excusable, for it was brought about by his detention for almost three years for a criminal charge that was later declared baseless. They held that his prolonged absence was not coupled with an intention to relinquish his employment, and therefore did not constitute abandonment. The CA elaborated:

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[13] *Id.* at 1.

[14] *Rollo*, pp. 32-33.

[15] *Id.* at 11.

Verily, the Supreme Court ruled in the *Magtoto* case, involving detention for seven (7) months by military authorities, pursuant to an Arrest, Search and Seizure Order (ASSO), relied upon by the Arbiter, *viz.*:

> "Equitable considerations favor the petitioner. While the respondent employer may have shed no tears over the arrest of one of its employees, there is likewise no showing that it had any role in the arrest and detention of Mr. Magtoto. But neither was the petitioner at fault. The charges which led to his detention was later found without basis. x x x."[16]

Petitioners argue that they were justified in dismissing respondent after the latter incurred a three-year absence without leave, and refused to report for work despite several notices.[17] Petitioners argue that respondent's prolonged absence was not justified or excused by his so-called detention, which remained a mere allegation that was never quite substantiated by any form of official documentation.[18] It being uncertain whether respondent was ever placed in detention, petitioners doubt whether the CA correctly applied the ruling in *Magtoto v. National Labor Relations Commission*.[19]

The foregoing arguments of petitioners are specious.

It cannot be gainsaid that respondent was in detention during the entire period of his absence from work and, more importantly, that his situation was known to petitioners. It is of record that in the February 8, 1995 termination notice it issued, petitioners expressly acknowledged that respondent began incurring absences without leave "after [he was] put behind bars due to [his] involvement in a killing incident."[20] It clearly indicates that petitioners knew early on of the situation of respondent. It also explains why in its reply[21] before the LA, appeal[22] before the

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[16] CA decision, *rollo*, p. 29.

[17] Petition, *rollo*, pp. 15-16.

[18] Petition, *rollo*, pp. 18-17.

[19] No. L-63370, November 18, 1985, 140 SCRA 58.

[20] CA *rollo*, p. 45.

[21] *Id.* at 34.

[22] *Id.* at 46.

NLRC and petition for *certiorari*[23] before CA, petitioners never questioned the truth about respondent's detention. Petitioners' skepticism about respondent's detention is a mere afterthought not proper for consideration in a petition for review under Rule 45, which bars reappraisal of facts not disputed before the lower courts or already settled in their proceedings, and unanimously at that.[24]

It is beyond dispute then that the underlying reason for respondent's absences was his detention. The question is whether the CA erred in holding that such absences did not amount to abandonment as to furnish petitioners cause to dismiss respondent.

To justify the dismissal of respondent for abandonment, petitioners should have established by concrete evidence the concurrence of two elements: first, that respondent had the intention to deliberately and without justification abandon his employment or refuse to resume his work; and second, that respondent performed overt acts from which it may be deduced that he no longer intended to work.[25]

Petitioners failed to discharge such burden of proof. Respondent's absences, even after notice to return to work, cannot be equated with abandonment,[26] especially when we take into account that the latter incurred said absences unwillingly and without fault.[27]

Absences incurred by an employee who is prevented from reporting for work due to his detention to answer some criminal

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[23] *Id.* at 1.

[24] *Pandiman Philippines, Inc. v. Marine Manning Management Corporation,* G.R. No. 143313, June 21, 2005, 460 SCRA 418.

[25] *Hodieng Concrete Products v. Emilia*, G.R. No. 149180, February 14, 2005, 451 SCRA 249, 253.

[26] *Forever Security & General Services v. Flores*, G.R. No. 147961, September 7, 2007; *Seven Star Textile Co. v. Dy*, G.R. No. 166846, January 24, 2007, 512 SCRA 486, 499; *L.C. Ordonez Construction v. Nicdao*, G.R. No. 149669, July 27, 2006, 496 SCRA 745, 755.

[27] *Cebu Marine Beach Resort v. National Labor Relations Commission,* 460 Phil. 301, 308 (2003).

charge is excusable if his detention is baseless, in that the criminal charge against him is not at all supported by sufficient evidence. In *Magtoto v. National Labor Relations Commission* as well as *Pedroso v. Castro*,[28] we declared such absences as not constitutive of abandonment, and held the dismissal of the employee-detainee invalid. We recently reiterated this ruling in *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU*,[29] *viz.*:

> The facts in *Pedroso v. Castro* are similar to the set of facts in the present case. The petitioners therein were arrested and detained by the military authorities by virtue of a Presidential Commitment Order allegedly for the commission of Conspiracy to Commit Rebellion under Article 136 of the RPC. As a result, their employer hired substitute workers to avoid disruption of work and business operations. They were released when the charges against them were not proven. After incarceration, they reported back to work, but were refused admission by their employer. The Labor Arbiter and the NLRC sustained the validity of their dismissal. Nevertheless, this Court again held that the dismissed employees should be reinstated to their former positions, since their separation from employment was founded on a *false* or *non-existent* cause; hence, illegal.
>
> Respondent Javier's absence from August 9, 1995 cannot be deemed as an abandonment of his work. Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. To constitute as such, two requisites must concur: first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts, with the second element being the more determinative factor. Abandonment as a just ground for dismissal requires clear, willful, deliberate, and unjustified refusal of the employee to resume his employment. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment.
>
> Moreover, respondent Javier's acquittal for rape makes it more compelling to view the illegality of his dismissal. The trial court

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[28] 225 Phil. 210 (1986).

[29] G.R. No. 166111, August 25, 2005, 468 SCRA 316.

dismissed the case for "insufficiency of evidence," and such ruling is tantamount to an acquittal of the crime charged, and proof that respondent Javier's arrest and detention were without factual and legal basis in the first place.[30]

Similarly, respondent herein was prevented from reporting for work by reason of his detention. That his detention turned out to be without basis, as the criminal charge upon which said detention was ordered was later dismissed for lack of evidence, made the absences he incurred as a consequence thereof not only involuntary but also excusable. It was certainly not the intention of respondent to absent himself, or his fault that he was detained on an erroneous charge. In no way may the absences he incurred under such circumstances be likened to abandonment. The CA, therefore, correctly held that the dismissal of respondent was illegal, for the absences he incurred by reason of his unwarranted detention did not amount to abandonment.

His dismissal being illegal, respondent is entitled to backwages as a matter of right provided by law.[31] The CA granted him backwages from July 1996, when he reported back for work but was informed of his dismissal, up to the date of finality of its decision. It is noted that the LA and NLRC decisions did not award backwages and respondent did not appeal from said decision. Nonetheless, such award of backwages may still be sustained consistent with our ruling in *St. Michael's Institute v. Santos,*[32] to wit:

On the matter of the award of backwages, petitioners advance the view that by awarding backwages, the appellate court "unwittingly reversed a time-honored doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision." We do not agree.

The fact that the NLRC did not award backwages to the respondents or that the respondents themselves did not appeal

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[30] *Supra* note 29, at 326-327.

[31] *Velasco v. National Labor Relations Commission*, G.R. No. 161694, June 26, 2006, 492 SCRA 686, 699.

[32] 422 Phil. 723 (2001).

the NLRC decision does not bar the Court of Appeals from awarding backwages. While as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, 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.

Article 279 of the Labor Code, as amended, mandates that an illegally dismissed employee is entitled to the twin reliefs of (a) either reinstatement or separation pay, if reinstatement is no longer viable, and (b) backwages. Both are distinct reliefs given to alleviate the economic damage suffered by an illegally dismissed employee and, thus, the award of one does not bar the other. Both reliefs are rights granted by substantive law which cannot be defeated by mere procedural lapses. ***Substantive rights like the award of backwages resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules. The order of the Court of Appeals to award backwages being a mere legal consequence of the finding that respondents were illegally dismissed by petitioners, there was no error in awarding the same***.[33] (Emphasis supplied.)

However, as to whether petitioner Atty. Rodolfo G. Corvite, Jr. should be held jointly and severally liable with petitioner Asian Terminals, Inc., we agree with the latter's view that, absent a distinct finding of bad faith or evident malice on the part of petitioner Atty. Rodolfo G. Corvite, Jr. in terminating the employment of respondent, the former should not be held solidarily liable for the payment of whatever monetary award is due respondent.[34]

WHEREFORE, the petition is *PARTIALLY GRANTED*. The Decision dated January 23, 2003 and the May 23, 2004

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[33] *St. Michael's Institute v. Santos*, supra note 32, at 735-736. See also *Aurora Land Projects Corp. v. National Labor Relations Commission*, 334 Phil. 44 (1997).

[34] *Carag v. National Labor Relations Commission*, G.R. No. 147590, April 2, 2007.

Resolution of the Court of Appeals are *AFFIRMED* with the further *MODIFICATION* that the solidary liability of petitioner Atty. Rodolfo G. Corvite, Jr. is *DELETED*.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164195. December 19, 2007]

APO FRUITS CORPORATION and HIJO PLANTATION, INC., *petitioners, vs.* **THE HON. COURT OF APPEALS and LAND BANK OF THE PHILIPPINES (LBP),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CONFLICTING JURISPRUDENCE; PROPER SOLUTION IS TO GIVE EFFECT TO BOTH BY HARMONIZING THE TWO.—** As to the purported conflict between our decision in this case and that in *Land Bank of the Philippines v. Celada*, the more acceptable practice has always been to interpret and reconcile apparently conflicting jurisprudence, instead of placing one jurisprudence over another in a destructive confrontation; not to uphold one and annul the other, but instead to give effect to both by harmonizing the two.

2. **ID.; ID.; ID.; APPLICATION IN CASE AT BAR RE: CONFLICT IN THE COMPUTATION OF JUST COMPENSATION.—** A careful review of *Land Bank of the Philippines v. Celada* would show that this Court set aside

the just compensation arrived at by the trial court, acting as a Special Agrarian Court (SAC), and instead assented to the valuation of the LBP, on the ground that the valuation of the SAC was based "solely on the observation that there was a patent disparity between the price given to the respondent and the other landowners." Section 17 of Republic Act No. 6657 identified the factors to be considered for the determination of just compensation and to implement the same the Department of Agrarian Reform (DAR) Administrative Order (AO). No. 5, Series of 1998, laid down the applicable formula. In *Land Bank of the Philippines v. Celada,* the Supreme Court recognized that the factors specified in Section 17, Republic Act No. 6657 "have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of Republic Act No. 6657." The Court found that the SAC significantly used only a single factor as a basis for arriving at the valuation of the land involved in the said case, arbitrarily disregarding all other factors. It bears stressing that in the case before us, unlike in *Land Bank of the Philippines v. Celada*, the trial court, in arriving at its valuation of the properties of AFC and HPI, actually took into consideration **all the factors in the determination of just compensation as articulated in Section 17 of Republic Act No. 6657.** And it bears emphasizing, too, that precisely these factors have been translated into a basic formula in DAR AO No. 5, Series of 1998. In other words, the DAR formula merely encapsulated and implemented the guideposts in the determination of just compensation embodied in Section 17 of Republic Act No. 6657. It cannot therefore be said that the trial court had no basis for its valuation of the real properties of AFC and HPI. It took into consideration the required important factors enumerated in Section 17 of Republic Act No. 6657 which, in turn, were the very same matters that made up the DAR formula. **Verily, it can be said that the trial court had substantially applied the formula by looking into all the factors included therein, i.e net income, comparable sales and market value per tax declaration, to arrive at the proper land value.** Notably, DAR AO No. 5, Series of 1998, itself prescribes that the basic formula for just compensation shall only be used if all the three factors are *present, relevant and applicable***.** The three factors are: 1) capitalized net income; 2) comparable sales; and 3) market value per tax declaration. DAR AO No. 5, Series

of 1998, II A, underscores that the above formula as therein indicated, *i.e.,* LV = (CNI x.06) + (CS x 0.3) + (MV x 0.1), shall be used if all three factors are "present, relevant, and applicable." What is explicit in said AO, therefore, is the qualification that for the aforesaid basic formula to be utilized in arriving at the land value, the three factors, *i.e.,* capitalized net income; comparable sales; and market value per tax declaration must be determined by the RTC acting as SAC to be "present, relevant, and applicable." Hence, it is within its duty to: 1) identify the presence of the three factors; 2) determine if the factors are relevant to the valuation; and 3) judge their applicability. The very same DAR AO, therefore, recognizes that there are circumstances when, to the mind of the court, any of the three factors are not present, relevant or applicable; and the basic formula cannot be used. In such cases, alternative formulae are made available. What is clearly implicit, thus, is that the basic formula and its alternatives — administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998) — although referred to and even applied by the courts in certain instances, does not and cannot strictly bind the courts. To insist that the formula must be applied with utmost rigidity whereby the valuation is drawn following a strict mathematical computation goes beyond the intent and spirit of the law. The suggested interpretation is strained and would render the law inutile. Statutory construction should not kill but give life to the law. As we have established in earlier jurisprudence, the valuation of property in eminent domain is essentially a judicial function which is vested in the regional trial court acting as a SAC, and not in administrative agencies. The SAC, therefore, must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be arbitrarily restricted by a formula dictated by the DAR, an administrative agency. Surely, DAR AO No. 5 did not intend to straightjacket the hands of the court in the computation of the land valuation. While it provides a formula, it could not have been its intention to shackle the courts into applying the formula in every instance. The court shall apply the formula after an evaluation of the three factors, or it may proceed to make its own computation based on the extended list in Section 17 of Republic Act No. 6657, which includes other factors, like the cost of acquisition of the land; the current valuation of like

properties; its nature, actual use and income; the sworn valuation by the owner; the tax declarations; and the assessment made by the government assessors. The argument of LBP that the real properties of AFC and HPI must have a lower valuation, since they are agricultural, conveniently disregards our repeated pronouncement that in determining the just compensation to be paid to the landowner, all the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered. In this case, the trial court properly arrived at the just compensation due AFC and HPI for their properties, taking into account their nature as **irrigated land, location along the highway, market value, assessed value at the time of the taking, and the volume and value of their produce. Significantly, the observations were never rebutted by LBP.** This Court is convinced that the trial court correctly determined the amount of just compensation due AFC and HPI **in accordance with, and guided by, Republic Act No. 6657, the DAR formula, and existing jurisprudence.**

3. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM; JUST COMPENSATION; INTEREST; PROPER ONLY IN CASE OF DELAY IN PAYMENT.—** In *Land Bank of the Philippines v. Wycoco,* citing *Reyes v. National Housing Authority* and *Republic v. Court of Appeals,* this Court held that the interest of 12% per annum on the just compensation is due the landowner in case of delay in payment, which will in effect make the obligation on the part of the government one of forbearance. On the other hand, interest in the form of damages cannot be applied, where there was prompt and valid payment of just compensation. It is thus explicit from *LBP v. Wycoco* that interest on the just compensation is imposed only in case of delay in the payment thereof which must be sufficiently established.

4. **REMEDIAL LAW; LEGAL FEES; FEES OF COMMISSIONERS IN EMINENT DOMAIN PROCEEDINGS.—** Rule 141, Section 16 of the Rules of Court, provides that: SEC. 16. *Fees of commissioners in eminent domain proceedings*.–The commissioners appointed to appraise land sought to be condemned for public uses in accordance with these rules shall each receive a compensation to be fixed by the court of NOT

LESS THAN THREE HUNDRED (₱300.00) PESOS per day for the time actually and necessarily employed in the performance of their duties and in making their report to the court, which fees shall be taxed as a part of the costs of the proceedings. From the afore-quoted provision, the award made by the RTC is way beyond that allowed under Rule 141, Section 16; thus, the award is excessive and without justification. The rule above-quoted is very clear on the amount of commissioner's fees. A remand of the case for the determination of the proper amount of commissioner's fees is called for, pursuant to the aforecited provision of the Rules of Court.

5. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; NOT PROPER IN CASE AT BAR.—** Contracts for attorney's services in this jurisdiction stand upon an entirely different footing from contracts for the payment of compensation for any other service. x x x [A]n attorney is not entitled in the absence of express contract to recover more than a reasonable compensation for his services; and even when an express contract is made, the court can ignore it and limit the recovery to reasonable compensation if the amount of the stipulated fee is found by the court to be reasonable. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification. A perusal of Article 2208 of the Revised Civil Code will reveal that the award of attorney's fees in the form of damages is the exception rather than the rule for it is predicated upon the existence of exceptional circumstances. In all cases, it must be reasonable, just and equitable if the same is to be granted. It is necessary for the court to make findings of fact and law to justify the grant of such award. The matter of attorney's fees must be clearly explained and justified by the trial court in the body of its decision. In this case, the RTC failed to substantiate its award of attorney's fees which amounts to ten percent (10%) of the award. As we have earlier discussed, AFC and HPI's proper recourse after rejecting the initial valuation of LBP was to bring the matter to the RTC acting as Special Agrarian Court and not to file two complaints for determination of just compensation with the DAR. It is then quite obvious that AFC and HPI's claimed "unreasonable

delay" in obtaining just compensation for its subject properties was brought about by their own undoing for which they should not be made to profit by virtue of an exhorbitant award of attorney's fees in their favor. Given this, we now hold that the RTC erred in awarding attorney's fees in favor of AFC and HPI for said award lacks the requisite factual and legal justification. Its deletion is proper.

6. **REMEDIAL LAW; REFERRAL OF CASE FROM COURT DIVISION TO COURT *EN BANC* PROPER ONLY ON SPECIFIED GROUNDS AS THE COURT IN ITS DISCRETION MAY ALLOW.—** LBP's prayer for referral of this case to the Court *En Banc* must be resolved against the bank. It may be well to remind LBP's counsel that the Court *En Banc* is not an appellate tribunal to which appeals from a Division of the Court may be taken. A Division of the Court is the Supreme Court as fully and veritably as the Court *En Banc* itself, and a decision of its Division is as authoritative and final as a decision of the Court *En Banc*. Referrals of cases from a Division to the Court *En Banc* do not take place as just a matter of routine but only on such specified grounds as the Court in its discretion may allow.

APPEARANCES OF COUNSEL

Herrera Teehankee Faylona Cabrera for petitioners.

The Government Corporate Counsel for respondents.

R E S O L U T I O N

CHICO-NAZARIO, *J*.:

For resolution is the Omnibus Motion[1] filed by the Land Bank of the Philippines (LBP) for (a) the reconsideration of the Decision dated 6 February 2007; (b) the referral of the case to the Supreme Court sitting *en banc*; and (c) the setting of its Motion for Oral Argument.

The dispositive portion of our Decision reads:

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[1] Dated 16 March 2007; *rollo,* p. 442.

WHEREFORE, premises considered, the instant Petition is **PARTIALLY GRANTED.** While the Decision, dated 12 February 2004, and Resolution, dated 21 June 2004, of the Court of Appeals in CA-G.R. SP No. 76222, giving due course to LBP's appeal, are hereby **AFFIRMED,** this Court, nonetheless, **RESOLVES,** in consideration of public interest, the speedy administration of justice, and the peculiar circumstances of the case, to give **DUE COURSE** to the present Petition and decide the same on its merits. Thus, the Decision, dated 25 September 2001, as modified by the Decision, dated 5 December 2001, of the Regional Trial Court of Tagum City, Branch 2, in Agrarian Cases No. 54-2000 and No. 55-2000 and No. 55-2000 is AFFIRMED. No costs.[2]

LBP cites the following grounds for the Motion for Reconsideration:

A. THE HONORABLE COURT RULED IN THE FAIRLY RECENT CASE OF *LAND BANK OF THE PHILIPPINES v. CELADA*, G.R. NO. 164876 THAT SPECIAL AGRARIAN COURTS ARE NOT AT LIBERTY TO DISREGARD THE FORMULA DEVISED TO IMPLEMENT SECTION 17 OF REPUBLIC ACT NO. 6657 OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988.

B. RESPONDENT LBP SATISFIED OR COMPLIED WITH THE CONSTITUTIONAL REQUIREMENT ON PROMPT AND FULL PAYMENT OF JUST COMPENSATION.

C. RESPONDENT LBP ENSURED THAT THE INTERESTS ALREADY EARNED ON THE BOND PORTION OF THE REVALUED AMOUNTS WERE ALIGNED WITH 91-DAY TRASURY BILL (T-BILL) RATES AND ON THE CASH PORTION THE NORMAL BANKING INTEREST RATES.

D. PETITIONERS ARE NOT ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COMMISSIONERS' FEES.

E. RESPONDENT LBP'S COUNSEL DID NOT UNNECESSARILY DELAY THE PROCEEDINGS.

F. THE IMMINENT MODIFICATION, IF NOT THE REVERSAL, OF THE SUPREME COURT RULINGS IN BANAL AND CELADA BY THE QUESTIONED DECISION

[2] *Rollo,* p. 440.

NECESSITATES A REFERRAL OF THE INSTANT CASE TO THE HONORABLE COURT SITTING *EN BANC*.

The Motion for Reconsideration is partially meritorious.

In its first ground, LBP asserts the use of the formula set forth in the Department of Agrarian Reform (DAR) Administrative Order (AO) No. 5, Series of 1998, citing *Land Bank of the Philippines v. Celada,*[3] in which it was declared that:

> While SAC is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of RA No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. DAR AO No. 5, s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. The SAC was at no liberty to disregard the formula **which was devised to implement the said provision**. (Emphasis supplied.)

LBP relies heavily on our pronouncement in the said case that the RTC acting as a special agrarian court cannot disregard the formula under DAR AO No. 5, Series of 1998.

LBP also argues that the trial court erred in arriving at its valuation of the properties of the Apo Fruits Corporation (AFC) and Hijo Plantation, Inc. (HPI). To quote:

> The Schedule of Market Values of the City of Tagum cannot be used as a factor in determining just compensation of the subject property since said schedule of market values refers to residential and industrial properties are outside the coverage of the Comprehensive Agrarian Reform Law. The Comprehensive Agrarian Reform Law of 1988 covers only public and private agricultural lands "devoted to agricultural activity x x x and not classified as mineral, forest, residential, commercial or industrial land." (Please

[3] G.R. No. 164876, 23 January 2006, 479 SCRA 495, 506-507.

see Sec. 3(c) of R.A. No. 6657; (emphasis supplied). Furthermore, Section 17 of the R.A. No. 6657 speaks of "current value of like properties," which necessarily refers to values of similar agricultural properties.

The data on "Comparative Sales" can be used only when similar properties are involved. In this case, however, the data relative to "Comparative Sales," which were presented to the trial court, could not be used as factors for determining just compensation, as these data pertain to sales of properties which are residential, commercial and industrial in nature.

The proximity of the agricultural land to residential, commercial and industrial properties and the "potential use" of subject properties cannot also be used as factors since Section 17 of R.A. No. 6657 refers to "actual use." In fact, the farmer-beneficiaries have devoted the said lands to agricultural productivity, not to other purposes.

In the end, however, the court *a quo* disregarded said factors and zeroed in on the "LOWEST VALUE FOR RESIDENTIAL LAND at P100/sq.m. for 4th class RESIDENTIAL LAND in 1993," "THE LOWEST VALUE of Php130.00/sq.m**.** x x x FOR INDUSTRIAL LAND" as the sole factor in determining the just compensation for subject plantations. It then exclusively used THE AVERAGE OF THE AFORESTATED FIGURES as basis in arriving at the amount of Php103.33 for EVERY SQUARE METER of the ACQUIRED AREA consisting of 1,338.6027 hectares, in **utter disregard of Section 17 of R.A. No. 6657.**[4] (Emphasis supplied.)

As to the purported conflict between our decision in this case and that in *Land Bank of the Philippines v. Celada*, the more acceptable practice has always been to interpret and reconcile apparently conflicting jurisprudence, instead of placing one jurisprudence over another in a destructive confrontation; not to uphold one and annul the other, but instead to give effect to both by harmonizing the two.[5] Hence, the pronouncement made in the aforementioned case as to the application of the formula in DAR AO No. 5, Series of 1998, must be put in its proper

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[4] *Rollo,* pp. 457-459.

[5] *People v. Olivar*, 458 Phil. 375, 388 (2003).

context and understood in light of the following ratiocination preceding the same,[6] to wit:

With regard to the third assigned error, however, we agree with petitioner that the SAC erred in setting aside petitioner's valuation of respondent's land on the **sole** basis of the higher valuation given for neighboring properties. In this regard, the SAC held:

> "It appears from the evidence of petitioner that the neighboring lands of similar classification were paid higher than what was quoted to her land by respondent Land Bank as the value per square meter to her land was only quoted at ₱2.1105517 while the others which were of the same classification were paid by respondent Bank at ₱2.42 more or less, per square meter referring to the land of Consuelito Borja (Exh. "D") and Cesar Borja (Exh. "F"). Furthermore, the land of petitioner was allegedly mortgage for a loan of ₱1,200,000.00 before the Rural Bank of San Miguel, Bohol and that it was purchased by her from a certain Felipe Dungog for ₱450,000.00 although no documents therefore were shown to support her claim. Nevertheless, the Court finds a patent disparity in the price quotations by respondent Land Bank for the land of petitioner and that of the other landowners brought under CARP which could be caused by deficient or erroneous references due to the petitioner's indifference and stubborn attitude in not cooperating with respondent bank in submitting the data needed for the evaluation of the property. x x x At any rate, the price quotation by respondent Land Bank on the land of the petitioner is low more so that it was done some four years ago, particularly, on June 22, 1998 (Exh. "1") and the same has become irrelevant in the course of time due to the devaluation of the peso brought about by our staggering economy."

As can be gleaned from above ruling, the SAC based its valuation solely on the observation that there was a "patent disparity" between the price given to respondent and the other landowners. We note that it did not apply the DAR valuation formula since according to the SAC, it is Section 17 of RA No. 6657 that "should be the principal basis of computation as it is the law governing the matter." The SAC further held that said Section 17 "cannot be superseded by any administrative

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[6] *Land Bank of the Philippines v. Celada, supra* note 3 at 505-506.

order of a government agency," thereby implying that the valuation formula under DAR Administrative Order No. 5, Series of 1998 (DAR OA No. 5, s. of 1998), is invalid and of no effect. (Emphasis supplied.)

A careful review of *Land Bank of the Philippines v. Celada* would thus show that this Court set aside the just compensation arrived at by the trial court, acting as a Special Agrarian Court (SAC), and instead assented to the valuation of the LBP, on the ground that the valuation of the SAC was based "solely on the observation that there was a patent disparity between the price given to the respondent and the other landowners."

Section 17 of Republic Act No. 6657 identified the factors to be considered for the determination of just compensation:

SEC. 17. *Determination of Just Compensation*.— In determining just compensation, the **cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors**, shall be considered. **The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land** shall be considered as additional factors to determine its valuation.

To implement the foregoing, DAR AO No. 5, Series of 1998, laid down the following formula:

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)
Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all three factors are present, relevant, and applicable.

A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2[7]

In *Land Bank of the Philippines v. Celada,* the Supreme Court recognized that the factors specified in Section 17, Republic Act No. 6657 "have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of Republic Act No. 6657."[8] The Court found that the SAC significantly used only a single factor as a basis for arriving at the valuation of the land involved in the said case, arbitrarily disregarding all other factors.

It bears stressing that in the case before us, unlike in *Land Bank of the Philippines v. Celada*, the trial court, in arriving at its valuation of the properties of AFC and HPI, actually took into consideration **all the factors in the determination of just compensation as articulated in Section 17 of Republic Act No. 6657.** And it bears emphasizing, too, that precisely these factors have been translated into a basic formula in DAR AO No. 5, Series of 1998. In other words, the DAR formula merely encapsulated and implemented the guideposts in the determination of just compensation embodied in Section 17 of Republic Act No. 6657.

In arriving at a valuation of ₱103.33 per square meter, the RTC in its decision considered the following, among other things:

(1) The recommendation of the Commissioners based on the Schedule of Market Values of the City of Tagum as per its 1993 and 1994 Revision of Assessment and property classification

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[7] *Land Bank of the Philippines v. Celada*, *supra* note 3 at 508.

[8] *Id*.

(2) The fact that certain portions of the land have been classified as a Medium Industrial District

(3) Permanent improvements on the land and value of said improvements

(4) Comparative sales of adjacent land

(5) Actual use

(6) Potential use

The trial court even meticulously evaluated each factor and justified its final valuation, thus:

The recommendation of the Commissioners' Report for a value of ₱85.00 per sq.m. or ₱850,000.00 per hectare is founded on evidence. The schedule of market values of the City of Tagum as per its 1993 and 1994 Revision of Assessment and Property Classification (Exhibit "J-6" and "CC-6") give the lowest value for residential land at ₱100/sq.m. for 4th class residential land in 1993. In 1994, it gave the lowest value of ₱80.00/sq.m. for barangay residential lot. It appears that certain portions of the land in question have been classified as Medium Industrial District (Exhibit "J-4" and "CC-4"). The lowest value as for industrial land, 3rd class in a barangay is ₱130.00 sq.m. The average of these figures, using the lowest values in Exhibit "6" and "CC-6" yields the figure of ₱103.33 which is even higher by 22.2% than that recommended by the Commissioners. It is even of judicial notice that assessments made by local governments are much lower than real market value. Likewise, the value of the improvements thereon, were not even considered in the average of ₱103.33. If considered, this will necessarily result in a higher average value.

In said Appraisal Report, mention has been made on "improvements," and our Supreme Court in *Republic vs. Gonzales*, 50 O.G. 2461, decreed the rule, as follows:

> If such improvements are permanent in character, consisting of good paved road, playgrounds, water system, sewerage and general leveling of the land suitable for residential lots together with electric installations and buildings, the same are important factors to consider in determining the value of the land. The original cost of such improvements may be considered, with

due regard to the corresponding depreciation. (*Davao vs. Dacudao*, L-3741, May 8, 1952).

Note should be taken that in said Appraisal Report, permanent improvements on plaintiffs' lands have been introduced and found existing, *e.g.*, all weather-road network, airstrip, pier, irrigation system, packing houses, among others, wherein substantial amount of capital funding have been invested in putting them up.

This Court, however, notes that the comparative sales (Exhibits "A" to "F") referred to in the Appraisal Report are sales made after the taking of the land in 1996. However, in the offer of evidence, the plaintiff offered additional comparative sales of adjacent land from late 1995 to early 1997, ranging from a high of ₱580.00/sq.meter in September 1996 (Exhibit "L-4" for plaintiff Apo and "EE-4" for plaintiff Hijo) to a low of ₱146.02/sq.meter in October 1997 (Exhibits "L-2" and "EE-2"). The other sales in 1996 were in January 1996 for ₱530.00/sq.meter (Exhs. "L-3" and "EE-3") and in December 1996 for ₱148.64/sq.meter (Exhs. "L-2" and "EE-1"). On the other hand, the sale in December 1995 (Exhs. "L-5" and "EE-5") was made for ₱530.00/sq.meter." The average selling price based on the foregoing transaction is ₱386.93/sq.meter. The same is even higher by around 350% than the recommended value of ₱85.00, as per the Commissioners' Report.

The Cuervo Appraisal Report, on the other hand, gave a value of ₱84.53/sq. meter based on the Capitalized Income Approach. The said approach considered only the use of the land and the income generated from such use.

The just compensation for the parcels of land under consideration, taking into account the Schedule of Market Values given by the City Assessor of Tagum (Exhs. "J-6" for Apo "CC-6" for Hijo), the comparative sales covering adjacent lands at the time of taking of subject land, the Cuervo Report, and the Appraisal Report is hereby fixed at ₱103.33/sq.meter.

The valuation given by Cuervo and the Appraisal Report of ₱84.53 and ₱85.00, respectively, in this Court's judgment, is the minimum value of the subject landholdings and definitely cannot in anyway be the price at which plaintiffs APO and/or HIJO might be willing to sell, considering that the parcels of land adjacent thereto were sold at much higher prices, specifically from a low of ₱146.02/sq.meter to a high of ₱580.00. The average of the lowest value under the

1993 and 1994 Revision of Assessment and Property Classification (Exhibits "J-6" and "CC-6") were already at ₱103.33/sq.meter, even without considering the improvements introduced on the subject landholdings.

Moreover, the Commission made the findings that "portions of the land subject of th(e) report may x x x increase to ₱330.00/ sq.meter, specifically th(e) strips of land surrounding the provincial roads" and made the conclusion that "(c)learly, the value recommended by th(e) Commission, which is only about ₱85.00/sq.meter is way below the x x x assessed values, which effectively was fixed (as early as) 1994 or earlier than the Voluntary Offer to Sell of the above plaintiffs' properties." In the absence of any evidence to the contrary, the said assessed values are presumed to be prevailing [in] December 1996, the time of taking of plaintiffs' landholdings. The Commission further stated that the average of the said "assessed values as submitted by the City Assessor of Tagum City (is) ₱265.00/ sq.meter." This Court, therefore, finds it unfair that the just compensation for the subject landholdings should only be fixed at ₱85.00/sq.meter.

It is similarly true, however, that the determination of just compensation cannot be made to the prejudice of defendants or the government for that matter.

Thus, the selling price of ₱580.00/sq. meter nor the average selling price of ₱386.93/sq. meter or the average assessed value of ₱265.00/ sq. meter cannot be said to be the value at which defendants might be willing to buy the subject landholdings.

This Court, therefore, finds the price of ₱103.33/sq. meter for the subject landholdings fair and reasonable for all the parties. Said value is even lower than the lowest selling price of ₱148.64 for sale of adjacent land at the time of the taking of the subject landholdings [in] December 1996. It approximates, however, the average of the lowest values under the 1993 and 1994 Revision of Assessment and Property Clarification (Exhs. "J-6" and "CC-6") of ₱103.33. The said figure will further increase, if the Court will further consider the improvements introduced by plaintiffs, which should be the case. Moreover, the said value of ₱103.33/sq. meter is more realistic as it does not depart from the government recognized values as specified in the 1993 and 1994 Revised Assessment and Property Classification of Tagum City. This Court finds the evidence of the

plaintiffs sufficient and preponderant to establish the value of ₱103.33/sq. meter.[9]

It cannot therefore be said that the trial court had no basis for its valuation of the real properties of AFC and HPI. It took into consideration the required important factors enumerated in Section 17 of Republic Act No. 6657 which, in turn, were the very same matters that made up the DAR formula. **Verily, it can be said that the trial court had substantially applied the formula by looking into all the factors included therein, *i.e* net income, comparable sales and market value per tax declaration, to arrive at the proper land value.**

Notably, DAR AO No. 5, Series of 1998, itself prescribes that the basic formula for just compensation shall only be used if all the three factors are **present, relevant and applicable.** The three factors are: 1) capitalized net income; 2) comparable sales; and 3) market value per tax declaration. DAR AO No. 5, Series of 1998, II A, underscores that the above formula as therein indicated, *i.e.,* LV = (CNI x.06) + (CS x 0.3) + (MV x 0.1), shall be used if all three factors are "present, relevant, and applicable." What is explicit in said AO, therefore, is the qualification that for the aforesaid basic formula to be utilized in arriving at the land value, the three factors, *i.e.,* capitalized net income; comparable sales; and market value per tax declaration must be determined by the RTC acting as SAC to be "present, relevant, and applicable." Hence, it is within its duty to: 1) identify the presence of the three factors; 2) determine if the factors are relevant to the valuation; and 3) judge their applicability. The very same DAR AO, therefore, recognizes that there are circumstances when, to the mind of the court, any of the three factors are not present, relevant or applicable; and the basic formula cannot be used. In such cases, alternative formulae are made available.

What is clearly implicit, thus, is that the basic formula and its alternatives — administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998) — although referred to and even applied by the

[9] *Rollo*, pp. 116-119.

courts in certain instances, does not and cannot strictly bind the courts. To insist that the formula must be applied with utmost rigidity whereby the valuation is drawn following a strict mathematical computation goes beyond the intent and spirit of the law. The suggested interpretation is strained and would render the law inutile. Statutory construction should not kill but give life to the law.[10] As we have established in earlier jurisprudence, the valuation of property in eminent domain is essentially a judicial function which is vested in the regional trial court acting as a SAC, and not in administrative agencies.[11] The SAC, therefore, must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be arbitrarily restricted by a formula dictated by the DAR, an administrative agency. Surely, DAR AO No. 5 did not intend to straightjacket the hands of the court in the computation of the land valuation. While it provides a formula, it could not have been its intention to shackle the courts into applying the formula in every instance. The court shall apply the formula after an evaluation of the three factors, or it may proceed to make its own computation based on the extended list in Section 17 of Republic Act No. 6657, which includes other factors, like the cost of acquisition of the land; the current valuation of like properties; its nature, actual use and income; the sworn valuation by the owner; the tax declarations; and the assessment made by the government assessors.

The argument of LBP that the real properties of AFC and HPI must have a lower valuation, since they are agricultural, conveniently disregards our repeated pronouncement that in determining the just compensation to be paid to the landowner, all the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered.[12]

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[10] *People v. Que,* 333 Phil. 582, 590 (1996).

[11] *Didipio Earth-Savers' Multi- Purpose Association, Inc. v. Gozun*, G.R. No. 157882, 30 March 2006, 485 SCRA 586, 617, citing *Export Processing Zone Authority v. Dulay*, G.R. No. 59603, 29 April 1987, 149 SCRA 305, 316.

[12] *Land Bank of the Philippines v. Natividad,* G.R. No. 127198, 16 May 2005, 458 SCRA 441, 452-453.

In *National Power Corporation v. Manubay Agro-Industrial Development Corporation*[13] involving undeveloped, raw agricultural land, the court held that other factors should still be considered in the valuation of the property:

The parcels of land sought to be expropriated are undeniably **undeveloped, raw agricultural land. But a dominant portion thereof has been reclassified** by the Sangguniang Panlungsod ng Naga – per Zoning Ordinance No. 94-076 dated August 10, 1994 – **as residential**, per the August 8, 1996 certification of Zoning Administrator Juan O. Villegas, Jr. The property is also covered by Naga City Mayor Jesse M. Robredo's favorable endorsement of the issuance of a certification for land use conversion by the Department of Agrarian Reform (DAR) on the ground that the locality where the property was located had become highly urbanized and would have greater economic value for residential or commercial use.

The nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should be given to the landowner. All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered.

In fixing the valuation at ₱550 per square meter, the trial court had considered the Report of the commissioners and the proofs submitted by the parties. These documents included the following: (1) the established fact that the property of respondent was located along the Naga-Carolina provincial road; (2) the fact that it was about 500 meters from the Kayumanggi Resort and 8 kilometers from the Naga City Cental Business District; and a half kilometer from the main entrance of the fully developed Naga City Sports Complex – used as the site of the Palarong Pambansa – and the San Francisco Village Subdivision, a first class subdivision where lots were priced at ₱2,500 per square meter; (3) the fair market value of ₱650 per square meter proffered by respondent, citing its recently concluded sale of a portion of the same property to Metro Naga Water District at a fixed price of ₱800 per square meter; (4) the BIR zonal valuation of residential lots in Barangay Pacol, Naga City, fixed at a price of ₱220 per square meter as of 1997; and (5) the fact that the price of ₱430 per square meter had been determined by the RTC of Naga City (Branch 21) as just compensation for the Mercados' adjoining

[13] G.R. No. 150936, 18 August 2004, 437 SCRA 60, 68-70.

property, which had been expropriated by NPC for the same power transmission project.

The chairperson of the Board of Commissioners, in adopting the recommendation of Commissioner Bulaos, made a careful study of the property. Factors considered in arriving at a reasonable estimate of just compensation for respondent were the location; the most profitable likely use of the remaining area; and the size, shape, accessibility as well as listings of other properties within the vicinity. Averments pertaining to these factors were supported by documentary evidence.

On the other hand, the commissioner of petitioner – City Assessor Albeus – recommended a price of ₱115 per square meter in his Report dated June 30, 1997. No documentary evidence, however, was attached to substantiate the opinions of the banks and the realtors, indicated in the commissioner's Report and computation of the market value of the property.

The price of ₱550 per square meter appears to be the closest approximation of the market value of the lots in the adjoining, fully developed San Francisco Village Subdivision. Considering that the parcels of land in question are still undeveloped raw land, it appears to the Court that the just compensation of ₱550 per square meter is justified.

Inasmuch as the determination of just compensation in eminent domain cases is a judicial function, and the trial court apparently did not act capriciously or arbitrarily in setting the price at P550 per square meter – an award affirmed by the CA – we see no reason to disturb the factual findings as to the valuation of the property. Both the Report of Commissioner Bulao and the commissioners' majority Report were based on uncontroverted facts supported by documentary evidence and confirmed by their ocular inspection of the property. As can be gleaned from the records, they did not abuse their authority in evaluating the evidence submitted to them; neither did they misappreciate the clear preponderance of evidence. The amount fixed and agreed to by the trial court and respondent appellate court has not been grossly exorbitant or otherwise unjustified.

In this case, the trial court properly arrived at the just compensation due AFC and HPI for their properties, taking into account their nature as **irrigated land, location along the**

highway, market value, assessed value at the time of the taking, and the volume and value of their produce.

In addition to these, an ocular inspection conducted by the Commission revealed the following:

> On August 5, 2000, this Commission conducted an Ocular Inspection of the properties, viewing vital infrastructure facilities including an extensive all-weather road network, an airfield, engineering facilities, a power plant and water/irrigation system. The properties are also located near the Davao del Norte Regional Trial Hospital, fully developed residential areas, schools and the proposed City Government Center. On the boundary of APO is the Visayan Village, Apokon, the next barangay to the downtown City of Tagum and only about a kilometer to the present City Hall. (Underscoring supplied.)

Significantly, these observations were never rebutted by LBP.

Based on said documentary evidence and the result of the ocular inspection, it was established that the properties of petitioner AFC border "Visayan Village (*Barangay* of) Apokon, the next *barangay* to the downtown City of Tagum and only one kilometer to the present City Hall." The portions of the property of AFC located in Madaum had been classified in 1994 as a Major Commercial District and a Medium Industrial District per Municipal Ordinance No. 41 Series of 1994. Also, portions of the properties of AFC and HPI were re-classified as second-class *barangay* commercial lands at ₱330.00/square meter and second-class *barangay* industrial lands at ₱200/square meter. The classification of the lands of AFC and HPI by the Municipality of Tagum from agricultural land to "second-class *barangay* commercial lands and second-class *barangay* industrial lands, one year after the taking of the land, validates the observation of the commissioners in their Appraisal Report that "the properties are also located near Davao Del Norte Regional Hospital, fully developed residential areas, schools and proposed City Government Center." Moreover, the values of comparative sales of residential land presented before the trial court are in *Barangay*

Apokon, as well as in the Visayan Village in the same Barangay Apokon, adjacent to the Apo property.

Hence, this Court is convinced that the trial court correctly determined the amount of just compensation due AFC and HPI **in accordance with, and guided by, Republic Act No. 6657, the DAR formula, and existing jurisprudence.**

Similarly unavailing is LBP's claim that the real properties in question are **SOLELY** agricultural, as the trial court has determined that certain portions thereof have been classified as a Medium Industrial District, to wit:

> It is undeniable that plaintiffs' agricultural lands as borne out from the records hereof, and remaining unrebutted, shows that all weather-roads network, airstrip, pier, irrigation system, packing houses, and among numerous other improvements are permanently in place and not just a measly, but substantial amounts investments have been infused. To exclude these permanent improvements in rendering its valuation of said properties would certainly be less than fair. x x x.
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> xxx xxx xxx
>
> The plaintiffs' agricultural properties are just a stone's throw from the residential and/or industrial sections of Tagum City, a fact defendants-DAR and LBP should never ignore. The market value of the property (plus the consequential damages less consequential benefits) is determined by such factors as the value of like properties, its actual or potential use, its size, shape and location as enunciated in *B.H. Berkenkotter & Co. vs. Court of Appeals*, 216 SCRA 584 (1992). To follow Defendants-DAR and LBP logic, therefore, would in effect restrict and delimit the broad judicial prerogatives of this Court in determining and fixing just compensation of properties taken by the State.
>
> Proceedings before the Panel of Commissioners revealed that permanent improvements as mentioned above exist inside the lands subject of this complaints. It was also established during the trial proper upon reception of the evidence of the plaintiffs which clearly revealed the character, use and valuation of the lands surrounding the properties involved in these cases, indicating the strategic location of the properties subject of these cases. The findings being that surrounding properties have been classified as residential, commercial

or industrial. And yet defendant-LBP refused to acknowledge the factual basis of the findings of the Panel of Commissioners and insisted on its guideline in determining just compensation. x x x.[14]

These are strengthened by the following evidence of AFC and HPI, to wit:

a) Municipal Ordinance No. 41, Series of 1994 issued by the Sangguaniang Bayan of Tagum (when Tagum was still a Municipality), amending the Revised Comprehensive Municipal Zoning Ordinance and classifying parts of Barangay Madaum as Major Commercial District (C-2 and Medium Industrial District (1-2) (Exhibit J-4 for APO, Exhibit CC-4 for HIJO).

b) A certification from the Office of the City Assessor of Tagum City showing the assessed value of second class barangay commercial lands as ₱330.00/sq.m. and second class barangay industrial lands ₱200.00/sq.m. (Exhibit J-6 for APO, Exhibit CC-6 for HIJO).

LBP next cites our decision in *Land Bank of the Philippines v. Banal*[15] to fortify its feeble stand. Again, we strike it down, as *Land Bank of the Philippines v. Banal* is not on all fours with the present case. Notably, while *Land Bank of the Philippines v. Banal* involves a determination of just compensation under Republic Act No. 6657, the valuation arrived at by the RTC acting as SAC and affirmed by the Court of Appeals was reversed by this Court on the following grounds:

[T]he RTC failed to observe the basic rules of procedure and the fundamental requirements in determining just compensation for the property. *Firstly,* it dispensed with the hearing and merely ordered the parties to submit their respective memoranda. Such action is grossly erroneous since the determination of just compensation involves the examination of the following factors specified in Section 17 of R.A. 6657, x x x.

xxx xxx xxx

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[14] *Id.* at 146-149.

[15] G.R. No. 143276, 20 July 2004, 434 SCRA 543, 550-553.

Secondly, the RTC, in concluding that the valuation of respondent's property is ₱703,137.00, merely took judicial notice of the average production figures *in the Rodriguez case pending before it* and applied the same to this case without conducting a hearing and worse, without the knowledge or consent of the parties, x x x.

xxx xxx xxx

Lastly, the RTC erred in applying the formula prescribed under Executive Order (EO) No. 228 and R.A. No. 3844, as amended, in determining the valuation of the property; and in granting compounded interest pursuant to DAR Administrative Order No. 13, Series of 1994. x x x.

Clearly, *Land Bank of the Philippines v. Banal* belongs to a different factual milieu, for the RTC therein acting as SAC failed to conduct a hearing with notice and participation of all the parties, in keeping with the ideals of fair play. In this case, the RTC, as SAC, conducted the requisite hearing, received the evidence of the parties, conducted ocular inspection and gave due regard to all the factors to be considered in determining the correct amount of just compensation when it rendered its valuation of the properties of AFC and HPI.[16]

However, after a second hard look at the facts of this case, we find that a modification of our Decision dated 6 February 2007 pertaining to the award of interest on just compensation, commissioner's fees and attorney's fees, is in order.

On the issue of interest rates imposed by the trial court, Section 18 of Republic Act No. 6657 states:

SEC. 18. *Valuation and Mode of Compensation*. – The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner, the DAR and LBP or as may be finally determined by the court as the just compensation for the land.

The compensation shall be paid in one of the following modes at the option of the landowner:

(1) Cash payment, under the following terms and conditions:

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[16] *Export Processing Zone Authority v. Dulay, supra* note 11; *Land Bank of the Philippines v. Wycoco*, 464 Phil. 83, 97 (2004); *Land Bank of the Philippines v. Banal, id.*

(a) For lands above fifty (50) hectares, insofar as the excess hectarage is concerned	-	Twenty-five percent (25%) cash, the balance to be paid in government financial instruments negotiable at any time.

xxx xxx xxx

(4) LBP bonds, which shall have the following features:

(a) Market interest rates aligned with 91-day treasury bill rates. Ten percent (10%) of the face value of the bonds shall mature every year from the date of issuance until the tenth (10th) year: *Provided*, That should the landowner choose to forego the cash portion, whether in full or in part, he shall be paid correspondingly in LBP bonds.

Under the above provision, in case of payment made in LBP bonds, the same shall earn interest rates aligned with the 91-day treasury bill (T-Bill) rates. The court notes that in the LBP's Motion for Reconsideration dated 5 October 2001[17] of the 25 September 2001 Decision of the RTC acting as SAC, the LBP disagreed with the imposition of interest rates by the RTC based on the 91-day T- Bill rate. LBP insisted therein that, assuming interest should be imposed on the amount of just compensation, it should be in accordance with existing jurisprudence laid down in *Eastern Shipping Lines v. Court of Appeals,*[18] to wit:

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.

[17] Records, Book 2, p. 1047.

[18] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.

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.

Acting on this motion, the RTC in its Order dated 5 December 2001[19] acknowledged the proper rate of interest suggested by LBP when it modified its decision by imposing a 12% interest rate due on the amount of just compensation, instead of the earlier interest rate it imposed based on the market interest rate aligned under the 91-day treasury bills as provided in Section 18 of Republic Act No. 6657.

We agree in the position taken by LBP.

It must be noted that after AFC and HPI voluntarily offered to sell the subject lands, respondent DAR referred the Voluntary Offer to Sell application to respondent LBP for initial valuation, which fixed the just compensation at ₱165,484.47 per hectare. AFC and HPI, however, rejected the valuation, hence, respondent LBP opened deposit accounts in the name of the AFC and HPI and credited their accounts with ₱26,409,549.86 and ₱45,481,706.76, respectively. Both AFC and HPI withdrew the amounts in cash from respondent LBP. Thereafter, AFC

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[19] Records, Book 2, p. 1140.

and HPI filed separate complaints for determination of just compensation with the DAR Adjudication Board (DARAB). When the same were not acted upon for more than three years, AFC and HPI filed the present complaints for determination of just compensation with the RTC of Tagum City, Branch 2.

AFC and HPI now blame LBP for allegedly incurring delay in the determination and payment of just compensation. However, the same is without basis as AFC and HPI's proper recourse after rejecting the initial valuations of respondent LBP was to bring the matter to the RTC acting as a SAC, and not to file two complaints for determination of just compensation with the DAR, which was just circuitous as it had already determined the just compensation of the subject properties taken with the aid of LBP.

In *Land Bank of the Philippines v. Wycoco,*[20] citing *Reyes v. National Housing Authority*[21] and *Republic v. Court of Appeals,*[22] this Court held that the interest of 12% per annum on the just compensation is due the landowner in case of delay in payment, which will in effect make the obligation on the part of the government one of forbearance. On the other hand, interest in the form of damages cannot be applied, where there was prompt and valid payment of just compensation. Thus:

> The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it being fixed at the time of the actual taking by the government. **Thus, if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court.** In fine, between the taking of the property and the

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[20] *Supra* note 16.

[21] 443 Phil. 603 (2003).

[22] 433 Phil. 106 (2002).

actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.

x x x This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time. Article 1250 of the Civil Code, providing that, in case of extraordinary inflation or deflation, the value of the currency at the time of the establishment of the obligation shall be the basis for the payment when no agreement to the contrary is stipulated, has strict application only to contractual obligations. In other words, a contractual agreement is needed for the effects of extraordinary inflation to be taken into account to alter the value of the currency.[23]

It is explicit from *LBP v. Wycoco* that interest on the just compensation is imposed only in case of delay in the payment thereof which must be sufficiently established. Given the foregoing, we find that the imposition of interest on the award of just compensation is not justified and should therefore be deleted.

It must be emphasized that "pertinent amounts were deposited in favor of AFC and HPI within fourteen months after the filing by the latter of the Complaint for determination of just compensation before the RTC".[24] It is likewise true that AFC and HPI already collected ₱149.6 and ₱262 million, respectively, representing just compensation for the subject properties. Clearly, there is no unreasonable delay in the payment of just compensation which should warrant the award of 12% interest per annum in AFC and HPI's favor.

On the matter of commissioner's fees, the RTC awarded such fees as follows:

Third – Hereby ordering Defendants – DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay

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[23] *Reyes v. National Housing Authority, supra* note 21 at 616.

[24] *Rollo*, p. 571.

> jointly and severally the Commissioners' fees herein taxed as part of the costs pursuant to Section 12, Rule 67 of the 1997 Rules of Civil Procedure, equivalent to, and computed at Two and One-Half (2 ½) percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops and improvements.[25]

The relevant law is found in Rule 67, Section 12 of the Rules of Court:

> SEC. 12. *Costs, by whom paid.* – The fees of the commissioners shall be taxed as a part of the costs of the proceedings. All costs, except those of rival claimants litigating their claims, shall be paid by the plaintiff, unless an appeal is taken by the owner of the property and the judgment is affirmed, in which event the costs of the appeal shall be paid by the owner.

Rule 141, Section 16 of the Rules of Court, provides that:

> SEC. 16. *Fees of commissioners in eminent domain proceedings*. – The commissioners appointed to appraise land sought to be condemned for public uses in accordance with these rules shall each receive a compensation to be fixed by the court of NOT LESS THAN THREE HUNDRED (₱300.00) pesos per day for the time actually and necessarily employed in the performance of their duties and in making their report to the court, which fees shall be taxed as a part of the costs of the proceedings.

From the afore-quoted provision, the award made by the RTC is way beyond that allowed under Rule 141, Section 16; thus, the award is excessive and without justification. Records show that the commissioners were constituted on 26 May 2000 and they submitted their appraisal report on 21 May 2001, when the old schedule of legal fees was in effect. The amendment in Rule 141 introduced by A.M. No. 04-2-04-SC, which took effect on 16 August 2004, increased the commissioner's fees from ₱100.00 to ₱300.00 per day. Assuming they devoted all the 360 days from the time they were constituted until the time they submitted the appraisal report in the performance of their

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[25] Records, Book 2, p. 1158.

duties, and applying the old rate for commissioner's fees, they would only receive ₱38,000.00. Moreover, even if the new rate is applied, each commissioner would receive only ₱108,000.00. The rule above-quoted is very clear on the amount of commissioner's fees. The award made by the RTC in the amount of 2½% of the total amount of just compensation, *i.e.,* 2½% of ₱1,383,179,000.00, which translates to ₱34,579,475.00, is certainly unjustified and excessive. A remand of the case for the determination of the proper amount of commissioner's fees is called for, pursuant to the aforecited provision of the Rules of Court.

On the issue of attorney's fees, we quote the award of the RTC in its modified decision dated 5 December 2001:

> Fourth – Hereby ordering Defendants – DEPARTMENT OF AGRARIAN REFORM and/or LAND BANK OF THE PHILIPPINES, thru its Land Valuation Office, to pay jointly and severally the attorney's fees to plaintiffs equivalent to, and computed at Ten (10%) Percent of the determined and fixed amount as the fair, reasonable and just compensation of plaintiffs' land and standing crops and improvements.[26]

In justifying its award of 10% of the just compensation as attorney's fees, the RTC cited Article 2208 of the Civil Code and supposed delay of three years by the DAR in ruling on the issue of just compensation.

Contracts for attorney's services in this jurisdiction stand upon an entirely different footing from contracts for the payment of compensation for any other service.

> x x x [A]n attorney is not entitled in the absence of express contract to recover more than a reasonable compensation for his services; and even when an express contract is made, the court can ignore it and limit the recovery to reasonable compensation if the amount of the stipulated fee is found by the court to be reasonable[27]

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[26] Records, Book 2, p. 1159.

[27] *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices,* G.R. No. 160334, 11 September 2006, 501 SCRA 419, 432-433.

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification. A perusal of Article 2208 of the Revised Civil Code will reveal that the award of attorney's fees in the form of damages is the exception rather than the rule for it is predicated upon the existence of exceptional circumstances.[28]

In all cases, it must be reasonable, just and equitable if the same is to be granted. It is necessary for the court to make findings of fact and law to justify the grant of such award. The matter of attorney's fees must be clearly explained and justified by the trial court in the body of its decision.[29]

In this case, the RTC failed to substantiate its award of attorney's fees which amounts to ten percent (10%) of the award of ₱1,383,179,000 and is equivalent to ₱138,317,900.00.

It must be noted that the RTC, in justifying attorney's fees in favor of AFC and HPI, ruled that AFC and HPI were "constrained to go to court due to the unreasonable delay of three (3) years by defendant DAR in failing to rule on their claim for just and additional compensation."[30] However, as we have earlier discussed, AFC and HPI's proper recourse after rejecting the initial valuation of LBP was to bring the matter to the RTC acting as Special Agrarian Court and not to file two complaints for determination of just compensation with the DAR. It is then quite obvious that AFC and HPI's claimed "unreasonable delay" in obtaining just compensation for its subject properties was brought about by their own undoing for which they should not be made to profit by virtue of an exhorbitant award of

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[28] *Sy v. Court of Appeals,* G.R. No. 83139, 12 April 1989, 172 SCRA 125.

[29] *Citibank, N.A. v. Cabamongan*, G.R. No. 146918, 2 May 2006, 488 SCRA 517, 535-536.

[30] *Rollo,* p. 121.

attorney's fees in their favor. Given this, we now hold that the RTC erred in awarding attorney's fees in favor of AFC and HPI for said award lacks the requisite factual and legal justification. Its deletion is proper.

With the foregoing disquisition, LBP's prayer for referral of this case to the Court *En Banc* must be resolved against the bank. For it is abundantly clear that this case does not in any way modify or reverse our holdings in *Land Bank of the Philippines v. Banal* and *Land Bank of the Philippines v. Celada.* To reiterate, in *Land Bank of the Philippines v. Celada,* the RTC acting as SAC arrived at the determination of just compensation based only on one single factor, namely, its observation that there was a patent disparity between the price given to the landowner as compared to the other landowners in that case. This is not true in the present case as we have repeatedly held that the RTC acting as SAC considered all material and relevant factors to arrive at a correct and proper determination of just compensation. On the other hand, in *Land Bank of the Philippines v. Banal,* the valuation of the RTC acting as SAC was set aside for the reason that the same was arrived at without a hearing and based only on the memoranda of the parties. In this case, the trial court conducted several hearings and ocular inspections before it rendered its decision.

It may be well to remind LBP's counsel that the Court *En Banc* is not an appellate tribunal to which appeals from a Division of the Court may be taken. A Division of the Court is the Supreme Court as fully and veritably as the Court *En Banc* itself, and a decision of its Division is as authoritative and final as a decision of the Court *En Banc*. Referrals of cases from a Division to the Court *En Banc* do not take place as just a matter of routine but only on such specified grounds as the Court in its discretion may allow. [31]

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[31] *Bagaoisan v. National Tobacco Administration,* 455 Phil. 761, 777 (2003). The following are considered *en banc* cases:

1. Cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, or presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;

WHEREFORE, premises considered, the Motion for Reconsideration is *PARTIALLY GRANTED* as follows:

(1) The award of 12% interest rate per annum in the total amount of just compensation is *DELETED.*

(2) This case is ordered *REMANDED* to the RTC for further hearing on the amount of Commissioners' Fees.

(3) The award of attorney's fees is *DELETED*.

(4) The Motion for Referral of the case to the Supreme Court sitting *En Banc* and the request or setting of the Omnibus Motion for Oral Arguments are all *DENIED* for lack of merit. In all other respects, our Decision dated 6 February 2007 is *MAINTAINED.*

SO ORDERED.

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

Nachura, J., on leave.

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2. Criminal cases in which the appealed decision imposes the death penalty;

3. Cases raising novel questions of law;

4. Cases affecting ambassadors, other public ministers and consuls;

5. Cases involving decisions, resolutions or orders of the Civil Service Commission, Commission on Elections, and Commission on Audit;

6. Cases where the penalty to be imposed is the dismissal of a judge, officer or employee of the judiciary, disbarment of a lawyer, or either the suspension of any of them for a period of more than one (1) year or a fine exceeding ₱10,000.00 or both;

7. Cases where a doctrine or principle laid down by the court *en banc* or in division may be modified or reversed;

8. Cases assigned to a division which in the opinion of at least three (3) members thereof merit the attention of the court *en banc* and are acceptable to a majority of the actual membership of the court *en banc*; and

9. All other cases as the court *en banc* by a majority of its actual membership may deem of sufficient importance to merit its attention.

FIRST DIVISION

[G.R. No. 168030. December 19, 2007]

AURELIO CABIGON, LORLIE N. ALESNA, MELANIE ALESNA, SOLOMON G. RIGONAN, LOLITA ARTEZUELA, EFREN GOCOTANO, ERLINDA ABAR, ALICA VENTURES, JUSTINIANO B. MENDEZ, EDELISA CODILLA, ROLINA BAGUIO, REBECCA SONGCADOS, ELENA A. DATAN, AGUIDO AÑOS, RODIGONDO INDOYON, LOURDES S. TUBALDE, ABUNDIO ALDAVE, GINA SINGSON, FEDERICA SUNGGAYAN, LUCRECIA QUINTILITISCA, FILEMON YAP, JOSEPHINE CANTON, ASTERIA ABALO, RONALD CABALLES, RIZALINA CABARRUBIAS, PIO TAN-AN, TEODORO LLORANDO, EDILBERTO VILLANUEVA, HONORIO COMILANG, LUCIA SALEM, BELDA ARTHUR CASTANAS, CLAUDIA BEBITA, JOSEPH SUQUIB, REMEDIOS A. ATANACIO, LLOYD BACALSO, JETROGER CHAN, WALTER PANAL, THELMA TOQUERO, REYANALDO CABILAO, HILDA BACALSO, MERLYN SARANSAN, CASELDITA BUSTRILLO, NATIVIDAD FISULBON, MILAGROS ABAN, SILVANO COLARTE, ROGELIO RUIZO, CONCORDIA BOHOL, BONIFACIO DURANGPARANG, BERNARDINO VALLES, BENITO DURANGPARANG, GERMANO MINGO, AURELIO MIRANDA, NOEL BARGAMENTO, NELY TRAYA, GEORGE PADILLO, ROSALITA DELA PEÑA, GEMMA CAPITO, MARIANO BASLAN, LOURDES NARAL, JESUS SAYUD, JOSEFINA ARCHULETA, LOLITA FUENTES, JOEL POLLICAR, VICTORINO LUENGO, ALEX ABELLANA, LINDA HOLLERO, ANABELE TAUTHO, ELIZABETH MARTILLAN, LYDIA T. MANCAO, MYRNA TORREGOSA, EDUARDO COMMENDADOR, JOEVIC GUEVARRA, CONSTANTINO UBAL, MIGUEL APA, ALFONSO VILLARIN, APOLONIA CAPUNO, CATALINA

WAMAR, JOSEPHINE NEGAPATAN, CARMELA PERPETUA, MATALISA GONZALES, PRIMA BUOT, ESTER INSAO, DOMINADOR ANGTUD, NARCISO CABURNAY, BIENVENIDO GEMPESAO, REBECCA GABUYA, LEONARD AMBOS, FAUSTINO EMPIS, JR., LAUDELINA ADEVA, EMERITA BUAYA, EDITH BABAO, CONCEPCION AWE, JOSE POLIGRATES, MARIO LAURON, LEONARDA BOLIVAR, NILO SULIB, RAMON BACLOHAN, DAMASO RAGANAS, FLOREDELIZA SUNGGAYAN, JULIETA ORLANES, JUAN ESPEDILLON, JR., GINA LAPUT, COSME BAYNOSA, DEDICACION BIHAG, CONCEPCION OPELARIO, BELINDA BASTISMO,[1] EVANGELINE MAHUSAY, TEODOCIOS BIRAO, ERNESTO JUMAO-AS, SR., JORGE SOCO, MELBA SANCHEZ, CORAZON ONG, MAXIMIANO CASTILLON, AVELINA CATAM-ISAM, ELISA LOPEZ, GRECIA R. TAN, LUCENA S. VELASCO, BEATRIZ JOSEPH, GUILLERMO N. PAPASIN, CRISPIN AMANCIO, AURELIO ALINABON, TEODOLO ABREGANA, TEODULO MONTECLARO, ANASTACIO ABELLA, JOSEFINA CO, GEMMA H. WASKIN, PEDRO SUQUIB, NARCISA MAMOGAY, TEOFILA C. PRAJES, ELEUTERIO CUIZON, BEATRIZ BIAÑO,[2] LEOPOLDO LOPEZ, ROSITA CHAN, ELENA HERA, LEONISA VILLEGAS, LOLITA HERRERA, REYNALDO B. PADILLO, JUDE THADDEUS ALENTON, ANTONIETO ESTOY, AMY COLLAMAT, ANGEL JAN CHIN, NICETORA GONZALES, CATALINA ENGLATERA, ROSARIO ALVAREZ, FELIX BELDAD, SR., RENE C. RIVERA, FLORENCIA ARRIESGADO, HILARIA BACALSO, MARIA GALACY, RUBEN BAS, TRINIDAD M. ECOJEDO, LORNA ORTALEZA, NORMAN TAN, LIBRALDO ANDALES, JAIME PARAS O. POLAN, ADONIS P. VARGAS, FELIPE TORINO CABALLERO, IGNACIO

[1] Also referred to as Belinda Rastimo.

[2] Also referred to as Beatriz Beano.

PATIGDAS, MARGARITO TAPAO, ALFREDO V. TAN, JR., LAURO H. ORBASE, DOMINGITO BRIGOLI, MILAGROS L. PADILLO, FIEL PLACIDO, JR., ANDRES DEGOMA, LEONISA BARRIOS, JUANITO D. VAEEOR, VICTORIO P. SALAPI, ANAGORITA DUALLO, RAUL ARRIENTOS, BELINDA PLACER, JOSE BOCOG, LIBRADO BELLITA, ANTONIO CABRERA, MARILOU MURILLO, FELISA PONPON, SIMEON DE LA CALZADA, SUSAN LEGITIMAS, IRVI G. AGUILAR, ANDREW V. MANUEL, HENRY LABUS, MATEA BARICUATRO, ERLINDA PANILAGAO, MARTIN C. PANILAGAO, MINVILUZ D. ABALO, ARTEMIO ORONCE, MATILDE MANGITNGIT, JOSEFINA JAKOSALEM, ALEJANDRA M. LAGWA-AN, MERLYNDA RIVERAL, TEODOCIOS BILAO, MARLO L. YAP, ALBERTO DAUGDAUG, CERILINA M. AGUELO, FRANCISCO CABANERO, MARILOU PANILAGAO, ARNEL B. BORROMEO, VIRSISIMA S. PLICANO, ARTEMIO SAYON, FELIX GETUABAN, EVA S. ABRENICA, CORAZON GLORITA SANCHEZ, FLORMINDA TAN, ROSALIO BARCOSO, NARCISA EMPIC, BEVERLY HOYLAR, ELMA V. ROFLO, CESAR MARANO, VALENTIN B. SUMALINOG, JEREMIAS CAPARIDA, DANTE RAMAS, JESUS R. MILMAO, PAZ C. DEL ROSARIO, MILAGROS DELA CERNA, REYNALDO V. KIAMCO, DANILO R. SULTAN, CONCORDIA DIONSON, ELVIRA C. TANGPUZ, LIRA D. VILLAS, PEDRO CAPISNON, EDILBERTO S. CANALITA, SERGIO TANJAY, EMMA A. MORALES, DESIDERIO ENERLAS, ADOLFO Q. LATO, VICENTA ALMENDRAS, FREDO CUIZON, PACITA FORTUNA, ANTONIA RONDINA, JUANITA SABERON, LOURDES NAVAL, HERACLEO S. CONCON, WILLIAM BONTIA, MARILOU COMILANG, JUANITA V. AGUILAR, FLORA OCHIA ELARCOSA, APOLONIA BARING, ELSA B. BUCAO, ISABEL

OSMENA, EDUARDO N. CARAMPATANA, ANECITA A. GELLANGGAO, CESAR GABUTIN, REY NUNEZA, JESUS D. ATANACIO, DIONISIO CUBERO, MARLON E. ARANETA, JOSEPH RONDINA, MARINO V. BASLAN, MATRANILLO MANTUA, MA. CECILIA CABAYO, CLEOFE LUTAO, JOEL L. CABAHUG, EMMANUEL CABAHUG, ALEX CABAYO, FELICIANO CABAHUG, JESSICA C. GUNGOB, NOLITO TALISIC, ESTRELLA B. CABAHUG, DEMETRIO PEPITO, ROSAL QUINOPA, EPUGENIA L. ABERION, MARTALIZA L. GONZALES, HILARIO SAMEON, LILIBETH B. MISA, EUFRACIA C. HERANA, MERCEDES L. PEPITO, NARCISA MAGRO, BONIFACIO APAS, ROGELIO SUGUIB, RENE BUGTAI, PANFILO BACALLA, JR., LILIA S. PEPITO, JUANITO L. DILAO, ROSARIO B. BACALLA, RODOLFO B. TUSOY, FLORA S. QUERUBIN, RODELIO L. ARELA, CHARITO P. BONGO, PAQUITO A. BARBIEROS, ERLINDA ABANGAN, ESTRELLA A. ESTARTE, LEOVIGILDO A. RIZADA, SHERLITA M. AVILA, MARILYN PERALES, ALAN MARTIN GARCELLANO, MARIA T. BOHOL, DAVID LARSEN S. URSAL, ARLENE MORENO, ALAN B. ABRIL, VILMA OSABEL, ROQUINA G. DAVIDON, JOSEFA CAPADA, CECILIA D. LENIZO, QUILLANO V. VILLASOR, PRIMA JABONERO, WILMA L. EBALE, PAULITA CAPARROS, JEANETH DOLON, LUCITA LAMOSTE, TERESITA REGIDOR, ALICIA IGOY, REYNALDO PETILUNA, ALBERTO B. CARPESO, DANTE L. PERALES, RICARDO D. MONUNGOLH, MICHELLE A. CELESTE, PATRICIO PARDILLO, ANIONIO D. VAFLOR, MARILYN A. SECO, LOLITA FIGURACION, ROWENA ACEBUQUE, ANASTACIA MAHINAY, NATIVIDAD ABABA, LOURDES N. ANCAJAS and ANNABELLE L. LIBATAN, *petitioners, vs.* **PEPSI-COLA PRODUCTS PHILIPPINES, INC.,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PRINCIPLE OF *STARE DECISIS ET NON QUIETA MOVERE;* APPLICATION IN CASE AT BAR.— Over the past years, we have promulgated a number of cases involving the 349 number fever promo. Thus, we are bound by our pronouncement in those cases. The principle of *stare decisis et non quieta movere* holds that a point of law, once established by the court, will generally be followed by the same court and by all courts of lower rank in subsequent cases involving a similar legal issue. This proceeds from the legal principle that, in the absence of powerful countervailing considerations, like cases ought to be decided alike. We have consistently held (in previous 349 number fever promo cases) that the correct security code was an indispensable requirement to be entitled to the cash prize concerned. Here, petitioners held 349 crowns bearing either security code L-2560-FQ or L-3560-FQ. These, however, were not the security codes for the 349 crowns issued during the extended period of the promo. Thus, petitioners were never entitled to any prize.

APPEARANCES OF COUNSEL

Florido & Largo Law Office for petitioners.
Poblador Bautista & Reyes for respondent.

R E S O L U T I O N

CORONA, *J.*:

This petition for review on *certiorari*[3] seeks to set aside the decision[4] of the Court of Appeals (CA) in CA-G.R. CV No. 60137 and its resolution denying reconsideration.[5]

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

[4] Penned by Associate Justice Arturo D. Brion (now Secretary of Labor) and concurred in by Associate Justices Salvador J. Valdez, Jr. (retired) and Josefina Guevara-Salonga. Dated February 24, 2004. *Rollo,* pp. 65-100.

[5] Penned by Associate Justice Arturo D. Brion (now Secretary of Labor) and concurred in by Associate Justices Salvador J. Valdez, Jr. (retired) and Josefina Guevara-Salonga. Dated March 21, 2005. *Id.*, pp. 107-108.

This case involves actions filed against respondent Pepsi-Cola Products Philippines, Inc. in connection with its 1992 "number fever promo." Petitioners, holders of non-winning 349 crowns,[6] filed complaints for sum of money and damages,[7] as well as specific performance and damages,[8] against respondent in the Regional Trial Court (RTC), Branch 7, Cebu City. They similarly alleged that respondent, by changing the winning combination and refusing to pay their prizes,[9] was guilty of gross negligence or fraud in dealing with its customers.[10]

The RTC found that respondent caused "pain and suffering, mental anguish, broken dreams or hopes, serious anxiety, wounded feelings, moral shock, embarrassment and humiliation to its long-time patrons."[11] Thus, on December 15, 1997, it rendered a consolidated decision in favor of petitioners:[12]

Wherefore, judgment is hereby rendered in favor of [petitioners] and against [respondent] Pepsi Cola Products, Philippines, Inc. ordering said [respondent]:

1. To pay **each** [**petitioner**] (not for each "349" crown) in these two (2) civil cases the amount of twenty thousand pesos (₱20,000) by way of moral damages; and
2. To pay each [petitioner] the amount of ten thousand (₱10,000) by way of exemplary damages; and
3. If the amount of prize money stated in a [petitioner's] crown is less than ₱30,000, then such [petitioner] shall be entitled to payment of not more than the exact amount so stated in his "349" crown, but if the amount stated in the "349" crown

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[6] Refer to those 349 crowns which contained non-winning security codes L-2560-FQ and L-3560-FQ.

[7] Docketed as Civil Case No. CEB-11758. *Rollo*, p. 41.

[8] Docketed as Civil Case No. CEB-12609. *Id*.

[9] *Id*., p. 45.

[10] *Id*.

[11] *Id*., pp. 52-53.

[12] Penned by Judge Martin A. Ocampo. *Id*., pp. 41-54.

> exceeds ₱30,000, then such [petitioner] shall be entitled only to the total herein ordered, which is ₱30,000 representing both moral and exemplary damages.

SO ORDERED.[13]

Aggrieved, respondent appealed[14] to the CA.

In the assailed decision, the appellate court found that the confusion with regard to the winning and non-winning 349 crowns arose because respondent decided to extend the promo period. It explained:

> There were three types of crowns for both the original and extension period of the [promo] — the winning, the non-winning and the unused crowns — with numbers from 000 to 999 and with appropriate security codes.
>
> The number 349 bearing security code L-2560-FQ was used during the original promo period in non-winning crowns. For the extended promo period, the number 349 was inadvertently chosen as a winning number but the security code for these crowns were security codes for the extended period, not the L-2560-FQ used in the original promo period. The problem arose because the original 349 with L-2560-FQ was still in circulation during the extended promo period and were crowns picked out by the [petitioners] in the present case. It is on the basis of undisputed facts that we conclude that 349 crowns with security code L-2560-FQ were never winning crowns and were never intended to be so.[15]

Nevertheless, respondent did not fail to emphasize the importance of the alpha-numeric security code in its promotional materials.[16] It clearly stated that the code, printed on each crown, was its only means to verify the genuineness of the winning crown.[17] Thus, it was not negligent in the conduct of its promo.

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[13] *Id.*, pp. 53-54.

[14] Under Rule 41 of the Rules of Court.

[15] *Rollo,* pp. 91-92.

[16] *Id.*, p. 93.

[17] *Id*.

Accordingly, the CA granted respondent's petition and reversed the December 15, 1997 RTC decision.[18] Because petitioners raised an identical cause of action and issue, and presented evidence similar to those in previous 349 number fever cases, the appellate court dismissed the petition pursuant to its decision in the cases of *Rodrigo*[19] and *Mendoza.*[20]

Petitioners moved for reconsideration[21] but their motion was denied.[22] Hence, this petition.

We deny the petition.

Over the past years, we have promulgated a number of cases[23] involving the 349 number fever promo. Thus, we are bound by our pronouncement in those cases.

The principle of *stare decisis et non quieta movere* holds that a point of law, once established by the court, will generally be followed by the same court and by all courts of lower rank

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[18] *Supra* note 12.

[19] Then docketed as CA-G.R. CV No. 62837. The case was elevated to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court. The petition was docketed as G.R. No. 149411 and entitled *Rodrigo v. Pepsi-Cola Products, Philippines, Inc.* On October 1, 2001, the petition was denied because the Court found no reversible error in the CA decision. *Rollo,* pp. 89-90, 128-129.

[20] Then docketed as CA-G.R. CV No. 53860. The case was later elevated to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court. The petition was docketed as G.R. No. 153103 and entitled *Mendoza v. Pepsi-Cola Products, Philippines, Inc.* On July 24, 2002, the petition was denied because the Court found no reversible error in the CA decision. *Id*.

[21] *Id*., pp. 102-105.

[22] *Supra* note 5.

[23] *See Pepsi Cola Products Philippines, Inc. v. Patan,* G.R. No. 152927, 14 January 2004, 419 SCRA 417; *de Mesa v. Pepsi Cola Products Philippines, Inc.,* G.R. Nos. 153063-70, 19 August 2005, 467 SCRA 433; *Pepsi Cola Products Philippines, Inc. v. Lacanilao,* G.R. No. 146007 and No. 146295, 15 June 2006, 490 SCRA 615; *Pepsi Cola Products Philippines, Inc. v. Pagdanganan,* G.R. No. 167866, 16 October 2006, 504 SCRA 549.

in subsequent cases involving a similar legal issue.[24] This proceeds from the legal principle that, in the absence of powerful countervailing considerations, like cases ought to be decided alike.[25]

We have consistently held (in previous 349 number fever promo cases) that the correct security code was an indispensable requirement to be entitled to the cash prize concerned.[26] Here, petitioners held 349 crowns bearing either security code L-2560-FQ or L-3560-FQ. These, however, were not the security codes for the 349 crowns issued during the extended period of the promo. Thus, petitioners were never entitled to any prize.

WHEREFORE, this petition is hereby *DENIED*. The February 24, 2004 decision and March 21, 2005 resolution of the Court of Appeals in CA-G.R. CV No. 60137 are hereby *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

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[24] *Garcia v. JG Summit Petrochemical Corporation,* G.R. No. 129925, 23 February 2007.

[25] *Id*.

[26] *Pepsi Cola Products Philippines, Inc. v. Pagdanganan, supra* note 23 at 562-563.

FIRST DIVISION

[G.R. No. 168522. December 19, 2007]

UNIWIDE HOLDINGS, INC., *petitioner, vs.* **JANDECS TRANSPORTATION CO., INC.,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; PD NO. 902-A; SUSPENSION OF PAYMENTS FOR MONEY CLAIMS AGAINST CORPORATIONS UNDER REHABILITATION; ELUCIDATED.—** The relevant law dealing with the suspension of payments for money claims against corporations under rehabilitation is Presidential Decree (PD) No. 902-A, as amended. The term "claim" under said law refers to debts or demands of pecuniary nature. It is the assertion of rights for the payment of money. The *raison d' être* behind the suspension of claims pending rehabilitation was explained in the case of *BF Homes, Inc. v. CA*: x x x It is not really to enable the management committee or the rehabilitation receiver to substitute the [corporation] in any pending action against it before any court, tribunal, board or body. x x x [T]he real justification is to enable the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor [corporation]. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation. In *Philippine Air Lines [(PAL)], Incorporated v. Zamora,* we said that "all actions for claims against a corporation pending before any court, tribunal or board shall *ipso jure* be suspended in whatever stage such actions may be found upon the appointment by the SEC of a management committee or a rehabilitation receiver."

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; RECIPROCAL OBLIGATIONS; RIGHT OF RESCISSION; APPLICATION IN CASE AT BAR.—** Article 1191 of the Civil Code provides: The power to rescind obligations is implied

in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he had chosen fulfillment, if the latter should become impossible. xxx xxx xxx From the foregoing, the right of rescission is implied in every reciprocal obligation where one party fails to perform what is incumbent upon him while the other is willing and ready to comply. Certainly, petitioner's failure to deliver the units on the commencement date of the lease on October 1, 1997 gave respondent the right to rescind the contract after the latter had already paid the contract price in full. Furthermore, respondent's right to rescind the contract cannot be prevented by the fact that petitioner had the option to substitute the stalls. Even if petitioner had that option, it did not, however, mean that it could insist on the continuance of the contract by forcing respondent to accept the substitution. Neither did it mean that its previous default had been obliterated completely by the exercise of that option.

APPEARANCES OF COUNSEL

Alampay Gatchalian Mawis & Alampay for petitioner.

NL Dasig Law Office for respondent.

R E S O L U T I O N

CORONA, *J.*:

Petitioner Uniwide Holdings Inc. filed a petition for review for *certiorari* under Rule 45 of the Rules of Court assailing the decision[1] of the Court of Appeals (CA) dated February 16, 2005 in CA-G.R. CV No. 78931 entitled *Jandecs Transportation Co., Inc. v. Uniwide Holdings, Incorporated*. In a resolution dated August 17, 2005,[2] we denied the petition for failure to

[1] Penned by Associate Justice Renato C. Dacudao (retired), with the concurrence of Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, Thirteenth Division of the Court of Appeals. *Rollo*, pp. 46-59.

[2] *Id.*, p. 168.

show that the CA committed reversible error. Thereafter, petitioner filed a "Motion to Suspend Proceedings with Motion for Reconsideration" calling this Court's attention to the order of suspension of payments and approval of its rehabilitation plan by the Securities and Exchange Commission (SEC).[3]

The antecedent facts follow.

In January 1997, petitioner and respondent Jandecs Transportation Co., Inc. entered into a contract of "Assignment of Leasehold Rights" under which the latter was to operate food and snack stalls at petitioner's Uniwide Coastal Mall in Parañaque City. The contract was for a period of 18 years, commencing October 1, 1997 up to September 30, 2015, for a consideration of ₱2,460,630.15. The parties also agreed that respondent's stalls would be located near the movie houses and would be the only stalls to sell food and beverages in that area.

On February 7, 1997, respondent paid the contract price in full. Petitioner, however, failed to turn over the stall units on October 1, 1997 as agreed upon. Respondent sought the rescission of the contract and the refund of its payment. Petitioner refused both.

On July 23, 1999, respondent filed a complaint in the Regional Trial Court (RTC), Branch 257 of Parañaque City, for breach of contract, rescission of contract, damages and issuance of a writ of preliminary attachment. In the complaint,[4] respondent claimed that, despite full payment, petitioner (1) failed to deliver the stall units on the stipulated date; (2) opened its own food and snack stalls near the cinema area and (3) refused to accommodate its request for the rescission of the contract and the refund of payment.

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[3] Petitioner previously filed a "Petition for the Declaration of Suspension Payment, Formation and Appointment of a Rehabilitation Receiver/Committee and Approval of Rehabilitation Plan" in the SEC claiming its inability to pay its creditors.

[4] *Rollo*, pp. 67-78.

In its answer,[5] petitioner admitted respondent's full payment of the contract price but denied that it was bound to deliver the stalls on October 1, 1997. According to petitioner, the contract was clear that it was to turn over the units only upon completion of the mall. It likewise claimed that, under the contract, it had the option to offer substitute stalls to respondent which the latter, however, rejected.

After trial, the RTC ruled in favor of respondent. It held:

It is not disputed that [petitioner] had failed to [turn over] the units leased to [respondent]. Since the term of the contract is for 18 years to commence on October 1, 1997 to September 30, 2015, it is understood that [petitioner] was obliged to deliver to [respondent] the leased units on October 1, 1997. [Petitioner's] failure to deliver the leased units as provided in the contract obviously constitutes breach thereof.

[Respondent] had paid [petitioner] the full consideration of ₱2,460,680.15 for the leasehold rights. While [respondent] had fully complied with [its] obligation, [petitioner] has not performed its part of the obligation to deliver to [respondent] the 2 units leased. Hence, [respondent] has the right to rescind the contract. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him (Art. 1191, Civil Code).[6]

xxx xxx xxx

WHEREFORE, finding the act of [respondent] in rescinding the Assignment of Leasehold Rights proper, the same is declared valid and lawful. Accordingly, [petitioner] is ordered to return to [respondent] the amount of ₱2,460,630.15 plus interest at the legal rate and to pay [respondent] the amount of ₱30,000.00 for attorney's fees.

SO ORDERED.[7]

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[5] With opposition to the application for issuance of a writ of preliminary attachment. *Id*., pp. 106-111.

[6] Decided by Judge Rolando G. How. *Id*., p. 118.

[7] *Id*., p. 119.

Aggrieved, petitioner appealed the decision to the CA. Except for the award of attorney's fees which it found to be bereft of any basis, the CA upheld the RTC decision saying:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the Decision of the Regional Trial Court, Parañaque City, Branch 257 in Civil Case No. 99-0268 dated March 12, 2003 is hereby AFFIRMED, with the sole modification that the award of attorney's fees to [respondent] be DELETED. Costs shall also be taxed against [petitioner].
>
> SO ORDERED.[8]

Petitioner filed a partial motion for reconsideration (MR) of the CA decision but it was denied as well.[9] Hence, it filed the petition for review on *certiorari* which we denied on August 17, 2005.[10] Thereafter, petitioner filed the "Motion to Suspend Proceedings with Motion for Reconsideration."

In its motion to suspend the proceedings, petitioner prays that the action in this Court be held in abeyance in view of the SEC's order of suspension of payments and approval of its rehabilitation plan.[11] In its MR, on the other hand, it insists that we should find (1) the rescission decreed by the lower courts erroneous and (2) the order for refund of the ₱2,460,630.15 (with legal interest) to respondent unwarranted.

SUSPENSION OF PROCEEDINGS WHEN WARRANTED

The relevant law dealing with the suspension of payments for money claims against corporations under rehabilitation is Presidential Decree (PD) No. 902-A,[12] as amended. The term "claim" under said law refers to debts or demands of pecuniary

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[8] *Supra* at note 1.

[9] CA Resolution dated June 10, 2005. *Rollo*, pp. 61-62.

[10] *Supra* at note 2.

[11] SEC Decision dated 11 April 2000.

[12] Reorganization of the Securities and Exchange Commission.

nature.[13] It is the assertion of rights for the payment of money.[14] The *raison d' être* behind the suspension of claims pending rehabilitation was explained in the case of *BF Homes, Inc. v. CA*[15]:

> . . . the reason for suspending actions for claims against the corporation should not be difficult to discover. It is not really to enable the management committee or the rehabilitation receiver to substitute the [corporation] in any pending action against it before any court, tribunal, board or body. Obviously, the real justification is to enable the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor [corporation]. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.

In *Philippine Air Lines [(PAL)], Incorporated v. Zamora,*[16] we said that "**all** actions for claims against a corporation pending before any court, tribunal or board shall *ipso jure* be suspended in whatever stage such actions may be found upon the appointment by the SEC of a management committee or a rehabilitation receiver."

However, we would still find no cogent reason to reverse our August 17, 2005 resolution denying petitioner's appeal even if the proceedings here were to be suspended in the meantime. And such suspension would not at all affect our position that the MR should be denied as well.

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[13] *See* Section 6 (c) of PD No. 902-A, as amended. See also *Sobrejuanite v. ASB Development Corporation,* G.R. No. 165675, 30 September 2005, 471 SCRA 763.

[14] *Sobrejuanite v. ASB Development Corporation*, *id.*

[15] G.R. No. 76879 and G.R. No. 77143, 3 October 1990, 190 SCRA 262.

[16] *Supra.*

RIGHT OF RESCISSION WHEN AVAILABLE

Article 1191 of the Civil Code provides:

> The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he had chosen fulfillment, if the latter should become impossible.
>
> xxx xxx xxx

From the foregoing, the right of rescission is implied in every reciprocal obligation where one party fails to perform what is incumbent upon him while the other is willing and ready to comply. Certainly, petitioner's failure to deliver the units on the commencement date of the lease on October 1, 1997 gave respondent the right to rescind the contract after the latter had already paid the contract price in full.

Furthermore, respondent's right to rescind the contract cannot be prevented by the fact that petitioner had the option to substitute the stalls. Even if petitioner had that option, it did not, however, mean that it could insist on the continuance of the contract by forcing respondent to accept the substitution. Neither did it mean that its previous default had been obliterated completely by the exercise of that option.

However, so as not to run counter to or depart from the well-established doctrines in *BF Homes, Inc.* and *PAL,* and considering further the SEC's appointment of a receivership committee,[17] we will defer the entry of judgment in this case even after this resolution attains finality. In effect, the execution of the RTC decision (which the CA and this Court have affirmed) is suspended until further advice from us.

One final note. Petitioner's extreme bad faith in dealing with respondent was too glaring for the Court to ignore. Petitioner's

[17] SEC Decision, *supra* at note 11.

lack of good and honest intentions, as well as the evasive manner by which it was able to frustrate respondent's claim for a decade, should not go unsanctioned. Parties in a contract cannot be allowed to engage in double-dealing schemes to dupe those who transact with them in good faith.

WHEREFORE, premises considered, the motion for reconsideration of our August 17, 2005 resolution is *DENIED WITH FINALITY*. However, the motion for suspension of proceedings is *GRANTED* and the entry of judgment held in abeyance until further orders of this Court. Accordingly, petitioner Uniwide Holdings, Inc. is hereby *DIRECTED* to make a quarterly report to this Court on the status of its ongoing rehabilitation.

Treble costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 169080. December 19, 2007]

CELESTIAL NICKEL MINING EXPLORATION CORPORATION, *petitioner, vs.* **MACROASIA CORPORATION (formerly INFANTA MINERAL AND INDUSTRIAL CORPORATION), BLUE RIDGE MINERAL CORPORATION, and LEBACH MINING CORPORATION,** *respondents.*

[G.R. No. 172936. December 19, 2007]

BLUE RIDGE MINERAL CORPORATION, *petitioner, vs.* **HON. ANGELO REYES in his capacity as SECRETARY of the DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, HON. GUILLERMO ESTABILLO in his capacity as REGIONAL DIRECTOR of the MINES AND GEOSCIENCES BUREAU, REGION IV-B of the DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, and MACROASIA CORPORATION (formerly INFANTA MINERAL AND INDUSTRIAL CORPORATION),** *respondents.*

[G.R. No. 176226. December 19, 2007]

CELESTIAL NICKEL MINING EXPLORATION CORPORATION, *petitioner, vs.* **BLUE RIDGE MINERAL CORPORATION and MACROASIA CORPORATION (formerly INFANTA MINERAL AND INDUSTRIAL CORPORATION),** *respondents.*

[G.R. No. 176319. December 19, 2007]

MACROASIA CORPORATION (formerly INFANTA MINERAL AND INDUSTRIAL CORPORATION), *petitioner, vs.* **BLUE RIDGE MINERAL CORPORATION and CELESTIAL NICKEL MINING EXPLORATION CORPORATION,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; DEPARTMENT OF ENERGY AND NATURAL RESOURCES (DENR); JURISDICTION OF THE DENR SECRETARY; ON THE CANCELLATION OF EXISTING MINERAL CONTRACTS.—** After a scrutiny of the provisions of PD 463, EO 211, EO 279, RA 7942 and its implementing rules and regulations, executive issuances, and case law, we rule that the DENR Secretary, not

the POA, has the jurisdiction to cancel existing mineral lease contracts or mineral agreements based on the following reasons: 1. The power of the DENR Secretary to cancel mineral agreements emanates from his administrative authority, supervision, management, and control over mineral resources under Chapter I, Title XIV of Book IV of the Revised Administrative Code of 1987. It is the DENR, through the Secretary, that manages, supervises, and regulates the use and development of all mineral resources of the country. It has exclusive jurisdiction over the management of all lands of public domain, which covers mineral resources and deposits from said lands. It has the power to oversee, supervise, and police our natural resources which include mineral resources. Derived from the broad and explicit powers of the DENR and its Secretary under the Administrative Code of 1987 is the power to approve mineral agreements and necessarily to cancel or cause to cancel said agreements. 2. RA 7942 confers to the DENR Secretary specific authority over mineral resources. Secs. 8 and 29 of RA 7942 pertinently provide: SEC. 8. *Authority of the Department.* — **The Secretary shall have the authority to enter into mineral agreements on behalf of the Government upon the recommendation of the Director,** x x x SEC. 29. *Filing and approval of Mineral Agreements.* — x x x **The proposed mineral agreement will be approved by the Secretary** x x x. Sec. 29 is a carry over of Sec. 40 of PD 463 which granted jurisdiction to the DENR Secretary to approve mining lease contracts on behalf of the government, thus: x x x the **Secretary shall approve and issue the corresponding mining lease** x x x. To enforce PD 463, the CMAO containing the rules and regulations implementing PD 463 was issued. Sec. 44 of the CMAO provides: SEC. 44. **Procedure for Cancellation.–– x x x If, upon investigation, the Secretary shall find the lessee to be in default, the former may warn the lessee, suspend his operations or <u>cancel the lease contract</u>.** Sec. 4 of EO 279 provided that the provisions of PD 463 and its implementing rules and regulations, not inconsistent with the executive order, continue in force and effect. When RA 7942 took effect on March 3, 1995, there was no provision on who could cancel mineral agreements. However, since the aforequoted Sec. 44 of the CMAO implementing PD 463 was not repealed by RA 7942 and DENR AO 96-40, not being contrary to any of the provisions in them,

then it follows that Sec. 44 serves as basis for the DENR Secretary's authority to cancel mineral agreements. Since the DENR Secretary had the power to approve and cancel mineral agreements under PD 463, and the power to cancel them under the CMAO implementing PD 463, EO 211, and EO 279, then there was no recall of the power of the DENR Secretary under RA 7942. Historically, the DENR Secretary has the express power to approve mineral agreements or contracts and the implied power to cancel said agreements. x x x We rule, therefore, that based on the grant of implied power to terminate mining or mineral contracts under previous laws or executive issuances like PD 463, EO 211, and EO 279, RA 7942 should be construed as a continuation of the legislative intent to authorize the DENR Secretary to cancel mineral agreements on account of violations of the terms and conditions thereof.
3. Under RA 7942, the power of control and supervision of the DENR Secretary over the MGB to cancel or recommend cancellation of mineral rights clearly demonstrates the authority of the DENR Secretary to cancel or approve the cancellation of mineral agreements. Under Sec. 9 of RA 7942, the MGB was given the power of direct supervision of mineral lands and resources. Corollary to the power of the MGB Director to recommend approval of mineral agreements is his power to cancel or recommend cancellation of mining rights covered by said agreements under Sec. 7 of DENR AO 96-40, containing the revised Implementing Rules and Regulations of RA 7942. x x x [Explicitly therefrom.] the DENR Secretary has the authority to cancel mineral agreements based on the recommendation of the MGB Director. As a matter of fact, the power to cancel mining rights can even be delegated by the DENR Secretary to the MGB Director. Clearly, it is the Secretary, not the POA, that has authority and jurisdiction over cancellation of existing mining contracts or mineral agreements.
4. The DENR Secretary's power to cancel mining rights or agreements through the MGB can be inferred from Sec. 230, Chapter XXIV of DENR AO 96-40 on cancellation, revocation, and termination of a permit/mineral agreement/FTAA. Though Sec. 230 is silent as to who can order the cancellation, revocation, and termination of a permit/mineral agreement/FTAA, it has to be correlated with the power of the MGB under Sec. 7 of AO 96-40 "to cancel or to recommend cancellation, after due process, mining rights, mining applications and mining

claims for noncompliance with pertinent laws, rules and regulations." As the MGB is under the supervision of the DENR Secretary, then the logical conclusion is that it is the DENR Secretary who can cancel the mineral agreements and not the POA nor the MAB. 5. Celestial and Blue Ridge are not unaware of the stipulations in the Mining Lease Contract Nos. V-1050 and MRD-52, the cancellation of which they sought from the POA. It is clear from said lease contracts that the parties are the Republic of the Philippines represented by the Secretary of Agriculture and Natural Resources (now DENR Secretary) as lessor, and Infanta (Macroasia) as lessee. Thus, the government represented by the then Secretary of Agriculture and Natural Resources (now the DENR Secretary) has the power to cancel the lease contracts for violations of existing laws, rules and regulations and the terms and conditions of the contracts. Celestial and Blue Ridge are now estopped from challenging the power and authority of the DENR Secretary to cancel mineral agreements.

2. **STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; HISTORY OF THE ENACTMENT OF THE LAW, USED AS EXTRINSIC AID TO DETERMINE IMPORT OF THE LEGAL PROVISION.—** It is a well-established principle that in the interpretation of an ambiguous provision of law, the history of the enactment of the law may be used as an extrinsic aid to determine the import of the legal provision or the law. History of the enactment of the statute constitutes prior laws on the same subject matter. Legislative history necessitates review of "the origin, antecedents and derivation" of the law in question to discover the legislative purpose or intent. It can be assumed "that the new legislation has been enacted as continuation of the existing legislative policy or as a new effort to perpetuate it or further advance it."

3. **POLITICAL LAW; ADMINISTRATIVE LAW; DENR; JURISDICTION OF THE PANEL OF ARBITRATORS (POA) OF THE MINES AND GEO-SCIENCES BUREAU (MGB) OF THE DENR; ON DISPUTES INVOLVING MINERAL MATTERS; ELUCIDATED.—** Sec. 77 of RA 7942 lays down the jurisdiction of POA, to wit: Within thirty (30) days, after the submission of the case by the parties for the decision, the panel shall have exclusive and original jurisdiction to hear and decide

the following: (a) Disputes involving rights to mining areas (b) Disputes involving mineral agreements or permits. The phrase "disputes involving rights to mining areas" refers to any adverse claim, protest, or opposition to an application for mineral agreement. The POA therefore has the jurisdiction to resolve any adverse claim, protest, or opposition to a pending application for a mineral agreement filed with the concerned Regional Office of the MGB. This is clear from Secs. 38 and 41 of DENR AO 96-40 that the "disputes involving rights to mining areas" under Sec. 77(a) specifically refer only to those disputes relative to the **applications** for a mineral agreement or conferment of mining rights. The jurisdiction of the POA over adverse claims, protest, or oppositions to a mining right application is further elucidated by Secs. 219 and 43 of DENR AO 95-936. These provisions lead us to conclude that the power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Sec. 77(a) of RA 7942 is confined only to adverse claims, conflicts and oppositions relating to **applications** for the grant of mineral rights. POA's jurisdiction is confined only to resolutions of such adverse claims, conflicts and oppositions and it has no authority to approve or reject said applications. Such power is vested in the DENR Secretary upon recommendation of the MGB Director. Clearly, POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of existing mineral agreements.

4. **ID.; ID.; ID.; ID.; ID.; PETITION FOR CANCELLATION OF EXISTING MINERAL AGREEMENT, NOT A DISPUTE.—** A petition for the cancellation of an existing mineral agreement covering an area applied for by an applicant based on the alleged violation of any of the terms thereof, is not a "dispute" involving a mineral agreement under Sec. 77 (b) of RA 7942. It does not pertain to a violation by a party of the right of another. The applicant is not a real party-in-interest as he does not have a material or substantial interest in the mineral agreement but only a prospective or expectant right or interest in the mining area. He has no legal right to such mining claim and hence no dispute can arise between the applicant and the parties to the mineral agreement. The court rules therefore that a petition for cancellation of a mineral agreement anchored on the breach thereof even if filed by an

applicant to a mining claim, like Celestial and Blue Ridge, falls within the jurisdiction of the DENR Secretary and not POA. Such petition is excluded from the coverage of the POA's jurisdiction over disputes involving mineral agreements under Sec. 77 (b) of RA 7942.

5. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO A *"DISPUTE";* REAL PARTY *IN INTEREST;* ELUCIDATED.—** A dispute is defined as "a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side; met by contrary claims or allegations on the other." It is synonymous to a cause of action which is "an act or omission by which a party violates a right of another." A petition or complaint originating from a dispute can be filed or initiated only by a real party-in-interest. The rules of court define a real party-in-interest as "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." Every action, therefore, can only be prosecuted in the name of the real party-in-interest. It has been explained that "a real party-in-interest plaintiff is one who has a legal right, while a real party-in-interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal right of the former." On the other hand, interest "means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest." It is settled in this jurisdiction that "one having no right or interest to protect cannot invoke the jurisdiction of the court as a party-plaintiff in an action." Real interest is defined as "a present substantial interest, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest."

6. **ID.; JURISDICTION; PRINCIPLE OF ESTOPPEL; NOT APPLICABLE IN CASE AT BAR.—** Petitioner Celestial argues that Macroasia is estopped from raising and questioning the issue of the jurisdiction of the POA and MAB over the petition for cancellation of its mining lease contracts, when Macroasia raised it only in its Supplemental Motion for Reconsideration. We rule that the principle of estoppel does not apply. Indeed, Macroasia was not the one that initiated the instant case before the POA, and thus was not the one that invoked the jurisdiction of the POA. Hence, on appeal,

Macroasia is not precluded from raising the issue of jurisdiction as it may be invoked even on appeal. As a matter of fact, a party can raise the issue of jurisdiction at any stage of the proceedings.

7. **ID.; ID.; COURT OF APPEALS; RENDITION OF TWO CONFLICTING DECISIONS OF TWO CA DIVISIONS OVER SAME CHALLENGED RESOLUTION, ABHORRED.—** The rendition of two conflicting decisions of the two CA Divisions over the same challenged resolutions of the MAB should be avoided in the future as this is anathema to stability of judicial decisions and orderly administration of justice. By our ruling in *Nacuray v. NLRC*, we held, "Consequently, a division cannot and should not review a case already passed upon by another Division of this Court. It is only proper, to allow the case to take its rest after having attained finality." The CA should take the appropriate steps, including the adoption or amendment of the rules, to see to it that cases or petitions arising from the same questioned decision, order, or resolution are consolidated to steer clear of contrary or opposing decisions of the different CA Divisions and ensure that incidents of similar nature will not be replicated.

8. **ID.; CIVIL PROCEDURE; APPEALS; FACTUAL ISSUE, RAISED FOR THE FIRST TIME ON APPEAL AND ABSENT THE EXHAUSTION OF REMEDIES, NOT PROPER.—** The rule is established that questions raised for the first time on appeal before this Court are not proper and have to be rejected. Furthermore, the resolution of these factual issues would relegate the Court to a trier of facts. The Blue Ridge plea is hindered by the factual issue bar rule where factual questions are proscribed under Rule 65. Lastly, there was no exhaustion of administrative remedies before the MGB and DENR. Thus, Blue Ridge's petition must fail.

9. **ID.; ID.; ID.; DECISIONS OF ADMINISTRATIVE BODIES, RESPECTED.—** RA 7942, similar to PD 463, confers exclusive and primary jurisdiction on the DENR Secretary to approve mineral agreements, which is purely an administrative function within the scope of his powers and authority. In exercising such exclusive primary jurisdiction, the DENR Secretary, through the MGB, has the best competence to determine to whom mineral agreements are granted. Settled is the rule that

the courts will defer to the decisions of the administrative offices and agencies by reason of their expertise and experience in the matters assigned to them pursuant to the doctrine of primary jurisdiction. Administrative decisions on matter within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law. Unless it is shown that the then DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for an illegal consideration and similar reasons, this Court cannot look into or review the wisdom of the exercise of such discretion. Blue Ridge failed in this regard. Delineation of powers and functions is accorded the three branches of government for the smooth functioning of the different governmental services. We will not disturb nor interfere in the exercise of purely administrative functions of the executive branch absent a clear showing of grave abuse of discretion.

10. ID.; JURISDICTION; DENR; FUNCTION OVER MINING CLAIMS UNDER LITIGATION, NOT DETERRED IN THE ABSENCE OF RESTRAINING ORDER; CASE AT BAR.— While it is true that the subject mining claims are under litigation, this does not preclude the DENR and its Secretary from carrying out their functions and duties without a restraining order or an injunctive writ. Otherwise, public interest and public service would unduly suffer by mere litigation of particular issues where government interests would be unduly affected. In the instant case, it must be borne in mind that the government has a stake in the subject mining claims. Also, Macroasia had various valid existing mining lease contracts over the subject mining lode claims issued by the DENR. Thus, Macroasia has an advantage over Blue Ridge and Celestial insofar as the administrative aspect of pursuing the mineral agreements is concerned.

APPEARANCES OF COUNSEL

Israel Jose De leon and *Hector L. Hofileña* for Celestial Nickel Mining Corp.

Lazaro Law Firm for Blue Ridge Mineral Corp.

R.A. Din, Jr. and *Associates Law Offices* for lebach Mining Corp. *Cortina* and *Buted Law Offices* for Microasia Corp.

DECISION

VELASCO, JR., *J.*:

The Case

Before us are four (4) petitions. The first is a Petition for Review on *Certiorari*[1] under Rule 45 docketed as **G.R. No. 169080,** wherein petitioner Celestial Nickel Mining Exploration Corporation (Celestial) seeks to set aside the April 15, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 87931. The CA affirmed the November 26, 2004 Resolution of the Mines Adjudication Board (MAB) in MAB Case Nos. 056-97 and 057-97 (DENR Case Nos. 97-01 and 97-02), upholding the authority of the Department of Environment and Natural Resources (DENR) Secretary to grant and cancel mineral agreements. Also assailed is the August 3, 2005 Resolution[3] of the CA denying the Motion for Reconsideration of the assailed Decision.

The second is a Petition for *Certiorari*[4] under Rule 65 docketed as **G.R. No. 172936**, wherein petitioner Blue Ridge Mineral Corporation (Blue Ridge) seeks to annul and set aside the action of then Secretary Michael T. Defensor, in his capacity as DENR Secretary, approving and signing two Mineral Production Sharing Agreements (MPSAs) in favor of Macroasia Corporation (Macroasia) denominated as MPSA Nos. 220-2005-IVB and 221-2005-IVB.

And the third and fourth are petitions for review on *certiorari*[5] under Rule 45 docketed as **G.R. No. 176226** and **G.R. No. 176319**,

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[1] *Rollo* (G.R. No. 169080), pp. 9-87.

[2] *Id.* at 89-108. Penned by Associate Justice Martin S. Villarama (Chairperson) and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle.

[3] *Id.* at 110-122.

[4] *Rollo* (G.R. No. 172936), pp. 3-53.

[5] *Rollo* (G.R. No. 176226), pp. 9-85, and *rollo* (G.R. No. 176319), pp. 14-77.

wherein petitioners Celestial and Macroasia, respectively, seek to set aside the May 18, 2006 Decision[6] of the CA in CA-G.R. SP No. 90828. The CA reversed and set aside the November 26, 2004 and July 12, 2005 Resolutions of the MAB, and reinstated the October 24, 2000 Decision in MAB Case Nos. 056-97 and 057-97, granting Blue Ridge the prior and preferential right to file its application over the mining claims of Macroasia. These petitions likewise seek to set aside the January 19, 2007 Resolution[7] of the CA denying petitioners' motions for reconsideration of the assailed Decision.

Through our July 5, 2006 Resolution,[8] we consolidated the first two cases. While in our subsequent April 23, 2007[9] and July 11, 2007[10] Resolutions, we consolidated the four cases as they arose from the same facts.

The undisputed facts as found by the CA in CA-G.R. SP No. 87931 are as follows:

On September 24, 1973, the then Secretary of Agriculture and Natural Resources and Infanta Mineral and Industrial Corporation (Infanta) entered into a Mining Lease Contract (V-1050) for a term of 25 years up to September 23, 1998 for mining lode claims covering an area of 216 hectares at Sitio Linao, Ipilan, Brooke's Point, Palawan. The mining claims of Infanta covered by lode/lease contracts were as follows:

Contract No.	Area	Date of Issuance
LLC-V-941	18 hectares	January 17, 1972
LC-V-1050	216 hectares	September 24, 1973

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[6] *Rollo* (G.R. No. 176226), pp. 87-108, and *rollo* (G.R. No. 176319), pp. 79-100. Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Andres B. Reyes, Jr. (Chairperson) and Aurora Santiago-Lagman.

[7] *Rollo* (G.R. No. 176226), pp. 110-116, and *rollo* (G.R. No. 176319), pp. 102-108.

[8] *Rollo* (G.R. No. 172936), p. 700.

[9] *Rollo* (G.R. No. 176226), p. 1835.

[10] *Rollo* (G.R. No. 176319), pp. 1270-1271.

LLC-V-1060	16 hectares	October 30, 1973
LLC-V-1061	144 hectares	October 30, 1973
LLC-V-1073	144 hectares	April 18, 1973
MLC-MRD-52	306 hectares	April 26, 1978
MLC-MRC-53	72 hectares	April 26, 1978

Infanta's corporate name was changed to Cobertson Holdings Corporation on January 26, 1994 and subsequently to its present name, Macroasia Corporation, on November 6, 1995.

Sometime in 1997, Celestial filed a Petition to Cancel the subject mining lease contracts and other mining claims of Macroasia including those covered by Mining Lease Contract No. V-1050, before the Panel of Arbitrators (POA) of the Mines and Geo-Sciences Bureau (MGB) of the DENR. The petition was docketed as DENR Case No. 97-01.

Blue Ridge, in an earlier letter-petition, also wrote the Director of Mines to seek cancellation of mining lease contracts and other mining rights of Macroasia and another entity, Lebach Mining Corporation (Lebach), in mining areas in Brooke's Point. The petition was eventually docketed as DENR Case No. 97-02.

Celestial is the assignee of 144 mining claims covering such areas contiguous to Infanta's (now Macroasia) mining lode claims. Said area was involved in protracted administrative disputes with Infanta (now Macroasia), Lecar & Sons, Inc., and Palawan Nickel Mining Corporation. Celestial also holds an MPSA with the government which covers 2,835 hectares located at Ipilan/Maasin, Brooke's Point, Palawan and two pending applications covering another 4,040 hectares in Barangay Mainit also in Brooke's Point.

Celestial sought the cancellation of Macroasia's lease contracts on the following grounds: (1) the nonpayment of Macroasia of required occupational fees and municipal taxes; (2) the non-filing of Macroasia of Affidavits of Annual Work Obligations; (3) the failure of Macroasia to provide improvements on subject mining claims; (4) the concentration of Macroasia on logging; (5) the encroachment, mining, and extraction by Macroasia of

nickel ore from Celestial's property; (6) the ability of Celestial to subject the mining areas to commercial production; and (7) the willingness of Celestial to pay fees and back taxes of Macroasia.

In the later part of the proceedings, Macroasia intervened in the case and submitted its position paper refuting the grounds for cancellation invoked by Celestial.[11]

The Ruling of the Panel of Arbitrators in DENR Case Nos. 97-01 and 97-02

Based on the records of the Bureau of Mines and findings of the field investigations, the POA found that Macroasia and Lebach not only automatically abandoned their areas/mining claims but likewise had lost all their rights to the mining claims. The POA granted the petition of Celestial to cancel the following Mining Lease Contracts of Macroasia: LLC-V-941, LLC-V-1050, LLC-V-1060, LLC-V-1061, LLC-V-1073, MLC-MRD-52, and MLC-MRC-53; and found the claims of the others indubitably meritorious. It gave Celestial the preferential right to Macroasia's mining areas.[12] It upheld Blue Ridge's petition regarding DENR Case No. 97-02, but only as against the Mining Lease Contract areas of Lebach (LLC-V-1153, LLC-V-1154, and LLC-V-1155), and the said leased areas were declared automatically abandoned. It gave Blue Ridge priority right to the aforesaid Lebach's areas/ mining claims.[13]

Blue Ridge and Macroasia appealed before the MAB, and the cases were docketed as MAB Case Nos. 056-97 and 057-97, respectively.

Lebach did not file any notice of appeal with the required memorandum of appeal; thus, with respect to Lebach, the above resolution became final and executory.

[11] *Rollo* (G.R. No. 169080), pp. 89-91.

[12] *Id.* at 208-227.

[13] *Id*.

The Rulings of the Mines Adjudication Board in MAB Case Nos. 056-97 and 057-97 (DENR Case Nos. 97-01 and 97-02)

The MAB resolved the issues of timeliness and perfection of Macroasia's appeal; Macroasia's abandonment of its mining claims; and the preferential right over the abandoned mining claims of Macroasia.

Conformably with Section 51 of Consolidated Mines Administrative Order (CMAO)[14] implementing Presidential Decree No. (PD) 463[15] and our ruling in *Medrana v. Office of the President* (*OP*),[16] the MAB affirmed the POA findings that Macroasia abandoned its mining claims. The MAB found that Macroasia did not comply with its work obligations from 1986 to 1991. It based its conclusion on the field verifications conducted by the MGB, Region IV and validated by the Special Team tasked by the MAB.[17] However, contrary to the findings of the POA, the MAB found that it was Blue Ridge that had prior and preferential rights over the mining claims of Macroasia, and not Celestial.

Thus, on October 24, 2000, the MAB promulgated its Decision upholding the Decision of the POA to cancel the Mining Lode/ Lease Contracts of Macroasia; declaring abandoned the subject mining claims; and opening the mining area with prior and preferential rights to Blue Ridge for mining applications, subject to strict compliance with the procedure and requirements provided by law. In case Blue Ridge defaults, Celestial could exercise the secondary priority and preferential rights, and subsequently,

[14] Approved on May 17, 1975.

[15] "Providing for a Modernized System of Administration and Disposition of Mineral Lands and to Promote and Encourage the Development and Exploitation Thereof," approved and became effective on May 17, 1974.

[16] G.R. No. 85904, August 21, 1990, 188 SCRA 818.

[17] *See* September 15, 1999 Memorandum from Task Force Team Leader Rolando Peña to the Chairman of MAB, *rollo* (G.R. No. 169080), p. 494, on the Report by Task Force Created to Investigate the Area Subject of MAB Case Nos. 056-97 and 057-97 at Brooke's Point, Palawan, *id*. at 495-503, pursuant to May 17, 1999 Special Order No. 99-521, *id*. at 493.

in case Celestial also defaults, other qualified applicants could file.[18]

Both Celestial and Macroasia moved for reconsideration.[19] Celestial asserted that it had better rights than Blue Ridge over the mining claims of Macroasia as it had correctly filed its petition, and filed its MPSA application after Macroasia's lease contract expired on January 17, 1997 and after the POA's resolution was issued on September 1, 1997. Moreover, it argued that priority was not an issue when the contested area had not yet been declared abandoned. Thus, Blue Ridge's MPSA application filed on June 17, 1996 had no effect and should not be considered superior since Macroasia's lease contracts were still valid and subsisting and could not have been canceled by Macroasia's mere failure to perform annual work obligations and pay corresponding royalties/taxes to the government.

Macroasia, in its Motion for Reconsideration, reiterated that it did not abandon its mining claims, and even if mining was not listed among its purposes in its amended Articles of Incorporation, its mining activities were acts that were only *ultra vires* but were ratified as a secondary purpose by its stockholders in subsequent amendments of its Articles of Incorporation.

Before the MAB could resolve the motions for reconsideration, on March 16, 2001, Macroasia filed its Supplemental Motion for Reconsideration[20] questioning the jurisdiction of the POA in canceling mining lease contracts and mining claims. Macroasia averred that the power and authority to grant, cancel, and revoke mineral agreements is exclusively lodged with the DENR Secretary. Macroasia further pointed out that in arrogating upon itself such power, the POA whimsically and capriciously discarded the procedure on conferment of mining rights laid down in Republic Act No. (RA) 7942, *The Philippine Mining Act of 1995*, and

[18] *Id.* at 229-240.

[19] *Id.* at 241-258, Celestial's November 16, 2000 Motion for Reconsideration; and *id.* at 259-277, Macroasia's November 13, 2000 Motion for Reconsideration.

[20] *Id.* at 278-296.

DENR Administrative Order No. (AO) 96-40,[21] and perfunctorily and improperly awarded its mining rights to Blue Ridge and Celestial.

Subsequently, on November 26, 2004, the MAB issued a Resolution[22] vacating its October 24, 2000 Decision, holding that neither the POA nor the MAB had the power to revoke a mineral agreement duly entered into by the DENR Secretary, ratiocinating that there was no provision giving the POA and MAB the concurrent power to manage or develop mineral resources. The MAB further held that the power to cancel or revoke a mineral agreement was exclusively lodged with the DENR Secretary; that a petition for cancellation is not a mining dispute under the exclusive jurisdiction of the POA pursuant to Sec. 77 of RA 7942; and that the POA could only adjudicate claims or contests during the MPSA application and not when the claims and leases were already granted and subsisting.

Moreover, the MAB held that there was no abandonment by Macroasia because the DENR Secretary had not decided to release Macroasia from its obligations. The Secretary may choose not to release a contractor from its obligations on grounds of public interest. Thus, through its said resolution, the MAB rendered its disposition, as follows:

> WHEREFORE, premises considered, the assailed Decision of October 24, 2000 is hereby VACATED. The seven (7) mining lease contracts of Macroasia Corporation (formerly Infanta Mineral & Industrial Corporation) are DECLARED SUBSISTING prior to their expirations without prejudice to any Decision or Order that the Secretary may render on the same. NO PREFERENTIAL RIGHT over the same mining claims is accorded to Blue Ridge Mineral Corporation or Celestial Nickel Mining Exploration Corporation also without prejudice to the determination by the Secretary over the matter at the proper time.[23]

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[21] Revised Implementing Rules and Regulations of RA 7942, otherwise known as the *Philippine Mining Act of 1995*, *vice* DENR AO 95-23, series of 1995.

[22] *Rollo* (G.R. No. 169080), pp. 297-308.

[23] *Id.* at 307-308.

After the issuance of the MAB Resolution, Celestial and Blue Ridge went through divergent paths in their quest to protect their individual interests.

On January 10, 2005, Celestial assailed the November 26, 2004 MAB Resolution before the CA in a petition for review[24] under Rule 43 of the Rules of Court. The petition entitled *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation, et al.* was docketed as CA-G.R. SP No. 87931.

On the other hand, Blue Ridge first filed a Motion for Reconsideration[25] which was denied.[26] On August 26, 2005, Blue Ridge questioned the MAB's November 26, 2004 and July 12, 2005 Resolutions before the CA in a petition for review[27] entitled *Blue Ridge Mineral Corporation v. Mines Adjudication Board, et al.* docketed as CA-G.R. SP No. 90828.

CA-G.R. SP No. 87931 filed by Celestial was heard by the 12th Division of the CA; while Blue Ridge's CA-G.R. SP No. 90828 was heard by the Special 10th Division. Ironically, the two divisions rendered two (2) diametrically opposing decisions.

The Ruling of the Court of Appeals Twelfth Division

On April 15, 2005, in CA-G.R. SP No. 87931, the CA 12th Division affirmed the November 26, 2004 MAB Resolution which declared Macroasia's seven mining lease contracts as subsisting; rejected Blue Ridge's claim for preferential right over said mining claims; and upheld the exclusive authority of the DENR Secretary to approve, cancel, and revoke mineral agreements. The CA also denied Celestial's Motion for Reconsideration[28] of the assailed August 3, 2005 Resolution.[29]

[24] *Id.* at 309-371.

[25] *Rollo* (G.R. No. 172936), pp. 437-447.

[26] *Id.* at 448-455.

[27] *Id.* at 456-519.

[28] *Rollo* (G.R. No. 169080), pp. 372-403.

[29] *Supra* note 3.

Hence, Celestial filed its Petition for Review on *Certiorari*[30] docketed as **G.R. No. 169080**, before this Court.

The Ruling of the Court of Appeals Special Tenth Division

On May 18, 2006, the CA Special 10th Division in CA-G.R. SP No. 90828 granted Blue Ridge's petition; reversed and set aside the November 26, 2004 and July 12, 2005 Resolutions of the MAB; and reinstated the October 24, 2000 Decision in MAB Case Nos. 056-97 and 057-97. The Special Tenth Division canceled Macroasia's lease contracts; granted Blue Ridge prior and preferential rights; and treated the cancellation of a mining lease agreement as a mining dispute within the exclusive jurisdiction of the POA under Sec. 77 of RA 7942, explaining that the power to resolve mining disputes, which is the greater power, necessarily includes the lesser power to cancel mining agreements.

On February 20, 2006, Celestial filed a Most Urgent Motion for Issuance of a Temporary Restraining Order/Preliminary Prohibitory Injunction/Mandatory Injunction[31] to defer and preclude the issuance of MPSA to Macroasia by the MGB and the DENR Secretary. We denied this motion in our February 22, 2006 Resolution.[32]

Upon inquiry with the DENR, Blue Ridge discovered that sometime in December 2005 two MPSAs, duly approved and signed by the DENR Secretary, had been issued in favor of Macroasia. Thus, we have the instant Petition for *Certiorari*[33] filed by Blue Ridge docketed as **G.R. No. 172936** under Rule 65, seeking to invalidate the two MPSAs issued to Macroasia.

In the meantime, on June 7, 2006, Celestial filed its Motion for Partial Reconsideration[34] of the May 18, 2006 CA Decision

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[30] *Supra* note 1.

[31] *Rollo* (G.R. No. 169080), pp. 1203-1215.

[32] *Id*. at 1227.

[33] *Supra* note 4.

[34] *Rollo* (G.R. No. 176226), pp. 1687-1737.

in CA-G.R. SP No. 90828, while Macroasia filed its motion for reconsideration of the same CA decision on July 7, 2006. The motions were denied in the assailed January 19, 2007 CA Resolution. Hence, on March 8, 2007, Celestial filed the third petition[35] docketed as **G.R. No. 176226**, assailing the CA's May 18, 2006 Decision and January 19, 2007 Resolution, insofar as these granted Blue Ridge's prior and preferential rights. While on March 9, 2007, Macroasia filed the fourth petition[36] docketed as **G.R. No. 176319**, also assailing the CA's May 18, 2006 Decision and January 19, 2007 Resolution.

The Issues

In **G.R. No. 169080**, petitioner Celestial raises the following issues for our consideration:

(1) Whether or not Macroasia, for reasons of public policy is estopped from assailing the alleged lack of jurisdiction of the Panel of Arbitrators and the Mines Adjudication Board only after receiving an adverse judgment therefrom? [sic]

(2) Whether or not it is only the Secretary of the DENR who has the jurisdiction to cancel mining contracts and privileges? [sic]

(3) Whether or not a petition for the cancellation of a mining lease contract or privilege is a mining dispute within the meaning of the law? [sic]

(4) Whether or not Infanta's (Macroasia) mining lease contract areas were deemed abandoned warranting the cancellation of the lease contracts and the opening of the areas to other qualified applicants? [sic]

(5) Whether or not Macroasia/Infanta had lost its right to participate in this case after it failed to seasonably file its appeal and after its lease contracts had been declared abandoned and expired without having been renewed by the government? [sic]

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[35] *Supra* note 5.

[36] *Supra* note 5.

(6) Whether or not Celestial has the preferential right to apply for the 23 DE LARA claims which were included in Infanta's (Macroasia) expired lease contract (LLC-V-941) and the other areas declared as lapsed or abandoned by MGB-Region 4 and the Panel of Arbitrators?[37] [sic]

In **G.R. No. 172936,** petitioner Blue Ridge raises the following grounds for the allowance of the petition:

I

At the outset, the instant petition must be given due course and taken cognizance of by the Honorable Court considering that exceptional and compelling circumstances justify the availment of the instant petition and the call for the exercise of the Honorable Court's primary jurisdiction.

A. The exploration, development and utilization of minerals, petroleum and other mineral oils are imbued with public interest. The action of then Secretary Defensor, maintained and continued by public respondent Secretary Reyes, was tainted with grave abuse of discretion, has far-reaching consequences because of the magnitude of the effect created thereby.

B. The issues in the instant petition have already been put to fore by Celestial with the First Division of the Honorable Court, and hence, this circumstance justifies the cognizance by the Honorable Court of the instant petition.

II

It was grave abuse of discretion amounting to lack and/or excess of jurisdiction for then Secretary Defensor to have issued the subject MPSAs in favor of private respondent Macroasia, considering that:

A. Non-compliance of the mandatory requirements by private respondent Macroasia prior to approval of the subject MPSAs should have precluded then Secretary Defensor from approving subject MPSAs.

B. Petitioner Blue Ridge has the prior and preferential right to file its mining application over the mining claims covered

[37] *Supra* note 1, at 20-21.

> by the subject MPSAs, pursuant to the *Decision* dated 24 October 2000 of the Board and as affirmed by the *Decision* dated 18 May 2006 of the Court of Appeals in CA-G.R. SP No. 90828.[38]

In **G.R. No. 176226,** petitioner Celestial ascribes the following errors to the CA for our consideration:

> (1) That in reinstating and adopting as its own the Decision of the Mine Adjudication Board affirming the abandonment and cancellation of the mining areas/claims of Macroasia (Infanta) but awarding the prior or preferential rights to Blue Ridge, the Hon. Court of Appeals had decided a question of substance in a way not in accord with the Law (RA 7942) or with the applicable decisions of the Supreme Court; in other words, errors of law had been committed by the Hon. Court of Appeals in granting preferential rights to Blue Ridge;
>
> (2) That the Hon. Court of Appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such departure by the Mines Adjudication Board in its Decision of May 18, 2006 and Resolution of January 19, 2007 because:
>
> (A) The findings of fact of the Hon. Court of Appeals are contradictory or inconsistent with the findings of the Panel of Arbitrators;
>
> (B) There is grave abuse of discretion on the part of the Hon. Court of Appeals in its appreciation of the facts, the evidence and the law thereby leading it to make the erroneous conclusion that Blue Ridge, not Celestial, is entitled to the Award of prior/preferential rights over the mining areas declared as abandoned by Macroasia;
>
> (C) There is likewise, a grave abuse of discretion on the part of the Hon. Court of Appeals in that the said Court did not even consider some of the issues raised by Celestial;
>
> (D) That the findings of the Hon. Court of Appeals are mere conclusions not supported by substantial evidence and without citation of the specific evidence upon which

[38] *Supra* note 4, at 28-29.

they are based; they were arrived at arbitrarily or in disregard of contradiction of the evidence on record and findings of the Panel of Arbitrators in the Resolution of September 1, 1997;

(E) That the findings of the Hon. Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record and are violative of the provisions of RA 7942 and its Implementing Rules and Regulations.[39]

In **G.R. No. 176319,** petitioner Macroasia raises the following grounds for the allowance of the petition:

I.

The Court of Appeals (Special Tenth Division) should have dismissed the Petition of Blue Ridge outright since the issues, facts and matters involved in the said Petition are identical to those which had already been painstakingly passed upon, reviewed and resolved by the Court of Appeal's Twelfth Division in CA-G.R. SP No. 87931

II.

The Court of Appeals (Special Tenth Division) gravely erred in denying Macroasia's Motion to Inhibit Associate Justice Rosmari Carandang from hearing and deciding the Petition

III.

There were no factual nor legal bases for the Court of Appeals to rule that Macroasia had waived its right to question the jurisdiction of the Mines Adjudication Board

IV.

Republic Act No. 7942 contains provisions which unequivocally indicate that only the Secretary of the Department of Environment and Natural Resources has the power and authority to cancel mining lease agreements

V.

The Court of Appeals (Special Tenth Division) gravely erred in perfunctorily transferring Macroasia's mining lease agreements

[39] *Rollo* (G.R. No. 176226), pp. 32-33.

to Blue Ridge without observing the required procedure nor providing any basis therefore[40]

The Court's Ruling

The petitions under G.R. Nos. 169080, 172936, and 176226 are bereft of merit, while the petition under G.R. No. 176319 is meritorious.

The pith of the controversy, upon which the other issues are hinged is, who has authority and jurisdiction to cancel existing mineral agreements under RA 7942 in relation to PD 463 and pertinent rules and regulations.

G.R. Nos. 169080, 176226 and 176319

We will jointly tackle G.R. Nos. 169080, 176266, and 176319 as the issues and arguments of these three are inextricably intertwined.

Core Issue: Jurisdiction over Cancellation of Mineral Agreements

Petitioner Celestial maintains that while the jurisdiction to approve mining lease contracts or mineral agreements is conferred on the DENR Secretary, Sec. 77(a) of RA 7942 by implication granted to the POA and MAB the authority to cancel existing mining lease contracts or mineral agreements.

On the other hand, respondent Macroasia strongly asserts that it is the DENR Secretary who has the exclusive and primary jurisdiction to grant and cancel existing mining lease contracts; thus, the POA and MAB have no jurisdiction to cancel much less to grant any preferential rights to other mining firms.

Before we resolve this core issue of jurisdiction over cancellation of mining lease contracts, we first need to look back at previous mining laws pertinent to this issue.

Under PD 463, *The Mineral Resources Development Decree of 1974*, which took effect on May 17, 1974, applications for lease of mining claims were required to be filed with the Director

[40] *Rollo* (G.R. No. 176319), p. 15.

of the Bureau of Mines, within two (2) days from the date of their recording.[41] Sec. 40 of PD 463 provided that if no adverse claim was filed within (15) days after the first date of publication, it was conclusively presumed that no adverse claim existed and thereafter no objection from third parties to the grant of the lease could be heard, except protests pending at the time of publication. The Secretary would then approve and issue the corresponding mining lease contract. In case of any protest or adverse claim relating to any mining claim and lease application, Secs. 48 and 50 of PD 463 prescribed the procedure. Under Sec. 48, the protest should be filed with the Bureau of Mines. Under Sec. 50, any party not satisfied with the decision or order of the Director could, within five (5) days from receipt of the decision or order, appeal to the Secretary. The decisions of the Secretary were likewise appealable within five (5) days from receipts by the affected party to the President of the Philippines whose decision shall be final and executory. PD 463 was, however, silent as to who was authorized to cancel the mineral agreements.

On July 10, 1987, President Corazon C. Aquino issued Executive Order No. (EO) 211. Under Sec. 2 of EO 211, the processing, evaluation, and approval of all mining applications, declarations of locations, operating agreements, and service contracts were governed by PD 463, as amended. EO 211 likewise did not contain any provision on the authority to cancel operating agreements and service contracts.

On July 25, 1987, EO 279 was issued by President Aquino. It authorized the DENR Secretary to negotiate and enter into, for and in behalf of the Government, joint venture, co-production, or production-sharing agreements for the exploration, development, and utilization of mineral resources with any Filipino citizen, corporation, or association, at least 60% of whose capital was owned by Filipino citizens.[42] The contract or agreement was subject to the approval of the President.[43] With respect to contracts of foreign-owned corporations or foreign investors

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[41] PD 463, Sec. 34.

[42] EO 279, Sec. 1.

[43] EO 279, Sec. 3.

involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, the DENR Secretary could recommend approval of said contracts to the President.[44] EO 279 provided that PD 463 and its implementing rules and regulations, which were not inconsistent with EO 279, continued in force and effect.[45] Again, EO 279 was silent on the authority to cancel mineral agreements.

RA 7942, *The Philippine Mining Act of 1995* enacted on March 3, 1995, repealed the provisions of PD 463 inconsistent with RA 7942. Unlike PD 463, where the application was filed with the Bureau of Mines Director, the applications for mineral agreements are now required to be filed with the Regional Director as provided by Sec. 29 of RA 7942. The proper filing gave the proponent the prior right to be approved by the Secretary and thereafter to be submitted to the President. The President shall provide a list to Congress of every approved mineral agreement within 30 days from its approval by the Secretary. Again, RA 7942 is silent on who has authority to cancel the agreement.

Compared to PD 463 where disputes were decided by the Bureau of Mines Director whose decisions were appealable to the DENR Secretary and then to the President, RA 7942 now provides for the creation of quasi-judicial bodies (POA and MAB) that would have jurisdiction over conflicts arising from the applications and mineral agreements. Secs. 77, 78, and 79 lay down the procedure, thus:

> SEC. 77. *Panel of Arbitrators*.––There shall be a panel of arbitrators in the regional office of the Department composed of three (3) members, two (2) of whom must be members of the Philippine Bar in good standing and one [1] licensed mining engineer or a professional in a related field, and duly designated by the Secretary as recommended by the Mines and Geosciences Bureau Director. Those designated as members of the panel shall serve as such in addition to their work in the Department without receiving any additional compensation. As much as practicable, said members shall come from the different bureaus of the Department in the

[44] EO 279, Sec. 4.

[45] EO 279, Sec. 7.

region. The presiding officer thereof shall be selected by the drawing of lots. His tenure as presiding officer shall be on a yearly basis. The members of the panel shall perform their duties and obligations in hearing and deciding cases until their designation is withdrawn or revoked by the Secretary. Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:

(a) **Disputes involving rights to mining areas**;

(b) **Disputes involving mineral agreements or permits**;

(c) Disputes involving surface owners, occupants and claimholders/concessionaires; and

(d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

SEC. 78. *Appellate Jurisdiction*.—The decision or order of the panel of arbitrators may be appealed by the party not satisfied thereto to the Mines Adjudication Board within fifteen (15) days from receipt thereof which must decide the case within thirty (30) days from submission thereof for decision.

SEC. 79. *Mines Adjudication Board.*—The Mines Adjudication Board shall be composed of three (3) members. The Secretary shall be the chairman with the Director of the Mines and Geosciences Bureau and the Undersecretary for Operations of the Department as members thereof.

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A petition for review by *certiorari* and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board.

RA 7942 is also silent as to who is empowered to cancel existing lease contracts and mineral agreements.

Meanwhile, in *Southeast Mindanao Gold Mining Corp. v. MAB*, we explained that the decision of the MAB can first be appealed, via a petition for review, to the CA before elevating the case to this Court.[46]

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[46] G.R. No. 132475, September 11, 2000, Second Division Resolution.

After a scrutiny of the provisions of PD 463, EO 211, EO 279, RA 7942 and its implementing rules and regulations, executive issuances, and case law, we rule that the DENR Secretary, not the POA, has the jurisdiction to cancel existing mineral lease contracts or mineral agreements based on the following reasons:

1. The power of the DENR Secretary to cancel mineral agreements emanates from his administrative authority, supervision, management, and control over mineral resources under Chapter I, Title XIV of Book IV of the Revised Administrative Code of 1987, *viz*:

Chapter 1—General Provisions

Section 1. *Declaration of Policy*.—(1) The State shall ensure, for the benefit of the Filipino people, the full exploration and development as well as the judicious disposition, **utilization, management, renewal and conservation of the country's** forest, **mineral,** land, waters, fisheries, wildlife, off-shore areas and other natural resources x x x

Sec. 2. *Mandate*.— (1) **The Department of Environment and Natural Resources shall be primarily responsible for the implementation of the foregoing policy**. (2) **It shall, subject to law and higher authority, be in charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country's natural resources.**

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Sec. 4. *Powers and Functions*.—The Department shall:

xxx xxx xxx

(2) **Formulate, implement and supervise the implementation of the government's policies, plans, and programs pertaining to the management, conservation, development, use and replenishment of the country's natural resources**;

xxx xxx xxx

(4) **Exercise supervision and control over** forest lands, alienable and disposable public lands, **mineral resources** x x x

xxx xxx xxx

(12) **Regulate the development, disposition, extraction, exploration and use of the country's forest, land, water and mineral resources**;

(13) **Assume responsibility for** the assessment, development, protection, **licensing and regulation** as provided for by law, where applicable, **of all energy and natural resources**; the **regulation and monitoring of service contractors, licensees, lessees, and permit for the extraction, exploration, development and use of natural resources products;** x x x

xxx xxx xxx

(15) **Exercise exclusive jurisdiction on the management and disposition of all lands of the public domain** x x x

Chapter 2—The Department Proper

xxx xxx xxx

Sec. 8. *The Secretary*.—The Secretary shall:

xxx xxx xxx

(3) **Promulgate rules, regulations and other issuances necessary in carrying out the Department's mandate, objectives, policies, plans, programs and projects.**

(4) **Exercise supervision and control over all functions and activities of the Department;**

(5) Delegate authority for the performance of any administrative or substantive function to subordinate officials of the Department x x x (Emphasis supplied.)

It is the DENR, through the Secretary, that manages, supervises, and regulates the use and development of all mineral resources of the country. It has exclusive jurisdiction over the management of all lands of public domain, which covers mineral resources and deposits from said lands. It has the power to oversee, supervise, and police our natural resources which include mineral resources. Derived from the broad and explicit powers of the DENR and its Secretary under the Administrative Code of 1987 is the power to approve mineral agreements and necessarily to cancel or cause to cancel said agreements.

2. RA 7942 confers to the DENR Secretary specific authority over mineral resources.

Secs. 8 and 29 of RA 7942 pertinently provide:

SEC. 8. *Authority of the Department.*––The Department shall be the primary government agency responsible for the conservation, management, development, and proper use of the States mineral resources including those in reservations, watershed areas, and lands of the public domain. **The Secretary shall have the authority to enter into mineral agreements on behalf of the Government upon the recommendation of the Director,** promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Act.

SEC. 29. *Filing and approval of Mineral Agreements*.—x x x.

The filing of a proposal for a mineral agreement shall give the proponent the prior right to areas covered by the same. **The proposed mineral agreement will be approved by the Secretary** and copies thereof shall be submitted to the President. Thereafter, the President shall provide a list to Congress of every approved mineral agreement within thirty (30) days from its approval by the Secretary. (Emphasis supplied.)

Sec. 29 is a carry over of Sec. 40 of PD 463 which granted jurisdiction to the DENR Secretary to approve mining lease contracts on behalf of the government, thus:

SEC. 40. *Issuance of Mining Lease Contract*.—If no adverse claim is filed within fifteen (15) days after the first date of publication, it shall be conclusively presumed that no such adverse claim exists and thereafter no objection from third parties to the grant of the lease shall be heard, except protest pending at the time of publication, and the **Secretary shall approve and issue the corresponding mining lease** x x x.

To enforce PD 463, the CMAO containing the rules and regulations implementing PD 463 was issued. Sec. 44 of the CMAO provides:

SEC. 44. *Procedure for Cancellation*.—Before any mining lease contract is cancelled for any cause enumerated in Section 43 above, the mining lessee shall first be notified in writing of such cause or

causes, and shall be given an opportunity to be heard, and to show cause why the lease shall not be cancelled.

If, upon investigation, the **Secretary shall find the lessee to be in default, the former may warn the lessee, suspend his operations or cancel the lease contract** (emphasis supplied).

Sec. 4 of EO 279 provided that the provisions of PD 463 and its implementing rules and regulations, not inconsistent with the executive order, continue in force and effect.

When RA 7942 took effect on March 3, 1995, there was no provision on who could cancel mineral agreements. However, since the aforequoted Sec. 44 of the CMAO implementing PD 463 was not repealed by RA 7942 and DENR AO 96-40, not being contrary to any of the provisions in them, then it follows that Sec. 44 serves as basis for the DENR Secretary's authority to cancel mineral agreements.

Since the DENR Secretary had the power to approve and cancel mineral agreements under PD 463, and the power to cancel them under the CMAO implementing PD 463, EO 211, and EO 279, then there was no recall of the power of the DENR Secretary under RA 7942. Historically, the DENR Secretary has the express power to approve mineral agreements or contracts and the implied power to cancel said agreements.

It is a well-established principle that in the interpretation of an ambiguous provision of law, the history of the enactment of the law may be used as an extrinsic aid to determine the import of the legal provision or the law.[47] History of the enactment of the statute constitutes prior laws on the same subject matter. Legislative history necessitates review of "the origin, antecedents and derivation" of the law in question to discover the legislative purpose or intent.[48] It can be assumed "that the new legislation has been enacted as continuation of the existing legislative policy or as a new effort to perpetuate it or further advance it."[49]

[47] *Commissioner of Customs v. Esso Standard Eastern, Inc.*, No. L-28329, August 7, 1975, 66 SCRA 113, 119.

[48] L.J. Gonzaga, *STATUTES AND THEIR CONSTRUCTION* 159 (1958).

[49] Crawford, *STATUTORY CONSTRUCTION* 374-375 (1940).

We rule, therefore, that based on the grant of implied power to terminate mining or mineral contracts under previous laws or executive issuances like PD 463, EO 211, and EO 279, RA 7942 should be construed as a continuation of the legislative intent to authorize the DENR Secretary to cancel mineral agreements on account of violations of the terms and conditions thereof.

3. Under RA 7942, the power of control and supervision of the DENR Secretary over the MGB to cancel or recommend cancellation of mineral rights clearly demonstrates the authority of the DENR Secretary to cancel or approve the cancellation of mineral agreements.

Under Sec. 9 of RA 7942, the MGB was given the power of direct supervision of mineral lands and resources, thus:

Sec. 9. *Authority of the Bureau*.—The Bureau shall have **direct charge in the administration and disposition of mineral lands and mineral resources and shall undertake geological, mining, metallurgical, chemical, and other researches as well as geological and mineral exploration surveys. The Director shall recommend to the Secretary the granting of mineral agreements to duly qualified persons and shall monitor the compliance by the contractor of the terms and conditions of the mineral agreements**. The Bureau may confiscate surety, performance and guaranty bonds posted through an order to be promulgated by the Director. The Director may deputize, when necessary, any member or unit of the Philippine National Police, *barangay*, duly registered nongovernmental organization (NGO) or any qualified person to police all mining activities. (Emphasis supplied.)

Corollary to the power of the MGB Director to recommend approval of mineral agreements is his power to cancel or recommend cancellation of mining rights covered by said agreements under Sec. 7 of DENR AO 96-40, containing the revised Implementing Rules and Regulations of RA 7942. Sec. 7 reads:

Sec. 7. Organization and Authority of the Bureau.

xxx xxx xxx

The Bureau shall have the following authority, among others:

a. To have direct charge in the administration and disposition of mineral land and mineral resources;

xxx xxx xxx

d. To recommend to the Secretary the granting of mineral agreements or to endorse to the Secretary for action by the President the grant of FTAAs [Financial and Technical Assistance Agreements], in favor of qualified persons and to monitor compliance by the Contractor with the terms and conditions of the mineral agreements and FTAAs.

e. **To cancel or to recommend cancellation after due process, mining rights**, mining applications and mining claims for non-compliance with pertinent laws, rules and regulations.

It is explicit from the foregoing provision that the DENR Secretary has the authority to cancel mineral agreements based on the recommendation of the MGB Director. As a matter of fact, the power to cancel mining rights can even be delegated by the DENR Secretary to the MGB Director. Clearly, it is the Secretary, not the POA, that has authority and jurisdiction over cancellation of existing mining contracts or mineral agreements.

4. The DENR Secretary's power to cancel mining rights or agreements through the MGB can be inferred from Sec. 230, Chapter XXIV of DENR AO 96-40 on cancellation, revocation, and termination of a permit/mineral agreement/FTAA. Sec. 230 provides:

Section 230. Grounds

The following grounds for cancellation revocation and termination of a Mining Permit Mineral Agreement/FTAA.

a. Violation of any of the terms and conditions of the Permits or Agreements;

b. Nonpayment of taxes and fees due the government for two (2) consecutive years; and

c. Falsehood or omission of facts in the application for exploration [or Mining] Permit Mineral Agreement/FTAA or other permits which may later, change or affect substantially the facts set forth in said statements.

Though Sec. 230 is silent as to who can order the cancellation, revocation, and termination of a permit/mineral agreement/FTAA, it has to be correlated with the power of the MGB under Sec. 7 of AO 96-40 "to cancel or to recommend cancellation, after due process, mining rights, mining applications and mining claims for noncompliance with pertinent laws, rules and regulations." As the MGB is under the supervision of the DENR Secretary, then the logical conclusion is that it is the DENR Secretary who can cancel the mineral agreements and not the POA nor the MAB.

5. Celestial and Blue Ridge are not unaware of the stipulations in the Mining Lease Contract Nos. V-1050 and MRD-52,[50] the cancellation of which they sought from the POA. It is clear from said lease contracts that the parties are the Republic of the Philippines represented by the Secretary of Agriculture and Natural Resources (now DENR Secretary) as lessor, and Infanta (Macroasia) as lessee. Paragraph 18 of said lease contracts provides:

> Whenever the LESSEE fails to comply with any provision of [PD 463, and] Commonwealth Acts Nos. 137, 466 and 470, [both as amended,] and/or the rules and regulations promulgated thereunder, or any of the covenants therein, **the LESSOR may declare this lease cancelled** and, after having given thirty (30) days' notice in writing to the LESSEE, may enter and take possession of the said premises, and said lessee shall be liable for all unpaid rentals, royalties and taxes due the Government on the lease up to the time of the forfeiture or cancellation, in which event, the LESSEE hereby covenants and agrees to give up the possession of the property leased. (Emphasis supplied.)

Thus, the government represented by the then Secretary of Agriculture and Natural Resources (now the DENR Secretary) has the power to cancel the lease contracts for violations of existing laws, rules and regulations and the terms and conditions of the contracts. Celestial and Blue Ridge are now estopped from challenging the power and authority of the DENR Secretary to cancel mineral agreements.

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[50] *Rollo* (G.R. No. 169080), pp. 145-153.

However, Celestial and Blue Ridge insist that the power to cancel mineral agreements is also lodged with the POA under the explicit provisions of Sec. 77 of RA 7942.

This postulation is incorrect.

Sec. 77 of RA 7942 lays down the jurisdiction of POA, to wit:

> Within thirty (30) days, after the submission of the case by the parties for the decision, the panel shall have exclusive and original jurisdiction to hear and decide the following:
>
> (a) Disputes involving rights to mining areas
>
> (b) Disputes involving mineral agreements or permits

The phrase "disputes involving rights to mining areas" refers to any adverse claim, protest, or opposition to an application for mineral agreement. The POA therefore has the jurisdiction to resolve any adverse claim, protest, or opposition to a pending application for a mineral agreement filed with the concerned Regional Office of the MGB. This is clear from Secs. 38 and 41 of DENR AO 96-40, which provide:

> Sec. 38.
>
> xxx xxx xxx
>
> Within thirty (30) calendar days from the last date of publication/posting/radio announcements, the authorized officer(s) of the concerned office(s) shall issue a certification(s) that the publication/posting/radio announcement have been complied with. **Any adverse claim, protest or opposition shall be filed directly, within thirty (30) calendar days from the last date of publication/posting/radio announcement, with the concerned Regional Office or through any concerned PENRO or CENRO for filing in the concerned Regional Office for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of this Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a certification to that effect within five (5) working days from the date of finality of resolution thereof. Where there is no adverse claim, protest or opposition,**

the Panel of Arbitrators shall likewise issue a Certification to that effect within five working days therefrom.

xxx xxx xxx

No Mineral Agreement shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/opposition is finally resolved by the Panel of Arbitrators.

Sec. 41.

xxx xxx xxx

Within fifteen (15) working days from the receipt of the Certification issued by the Panel of Arbitrators as provided in Section 38 hereof, **the concerned Regional Director shall initially evaluate the Mineral Agreement applications in areas outside Mineral reservations. He/She shall thereafter endorse his/her findings to the Bureau for further evaluation by the Director within fifteen (15) working days from receipt of forwarded documents. Thereafter, the Director shall endorse the same to the secretary for consideration/approval within fifteen working days from receipt of such endorsement.**

In case of Mineral Agreement applications in areas with Mineral Reservations, **within fifteen (15) working days from receipt of the Certification issued by the Panel of Arbitrators as provided for in Section 38 hereof**, **the same shall be evaluated and endorsed by the Director to the Secretary for consideration/approval within fifteen days from receipt of such endorsement.** (Emphasis supplied.)

It has been made clear from the aforecited provisions that the "disputes involving rights to mining areas" under Sec. 77(a) specifically refer only to those disputes relative to the **applications** for a mineral agreement or conferment of mining rights.

The jurisdiction of the POA over adverse claims, protest, or oppositions to a mining right application is further elucidated by Secs. 219 and 43 of DENR AO 95-936, which read:

Sec. 219. *Filing of Adverse Claims/Conflicts/Oppositions*.— Notwithstanding the provisions of Sections 28, 43 and 57 above, **any adverse claim, protest or opposition specified in said**

sections may also be filed directly with the Panel of Arbitrators within the concerned periods for filing such claim, protest or opposition as specified in said Sections.

Sec. 43. *Publication/Posting of Mineral Agreement Application.*—

xxx xxx xxx

The Regional Director or concerned Regional Director shall also cause the posting of the application on the bulletin boards of the Bureau, concerned Regional office(s) and in the concerned province(s) and municipality(ies), copy furnished the *barangays* where the proposed contract area is located once a week for two (2) consecutive weeks in a language generally understood in the locality. After forty-five (45) days from the last date of publication/posting has been made and no adverse claim, protest or opposition was filed within the said forty-five (45) days, the concerned offices shall issue a certification that publication/posting has been made and that no adverse claim, protest or opposition of whatever nature has been filed. **On the other hand, if there be any adverse claim, protest or opposition, the same shall be filed within forty-five (45) days from the last date of publication/posting, with the Regional Offices concerned, or through the Department's Community Environment and Natural Resources Officers (CENRO) or Provincial Environment and Natural Resources Officers (PENRO), to be filed at the Regional Office for resolution of the Panel of Arbitrators.** However previously published valid and subsisting mining claims are exempted from posted/posting required under this Section.

No mineral agreement shall be approved unless the requirements under this section are fully complied with and any opposition/adverse claim is dealt with in writing by the Director and resolved by the Panel of Arbitrators. (Emphasis supplied.)

These provisions lead us to conclude that the power of the POA to resolve any adverse claim, opposition, or protest relative to mining rights under Sec. 77(a) of RA 7942 is confined only to adverse claims, conflicts and oppositions relating to **applications** for the grant of mineral rights. POA's jurisdiction is confined only to resolutions of such adverse claims, conflicts and oppositions and it has no authority to approve or reject

said applications. Such power is vested in the DENR Secretary upon recommendation of the MGB Director. Clearly, POA's jurisdiction over "disputes involving rights to mining areas" has nothing to do with the cancellation of existing mineral agreements.

On the other hand, Celestial and Blue Ridge contend that POA has jurisdiction over their petitions for the cancellation of Macroasia's lease agreements banking on POA's jurisdiction over "disputes involving mineral agreements or permits" under Sec. 77 (b) of RA 7942.

Such position is bereft of merit.

As earlier discussed, the DENR Secretary, by virtue of his powers as administrative head of his department in charge of the management and supervision of the natural resources of the country under the 1987 Administrative Code, RA 7942, and other laws, rules, and regulations, can cancel a mineral agreement for violation of its terms, even without a petition or request filed for its cancellation, provided there is compliance with due process. Since the cancellation of the mineral agreement is approved by the DENR Secretary, then the recourse of the contractor is to elevate the matter to the OP pursuant to AO 18, Series of 1987 but not with the POA.

Matched with the legal provisions empowering the DENR Secretary to cancel a mineral agreement is Sec. 77 (b) of RA 7942 which grants POA jurisdiction over disputes involving mineral agreements.

A dispute is defined as "a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side; met by contrary claims or allegations on the other."[51] It is synonymous to a cause of action which is "an act or omission by which a party violates a right of another."[52]

A petition or complaint originating from a dispute can be filed or initiated only by a real party-in-interest. The rules of court define a real party-in-interest as "the party who stands to

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[51] H. Black, *BLACK'S LAW DICTIONARY* 472 (6th ed., 1990).

[52] RULES OF COURT, Rule 2, Sec. 2.

be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit."[53] Every action, therefore, can only be prosecuted in the name of the real party-in-interest.[54] It has been explained that "a real party-in-interest plaintiff is one who has a legal right, while a real party-in-interest-defendant is one who has a correlative legal obligation whose act or omission violates the legal right of the former."[55]

On the other hand, interest "means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest." It is settled in this jurisdiction that "one having no right or interest to protect cannot invoke the jurisdiction of the court as a party-plaintiff in an action."[56] Real interest is defined as "a present substantial interest, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest."[57]

From the foregoing, a petition for the cancellation of an existing mineral agreement covering an area applied for by an applicant based on the alleged violation of any of the terms thereof, is not a "dispute" involving a mineral agreement under Sec. 77 (b) of RA 7942. It does not pertain to a violation by a party of the right of another. The applicant is not a real party-in-interest as he does not have a material or substantial interest in the mineral agreement but only a prospective or expectant right or interest in the mining area. He has no legal right to such mining claim and hence no dispute can arise between the applicant and the parties to the mineral agreement. The court rules therefore that a petition for cancellation of a mineral agreement anchored on the breach thereof even if filed by an applicant to a mining claim, like Celestial and Blue Ridge, falls within the jurisdiction of the DENR Secretary and not POA. Such petition is excluded

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[53] RULES OF COURT, Rule 3, Sec. 2.

[54] *Id*.

[55] *Ibonilla v. Province of Cebu*, G.R. No. 97463, June 26, 1992, 210 SCRA 526.

[56] *Ralla v. Ralla*, G.R. No. 78646, July 23, 1991, 199 SCRA 495.

[57] *Ibonilla v. Province of Cebu*, *supra*.

from the coverage of the POA's jurisdiction over disputes involving mineral agreements under Sec. 77 (b) of RA 7942.

Macroasia not estopped from raising the issue of jurisdiction on appeal

On the related issue of estoppel, petitioner Celestial argues that Macroasia is estopped from raising and questioning the issue of the jurisdiction of the POA and MAB over the petition for cancellation of its mining lease contracts, when Macroasia raised it only in its Supplemental Motion for Reconsideration.

We rule that the principle of estoppel does not apply.

Indeed, Macroasia was not the one that initiated the instant case before the POA, and thus was not the one that invoked the jurisdiction of the POA. Hence, on appeal, Macroasia is not precluded from raising the issue of jurisdiction as it may be invoked even on appeal.[58] As a matter of fact, a party can raise the issue of jurisdiction at any stage of the proceedings.

Petitioner Celestial's reliance on *Villela v. Gozun*[59] to support the contention that the POA has jurisdiction to hear and decide a petition to cancel existing mining lease contracts, is misplaced. In said case, we dismissed the petition on the ground of non-exhaustion of administrative remedies and disregarded judicial hierarchy as no compelling reason was shown to warrant otherwise. While we pointed out the authority of the POA, there was no categorical pronouncement on the jurisdictional issue.

No valid pronouncement of abandonment due to lack of jurisdiction over petition to cancel

As we are not a trier of facts, we need not make any finding on the various investigations done by the MGB and MAB on the issue of Macroasia's non-compliance with its work obligations and nonpayment of taxes and fees. Verily, the law does not impose automatic cancellation of an existing mining lease contract,

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[58] See *Duero v. Court of Appeals*, G.R. No. 131282, January 4, 2002, 373 SCRA 11.

[59] G.R. No. 158092, April 4, 2005, Resolution of the Second Division.

as it is a question of fact which must be determined by the MGB which can recommend the cancellation of the mineral or lease agreements to the DENR Secretary. Be that as it may, since the POA and MAB have no jurisdiction over the petition for cancellation of existing mining lease contracts of Macroasia, they could not have made any binding pronouncement that Macroasia had indeed abandoned the subject mining claims. Besides, it is the DENR Secretary who has the authority to cancel Macroasia's existing mining lease contracts whether on grounds of abandonment or any valid grounds for cancellation.

Decision in CA-G.R. SP No. 90828 not in accord with the law

With our resolution of the issue on the lack of jurisdiction of the POA and the MAB over petitions to cancel existing mining lease contracts or mineral agreements, it is thus clear that the May 18, 2006 Decision in CA-G.R. SP No. 90828 must be nullified for being not in accord with the law and the April 15, 2005 Decision in CA-G.R. SP No. 87931 must be upheld.

Notwithstanding the nullification of the May 18, 2006 Decision of the Special Tenth Division in CA-G.R. SP No. 90828, the rendition of two conflicting decisions of the two CA Divisions over the same challenged resolutions of the MAB should be avoided in the future as this is anathema to stability of judicial decisions and orderly administration of justice.

The chronology of events reveals the following:

1. January 10, 2005 – petitioner Celestial filed its petition docketed as CA-G.R. SP No. 87931 with the CA.

2. April 15, 2005 – the CA through its Twelfth Division rendered its Decision in CA-G.R. SP No. 87931 affirming the November 26, 2004 MAB Resolution.

3. July 12, 2005 – respondent Blue Ridge filed its petition docketed as CA-G.R. SP No. 90828 with the CA. It is clear that the Blue Ridge petition was filed with the CA three months after the decision in CA-G.R. SP No. 87931 was promulgated.

4. May 18, 2006 – the CA through its Special Tenth Division rendered its Decision setting aside the November 26, 2004 and July 12, 2005 Resolutions of the MAB and reinstating the October 24, 2000 MAB Decision.

From these facts, the CA Special Tenth Division should have ordered the consolidation of the petition in CA-G.R. SP No. 90828 by CA-G.R. SP No. 87931 pursuant to the Internal Rules of the CA, the latter having the earlier docket number. Had it done so, then the occurrence of the conflicting decisions could have been prevented. The CA Special Tenth Division should have abided by our ruling in *Nacuray v. NLRC*, where we held, "Consequently, a division cannot and should not review a case already passed upon by another Division of this Court. It is only proper, to allow the case to take its rest after having attained finality."[60]

The CA should take the appropriate steps, including the adoption or amendment of the rules, to see to it that cases or petitions arising from the same questioned decision, order, or resolution are consolidated to steer clear of contrary or opposing decisions of the different CA Divisions and ensure that incidents of similar nature will not be replicated.

G.R. No. 172936

No showing that the DENR Secretary gravely abused his discretion

Now, going to the substance of the petition in G.R. No. 172936. A scrutiny of the records shows that the DENR Secretary did not gravely abuse his discretion in approving and signing MPSA Nos. 220-2005-IVB and 221-2005-IVB in favor of Macroasia.

Petitioner Blue Ridge anchors its rights on the May 18, 2006 Decision in CA-G.R. SP No. 90828, which we have unfortunately struck down. Blue Ridge's argument in assailing the approval and issuance of the subject MPSAs that it has been accorded preferential right by the CA has no leg to stand on.

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[60] G.R. Nos. 114924-27, March 18, 1997, 270 SCRA 9, 18.

The October 24, 2000 MAB Decision, nullified by the subsequent November 26, 2004 Resolution, is unequivocal that Blue Ridge was granted only "prior and preferential rights **to FILE** its mining application over the same mining claims."[61] What was accorded Blue Ridge was only the right to file the mining application but with no assurance that the application will be recommended for approval by the MGB and finally approved by the DENR Secretary.

Moreover, a preferential right would at most be an inchoate right to be given priority in the grant of a mining agreement. It has not yet been transformed into a legal and vested right unless approved by the MGB or DENR Secretary. Even if Blue Ridge has a preferential right over the subject mining claims, it is still within the competence and discretion of the DENR Secretary to grant mineral agreements to whomever he deems best to pursue the mining claims over and above the preferential status given to Blue Ridge. Besides, being simply a preferential right, it is ineffective to dissolve the pre-existing or subsisting mining lease contracts of Macroasia.

The DENR Secretary has full discretion in the grant of mineral agreements

Blue Ridge also argues that the Secretary gravely abused his discretion in approving the subject MPSAs without Macroasia complying with the mandatory requirements for mineral agreement applications under Sec. 35 of DENR AO 96-40. Petitioner specifically cited Sec. 36 of DENR AO 96-40 to the effect that "no Mineral Agreement shall be approved unless the requirements under this section are fully complied with and any adverse claim/ protest/opposition thereto is finally resolved by the Panel of Arbitrators." Moreover, Blue Ridge contends that the MPSAs were approved even prior to the issuance of the Compliance Certificate[62] by the National Commission on Indigenous Peoples under the OP, which is a requisite pre-condition for the issuance of an MPSA.

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[61] *Rollo* (G.R. No. 169080), p. 240.

[62] *Rollo* (G.R. No. 172936), pp. 87-90.

We are not persuaded.

Blue Ridge cites Sec. 38 (not Sec. 36) of DENR AO 96-40 as basis for claiming that then DENR Secretary Defensor committed grave abuse of discretion in granting MPSA Nos. 220-2005-IVB and 221-2005-IVB to Macroasia. Petitioner's postulation cannot be entertained for the reason that the issuance of the mining agreements was not raised before the MGB Director and DENR Secretary, nor was it amply presented before the CA. There is even a counter-charge that Blue Ridge has not complied with the legal requirements for a mining application. The rule is established that questions raised for the first time on appeal before this Court are not proper and have to be rejected. Furthermore, the resolution of these factual issues would relegate the Court to a trier of facts. The Blue Ridge plea is hindered by the factual issue bar rule where factual questions are proscribed under Rule 65. Lastly, there was no exhaustion of administrative remedies before the MGB and DENR. Thus, Blue Ridge's petition must fail.

Primary jurisdiction of the DENR Secretary in determining whether to grant or not a mineral agreement

Verily, RA 7942, similar to PD 463, confers exclusive and primary jurisdiction on the DENR Secretary to approve mineral agreements, which is purely an administrative function within the scope of his powers and authority. In exercising such exclusive primary jurisdiction, the DENR Secretary, through the MGB, has the best competence to determine to whom mineral agreements are granted. Settled is the rule that the courts will defer to the decisions of the administrative offices and agencies by reason of their expertise and experience in the matters assigned to them pursuant to the doctrine of primary jurisdiction. Administrative decisions on matter within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law.[63] Unless it is shown that the then DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for

[63] *Bernardo v. Court of Appeals*, G.R. No. 124261, May 27, 2004, 429 SCRA 285, 300.

an illegal consideration and similar reasons, this Court cannot look into or review the wisdom of the exercise of such discretion. Blue Ridge failed in this regard.

Delineation of powers and functions is accorded the three branches of government for the smooth functioning of the different governmental services. We will not disturb nor interfere in the exercise of purely administrative functions of the executive branch absent a clear showing of grave abuse of discretion.

Without a restraining order or injunction, litigation will not deter the DENR from exercising its functions

While it is true that the subject mining claims are under litigation, this does not preclude the DENR and its Secretary from carrying out their functions and duties without a restraining order or an injunctive writ. Otherwise, public interest and public service would unduly suffer by mere litigation of particular issues where government interests would be unduly affected. In the instant case, it must be borne in mind that the government has a stake in the subject mining claims. Also, Macroasia had various valid existing mining lease contracts over the subject mining lode claims issued by the DENR. Thus, Macroasia has an advantage over Blue Ridge and Celestial insofar as the administrative aspect of pursuing the mineral agreements is concerned.

WHEREFORE, the petitions under *G.R. Nos. 169080, 172936,* and *176229* are *DISMISSED* for lack of merit, while the petition under *G.R. No. 176319* is hereby *GRANTED*. The assailed April 15, 2005 Decision and August 3, 2005 Resolution of the CA in CA-G.R. SP No. 87931 are hereby *AFFIRMED IN TOTO.* And the May 18, 2006 Decision and January 19, 2007 Resolution of the CA in CA-G.R. SP No. 90828 are hereby *REVERSED* and *SET ASIDE*. In view of the foregoing considerations, we find no grave abuse of discretion on the part of the then DENR Secretary in the approval and issuance of MPSA Nos. 220-2005-IVB and 221-2005-IVB. Costs against Celestial Nickel Mining Exploration Corporation and Blue Ridge Mineral Corporation.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, and *Chico-Nazario,*[*] *JJ.,* concur.

Tinga, J., concurs in the result.

SECOND DIVISION

[G.R. No. 171438. December 19, 2007]

MERCURY GROUP OF COMPANIES, INC., *petitioner, vs.* **HOME DEVELOPMENT MUTUAL FUND,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; LAW OF THE CASE DOCTRINE; NOT APPLICABLE IN CASE AT BAR.— The doctrine of the law of the case does not apply to the present case *vis a vis* the decision of this Court in **G.R. No. 132416.** The present case is not a subsequent proceeding of the same case – G.R. No. 132416. This is an entirely new one which was commenced by petitioner's filing of an original petition for *certiorari*, prohibition, and *mandamus* before the Court of Appeals against respondent. Even assuming arguendo that the present proceeding may be considered a subsequent proceeding of G.R. No. 132416, the doctrine of the law of the case just the same does not apply because the said case was not resolved on the merits. The Order of this Court denying petitioner's petition for review in G.R. No. 132416 found no reversible error in the Order of the Quezon City RTC, Branch 222 dismissing petitioner's case primarily on a *procedural* ground – failure to exhaust administrative remedies. At all events, the doctrine "is merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision." To sustain

[*] Per October 24, 2007 raffle.

respondent's refusal to grant a waiver of Fund coverage to petitioner on the basis of amendments to implementing rules which had priorly been declared null and void by this Court would certainly be unjust. In fine, the doctrine of the law of the case cannot be made to apply to the case at bar, hence, petitioner's application for waiver from Fund coverage for the year 1996 must be processed by respondent.

APPEARANCES OF COUNSEL

Corazon S. Agustin for petitioner.
Office of the General Corporate Counsel for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On challenge via the present petition for review on *certiorari* are the Court of Appeals August 18, 2005 Decision[1] which granted in part petitioner's petition for *certiorari*, prohibition and *mandamus*, and February 9, 2006 Resolution which denied petitioner's motion for reconsideration.[2]

Presidential Decree (P.D.) No. 1752, the "Home Development Mutual Fund Law of 1980" which became effective on December 14, 1980, created the Pag-IBIG Fund System. The law was amended in June 1994 by Republic Act (R.A.) No. 7742.

The Pag-IBIG Fund (the Fund) is a provident savings system for private and government employees which is supported by contributions from their respective employers. Under P.D. No. 1752, coverage of the Fund is mandatory for all employees covered by the Social Security System and the Government Service Insurance System and their employers. The law provides, however, for a waiver or suspension from coverage or participation in the Fund, *viz:*

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[1] Penned by Justice Eugenio S. Labitoria and concurred in by Justice Eliezer R. de los Santos, and Justice Arturo D. Brion, all of the Court of Appeals; CA-G.R. SP No. 87789, *rollo*, pp. 10-24.

[2] *Id.* at 26-27.

SEC. 19. Existing Provident/Housing Plans. – An employer and/or employee-group who, at the time this Decree becomes effective have their own provident **and/or** employee-housing plans, may register with the Fund, for any of the following purposes;

(a) For annual certification of waiver or suspension from coverage or participation in the Fund, which shall be granted on the basis of verification that the waiver or suspension does not contravene any effective collective bargaining agreement and that the features of the plan or plans are superior to the Fund or continue to be so; or

x x x (Emphasis and underscoring supplied)

Upon the effectivity of the law in 1980 up to 1995, petitioner and its subsidiaries were, on their application, annually granted waiver from coverage of the Fund because their Retirement or Provident Plan was superior to it.[3]

On September 1, 1995, the Board of Trustees of herein respondent, Home Development Mutual Fund (HDMF), issued Amendment to the Rules and Regulations Implementing R.A. No. 7742 pursuant to which it issued on October 23, 1945 HDMF Circular No. 124-B or the Revised Guidelines and Procedure for filing Applications for Waiver or Suspension of Fund Coverage under P.D. No. 1752. Under the Amendment and the Guidelines, an employer with a provident/retirement **and** housing plan superior to that provided under the Pag-IBIG Fund is entitled to execution/waiver from Fund coverage[4] (**1995 amendment**).

On April 20, 1996, petitioner, on its behalf and its subsidiaries, applied for renewal of waiver from Fund coverage for the year 1996. Respondent disapproved petitioner's application, by letter-resolution dated April 26, 1996, on the ground that:

> [petitioner's] retirement/provident housing plan is not superior to Pag-IBIG Fund['s]. Further, the amended Implementing Rules and Regulations of R.A. 7742 provides that to qualify for waiver, a company must have retirement/provident **and** housing plans which

[3] *Id*. at 86.

[4] CA *rollo*, p. 34.

are both **superior** to Pag-IBIG Fund's.[5] (Emphasis and underscoring supplied)

Respondent thus directed petitioner to register its employees with the Fund and to remit their monthly contributions and its share to the Fund starting January 1, 1996.

On the ground that it was granted exemption from Fund coverage for previous years based on its existing retirement plan the features of which are superior to that of the Fund's, petitioner appealed respondent's letter-resolution to respondent's Board of Trustees.

Respondent's Board of Trustees denied petitioner's appeal by Resolution of February 21, 1997, *viz*:

> Pursuant to the amendment to [the Implementing Rules and Regulations of] P.D. [No.] 7742 under Board Resolution No. 1208, series of **1996**, **removing the availment of waiver from the mandatory coverage of the Pag-IBIG Fund, except for distressed employers,** the Board of Trustees finds moot and academic all motions for reconsideration/appeals from the disapproval of the application for waiver.
>
> Attached herewith is a copy of the amendment on the policy to take effect Jan. 1, 1997.[6] (Emphasis and underscoring supplied)

It turned out that respondent had once again amended the Rules and Regulations Implementing P.D. No. 1752, as amended, this time limiting waiver from Fund coverage only to "distressed employers" as defined in Rule III, Section 1[7] (**1996 amendment**).

Petitioner thus filed a petition for *certiorari* and prohibition with the Regional Trial Court (RTC) of Quezon City (Q.C.)[8] to declare null and void the **1996 amendment** to the Rules and Regulations Implementing P.D. No. 1752, as amended.

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[5] *Id*. at 40.

[6] *Id*. at 42.

[7] *Id*. at 45.

[8] Records (Civil Action No. Q-97-31461), pp. 1-9.

By Order of September 30, 1997, Branch 222 of the Q.C. RTC dismissed petitioner's petition for *certiorari* on the ground that it failed to exhaust administrative remedies, and that respondent's questioned amendment of the implementing rules was made in the exercise of its legislative/administrative, not judicial, function.[9] Petitioner's motion for reconsideration was denied for lack of merit.[10] Petitioner assailed the dismissal of its petition to this Court via petition for review on *certiorari*, docketed as **G.R. No. 132416**. This Court Resolved to Deny the petition by Resolution of June 22, 1998[11] "for failure to sufficiently show that the Regional Trial Court, Quezon City, Branch 222 had committed any reversible error in the questioned [order]." The Resolution became final and executory on September 28, 1998.[12]

On May 19, 1999, the Court, in *China Banking Corporation v. Home Development Mutual Fund,*[13] nullified the **1995 Amendment** "insofar as [it] require[s] that an employer should have **both** a provident/retirement plan superior to the retirement/provident benefits offered by the Fund and a housing plan superior to the Pag-IBIG housing loan program in order to qualify for waiver or suspension of fund coverage."

On the strength of the ruling in *China Banking*, petitioner applied anew for a waiver from Fund coverage for the years 1996 up to 2000.[14] By letter of July 5, 2002, respondent required petitioner, however, to register its employees and to remit their contributions starting January 1, 1996[15] in light of the finality of the Court's decision in **G.R. No. 132416**.

[9] *Id*. at 116.

[10] *Id*. at 142.

[11] *Id*. at 196.

[12] *Id*. at 208.

[13] 366 Phil. 913, 930-931 (1999).

[14] CA *rollo*, pp. 60-61.

[15] *Id*. at 30.

Undaunted, petitioner reiterated its application for waiver, but the same was denied by respondent by letter of May 22, 2003 in this wise:

xxx xxx xxx

Applications for exemption from membership contribution are on a yearly basis. In the event of late or no filing thereof, a company is under obligation to make the remittance for the said years.

Our records show that your application for waiver for 1996 was denied and which denial was in effect affirmed by the Supreme Court in its Resolution dated June 22, 1998 [in G.R. No. 132416].

The prescribed forms for application for Waiver for the years 1997 to 2000 were not submitted by your company, though we acknowledge the "letter request" for waiver for said periods, dated November 29, 1999. For 2001-2003, there had absolutely been no applications.

Despite the foregoing, your company has failed to register all Pag-IBIG coverable employees/remit Pag-IBIG contributions due for the periods 1996-to present.

These acts are clear violations of P.D. [No.] 1752, as amended by R.A. [No.] 7742 which holds the employer criminally liable, apart from fines/civil liabilities that may be imposed.[16]

Petitioner thus filed before the Q.C. RTC a petition for *certiorari*, prohibition, and *mandamus*,[17] Branch 225 of which dismissed it, by Resolution of October 19, 2004, for lack of jurisdiction, without prejudice to refiling the same in the proper court.[18]

Petitioner thus filed on December 10, 2004 an original petition for *certiorari*, prohibition, and *mandamus* against respondent before the Court of Appeals, praying for judgment,

. . . declaring that the second amendment [**or 1996 amendment**] to the Implementing Rules of HDMF is null and void, nullifying the

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[16] *Id*. at 31-32.

[17] Civil Case No. Q-03-49907.

[18] Records (Civil Case No. Q-03-49907), pp. 170-173.

first and second letters in question, and directing respondent HDMF to desist from taking similar action against petitioner, and commanding HDMF to entertain petitioner's application for exemption/waiver of Fund coverage.[19] (Underscoring supplied)

The Court of Appeals granted in part the petition by the assailed Decision of August 18, 2005, disposing as follows:

> WHEREFORE, premises considered, the petition is partly **GRANTED.** Respondent is **DIRECTED** to entertain petitioner's applications for waiver/exemption from Fund coverage for the years **1997-to present** with the concomitant obligation on the part of the latter to register its employees and remit their membership contributions covered by the same periods.[20] (Emphasis and underscoring supplied)

Its motion for reconsideration of the appellate court's Decision having been denied, petitioner filed on March 29, 2006 the present petition for review on *certiorari*, faulting the Court of Appeals,

> A. IN DENYING PETITIONER'S PETITION FOR WAIVER/ EXEMPTION FOR THE YEAR 1996 IN CONSONANCE WITH THE RULING IN *CHINA BANK* CASE. LAW OF THE CASE ADMITS OF AN EXCEPTION.
>
> B. WHEN IT ALLOWED RESPONDENT HDMF TO ENFORCE AN IMPLEMENTING RULE AND REGULATION WHICH WAS DECLARED BY THE HONORABLE SUPREME COURT IN *CHINABANK* CASE, AS NULL AND VOID.
>
> C. WHEN IT DID NOT DECLARE NULL AND VOID THE SECOND IMPLEMENTING RULES OF RESPONDENT HDMF 'DISTRESSED EMPLOYER' AS THE ONLY GROUND FOR WAIVER/EXEMPTION CONTRARY TO THE *CHINA BANK* CASE AND THE LAW ON THE RULE MAKING POWER OF ADMINISTRATIVE BODIES.[21] (Underscoring and italics supplied)

Petitioner seeks the nullification of the **1996 amendment**. The 2000 case of *Romulo, Mabanta, Buenaventura, Sayoc &*

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[19] CA *rollo*, p. 26.

[20] *Rollo*, p. 23.

[21] *Id*. at 34.

de los Angeles, v. Home Development Mutual Fund[22] has done so, however:

> In the present case, when the Board of Trustees of the HDMF required in Section 1, Rule VII of the 1995 Amendments to the Rules and Regulations Implementing R.A. No. 7742 that employers should have *both provident/retirement and housing benefits* for all its employees in order to qualify for exemption from the Fund, it effectively amended Section 19 of P.D. No. 1752. And when the Board subsequently abolished that exemption through the **1996 Amendments,** it *repealed* Section 19 of P.D. No. 1752. **Such amendment and subsequent repeal of Section 19 are both invalid,** as they are not within the delegated power of the Board. The HDMF cannot, in the exercise of its rule-making power, issue a regulation not consistent with the law it seeks to apply. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law. (Emphasis and underscoring supplied)

In affirming respondent's denial of petitioner's request for waiver from Fund coverage for the year 1996, the appellate court harped on the law of the case doctrine. Thus it held:

> Undisputedly, petitioner's application anew for waiver/exemption from Fund coverage is anchored on the decision of the Supreme Court in the *China Bank* case which declared as null and void Section 1 of Rule VII of the Amendments to the Rules and Regulations Implementing R.A. [No.] 7742, and HDMF Circular No. 124-B prescribing the Revised Guidelines and Procedure for Filing Applications for Waiver or Suspension of Fund coverage under P.D. [No.] 1752, as amended by R.A. No. 7742. It is in this view that petitioner contends that respondent should have considered its application for waiver/exemption from the coverage of the Fund. On the other hand, respondent invoked the doctrine of the law of the case pursuant to the decision of the Supreme Court in G.R. No. 132416 in denying petitioner's application for waiver/exemption from the Fund coverage.
>
> Law of the case has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule or decision

[22] 389 Phil. 296, 306 (2000).

between the same parties in the same case **continues to be the law of the case**, *whether correct on general principles or not,* so long as the facts on which such decision was predicated continue to be the facts of the case before the court. Contrary to respondent's position the law of the case doctrine **applies only to the application for waiver/exemption for Fund coverage for the year 1996** and not to the applications for the succeeding years in view of the subsequent ruling of the Supreme Court in the *China Bank* case. The Supreme Court's decision, which attained finality, limited itself only to petitioner's application for waiver/exemption from Fund coverage for the year 1996. Apparently, petitioner applied for waiver/ exemption from Fund coverage for the years 1996-2000 by virtue of the decision in the *China Bank* case. Thus, except for year 1996, respondent may still consider the remaining years, as they are not covered by the earlier application that was denied by the respondent and eventually decided by the Supreme Court with finality. Succinctly stated, **the decision of the Supreme Court in the earlier case became the law of the case only for petitioner's application for the year 1996**. x x x[23] (Emphasis, italics and underscoring supplied)

Expounding on the doctrine of the law of the case, this Court, in *Villa v. Sandiganbayan,*[24] held:

The doctrine has been defined as "that principle under which determination of questions of law will generally be held to govern a case throughout all its subsequent stages where such determination has already been made on a prior appeal to a court of last resort. **It is "merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision.** It relates entirely to questions of law, **and is confined in its operation to subsequent proceedings in the same case.**

In *Jarantilla v. Court of Appeals*, we held:

"Law of the case" has been defined as the opinion delivered on a former appeal. …**It is a rule of general application that the decision of an appellate court in a case is the law to the case on the points presented throughout all the subsequent proceedings in the case** in both the trial and

[23] *Rollo*, pp. 20-21.

[24] G.R. No. 87186, April 24, 1992, 208 SCRA 283, 295-296.

> appellate courts and no question necessarily involved and decided on that appeal will be considered on a second appeal or writ of error in the same case, provided the facts and issues are substantially the same as those on which the first question rested and, according to some authorities, provided **the decision is on the merits**. (Emphasis and underscoring supplied)

The doctrine of the law of the case does not apply to the present case *vis a vis* the decision of this Court in **G.R. No. 132416**. The present case is not a subsequent proceeding of the same case – G.R. No. 132416. This is an entirely new one which was commenced by petitioner's filing of an original petition for *certiorari*, prohibition, and *mandamus* before the Court of Appeals against respondent.

Even assuming arguendo that the present proceeding may be considered a subsequent proceeding of G.R. No. 132416, the doctrine of the law of the case just the same does not apply because the said case was not resolved on the merits. The Order of this Court denying petitioner's petition for review in G.R. No. 132416 found no reversible error in the Order of the Quezon City RTC, Branch 222 dismissing petitioner's case primarily on a *procedural* ground – failure to exhaust administrative remedies.

At all events, the doctrine "is merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision."[25] To sustain respondent's refusal to grant a waiver of Fund coverage to petitioner on the basis of amendments to implementing rules which had priorly been declared null and void by this Court would certainly be unjust.

In fine, the doctrine of the law of the case cannot be made to apply to the case at bar, hence, petitioner's application for waiver from Fund coverage for the year 1996 must be processed by respondent.

WHEREFORE, the Petition for Review on *Certiorari* is *GRANTED*. Respondent is enjoined to process petitioner's

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[25] *Supra*.

application for waiver from Pag-IBIG Fund coverage for the year 1996.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 171545. December 19, 2007.]

EQUITABLE PCI BANK,[*] AIMEE YU and BEJAN LIONEL APAS, *petitioners, vs.* **NG SHEUNG NGOR[**] doing business under the name and style "KEN MARKETING," KEN APPLIANCE DIVISION, INC. and BENJAMIN E. GO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELUCIDATED.—** Forum shopping exists when two or more actions involving the same transactions, essential facts and circumstances are filed and those actions raise identical issues, subject matter and causes of action. The test is whether, in two or more pending cases, there is identity of parties, rights or causes of actions and reliefs.

2. **ID.; ID.; ID.; NOT PRESENT IN THE FILING OF PETITION FOR RELIEF WITH THE RTC AND PETITION FOR *CERTIORARI* WITH THE CA IN CASE AT BAR.—** Equitable's petition for relief in the RTC and its petition for *certiorari* in the CA did not have identical causes of action. The petition for relief from the denial of its notice of appeal

[*] Now, Banco De Oro Unibank.

[**] Also referred to as Ng Seung Ngor in the records.

was based on the RTC's judgment or final order preventing it from taking an appeal by "fraud, accident, mistake or excusable negligence." On the other hand, its petition for *certiorari* in the CA, a special civil action, sought to correct the grave abuse of discretion amounting to lack of jurisdiction committed by the RTC. In a petition for relief, the judgment or final order is rendered by a court with competent jurisdiction. In a petition for *certiorari*, the order is rendered by a court without or in excess of its jurisdiction. Moreover, Equitable substantially complied with the rule on non-forum shopping when it moved to withdraw its petition for relief in the RTC on the same day (in fact just four hours and forty minutes after) it filed the petition for *certiorari* in the CA. Even if Equitable failed to disclose that it had a pending petition for relief in the RTC, it rectified what was doubtlessly a careless oversight by withdrawing the petition for relief just a few hours after it filed its petition for *certiorari* in the CA — a clear indication that it had no intention of maintaining the two actions at the same time.

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUIREMENTS; GRAVE ABUSE OF DISCRETION; ELUCIDATED.—** There are two substantial requirements in a petition for *certiorari*. These are: 1. that the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of his or its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and 2. that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. For a petition for *certiorari* premised on grave abuse of discretion to prosper, petitioner must show that the public respondent patently and grossly abused his discretion and that abuse amounted to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power was exercised in an arbitrary and despotic manner by reason of passion or hostility.

4. **ID.; ID.; ID.; ID.; NO APPEAL OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW; CASE AT BAR.—** With regard to whether Equitable had a plain, speedy and adequate remedy in the ordinary course of law, we hold that there was none. The RTC denied due course to its notice of appeal in the March 1, 2004 order. Although

Equitable filed a petition for relief from the March 24, 2004 order, that petition was not a plain, speedy and adequate remedy in the ordinary course of law. A petition for relief under Rule 38 is an equitable remedy allowed only in exceptional circumstances or where there is no other available or adequate remedy. Thus, we grant Equitable's petition for *certiorari* and consequently give due course to its appeal.

5. **ID.; CIVIL PROCEDURE; APPEAL; ONLY QUESTIONS OF LAW PROPER.—** The jurisdiction of this Court in Rule 45 petitions is limited to questions of law. There is a question of law "when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for the probative value of the evidence presented, the truth or falsehood of facts being admitted."

6. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF ADHESION; ELUCIDATED.—** A contract of adhesion is a contract whereby almost all of its provisions are drafted by one party. The participation of the other party is limited to affixing his signature or his "adhesion" to the contract. For this reason, contracts of adhesion are strictly construed against the party who drafted it. It is erroneous, however, to conclude that contracts of adhesion are invalid per se. They are, on the contrary, as binding as ordinary contracts. A party is in reality free to accept or reject it. A contract of adhesion becomes void only when the dominant party takes advantage of the weakness of the other party, completely depriving the latter of the opportunity to bargain on equal footing.

7. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; SUPREME COURT NOT A TRIER OF FACTS; CASE PARTIALLY REMANDED FOR DETERMINATION OF AMOUNT OF DAMAGES.—** While the RTC categorically found that respondents had outstanding dollar- and peso-denominated loans with Equitable, it, however, failed to ascertain the total amount due (principal, interest and penalties, if any) as of July 9, 2001. The trial court did not explain how it arrived at the amounts of US$228,200 and ₱1,000,000. In *Metro Manila Transit Corporation v. D.M. Consunji,* we reiterated that this Court is not a trier of facts and it shall pass upon them only for compelling reasons which unfortunately

are not present in this case. Hence, we ordered the partial remand of the case for the sole purpose of determining the amount of actual damages.

8. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESCALATION CLAUSES IN CONTRACTS; VALIDITY THEREOF.—** Escalation clauses are not void *per se*. However, one "which grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assent to an important modification in the agreement" is void. Clauses of that nature violate the principle of mutuality of contracts. Article 1308 of the Civil Code holds that a contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them. For this reason, we have consistently held that a valid escalation clause provides: 1. that the rate of interest will only be increased if the applicable maximum rate of interest is increased by law or by the Monetary Board; and 2. that the stipulated rate of interest will be reduced if the applicable maximum rate of interest is reduced by law or by the Monetary Board (de-escalation clause).

9. **ID.; ID.; ID.; VOID IN CASE AT BAR.—** The RTC found that Equitable's promissory notes uniformly stated*:* If subject promissory note is extended, the interest for subsequent extensions shall be at such rate as shall be determined by the bank. Equitable dictated the interest rates if the term (or period for repayment) of the loan was extended. Respondents had no choice but to accept them. This was a violation of Article 1308 of the Civil Code. Furthermore, the assailed escalation clause did not contain the necessary provisions for validity, that is, it neither provided that the rate of interest would be increased only if allowed by law or the Monetary Board, nor allowed de-escalation. For these reasons, the escalation clause was void.

10. **ID.; ID.; ID.; ID.; ORIGINAL OR STIPULATED RATE OF INTEREST PREVAILS, AND UPON MATURITY OF LOAN, LEGAL INTEREST APPLIES.—** With regard to the proper rate of interest, in *New Sampaguita Builders v. Philippine National Bank* we held that, because the escalation clause was annulled, the principal amount of the loan was subject to the original or stipulated rate of interest. Upon maturity, the amount due was subject to legal interest at the rate of 12% per annum.

Consequently, respondents should pay Equitable the interest rates of 12.66% p.a. for their dollar-denominated loans and 20% p.a. for their peso-denominated loans from January 10, 2001 to July 9, 2001. Thereafter, Equitable was entitled to legal interest of 12% p.a. on all amounts due.

11. **ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT; RULE IN CASE OF EXTRAORDINARY INFLATION; REQUISITES; NOT PRESENT IN CASE AT BAR.—** Extraordinary inflation exists when there is an unusual decrease in the purchasing power of currency (that is, beyond the common fluctuation in the value of currency) and such decrease could not be reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the obligation. Extraordinary deflation, on the other hand, involves an inverse situation. Article 1250 of the Civil Code provides: Article 1250. In case an extraordinary inflation or deflation of the currency stipulated should intervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary. For extraordinary inflation (or deflation) to affect an obligation, the following requisites must be proven: 1. that there was an official declaration of extraordinary inflation or deflation from the Bangko Sentral ng Pilipinas (BSP); 2. that the obligation was contractual in nature; and 3. that the parties expressly agreed to consider the effects of the extraordinary inflation or deflation. Despite the devaluation of the peso, the BSP never declared a situation of extraordinary inflation. Moreover, although the obligation in this instance arose out of a contract, the parties did not agree to recognize the effects of extraordinary inflation (or deflation). The RTC never mentioned that there was a such stipulation either in the promissory note or loan agreement. Therefore, respondents should pay their dollar-denominated loans at the exchange rate fixed by the BSP on the date of maturity.

12. **ID.; DAMAGES; MORAL DAMAGES; PROPRIETY THEREOF.—** Moral damages are in the category of an award designed to compensate the claimant for actual injury suffered, not to impose a penalty to the wrongdoer. To be entitled to moral damages, a claimant must prove: 1. That he or she suffered besmirched reputation, or physical, mental or psychological suffering sustained by the claimant; 2. That the defendant

committed a wrongful act or omission; 3. That the wrongful act or omission was the proximate cause of the damages the claimant sustained; 4. The case is predicated on any of the instances expressed or envisioned by Article 2219 and 2220.

13. **ID.; ID.; ID.; PROPRIETY IN BREACH OF CONTRACT; CASE AT BAR.—** In *culpa contractual* or breach of contract, moral damages are recoverable only if the defendant acted fraudulently or in bad faith or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious or in bad faith, and oppressive or abusive. The RTC found that respondents did not pay Equitable the interest due on February 9, 2001 (or any month thereafter prior to the maturity of the loan) or the amount due (principal plus interest) due on July 9, 2001. Consequently, Equitable applied respondents' deposits to their loans upon maturity. The relationship between a bank and its depositor is that of creditor and debtor. For this reason, a bank has the right to set-off the deposits in its hands for the payment of a depositor's indebtedness. Respondents indeed defaulted on their obligation. For this reason, Equitable had the option to exercise its legal right to set-off or compensation. Whatever damage respondents sustained therefore, was **purely the consequence of their failure to pay their loans.** There was therefore absolutely no basis for the award of moral damages to them.

14. **ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEYS FEES; NOT PROPER AS NO MORAL DAMAGES APPOSITE TO THE CASE.—** Neither was there reason to award exemplary damages. Since respondents were not entitled to moral damages, neither should they be awarded exemplary damages. And if respondents were not entitled to moral and exemplary damages, neither could they be awarded attorney's fees and litigation expenses.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners.

Hilario P. Davide III for respondents.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari*[1] seeks to set aside the decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83112 and its resolution[3] denying reconsideration.

On October 7, 2001, respondents Ng Sheung Ngor,[4] Ken Appliance Division, Inc. and Benjamin E. Go filed an action for annulment and/or reformation of documents and contracts[5] against petitioner Equitable PCI Bank (Equitable) and its employees, Aimee Yu and Bejan Lionel Apas, in the Regional Trial Court (RTC), Branch 16 of Cebu City.[6] They claimed that Equitable induced them to avail of its peso and dollar credit facilities by offering low interest rates[7] so they accepted Equitable's proposal and signed the bank's pre-printed promissory notes on various dates beginning 1996. They, however, were unaware that the documents contained identical escalation clauses granting Equitable authority to increase interest rates without their consent.[8]

Equitable, in its answer, asserted that respondents knowingly accepted all the terms and conditions contained in the promissory

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

[2] Penned by Associate Justice Mercedes Gozo-Dadole (retired) and concurred in by Associate Justices Pampio A. Abarintos and Enrico A. Lanzanas of the Eighteenth Division of the Court of Appeals. Dated October 28, 2005. *Rollo,* pp. 88-111.

[3] Penned by Associate Justice Enrico A. Lanzanas and concurred in by Associate Justices Isaias P. Dicdican and Pampio A. Abarintos of the Special Former Eighteenth Division of the Court of Appeals. Dated February 3, 2006. *Id.*, pp. 112-115.

[4] Doing business in the name and style of "Ken Marketing."

[5] Docketed as Civil Case No. CEB-26983. *Rollo*, pp. 115-143.

[6] *Id.*, pp. 116-117, 177.

[7] The interest rate initially offered by Equitable was 12.75% p.a. for dollar-denominated loans. *Id.*, p. 187.

[8] *Id.*, p. 118.

notes.[9] In fact, they continuously availed of and benefited from Equitable's credit facilities for five years.[10]

After trial, the RTC upheld the validity of the promissory notes. It found that, in 2001 alone, Equitable restructured respondents' loans amounting to US$228,200 and ₱1,000,000.[11] The trial court, however, invalidated the escalation clause contained

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[9] *Id.*, pp. 155-175.

[10] *Id.*

[11] *Id.*, pp. 180, 183. SCHEDULE OF LOANS:

Respondents' submission

Principal	Interest	Date Availed	Date of Maturity	Amount Due
US$223,000	12.66%, p.a.	10 January 2001	9 July 2001	(total=)
36,700	12.66%, p.a.	10 January 2001	9 July 2001	US$232,248.00
₱995,000	20%, p.a.	10 January 2001	9 July 2001	₱1,081,703.14

Equitable's submission

Principal	Interest	Date Availed	Date of Maturity	Amount due
US$184,000	12.66%, p.a.	10 January 2001	9 July 2001	US$207,771.78
37,700	12.66%, p.a.	10 January 2001	9 July 2001	41,441.44
₱1,050,000	20%, p.a.	10 January 2001	9 July 2001	₱1,166,193.34

Note:

1. Equitable and respondents agreed neither as to the amount of the principal nor as to the amount due.
2. The RTC concluded that the rates of interest stated in the promissory notes were only applicable for 30 days (or from January 10, 2001 to February 9, 2001). Thereafter(or every 30 days until the loan matures), Equitable may change the rates if it so desired without the prior notice to respondents.
3. Interest due must be paid every month beginning February 9, 2001 until maturity.
4. The findings of the trial court, with regard to the amount of respondents' obligation to Equitable, agreed neither with the submission of Equitable nor with that of respondents. The RTC made its own finding as to the amount of respondent's obligation to Equitable but did not explain how it arrived at the figures. It merely stated:

   > "The evidence adduced during trial show [respondents] received the proceeds of peso and dollar loans from defendant bank as follows: (a) US$228,200 in four (4) different availments and the (b) principal amount of ₱1,000,000. xxx"

therein because it violated the principle of mutuality of contracts.[12] Nevertheless, it took judicial notice of the steep depreciation of the peso during the intervening period[13] and declared the existence of extraordinary deflation.[14] Consequently, the RTC ordered the use of the 1996 dollar exchange rate in computing respondents' dollar-denominated loans.[15] Lastly, because the business reputation of respondents was (allegedly) severely damaged when Equitable froze their accounts,[16] the trial court awarded moral and exemplary damages to them.[17]

The dispositive portion of the February 5, 2004 RTC decision[18] provided:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> A) Ordering [Equitable] to reinstate and return the amount of [respondents'] deposit placed on hold status;
>
> B) Ordering [Equitable] to pay [respondents] the sum of ₱12 [m]illion [p]esos as moral damages;
>
> C) Ordering [Equitable] to pay [respondents] the sum of ₱10 [m]illion [p]esos as exemplary damages;
>
> D) Ordering defendants Aimee Yu and Bejan [Lionel] Apas to pay [respondents], jointly and severally, the sum of [t]wo [m]illion [p]esos as moral and exemplary damages;

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[12] *Id*., pp. 185-186.

[13] *Id*. The RTC took judicial notice of the fact that the exchange rate in 1996 was US$1 = ₱26.50 while in 2001, it was US$1 = ₱55. Because the cost of purchasing dollar increased by 200% over the relatively short period of six years, it concluded that there was extraordinary inflation.

[14] *Id*.

[15] *Id*., p. 190.

[16] *Id*., pp. 188-189.

[17] *Id*.

[18] Penned by Judge Agapito L. Hontanosas, Jr. (dismissed from the service per resolution in *J. King and Sons Company, Inc. v. Judge Agapito L. Hontanosas, Jr.*, A.M. No. RTJ-03-1802, 21 September 2004, 438 SCRA 525). *Id*., pp. 177-190.

E) Ordering [Equitable, Aimee Yu and Bejan Lionel Apas], jointly and severally, to pay [respondents'] attorney's fees in the sum of ₱300,000; litigation expenses in the sum of ₱50,000 and the cost of suit;

F) Directing plaintiffs Ng Sheung Ngor and Ken Marketing to pay [Equitable] the unpaid principal obligation for the peso loan as well as the unpaid obligation for the dollar denominated loan;

G) Directing plaintiff Ng Sheung Ngor and Ken Marketing to pay [Equitable] interest as follows:

1) 12% per annum for the peso loans;

2) 8% per annum for the dollar loans. The basis for the payment of the dollar obligation is the conversion rate of ₱26.50 per dollar availed of at the time of incurring of the obligation in accordance with Article 1250 of the Civil Code of the Philippines;

H) Dismissing [Equitable's] counterclaim except the payment of the aforestated unpaid principal loan obligations and interest.

SO ORDERED.[19]

Equitable and respondents filed their respective notices of appeal.[20]

In the March 1, 2004 order of the RTC, both notices were denied due course because Equitable and respondents "failed to submit proof that they paid their respective appeal fees."[21]

WHEREFORE, premises considered, the appeal interposed by defendants from the Decision in the above-entitled case is **DENIED** due course. **As of February 27, 2004, the Decision dated February 5, 2004, is considered final and executory in so far as** [**Equitable, Aimee Yu and Bejan Lionel Apas**] **are concerned.**[22] (emphasis supplied)

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[19] *Id.*, pp. 189-190.

[20] *Id.*, pp. 191-193.

[21] *Id.*, p. 194.

[22] *Id.*

Equitable moved for the reconsideration of the March 1, 2004 order of the RTC[23] on the ground that it did in fact pay the appeal fees. Respondents, on the other hand, prayed for the issuance of a writ of execution.[24]

On March 24, 2004, the RTC issued an omnibus order denying Equitable's motion for reconsideration for lack of merit[25] and ordered the issuance of a writ of execution in favor of respondents.[26] According to the RTC, because respondents did not move for the reconsideration of the previous order (denying due course to the parties' notices of appeal),[27] the February 5, 2004 decision became final and executory as to both parties and a writ of execution against Equitable was in order.[28]

A writ of execution was thereafter issued[29] and three real properties of Equitable were levied upon.[30]

On March 26, 2004, Equitable filed a petition for relief in the RTC from the March 1, 2004 order.[31] It, however, withdrew that petition on March 30, 2004[32] and instead filed a petition

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[23] *Id.*, pp. 195-202. **Equitable attached proof that it paid the appeal fees.**

[24] *Id.*, pp. 203-204.

[25] *Id.*, p. 206.

[26] *Id.*, pp. 205-207.

[27] *Id.*, p. 205.

[28] *Id.*, p. 207.

[29] *Id.*, pp. 208-210.

[30] *Id.*, p. 218. Covered by TCT No. 124096, TCT No. 118031 and tax declarations GR2K-06-038-00391 and GRK-06-038-00392.

[31] *Id.*, pp. 272-276.

See RULES OF COURT, Rule 38, Sec. 2. The section provides:

Sec. 2. *Petition for relief from denial of appeal.—* When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

[32] *Id.*, pp. 279-281.

for *certiorari* with an application for an injunction in the CA to enjoin the implementation and execution of the March 24, 2004 omnibus order.[33]

On June 16, 2004, the CA granted Equitable's application for injunction. A writ of preliminary injunction was correspondingly issued.[34]

Notwithstanding the writ of injunction, the properties of Equitable previously levied upon were sold in a public auction on July 1, 2004. Respondents were the highest bidders and certificates of sale were issued to them.[35]

On August 10, 2004, Equitable moved to annul the July 1, 2004 auction sale and to cite the sheriffs who conducted the sale in contempt for proceeding with the auction despite the injunction order of the CA.[36]

On October 28, 2005, the CA dismissed the petition for *certiorari*.[37] It found Equitable guilty of forum shopping because the bank filed its petition for *certiorari* in the CA several hours before withdrawing its petition for relief in the RTC.[38] Moreover, Equitable failed to disclose, both in the statement of material dates and certificate of non-forum shopping (attached to its petition for *certiorari* in the CA), that it had a pending petition for relief in the RTC.[39]

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[33] Docketed as CA-G.R. SP No. 83112. *Id*., p. 221.

[34] Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Monina Arevalo-Zenarosa and Vicente I. Yap (retired) of the Special Eighteenth Division of the Court of Appeals. Dated June 16, 2004. *Id*., pp. 221-223.

[35] *Id*., pp. 226-231.

[36] *Id*., pp. 232-240.

[37] *Supra* note 2.

[38] *Id*., pp. 106-110. **The petition for *certiorari* was filed in the CA on March 30, 2004 at 9 a.m. while the motion to withdraw the petition for relief in the RTC was filed also on March 30, 2004 at 1:40 p.m.**

[39] *Id*.

Equitable moved for reconsideration[40] but it was denied.[41] Thus, this petition.

Equitable asserts that it was not guilty of forum shopping because the petition for relief was withdrawn on the *same day* the petition for *certiorari* was filed.[42] It likewise avers that its petition for *certiorari* was meritorious because the RTC committed grave abuse of discretion in issuing the March 24, 2004 omnibus order which was based on an erroneous assumption. The March 1, 2004 order denying its notice of appeal for non payment of appeal fees was erroneous because it had in fact paid the required fees.[43] Thus, the RTC, by issuing its March 24, 2004 omnibus order, effectively prevented Equitable from appealing the patently wrong February 5, 2004 decision.[44]

This petition is meritorious.

EQUITABLE WAS NOT GUILTY OF FORUM SHOPPING

Forum shopping exists when two or more actions involving the same transactions, essential facts and circumstances are filed and those actions raise identical issues, subject matter and causes of action.[45] The test is whether, in two or more pending cases, there is identity of parties, rights or causes of actions and reliefs.[46]

Equitable's petition for relief in the RTC and its petition for *certiorari* in the CA did not have identical causes of action. The petition for relief from the denial of its notice of appeal was based on the RTC's judgment or final order preventing it

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[40] *Id*., pp. 248-271.

[41] *Supra* note 3.

[42] *Id*., p. 38.

[43] *Id*., p. 55.

[44] *Id*., pp. 62-68.

[45] *Ligon v. Court of Appeals,* G.R. No. 127683, 7 August 1998, 294 SCRA 73, 88.

[46] *Id*.

from taking an appeal by "fraud, accident, mistake or excusable negligence."[47] On the other hand, its petition for *certiorari* in the CA, a special civil action, sought to correct the grave abuse of discretion amounting to lack of jurisdiction committed by the RTC.[48]

In a petition for relief, the judgment or final order is rendered by a court with competent jurisdiction. In a petition for *certiorari*, the order is rendered by a court without or in excess of its jurisdiction.

Moreover, Equitable substantially complied with the rule on non-forum shopping when it moved to withdraw its petition for relief in the RTC on the same day (in fact just four hours and forty minutes after) it filed the petition for *certiorari* in the CA. Even if Equitable failed to disclose that it had a pending petition for relief in the RTC, it rectified what was doubtlessly a careless oversight by withdrawing the petition for relief just a few hours after it filed its petition for *certiorari* in the CA—a clear indication that it had no intention of maintaining the two actions at the same time.

THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING ITS MARCH 1, 2004 AND MARCH 24, 2004 ORDERS

Section 1, Rule 65 of the Rules of Court provides:

> Section 1. *Petition for Certiorari.* When **any tribunal, board or officer exercising judicial or quasi-judicial function 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 or 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

[47] *Supra* note 31.

[48] Florenz B. Regalado, 2 REMEDIAL LAW COMPENDIUM 18th ed., 716 citing *Matute v. Macadaeg, et al.*, 99 Phil. 340 (1956) and *de Gala-Sison v. Maddela, et al.,* 160-B Phil. 626 (1975).

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 certificate of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

There are two substantial requirements in a petition for *certiorari*. These are:

1. that the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of his or its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and
2. that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

For a petition for *certiorari* premised on grave abuse of discretion to prosper, petitioner must show that the public respondent patently and grossly abused his discretion and that abuse amounted to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power was exercised in an arbitrary and despotic manner by reason of passion or hostility.[49]

The March 1, 2004 order denied due course to the notices of appeal of both Equitable and respondents. However, it declared that the February 5, 2004 decision was **final and executory only with respect to Equitable.**[50] As expected, the March 24, 2004 omnibus order denied Equitable's motion for reconsideration and granted respondents' motion for the issuance of a writ of execution.[51]

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[49] See *Aggabao v. Commission on Elections,* G.R. No. 163756, 26 January 2005, 449 SCRA 400. *See also Zarate v. Maybank,* G.R. No. 160976, 8 June 2005, 459 SCRA 785. See *also Agustin v. Court of Appeals,* G.R. No. 162571, 15 June 2005, 460 SCRA 315.

[50] *Rollo*, p. 194.

[51] *Id*., pp. 225-231.

The March 1, 2004 and March 24, 2004 orders of the RTC were obviously intended to prevent Equitable, et al. from appealing the February 5, 2004 decision. Not only that. The execution of the decision was undertaken with indecent haste, effectively obviating or defeating Equitable's right to avail of possible legal remedies. No matter how we look at it, the RTC committed grave abuse of discretion in rendering those orders.

With regard to whether Equitable had a plain, speedy and adequate remedy in the ordinary course of law, we hold that there was none. The RTC denied due course to its notice of appeal in the March 1, 2004 order. It affirmed that denial in the March 24, 2004 omnibus order. Hence, there was no way Equitable could have possibly appealed the February 5, 2004 decision.[52]

Although Equitable filed a petition for relief from the March 24, 2004 order, that petition was not a plain, speedy and adequate remedy in the ordinary course of law.[53] A petition for relief under Rule 38 is an equitable remedy allowed only in exceptional

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[52] See RULES OF COURT, Rule 41, Sec. 2. The section provides:

Section 2. *Modes of appeal.—*

(a) *Ordinary appeal.—* **The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.** No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in the like manner.

(b) *Petition for review.—* The appeal to the Court of Appeals in cases decided by the Regional Trial Court in exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.—* In all cases where only questions of law are raised or involved the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45. (emphasis supplied)

[53] *Supra* note 48 at 400 *citing Palmares, et al. v. Jimenez, et al.,* 90 Phil. 773. (1952).

circumstances or where there is no other available or adequate remedy.[54]

Thus, we grant Equitable's petition for *certiorari* and consequently give due course to its appeal.

EQUITABLE RAISED PURE QUESTIONS OF LAW IN ITS PETITION FOR REVIEW

The jurisdiction of this Court in Rule 45 petitions is limited to questions of law.[55] There is a question of law "when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for the probative value of the evidence presented, the truth or falsehood of facts being admitted."[56]

Equitable does not assail the factual findings of the trial court. Its arguments essentially focus on the nullity of the RTC's February 5, 2004 decision. Equitable points out that that decision was patently erroneous, **specially the exorbitant award of damages**, as it was inconsistent with existing law and jurisprudence.[57]

THE PROMISSORY NOTES WERE VALID

The RTC upheld the validity of the promissory notes despite respondents' assertion that those documents were contracts of adhesion.

A contract of adhesion is a contract whereby almost all of its provisions are drafted by one party.[58] The participation of the

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[54] *Tuason v. Court of Appeals*, G.R. No. 116607, 10 April 1996, 256 SCRA 158, 167. See *also Cerezo v. Tuazon,* G.R. No. 141538, 23 March 2004, 426 SCRA 167, 183. See *also Azucena v. Foreign Manpower Services,* G.R. No. 147955, 25 October 2004, 441 SCRA 346, 354-355.

[55] *Supra* note 52 and *Usero v. Court of Appeals,* G.R. Nos. 152112 and 155055, 26 January 2005, 449 SCRA 352, 358.

[56] *Bukidnon Doctor's Hospital v. Metropolitan Bank and Trust Company,* G.R. No. 161882, 8 July 2005, 463 SCRA 222, 233.

[57] *Rollo,* pp. 46-50.

[58] *Citibank*, *N.A. v. Sabeniano,* G.R. No. 156132, 6 February 2007.

other party is limited to affixing his signature or his "adhesion" to the contract.[59] For this reason, contracts of adhesion are strictly construed against the party who drafted it.[60]

It is erroneous, however, to conclude that contracts of adhesion are invalid *per se.* They are, on the contrary, as binding as ordinary contracts. A party is in reality free to accept or reject it. A contract of adhesion becomes void only when the dominant party takes advantage of the weakness of the other party, completely depriving the latter of the opportunity to bargain on equal footing.[61]

That was not the case here. As the trial court noted, if the terms and conditions offered by Equitable had been truly prejudicial to respondents, they would have walked out and negotiated with another bank at the first available instance. But they did not. Instead, they continuously availed of Equitable's credit facilities for five long years.

While the RTC categorically found that respondents had outstanding dollar- and peso-denominated loans with Equitable, it, however, failed to ascertain the total amount due (principal, interest and penalties, if any) as of July 9, 2001. The trial court did not explain how it arrived at the amounts of US$228,200 and ₱1,000,000.[62] In *Metro Manila Transit Corporation v. D.M. Consunji,*[63] we reiterated that this Court is not a trier of facts and it shall pass upon them only for compelling reasons which unfortunately are not present in this case.[64] Hence, we

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[59] *Id.*

[60] *Id.*

[61] *Perez v. Development Bank of the Philippines,* G.R. No. 148541, 11 November 2004, 442 SCRA 238, 249-250 citing *Rizal Commercial Banking Corporation v. Court of Appeals,* G.R. No. 127139, 19 February 1999, 303 SCRA 449, 454.

[62] *Supra* note 11.

[63] G.R. No. 147594, 7 March 2007.

[64] *Id.*

ordered the partial remand of the case for the sole purpose of determining the amount of actual damages.[65]

ESCALATION CLAUSE VIOLATED THE PRINCIPLE OF MUTUALITY OF CONTRACTS

Escalation clauses are not void per se. However, one "which grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assent to an important modification in the agreement" is void. Clauses of that nature violate the principle of mutuality of contracts.[66] Article 1308[67] of the Civil Code holds that a contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.[68]

For this reason, we have consistently held that a valid escalation clause provides:

1. that the rate of interest will only be increased if the applicable maximum rate of interest is increased by law or by the Monetary Board; and
2. that the stipulated rate of interest will be reduced if the applicable maximum rate of interest is reduced by law or by the Monetary Board (de-escalation clause).[69]

The RTC found that Equitable's promissory notes uniformly stated*:*

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[65] *Id*.

[66] *See New Sampaguita Builders Construction, Inc. v. Philippine National Bank,* G.R. No. 148753, 30 July 2004, 435 SCRA 565, 581 *citing Philippine National Bank v. Court of Appeals,* 328 Phil. 54, 62-63 (1996).

[67] Art. 1308. The contracts must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

[68] Jose B.L. Reyes and Ricardo C. Puno, *4 AN OUTLINE OF PHILIPPINE CIVIL LAW* 1957 ed., p. 178.

[69] *Llorin v. Court of Appeals,* G.R. No. 103592, 4 February 1993, 218 SCRA 438, 442.

If subject promissory note is extended, the interest for subsequent extensions shall be at such rate as shall be determined by the bank.[70]

Equitable dictated the interest rates if the term (or period for repayment) of the loan was extended. Respondents had no choice but to accept them. This was a violation of Article 1308 of the Civil Code. Furthermore, the assailed escalation clause did not contain the necessary provisions for validity, that is, it neither provided that the rate of interest would be increased only if allowed by law or the Monetary Board, nor allowed de-escalation. For these reasons, the escalation clause was void.

With regard to the proper rate of interest, in *New Sampaguita Builders v. Philippine National Bank*[71] we held that, because the escalation clause was annulled, the principal amount of the loan was subject to the original or stipulated rate of interest. Upon maturity, the amount due was subject to legal interest at the rate of 12% per annum.[72]

Consequently, respondents should pay Equitable the interest rates of 12.66% p.a. for their dollar-denominated loans and 20% p.a. for their peso-denominated loans from January 10, 2001 to July 9, 2001. Thereafter, Equitable was entitled to legal interest of 12% p.a. on all amounts due.

THERE WAS NO EXTRAORDINARY DEFLATION

Extraordinary inflation exists when there is an unusual decrease in the purchasing power of currency (that is, beyond the common fluctuation in the value of currency) and such decrease could not be reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the obligation. Extraordinary deflation, on the other hand, involves an inverse situation.[73]

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[70] *Rollo*, p. 147.

[71] *Supra* note 66.

[72] *Id*., pp. 608-609.

[73] *Sangrador v. Valderrama,* G.R. No. 58122, 29 December 1989, 168 SCRA 215, 228 *citing Filipino Pipe and Foundry Corporation v. National Waterworks and Sewerage Authority,* G.R. No. L-43446, 3 May 1988.

Article 1250 of the Civil Code provides:

Article 1250. In case an extraordinary inflation or deflation of the currency stipulated should intervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary.

For extraordinary inflation (or deflation) to affect an obligation, the following requisites must be proven:

1. that there was an official declaration of extraordinary inflation or deflation from the Bangko Sentral ng Pilipinas (BSP);[74]
2. that the obligation was contractual in nature;[75] and
3. that the parties expressly agreed to consider the effects of the extraordinary inflation or deflation.[76]

Despite the devaluation of the peso, the BSP never declared a situation of extraordinary inflation. Moreover, although the obligation in this instance arose out of a contract, the parties did not agree to recognize the effects of extraordinary inflation (or deflation).[77] The RTC never mentioned that there was a

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[74] *Citibank v. Sabeniano, supra* note 58. *See also Mobil Oil Philippines v. Court of Appeals,* G.R. No. 58122, 29 December 1989, 180 SCRA 651, 667.

[75] Extraordinary inflation or deflation does not affect obligations which arise from sources other than contracts. See *Velasco v. Manila Electric Company,* 149 Phil. 657 (1971).

See CIVIL CODE, Art. 1157. The article provides:

Art. 1157. Obligations arise from:

1. Law;
2. Contracts;
3. Quasi-contracts;
4. Acts or omission punished by law; and
5. Quasi-delicts.

[76] *Commissioner of Public Highway v. Burgos,* G.R. No. L-36706, 31 March 1980, 96 SCRA 831, 837.

[77] The requisites for Article 1250 apply to both extraordinary inflation and deflation. This case involved extraordinary inflation because, as RTC Judge Hontanosas noted, the peso substantially depreciated during the intervening period.

such stipulation either in the promissory note or loan agreement. Therefore, respondents should pay their dollar-denominated loans at the exchange rate fixed by the BSP on the date of maturity.[78]

THE AWARD OF MORAL AND EXEMPLARY DAMAGES LACKED BASIS

Moral damages are in the category of an award designed to compensate the claimant for actual injury suffered, not to impose a penalty to the wrongdoer.[79] To be entitled to moral damages, a claimant must prove:

1. That he or she suffered besmirched reputation, or physical, mental or psychological suffering sustained by the claimant;
2. That the defendant committed a wrongful act or omission;
3. That the wrongful act or omission was the proximate cause of the damages the claimant sustained;

For Article 1250 to apply, not only must the obligation be contractual, the parties must more importantly agree to recognize the effects of extraordinary inflation (or deflation, as the case may be). Here, despite the fact that the obligation was contractual (*i.e.*, a loan), neither the loan agreement nor the promissory notes contained a provision stating that the parties agreed to recognize the effects of extraordinary inflation or deflation. For this reason, Article 1250 was inapplicable.

[78] *Bank of the Philippine Islands v. Leobrera*, G.R. Nos. 137147-48, 18 November 2003, 416 SCRA 15, 19 *citing C.F. Sharp & Co. v. Northwest Airlines, Inc.,* G.R. No. 133498, 18 April 2002, 381 SCRA 314. See *also Jammang v. Takahashi,* G.R. No. 149429, 9 October 2006, 504 SCRA 31, 36. Note that Equitable did not present proof that respondents agreed to pay their dollar-denominated loans in US dollars.

[79] *Supercars Management & Development Corporation v. Flores,* G.R. No. 148173, 10 December 2004, 446 SCRA 34, 44.

See CIVIL CODE, Art. 2217. The article provides:

Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, **besmirched reputation**, wounded feelings, moral shock, **social humiliation**, and similar injury. **Though incapable of pecuniary estimation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.** (emphasis supplied)

4. The case is predicated on any of the instances expressed or envisioned by Article 2219[80] and 2220[81].[82]

In *culpa contractual* or breach of contract, moral damages are recoverable only if the defendant acted fraudulently or in bad faith or in wanton disregard of his contractual obligations.[83] The breach must be wanton, reckless, malicious or in bad faith, and oppressive or abusive.[84]

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[80] Art. 2219. Moral damages may be recovered in the following and analogous cases:

1. A criminal offense resulting in physical injury;
2. Quasi-delict causing physical injuries;
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 Art. 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, brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[81] 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.** (emphasis supplied)

[82] *Philippine National Bank v. Pike,* G.R. No. 157845, 20 September 2005, 470 SCRA 328, 349-350 *citing Philippine Telegraph & Telephone Corporation v. Court of Appeals,* G.R. No. 139268, 3 September 2002, 388 SCRA 270.

[83] *Id*.

[84] *Id. citing Herbosa v. Court of Appeals,* G.R. No. 119086, 25 January 2002, 374 SCRA 578. *See also Salvador v. Court of Appeals,* G.R. No. 124899, 30 March 2004, 426 SCRA 433.

The RTC found that respondents did not pay Equitable the interest due on February 9, 2001 (or any month thereafter prior to the maturity of the loan)[85] or the amount due (principal plus interest) due on July 9, 2001.[86] Consequently, Equitable applied respondents' deposits to their loans upon maturity.

The relationship between a bank and its depositor is that of creditor and debtor.[87] For this reason, a bank has the right to set-off the deposits in its hands for the payment of a depositor's indebtedness.[88]

Respondents indeed defaulted on their obligation. For this reason, Equitable had the option to exercise its legal right to set-off or compensation. However, the RTC mistakenly (or, as it now appears, deliberately) concluded that Equitable acted "fraudulently or in bad faith or in wanton disregard" of its contractual obligations despite the absence of proof. The undeniable fact was that, whatever damage respondents sustained was **purely the consequence of their failure to pay their loans**. There was therefore absolutely no basis for the award of moral damages to them.

Neither was there reason to award exemplary damages. Since respondents were not entitled to moral damages, neither should they be awarded exemplary damages.[89] And if respondents were not entitled to moral and exemplary damages, neither could they be awarded attorney's fees and litigation expenses.[90]

ACCORDINGLY, the petition is hereby *GRANTED.*

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[85] *Supra* note 11.

[86] *Id*.

[87] *Gullas v. National Bank,* 62 Phil. 519, 521 (1935) *citing Fulton Iron Works Co. v. China Banking Corporation,* 55 Phil. 208 (1930) and *San Carlos Milling Co. v. Bank of the Philippine Islands and China Banking Corporation,* 59 Phil. 59 (1933).

[88] *Id*., pp. 521-522.

[89] *Mahinay v. Velasquez, Jr.,* G.R. No. 152753, 13 January 2004, 419 SCRA 118, 122.

[90] *Supercars Management & Development Corporation v. Flores, supra* note 79 at 44.

The October 28, 2005 decision and February 3, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 83112 are hereby *REVERSED* and *SET ASIDE*.

The March 24, 2004 omnibus order of the Regional Trial Court, Branch 16, Cebu City in Civil Case No. CEB-26983 is hereby *ANNULLED* for being rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. All proceedings undertaken pursuant thereto are likewise declared null and void.

The March 1, 2004 order of the Regional Trial Court, Branch 16 of Cebu City in Civil Case No. CEB-26983 is hereby *SET ASIDE*. The appeal of petitioners Equitable PCI Bank, Aimee Yu and Bejan Lionel Apas is therefore given due course.

The February 5, 2004 decision of the Regional Trial Court, Branch 16 of Cebu City in Civil Case No. CEB-26983 is accordingly *SET ASIDE.* New judgment is hereby entered:

1. ordering respondents Ng Sheung Ngor, doing business under the name and style of "Ken Marketing," Ken Appliance Division, Inc. and Benjamin E. Go to pay petitioner Equitable PCI Bank the principal amount of their dollar- and peso-denominated loans;

2. ordering respondents Ng Sheung Ngor, doing business under the name and style of "Ken Marketing," Ken Appliance Division, Inc. and Benjamin E. Go to pay petitioner Equitable PCI Bank interest at:

    a) 12.66% p.a. with respect to their dollar-denominated loans from January 10, 2001 to July 9, 2001;

    b) 20% p.a. with respect to their peso-denominated loans from January 10, 2001 to July 9, 2001;[91]

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[91] While this case involved extraordinary inflation because of the substantial depreciation of the peso during the intervening period, Article 1250 of the Civil Code was inapplicable. For Article 1250 to apply, not only must the obligation be contractual, the parties must, more importantly, agree to recognize the effects of extraordinary inflation (or deflation, as the case may be). Here, despite the contractual obligation (*i.e.*, a loan), neither the loan agreement

c) pursuant to our ruling in *Eastern Shipping Lines v. Court of Appeals,*[92] the total amount due on July 9, 2001 shall earn legal interest at 12% p.a. from the time petitioner Equitable PCI Bank demanded payment, whether judicially or extra-judicially; and

d) after this Decision becomes final and executory, the applicable rate shall be 12% p.a. until full satisfaction;

3. all other claims and counterclaims are dismissed.

As a starting point, the Regional Trial Court, Branch 16 of Cebu City shall compute the exact amounts due on the respective dollar-denominated and peso-denominated loans, as of July 9, 2001, of respondents Ng Sheung Ngor, doing business under the name and style of "Ken Marketing," Ken Appliance Division and Benjamin E. Go.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172775. December 19, 2007]

HON NE CHAN, YUNJI ZENG, AND JOHN DOE, *petitioners, vs.* **HONDA MOTOR CO., LTD., AND HONDA PHIL., INC.,** *respondents.*

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nor the promissory notes contained a provision stating that the parties agreed to recognize the effects of extraordinary inflation or deflation. (*See* note 77.)

[92] G.R. No. 97412, 12 July 1994, 234 SCRA 74, 95.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT; REQUISITES.—**The pertinent provision of the Rules of Court on the issuance of a search warrant provides: Rule 126 Search and Seizure x x x x SEC. 4. *Requisites for issuing search warrant.* – A search warrant shall not issue but upon probable cause in connection with one specific offense 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 things to be seized which may be anywhere in the Philippines. Thus, the validity of the issuance of a search warrant rests upon the following factors: (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.

2. **ID.; ID.; ID.; ID.; ID.; PROBABLE CAUSE; HOW DETERMINED.—** It is settled that in determining probable cause, a judge is duty-bound to personally examine under oath the complainant and the witnesses he may present. Emphasis must be laid on the fact that the oath required must refer to "the truth of the facts within the personal knowledge of the petitioner or his witnesses, because the purpose thereof is to convince the committing magistrate, not the individual making the affidavit and seeking the issuance of the warrant, of the existence of probable cause." Search warrants are not issued on loose, vague or doubtful basis of fact, or on mere suspicion or belief. "Probable cause," as far as the issuance of a search warrant is concerned, has been uniformly defined as such facts and circumstances which would lead a reasonable, discreet 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. Equally important is our declaration in *Microsoft Corporation and Lotus Development Corporation v. Maxicorp, Inc.* that – The determination of probable cause does not call for the application of rules and

standards of proof that a judgment of conviction requires after trial on the merits. As implied by the words themselves, "probable cause" is concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage reasonable doubt. The standards of judgment are those of a reasonably prudent man, not the exacting calibrations of a judge after a full-blown trial.

3. **ID.; ID.; ID.; ID.; VALID SEARCH WARRANT; ELUCIDATED.—** It is elemental that in order to be valid, a search warrant must particularly describe the place to be searched and the things to be seized. The constitutional requirement of reasonable particularity of description of the things to be seized is primarily meant to enable the law enforcers serving the warrant to: (1) readily identify the properties to be seized and thus prevent them from seizing the wrong items; and (2) leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures. It is not, however, required that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. In *Bache and Co. (Phil.), Inc. v. Judge Ruiz*, it was pointed out that one of the tests to determine the particularity in the description of objects to be seized under a search warrant is when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued.

APPEARANCES OF COUNSEL

*R.L. Bagatsing & Associate*s for petitioners.

Law firm of R.V. Domingo and Associates for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before the Court is a Petition for Review on *Certiorari* of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 85353, granting respondents' Petition for *Certiorari* and setting aside

[1] Penned by Associate Justice Mario L. Guariña III with Associate Justices Roberto A. Barrios and Santiago Javier Ranada, concurring; *rollo*, pp. 30-39.

the Orders dated 20 February 2004 and 18 May 2004, of the Regional Trial Court (RTC) of Manila, Branch 46.

On 14 November 2003, the National Bureau of Investigation (NBI), through Special Investigator (SI) Glenn Lacaran, applied for search warrants with the RTC against petitioners for alleged violation of Section 168[2] in relation to Section 170[3] of

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[2] SEC. 168. *Unfair Competition, Rights, Regulation and Remedies*. – 168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactures by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to any action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feather of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

(b) Any person who by any artifice or device, or who employs any other means calculated to induce the false belief that such person is offering the service of another who has identified such services in the mind of the public; or

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Sections 156, 157 and 161 shall apply *mutatis mutandis.*

[3] SEC. 170. *Penalties*. – Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2)

Republic Act No. 8293 or the Intellectual Property Code of the Philippines.[4]

On the same date, RTC Judge Artemio S. Tipon issued two search warrants. The first warrant, Search Warrant No. 03-4438,[5] was directed against petitioner "Hon Ne Chan and John Does, operating under the name and style 'Dragon Spirit Motorcycle Center,' located at No. 192 M.H. del Pilar Street corner 10th Avenue, Grace Park, Caloocan City, Metro Manila."

On the other hand, the second search warrant, or Search Warrant No. 03-4439[6] was issued against petitioner "Yunji Zeng and John Does, operating under the name and style 'Dragon Spirit Motorcycle Center,' located at No. 192 E. Delos Santos Avenue, Caloocan City, Metro Manila."

Except for the names of respondents and addresses to be searched, both search warrants stated the following:

SEARCH WARRANT[7]

TO ANY PEACE OFFICER:

G R E E T I N G S:

It appearing to the satisfaction of the undersigned, after examining under oath the applicant Special Investigator Glenn M. Lacaran of the National Bureau of Investigation, and his witnesses Atty. Elmer NA. Cadano and Mr. Rene C. Baltazar, that there are good and sufficient reasons to believe that a violation of Sec. 168 in relation to Sec. 170 of the R.A. No. 8293 has been committed and that there are good and sufficient reasons to believe that the following :

a) Motorcycles bearing the model names and/or markings **"DS-110", "DSM-110", "SUPER WAVE", "DS-125",**

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years to five (5) years and a fine ranging from Fifty thousand pesos (₱50,000) to Two Hundred thousand pesos (₱200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

[4] Records, pp. 1-57.

[5] *Id*. at 74-76.

[6] *Id*. at 64-66.

[7] Search Warrant No. 03-4438.

"DSM-125", "WAVE R", and **"WAVE"** and the engines, moldings, spare parts, tires and accessories for the manufacture and assembly of such motorcycles;

b) Papers, documents, brochures, documents, receipts, invoices, ledgers, books of accounts, labels, materials, paraphernalia, effects, computer software, computer systems, central processing units, hard disks, floppy disks, diskettes, date storage and retrieval devices, monitors, and vehicles used or intended to be used in importing, producing, manufacturing, assembling, selling, marketing, distributing, dealing with and/or otherwise disposing of motorcycles bearing the model names and/or markings **"DS-110", "DSM-110", "SUPER WAVE", DS-125, DSM-125", "WAVE R",** and **WAVE",**

are in the possession and control of Respondents **HON NE CHAN**[8] and **JOHN DOES**, operating under the name and style **"DRAGON SPIRIT MOTORCYCLE CENTER"**, located at No. 192 M. H. Del Pilar Street corner 10th Avenue, Grace Park, Caloocan City, Metro Manila, and are being kept and concealed at the said address.[9]

You are hereby commanded to make an immediate search at any time of the day of the premises above-described and to search for, and seize, the above-described personal properties which are the subject of the aforesaid offense and bring to this Court said properties to be dealt with as the law directs.

GIVEN UNDER MY HAND AND SEAL this 14th day of November, 2003 at the City of Manila, Philippines.

ARTEMIO S. TIPON
Judge

On the strength of these search warrants, NBI agents conducted a search of petitioners' premises and seized the following items:

1. from petitioner Hon Ne Chan's premises:

   a) seven (7) motorcycles bearing the model name "DSM WAVE R;"

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[8] "Yunji Zeng."

[9] No. 195, E. delos Santos Avenue, Caloocan City for Search Warrant No. 03-4439.

b) three (3) motorcycles bearing the model name "DSM SUPER WAVE", and

c) one (1) motorcycle bearing the model name "WAVE CX".

2. from petitioner Yunji Zeng's premises:

a) twenty-one (21) motorcycles bearing the model name "WAVE CX 110;"

b) eight (8) motorcycles bearing the model name "WAVE 110;"

c) thirty-five (35) motorcycles bearing the model name "WAVE 125";

d) one (1) motorcycle bearing the model name "WAVE R";

e) eight (8) motorcycles bearing the model name "SUPER WAVE 110;" and

f) two (2) plastic bags containing various documents.[10]

On 1 December 2003, petitioners filed with the RTC a Joint Motion to Quash Search Warrants and to Return Illegally Seized Items,[11] averring therein that the search warrants were issued despite the absence of probable cause and that they were in the nature of general search warrants. Respondents filed their Opposition thereto on 7 January 2004[12] but despite this, the trial court still issued an Order dated 20 February 2004 which quashed both Search Warrants No. 03-4438 and 03-4439 and ordered the NBI to return to petitioners the articles seized. In quashing the search warrants, the trial court held that the return of the twenty-two "WAVE CX 110" motorcycle units was proper for they were never specifically mentioned therein. As regards the rest of the items seized by the NBI agents, the trial court

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[10] *Rollo*, pp. 12-13.

[11] *Id.* at 85-93.

[12] Records, pp. 104-117.

decreed that their return to petitioners was justified due to lack of probable cause in the issuance of the search warrants.

Respondents' Motion for Reconsideration dated 12 March 2004[13] was denied by the court *a quo* through its Order of 18 May 2004.[14] This prompted respondents to seek recourse before the Court of Appeals via a Petition for *Certiorari*.[15]

On 31 January 2006, the Court of Appeals rendered the now assailed Decision granting respondents' petition and setting aside the RTC's Orders dated 20 February 2004 and 18 May 2004.[16] The appellate court likewise denied petitioners' Motion for Reconsideration due to lack of merit.

Hence, the present petition imputing error to the Court of Appeals because of the following:

i.

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE WARRANTS COMPLIED WITH THE CONSTITUTIONAL AND STATUTORY REQUIREMENTS FOR THE ISSUANCE OF VALID SEARCH WARRANTS NOTWITHSTANDING THE LACK OF PROBABLE CAUSE IN CONNECTION WITH ONE SPECIFIC OFFENSE TO SEARCH AND SEIZE THE MOTORCYCLE UNITS OF THE PETITIONERS AND THE LACK OF PARTICULARITY IN THE DESCRIPTION OF THE THINGS TO BE SEARCHED.

ii.

THE COURT OF APPEALS COMMITTED GRAVE, SERIOUS AND REVERSIBLE ERROR IN RULING THAT RESPONDENT HAD ESTABLISHED GOODWILL IN HONDA WAVE MOTORCYCLE DESPITE OF THE FACT THAT THERE IS NO EVIDENCE ON RECORD SUPPORTING THE CLAIM.

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[13] *Id.* at 136-172.

[14] *Id.* at 296-297.

[15] CA *rollo*, pp. 2-50.

[16] *Rollo*, pp. 30-38.

iii.

THE COURT OF APPEALS COMMITTED A MISAPPREHENSION OF FACTS IN RULING THAT THE PETITIONERS PASSED OFF THEIR GOODS AS THAT OF THE RESPONDENTS BY USING THE MODEL NAME WAVE AND EMBODYING THE PROMINENT FEATURES OF THE DESIGNS, WHICH IS THE VERY ESSENCE OF UNFAIR COMPETITION.[17]

We are primarily tasked to resolve the questions of: 1) whether probable cause existed in the issuance of the subject search warrants; 2) whether said search warrants were in the nature of general search warrants and therefore null and void; and 3) whether there existed an offense to which the issuance of the search warrants was connected.

We affirm the Decision of the Court of Appeals.

The pertinent provision of the Rules of Court on the issuance of a search warrant provides:

Rule 126
Search and Seizure

xxx xxx xxx

SEC. 4. *Requisites for issuing search warrant.* – A search warrant shall not issue but upon probable cause in connection with one specific offense 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 things to be seized which may be anywhere in the Philippines.

Thus, the validity of the issuance of a search warrant rests upon the following factors: (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

[17] *Id*. at 15-16.

describe the place to be searched and persons or things to be seized.[18]

In this case, petitioners argue that the requirements enumerated in Rule 126 of the Rules of Court pertaining to the issuance of a search warrant were not fulfilled when Search Warrants No. 03-4438 and 03-4439 were issued by the trial court. First, they contend that no probable cause existed meriting the issuance of the search warrants in that it was stated in the Application for Search Warrant of National Bureau of Investigation Special Investigator (NBI SI) Lacaran that "**(h)e has information and verily believes** that (petitioners) are in possession or has in their control properties which are being sold, retailed, distributed, imported, dealt with or otherwise disposed of, or intended to be used as a means of committing a violation of Section 168 in relation to Section 170 of Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines"[19] Said statement, petitioners insist, failed to meet the condition that probable cause must be shown to be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay.[20]

It is settled that in determining probable cause, a judge is duty-bound to personally examine under oath the complainant and the witnesses he may present. Emphasis must be laid on the fact that the oath required must refer to "the truth of the facts within the personal knowledge of the petitioner or his witnesses, because the purpose thereof is to convince the committing magistrate, not the individual making the affidavit and seeking the issuance of the warrant, of the existence of probable cause."[21] Search warrants are not issued on loose, vague or doubtful basis of fact, or on mere suspicion or belief.[22]

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[18] *Republic v. Sandiganbayan,* G.R. Nos. 112708-09, 29 March 1996, 255 SCRA 438, 481-482.

[19] Records, p. 1.

[20] *Prudente v. Dayrit*, G.R. No. 82870, 14 December 1989, 180 SCRA 69, 76.

[21] *Id.* at 78.

[22] *Cupcupin v. People of the Philippines*, 440 Phil. 712, 727 (2002).

In the case at bar, petitioners capitalize on the first paragraph of the Application for Search Warrant executed by NBI SI Lacaran to support their argument that he lacked the personal knowledge required by both the Rules of Court and by jurisprudence. However, the very next paragraph of the application reveals the tremulous nature of their argument for it is clearly stated therein that far from merely relying on mere information and belief, NBI SI Lacaran "personally verified the report and found [it] to be a fact."[23] This, to our mind, removed the basis of his application from mere hearsay and supported the earlier finding of probable cause on the part of the examining judge. We cannot, thus, agree in his Order of 20 February 2004 quashing the search warrants he earlier issued on 14 November 2003.

It is likewise well to reiterate here that "probable cause," as far as the issuance of a search warrant is concerned, has been uniformly defined as such facts and circumstances which would lead a reasonable, discreet 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.[24] Equally important is our declaration in *Microsoft Corporation and Lotus Development Corporation v. Maxicorp, Inc.*[25] that–

> The determination of probable cause does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. As implied by the words themselves, "probable cause" is concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage reasonable doubt. The standards of judgment are those of a reasonably prudent man, not the exacting calibrations of a judge after a full-blown trial.[26]

Applying these standards, we hold that the trial court overstepped its boundaries as far as determination of probable

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[23] Records, pp. 2-3.

[24] *Kho v. Hon. Lanzanas*, G.R. No. 150877, 4 May 2006, 489 SCRA 444, 464.

[25] G.R. No. 140946, 13 September 2004, 438 SCRA 224.

[26] *Id.* at 236.

cause is concerned when it ratiocinated in its Order dated 20 February 2004 that—

> With respect to the other units seized by the NBI, their immediate release is likewise proper since there is no showing of probable cause that justified the issuance of the search warrant. The (herein respondents) claims (*sic*) that the (herein petitioners) are guilty of Unfair Competition because of the alleged similarities between its motorcycle units and those of the (petitioners). There maybe similarities as claimed by the (respondents) but the differences far outweigh the similarities that any confusion to the consumer is remote and speculative. These differences are quite evident from the very comparative pictures attached by the (petitioners) in its (*sic*) application for Search Warrant as well as in the Opposition filed relative to the pending "Joint Motion to Quash Search Warrants and to Return Illegally Seized Items."
>
> Aside from the differences in features, the motorcycle units sold by the (petitioners) prominently bear the distinct trade name "DRAGON SPIRIT." This is not the same trade name of the (respondents), which is Honda. The fact alone would practically eliminate any possible confusion on the part of the public that the motorcycle units they would be buying from the (petitioners) are those manufactured and/or sold by (respondents).[27]

Such pronouncement by the RTC is utterly premature for, at that point, all that was presented before it by respondents was evidence, which to their minds, was sufficient to support a finding of probable cause. The trial court's above-cited declaration unmistakably conveys the message that no unfair competition exists in this case – a conclusion that is not within its competence to make, for its task is merely confined to the preliminary matter of determination of probable cause and nothing more. The evidence it requires to dispense this function is, as stated before, far less stringent than that required in the trial on the merits of the charge involving unfair competition.

Petitioners also argue that the search warrants in question partook the nature of general search warrants in that they included motorcycles bearing the model name "WAVE." They insist that

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[27] Records, p. 128.

word "WAVE" is generic and that it fails to pass the requirement of particularity of the items to be seized. They also maintain that had the word "WAVE" been enough, there would have been no need for petitioners to state in their application for search warrants the specific motorcycle models, *i.e.*, "DSM WAVE," "DSM SUPERWAVE 110," and "WAVE R 125."[28]

It is elemental that in order to be valid, a search warrant must particularly describe the place to be searched and the things to be seized. The constitutional requirement of reasonable particularity of description of the things to be seized is primarily meant to enable the law enforcers serving the warrant to: (1) readily identify the properties to be seized and thus prevent them from seizing the wrong items; and (2) leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures.[29] It is not, however, required that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities.[30]

In *Bache and Co. (Phil.), Inc. v. Judge Ruiz*,[31] it was pointed out that one of the tests to determine the particularity in the description of objects to be seized under a search warrant is when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued. A reading of the search warrants issued by the trial court in this case reveals that the items to be seized, including motorcycles, are those which are connected with the alleged violation of Section 168 in relation to Section 170 of Republic Act No. 8293, notwithstanding the use of the generic word "WAVE." We, therefore, adopt the following finding of the appellate court:

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[28] *Rollo*, p. 21.

[29] *People v. Tee,* 443 Phil. 521, 535 (2003).

[30] *Kho v. Makalintal*, G.R. Nos. 94902-06, 21 April 1999, 306 SCRA 70, 77-78.

[31] 148 Phil. 794, 811 (1971) cited in *Al-Ghoul v. Court of Appeals*, 416 Phil. 759, 771 (2001).

We may say this of the Wave motorcycles. It is evident that Wave is the model name of the motorcycles produced by the (herein respondents) Honda and, therefore, any imitation unit that is in the possession of the (herein petitioners) and carries the name Wave is the fit object of the warrants – whether some other name or figure is affixed to it or not. The name Wave CX 110 is but a [species] of units under the generic name Wave. The warrant that directs the seizure of Wave logically includes Wave CX 110 and is by no means converted into a roving commission when it allows the officer to seize it.[32]

Anent petitioners' contention that the search warrants were issued in relation to no particular offense, they rely on the holding of this Court in *Savage v. Judge Taypin*,[33] where it was held that –

There is evidently no mention of any crime of "unfair competition" involving design patents in the controlling provisions on Unfair Competition. It is therefore unclear whether the crime exists at all, for the enactment of RA 8293 did not result in the reenactment of Art. 189 of the Revised Penal Code. In the face of this ambiguity, we must strictly construe the statute against the State and liberally in favor of the accused, for penal statutes cannot be enlarged or extended by intendment, implication or any equitable consideration.[34]

A reading of said case readily exposes its stark inapplicability to the instant Petition.

To be sure, the search warrant in *Savage* was issued in the face of possible violation of Republic Act No. 8293. The acts complained of in said case were the alleged manufacture and fabrication of wrought iron furniture similar to that patented by private respondent therein sans any license or patent for the same, for the purpose of deceiving or defrauding private respondent and the buying public.

In making the above-quoted declaration in said case, this Court recognized that paragraph 3 of Article 189 of the Revised Penal Code stating that –

[32] *Rollo,* p. 35.

[33] 387 Phil. 718 (2000).

[34] *Id.* at 727.

3. Any person who, by means of false or fraudulent representations or declarations, orally or in writing, or by other fraudulent means shall procure from the patent office or from any other office which may hereafter be established by law for the purposes, the registration of a tradename, trademark, or service mark, or of himself as the owner of such tradename, trademark, or service mark or an entry respecting a tradename, trademark, or servicemark.

was not included in the enactment of Section 168 of Republic Act No. 8293.

On the other hand, in the Application for Search Warrant filed by NBI SI Lacaran, it is clearly stated that what respondents are complaining about was the alleged violation of the goodwill they have established with respect to their motorcycle models "WAVE 110 S" and "WAVE 125 S" and which goodwill is entitled to protection in the same manner as other property rights. It is quite obvious then that their cause of action arose out of the intrusion into their established goodwill involving the two motorcycle models and not patent infringement, as what existed in *Savage*.

WHEREFORE, premises considered the present petition for review is *DENIED*, and the 31 January 2006 Decision of the Court of Appeals and its 17 May 2006 Resolution in CA-G.R. SP No. 85353 are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

Nachura, J., on leave.

THIRD DIVISION

[G.R. No. 172967. December 19, 2007]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHRISTOPHER AVILES,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREON, RESPECTED.—** During the trial, when Aviles was already in custody, testimonies merely pointing to a "possibility" that Aviles participated in the stabbing incident was supplanted by the eyewitness account of Contapay that Aviles himself had performed the stabbing. The trial court found Contapay's testimony to be credible. It is settled that the appellate courts will generally not disturb the findings of the trial court considering that the latter is in a better position to determine the same, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless certain facts of value have been plainly overlooked, which if considered, might affect the result of the case.

2. **ID.; ID.; ID.; NOT AFFECTED BY ALLEGED DIFFERENT REACTION OF THE WITNESS TO THE CRIME SITUATION.—** Neither are we persuaded by Aviles' argument that it is more consistent with human nature that a person's attention would be caught up in the ongoing struggle, rather than in trying to recognize the attacker. Different people react differently to a given situation, and there is no standard form of behavioral response when one is confronted with a strange, startling or frightful experience. Witnessing a crime is one novel experience which elicits different reactions from witnesses for which no clear-cut standard of behavior can be drawn. This is especially true if the assailant is physically near the witness. In *People v. Aquino*, we even held that: There is no standard rule by which witnesses to a crime may react. **Often, the face and body movements of the assailant create an impression which cannot be easily erased from the memory of witnesses x x x.**

3. CRIMINAL LAW; SLIGHT PHYSICAL INJURIES; CRIME COMMITTED IN THE PRESENT CASE'S STABBING INCIDENT IN THE ABSENCE OF INTENT TO KILL.— The crime proven to have been committed by Aviles in stabbing Contapay is only slight physical injuries. While the prosecution sufficiently established that Aviles stabbed Contapay, it failed to prove *intent to kill*, which is an element of both frustrated and attempted homicide. On the contrary, the evidence appears to show that Aviles stabbed Contapay on the knee only for the purpose of preventing the latter from further helping Arenas. Since there was no proof either as to the extent of the injury or the period of incapacity for labor or of the required medical attendance, Aviles can only be convicted of slight physical injuries.

4. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— There is treachery when the following requisites are present: (1) the employment of means, methods, or manner of execution to ensure the safety of the malefactor from defensive or retaliatory action on the part of the victim and (2) the deliberate or conscious adoption of such means, method or manner of execution. Although Contapay testified that he turned around immediately when the deceased shouted "*Apaya*," he did not testify as to how the attack was initiated. Also, considering that he was driving the jeepney when Arenas was attacked, he could not even have known how the attack was initiated. For treachery to be appreciated, it must be present at the inception of the attack. If the attack is continuous and treachery was present only at a subsequent stage and not at the inception of the attack, it cannot be considered. Qualifying circumstances must be proven beyond reasonable doubt as the crime itself. It cannot be considered on the strength of evidence which merely tends to show that the victim was *probably* surprised to see the assailant trying to get inside the jeepney. Neither does the fact that Arenas was in between Contapay and accused Aviles conclusively prove the presence of treachery. While this situation proved fatal to Arenas who had nowhere to run, there was no evidence that this situation was deliberately and consciously adopted to ensure safety of the malefactor from defensive or retaliatory action on the part of the victim.

5. **ID.; HOMICIDE; CRIME COMMITTED IN THE ABSENCE OF QUALIFYING CIRCUMSTANCE TO THE KILLING; PENALTY.—** As no qualifying circumstance attended the killing, Christopher Aviles can only be convicted of homicide. Homicide is punishable by *reclusion temporal.* There being no mitigating or aggravating circumstances proven in the case at bar, the penalty should be applied in its medium period of 14 years, 8 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which is *prision mayor* (six years and one day to 12 years). We find the indeterminate sentence of 10 years and one day of *prision mayor*, as minimum to 14 years and one day of *reclusion temporal*, as maximum to be sufficient. Finally, the absence of qualifying circumstances also warrants the deletion of the exemplary damages.

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.*:

This is an appeal from the Decision[1] of the Court of Appeals affirming with modification the Decision[2] of the Regional Trial Court of Urdaneta City, Branch 46, convicting accused-appellant Christopher Aviles *y* Molina *Alias* "Topeng" (Aviles) of the crimes of murder and slight physical injuries.

Aviles was charged with the crimes of murder and frustrated murder in two separate Informations, allegedly committed as follows:

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[1] Penned by Associate Justice Marina L. Buzon with Associate Justices Danilo B. Pine and Arcangelita Romilla-Lontok, concurring. *Rollo,* pp. 3-16.

[2] Penned by Presiding Judge Tita Rodriguez-Villarin. CA *rollo*, pp. 23-44.

Criminal Case No. U-12011

xxx xxx xxx

That on or about 7:30 o'clock in the evening of June 19, 2002 at Alexander St., Poblacion, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, armed with a sharp bladed and pointed knife, with intent to kill, and treachery, did then and there willfully, unlawfully and feloniously attack, assault, and stab Danilo Arenas, inflicting upon him the following:

- Wound, hook-shaped 26.5 x 4cms., left thigh middle 3rd antero medial aspect.
- Chopping wound 15 x 2.5 cm., left leg upper 3rd below knee.
- Chopping wound 4 x 1 cm., right leg middle 3rd anterior aspect.
- Wound semilunar 3 x 0.5 cm., right foot dorum.
- Hacking wound 3 cm. x 0.5 cm. left hand dorsum, near wrist.

resulting to "Irreversible shock due to arterial hemorrhage due to severe branch of fermoral artery," which caused his death, to the damage and prejudice of his heirs.

CONTRARY To Art. 249, Revised Penal Code as amended by R.A. 7659.

Criminal Case No. U-12385

That on or about 7:30 o'clock in the evening of June 19, 2002 along Alexander Street, Poblacion, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with intent to kill and treachery, did then and there, willfully, unlawfully and feloniously stab and hit NOVELITO CONTAPAY *y* CALICA, inflicting upon him a stab wound in the left knee, the accused having thus commenced by overt act the commission of the crime of Murder but did not perform all the acts of execution which would have produced the felony by reason of some cause or accident other than accused['s] spontaneous desistance, to the damage and prejudice of said Novelito Contapay *y* Calica.

CONTRARY to Article 248 in relation to Article 6 of the Revised Penal Code.[3]

The evidence for the prosecution shows that on 19 June 2002 at around 7:30 p.m., Novelito Contapay (Contapay) was driving his passenger jeep along Alexander Street, Poblacion, Urdaneta City, at less than ten kilometers per hour due to heavy traffic in front of Magic Mall. His lone passenger, the deceased Danilo Arenas, was seated beside him. Arenas suddenly shouted *apaya.*[4] Contapay turned his head and saw Christopher Aviles stabbing Arenas. Aviles' upper body was already inside the jeep with one foot on the running board. Contapay halted the jeep and tried to help Arenas by holding the hand of Aviles, but the latter stabbed Contapay on his left knee. Contapay pushed Aviles who ran away. Contapay alighted from the jeepney, but he was not able to chase Aviles because of his bleeding left knee. Contapay noticed that Arenas was already unconscious, and he brought the latter to the Urdaneta Sacred Heart Hospital.

SPO2 Asterio Dismaya, SPO2 Ernesto Contaoi, SPO1 Rodolfo Febreo, PO3 Dennis Torres and a certain SPO2 Cachuela investigated the stabbing incident. SPO2 Dismaya and his companions went to the Urdaneta Sacred Heart Hospital but they were not able to interview Danilo Arenas. A nurse informed SPO2 Dismaya that it was Novelito Contapay who brought Arenas to the hospital. SPO2 Dismaya interviewed Contapay who was still in the premises.

Thereafter, the policemen went to the scene of the incident. SPO2 Dismaya was able to talk to Rufina Calvero, a *balut* vendor, who told him that she noticed Aviles and the latter's half-brother, George Cresencia (Cresencia), pass by her going southwards. Rufina Calvero also told SPO2 Dismaya that her husband had a drinking spree with Aviles and Cresencia.

SPO2 Dismaya was also able to talk to Patricio Oliveros who informed him that Aviles created trouble at the parking lot

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[3] *Id*. at 23-24.

[4] According to the Court of Appeals, *apaya* means *why*.

for tricycles by chasing other tricycle drivers, but was pacified by Cresencia.

Meanwhile, Contapay, realizing the lack of doctors in Sacred Heart Hospital, proceeded to the Villasis Polymedic Hospital and Trauma Center to have his left knee treated. Contapay stayed in the hospital until the following day, incurring medical and hospital expenses.[5] Arenas, however, died at 2:00 in the morning of 20 June 2002. The Certificate of Death stated that the immediate cause of death was cardio-respiratory arrest and the antecedent cause was hemorrhagic shock due to stab wound on the medial side of the thigh.

Also on 20 June 2002, SPO2 Dismaya and other policemen went to the residence of Aviles in Jungle Town, San Vicente, Urdaneta City, but did not find him there. Aviles' mother accompanied the policemen to the house of Aviles' father-in-law, where they finally saw Christopher Aviles. They invited Aviles to the police station in connection with the stabbing incident. Aviles denied participation in the stabbing incident and claimed that it was his half-brother, Cresencia, who stabbed Arenas.

Upon the request of Police Superintendent Jessie Lorenzo Cardona, Chief of Police of the Urdaneta City Police Station, City Health Physician of Urdaneta City, Dr. Ramon B. Gonzales, Jr. conducted an autopsy on the body of Arenas. The Autopsy Report[6] reads:

SIGNIFICANT EXTERNAL FINDINGS:

- Plaster cast on left lower extremity.
  Upon removing cast:
  - Sutured wound left thigh middle 3rd antero-medial aspect.
    Upon opening sutured wound:
    Wound hook-shaped 26.5 x 4 cm.
  - Sutured wound left leg upper 3rd below knee
    Upon opening sutured wound:
    Chopping wound 15 x 2.5 cm.

[5] Evidenced by Official receipts; Exhibits K-10 to K-12; records, pp. 130-132.

[6] Exhibit B, records, p. 7.

- Sutured wound right leg middle 3rd anterior aspect.
  Upon opening sutured wound:
  - Chopping wound 4 x 1 cm.
- Sutured wound right foot, dorsum.
  Upon opening sutured wound
  - Sutured wound semilunar 3 x 0.5 cm.
- Sutured wound left hand dorsum, near wrist.
  Upon opening sutured wound:
  - Hacking wound 3 cm. x 0.5 cm.

SIGNIFICANT INTERNAL FINDINGS:

Severed branch of femoral artery.

CAUSE OF DEATH:

Irreversible shock due to arterial hemorrhage due to severed branch of femoral artery.

During the trial, the father of Danilo Arenas, Victorio, testified that he and his wife, Lagremas, spent ₱52,524.00 for the treatment of Danilo Arenas at the Urdaneta Sacred Heart Hospital, ₱50,000.00 during the wake, and another ₱38,000.00 paid to the Enriquez Funeral Home. These amounts were supported by official receipts.

The widow of Danilo Arenas, Sophia, testified that her late husband was a businessman who used to earn around ₱9,000.00 a month. Besides Sophia, Danilo Arenas is survived by his three children: Mark Joseph (10 years old), Mary Jane (9 years old), and Jeremias (6 years old).

Accused-appellant Christopher Aviles, who testified that he was a shoe repairer and fish vendor, claimed that at around 5:00 p.m. on 19 June 2002, he, George Cresencia, Romeo Aquino, Maria Aquino and several other persons were drinking in front of the Magic Mall in Urdaneta City. He allegedly left the group to accompany someone to the municipal hall, after which, he returned to the place where the group was drinking. He then told Cresencia that he was going home, but the latter asked him to stay and continue drinking with them. After 30 minutes, he finally left in order to go home. While he was walking towards

the public market near Rocca Theater, he saw Cresencia running towards him. Cresencia, who had blood stains on his t-shirt, told him that he (Cresencia) stabbed someone. Aviles revealed that he did not ask Cresencia who the victim was and proceeded on his way home. He did not tell his mother or his wife that Cresencia stabbed someone. The following day, on 20 June 2002, at 6:00 a.m., he was arrested and brought to the municipal hall.

Renton and Criselda Aviles, who are Christopher Aviles' brother and sister-in-law, testified that on 19 June 2002, Cresencia arrived drunk in their house at around 9 p.m., with blood stains on his shirt. Cresencia allegedly told them that he was involved in a fight and that he might have stabbed someone. Cresencia spent the night at their house and left the following morning.

On 21 July 2003, the trial court rendered a Joint Decision convicting Christopher Aviles of the crimes of murder and slight physical injuries, thus:

WHEREFORE, premises considered, the court finds accused CHRISTOPHER AVILES *Y* MOLINA ALIAS "TOPENG" –

1. CRIMINAL CASE NO. U-12011:

   GUILTY beyond reasonable doubt of the crime of MURDER and, there being no mitigating or aggravating circumstance, he is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA*; and is hereby ordered to indemnify the heirs of the victim of Danilo Arenas in the amount of FIFTY THOUSAND PESOS (₱50,000.00), to pay funeral expenses of Thirty Eight Thousand Pesos (₱38,000.00), to pay medical expenses of Fifty Two Thousand Five Hundred Twenty Four Pesos (₱52,524.00), to pay ₱50,000.00 by way of moral and exemplary damages, all without subsidiary imprisonment;

2. CRIMINAL CASE NO. U-12385:

   GUILTY beyond reasonable doubt of the crime of SLIGHT PHYSICAL INJURIES and is hereby sentenced to suffer imprisonment of thirty (30) days of *Arresto Menor*, and is hereby ordered to pay medical expenses of Six Thousand Eight Hundred Ninety Eight Pesos (₱6,898.00); and to pay the costs.

The accused shall be credited in full with the period of his preventive imprisonment in the service of his sentence.[7]

Aviles appealed to this Court. Conformably with this Court's ruling in *People v. Mateo*,[8] we resolved[9] to transfer the appeal to the Court of Appeals.

On 23 December 2005, the Court of Appeals rendered its Decision affirming with modification the trial court's Decision, thus:

WHEREFORE, the Joint Decision dated July 21, 2003 is AFFIRMED, with the MODIFICATION that accused-appellant Christopher Aviles *y* Molina is ordered to pay the heirs of Danilo Arenas the amounts of ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.[10]

Aviles now comes before us, assigning the following errors to the Court of Appeals:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIMES CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN ITS FINDING THAT THE QUALIFYING CIRCUMSTANCE OF TREACHERY ATTENDED THE COMMISSION OF THE CRIMES CHARGED.[11]

Christopher Aviles argues that the identification made by the lone eyewitness, Contapay, is doubtful. Contapay testified that

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

[8] G.R. No. 147678-87, 7 July 2004, 433 SCRA 640.

[9] CA *rollo*, p. 100.

[10] *Rollo,* p. 15.

[11] CA *rollo,* p. 59.

when he heard the deceased Arenas shout "*Apaya*," he turned his head and saw Aviles stabbing the deceased several times. He tried to hold Aviles but was, however, stabbed on the knee, prompting him to kick Aviles out of the jeepney. According to Aviles, when confronted with a situation like this, it is more consistent with human nature that a person's attention would be caught up in the on-going struggle and confusion, rather than in trying to recognize the attacker. Aviles points out that he and Contapay did not know each other prior to the stabbing incident and, thus, the only basis of Contapay's memory of Aviles' appearance was the span of time when the incident transpired.

Aviles further calls our attention to the investigation conducted by prosecution witness SPO2 Dismaya, who had interviewed *balut* vendor Rufina Calvero, tricycle driver Romeo Aquino, and Aviles' half-brother Cresencia. Aviles asserts that these three people were never presented in court to affirm their statements.

We do not find Aviles' assertions to be sufficient to reverse the outcome of the case.

Aviles may be correct that when the prosecution has at its disposal disinterested witnesses to the alleged crime but fails to produce them at the trial, such failure, although not fatal, seriously weakens the case against the accused.[12] However, that is not the case here. The statements of Rufina Calvero, Romeo Aquino and George Cresencia, while instrumental in the identification of Christopher Aviles for the purpose of his arrest, were neither necessary nor beneficial for the identification of Aviles in trial.

SPO2 Dismaya's testimony centered on his investigation of the crime which led to the arrest of Aviles. This investigation started with SPO2 Dismaya's interview of Contapay who knew neither the name nor the residence of Aviles. SPO2 Dismaya and his companions thus proceeded to the scene of the crime, which led to their discovery of witnesses who indicated Aviles' presence therein and *possible* participation in the stabbing incident.

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[12] *United States v. Tacubanza*, 18 Phil. 436, 438 (1911).

This eventually led to the arrest of Aviles who was identified by Contapay as the person who stabbed him and Arenas.

During the trial, when Aviles was already in custody, testimonies merely pointing to a "possibility" that Aviles participated in the stabbing incident was supplanted by the eyewitness account of Contapay that Aviles himself had performed the stabbing. The trial court found Contapay's testimony to be credible. It is settled that the appellate courts will generally not disturb the findings of the trial court considering that the latter is in a better position to determine the same, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless certain facts of value have been plainly overlooked, which if considered, might affect the result of the case.

It must also be considered that, as elucidated by the statements of Aviles himself, he and Contapay had never met before the stabbing incident. Contapay cannot therefore, could not have been impelled by ill will or evil intent in testifying against Aviles whom he did not know prior to the incident.

Neither are we persuaded by Aviles' argument that it is more consistent with human nature that a person's attention would be caught up in the ongoing struggle, rather than in trying to recognize the attacker. Different people react differently to a given situation, and there is no standard form of behavioral response when one is confronted with a strange, startling or frightful experience. Witnessing a crime is one novel experience which elicits different reactions from witnesses for which no clear-cut standard of behavior can be drawn. This is especially true if the assailant is physically near the witness.[13] In *People v. Aquino*,[14] we even held that:

> There is no standard rule by which witnesses to a crime may react. **Often, the face and body movements of the assailant create an impression which cannot be easily erased from the memory of witnesses** x x x.

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[13] *People v. Avedaño*, 444 Phil. 338, 356 (2003).

[14] 385 Phil. 887, 906 (2000).

This finding of credibility on the part of Contapay likewise obliges us to affirm the ruling of the trial court and the Court of Appeals finding Aviles guilty of slight physical injuries. Contapay's testimony was the evidence presented to prove not only the killing of Arenas, but likewise the stabbing of Contapay himself who had tried to help Arenas.

We also agree with the trial court that the crime proven to have been committed by Aviles in stabbing Contapay is only slight physical injuries. While the prosecution sufficiently established that Aviles stabbed Contapay, it failed to prove *intent to kill*, which is an element of both frustrated and attempted homicide. On the contrary, the evidence appears to show that Aviles stabbed Contapay on the knee only for the purpose of preventing the latter from further helping Arenas. Since there was no proof either as to the extent of the injury or the period of incapacity for labor or of the required medical attendance, Aviles can only be convicted of slight physical injuries.

Anent the second assigned error, Aviles claims that the trial court erred in its finding that the qualifying circumstance of treachery attended the commission of the crime, as Contapay did not testify as to how the attack on Arenas was initiated.

There is treachery when the following requisites are present: (1) the employment of means, methods, or manner of execution to ensure the safety of the malefactor from defensive or retaliatory action on the part of the victim and (2) the deliberate or conscious adoption of such means, method or manner of execution.[15]

The Court of Appeals ruled that the fact that Arenas shouted "*Apaya"* (perhaps a shortened form of *apay aya*, which is more accurately translated in Filipino as *bakit ba*) showed that he was probably surprised to see Aviles trying to get inside the jeepney which was moving slowly because of heavy traffic. The testimony of Contapay that after hearing Arenas shout "*Apaya*," he saw Aviles already stabbing Arenas, showed that the attack was sudden and unexpected.

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[15] *People v. Bayotas*, 401 Phil. 837, 848 (2000).

We agree with Aviles on this score. Although Contapay testified that he turned around immediately when the deceased shouted "*Apaya*," he did not testify as to how the attack was initiated. Also, considering that he was driving the jeepney when Arenas was attacked, he could not even have known how the attack was initiated.

For treachery to be appreciated, it must be present at the inception of the attack. If the attack is continuous and treachery was present only at a subsequent stage and not at the inception of the attack, it cannot be considered.[16] Rather than being an expression of surprise at the presence of Aviles as held by the Court of Appeals, the shout "*Apaya*" or "*Apay aya*," when translated as "*Bakit ba,*" connotes confusion as to why the person to whom it is spoken is acting the way he is acting. This implies the lapse of several moments between the commencement of the attack and Arenas' shouting.

Qualifying circumstances must be proven beyond reasonable doubt as the crime itself.[17] It cannot be considered on the strength of evidence which merely tends to show that the victim was *probably* surprised to see the assailant trying to get inside the jeepney. As discussed above, Arenas' shout can be interpreted in different ways. In fact, prosecution witness Dr. Ramon Gonzales even testified that it was possible that Aviles and Arenas were having a fight:

Atty. Florendo: You also found a wound on the left wrist of the cadaver, Doctor?

A: Yes sir.

Q: Would you consider it as a defensive wound, Doctor?

A: Yes sir.

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[16] *People v. Badon*, G.R. No. 126143, 10 June 1999, 308 SCRA 175, 189.

[17] *People v. Valez*, 406 Phil. 681, 699 (2001).

Q: When you said it was a defensive wound, it is possible that the victim and the assailant was having a fight?

A: Yes sir.[18]

Neither does the fact that Arenas was in between Contapay and Aviles conclusively prove the presence of treachery. While this situation proved fatal to Arenas who had nowhere to run, there was no evidence that this situation was deliberately and consciously adopted to ensure safety of the malefactor from defensive or retaliatory action on the part of the victim. As we have similarly held in *People v. Latag*,[19]

Furthermore, **no other circumstance attendant to the shooting supports the allegation that appellant carefully and deliberately planned the killing in a manner that would ensure his safety and success.** There were no indications that he had deliberately chosen the place, the time or the method of killing. In addition, there was no showing that the meeting between him and the victim had been planned. The fact that the former was seen by Atienza behind some shrubs after a gunshot had rung out does not, by itself, compel a finding of treachery. **Such a finding must be based on some positive proof, not merely on an inference drawn more or less logically from a hypothetical fact.** Apparent from the assailed Decision of the trial court is that it simply surmised that treachery had attended the killing.

As no qualifying circumstance attended the killing, Christopher Aviles can only be convicted of homicide. Homicide is punishable by *reclusion temporal.*[20] There being no mitigating or aggravating circumstances proven in the case at bar, the penalty should be applied in its medium period of 14 years, 8 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which

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[18] TSN, 1 October 2002, p. 10.

[19] 465 Phil. 683, 694-695 (2004).

[20] Article 249, Revised Penal Code.

is *prision mayor* (six years and one day to 12 years). We find the indeterminate sentence of 10 years and one day of *prision mayor*, as minimum to 14 years and one day of *reclusion temporal*, as maximum to be sufficient.

Finally, the absence of qualifying circumstances also warrants the deletion of the exemplary damages.

WHEREFORE, the Decision of the Court of Appeals is *MODIFIED*. The Court finds accused-appellant Christopher Aviles y Molina guilty beyond reasonable doubt of the crime of *HOMICIDE*, and is hereby sentenced to suffer an indeterminate penalty ranging from 10 years and one day of *prision temporal* as minimum to 14 years and one day of *reclusion temporal* as maximum. The penalty imposed by the courts *a quo* for the crime of slight physical injuries as well as all civil indemnities imposed by the courts *a quo* are **AFFIRMED**, with the exception of the ₱25,000.00 imposed on accused-appellant Aviles by way of exemplary damages, which is hereby *DELETED*.

SO ORDERED.

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

Nachura, J., on leave.

SECOND DIVISION

[G.R. No. 177313. December 19, 2007]

NIÑO MASAS *y* MILAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; DISMISSAL OF CRIMINAL CASE BASED ON SECTION 1(e), RULE 50 OF THE RULES ON CIVIL PROCEDURE, NOT PROPER.—** We take note of the Resolution dated 22 September 2006 where the Court of Appeals declared that petitioner's "appeal is deemed ABANDONED and accordingly DISMISSED for failure to file the required Appellant's Brief." It cited "Section 1(e), Rule 50 of the Rules of Court" as its basis for dismissing the appeal. This is erroneous. Rule 50 is under the Rules of Civil Procedure. Since the instant case is a criminal case, the appropriate rule is found in the Revised Rules of Criminal Procedure.

2. **ID.; ID.; ID.; PROCEDURE IN THE COURT OF APPEALS; DISMISSAL OF APPEAL FOR ABANDONMENT OR FAILURE TO PROSECUTE; APPLICATION IN CASE AT BAR.—** As ground for the petition, petitioner invokes Section 8 of Rule 124 of the Revised Rules of Criminal Procedure and contends that he was represented by counsel *de oficio* and that he was not furnished a prior notice to show cause why his appeal should not be dismissed. The Court of Appeals outrightly dismissed petitioner's appeal without looking into the merits of the case and disregarded the exception under Section 8 of Rule 124. Petitioner points out that a mere reading of the decision of the RTC- Branch 36 will reveal several glaring errors which necessitate a review of the case. These errors include the conviction of petitioner for violation of Section 5 (sale of dangerous drugs) despite the fact that the information merely alleged possession of dangerous drugs; the sentence of life imprisonment despite the absence in the Information of any allegation on the weight or volume of the alleged drugs; the questionable findings of a buy-bust operation; and obvious irregularity in the chain of custody of the confiscated items. Section 8 of Rule 124 of the Revised Rules of Criminal Procedure provides: SEC. 8. *Dismissal of appeal for abandonment or failure to prosecute*. — The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, **except where the appellant is represented by a**

counsel *de oficio*. The Court of Appeals may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal. The provision is clear and unambiguous. Section 8 provides for an exception in the dismissal of appeal for failure to file the appellant's brief, that is, where the appellant is represented by a counsel *de oficio.* The respondent, thru the Office of the Solicitor General, opposes the petition and argues that petitioner is not represented by a counsel *de oficio* as the latter was not duly appointed by the court to represent petitioner. However, it should be noted that in the Resolution dated 22 September 2006 dismissing the appeal and the Resolution dated 6 February 2007 denying petitioner's motion for reconsideration, the Court of Appeals itself referred to Atty. Sumile as petitioner's counsel *de oficio* and ruled that the failure of petitioner's "counsel *de oficio* to comply with Our resolution [is] a gross disregard to the Rules." Further, petitioner even filed a motion to litigate as pauper in this Court as he has no work and no real property where he could derive any income. Obviously, he could not afford the services of a counsel *de parte* for which reason he was previously represented by a PAO lawyer even in the trial court. This notwithstanding, also under Section 8, a criminal case may be dismissed by the Court of Appeals *motu proprio* and with notice to the appellant if the latter fails to file his brief within the prescribed time. The phrase "with notice to the appellant" means that a notice must first be furnished the appellant to show cause why his appeal should not be dismissed. No notice was given to petitioner to this effect. Besides, petitioner, in his motion for reconsideration, reiterated to the court that it cannot "order the dismissal of the appeal without prior notice to the appellant." As the Court held in *De Guzman v. People*: A healthy respect for petitioner's rights should caution courts against *motu proprio* dismissals of appeals, especially in criminal cases where the liberty of the accused is at stake. The rules allowing *motu proprio* dismissals of appeals merely confer a power and do not impose a duty; and the same are not mandatory but merely directory which thus require a great deal of circumspection, considering all the attendant circumstances. Courts are not exactly impotent to enforce their orders, including those requiring the filing of appellant's brief. This is precisely the *raison d'etre* for the court's inherent

contempt power. *Motu proprio* dismissals of appeals are thus not always called for. Although the right to appeal is a statutory, not a natural, right, it is an essential part of the judicial system and courts should proceed with caution so as not to deprive a party of this prerogative, but instead, afford every party-litigant the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities. More so must this be in criminal cases where, as here, the appellant is an indigent who could ill-afford the services of a counsel *de parte*.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

The Solicitor General for respondent.

R E S O L U T I O N

CARPIO, *J.*:

Petitioner Niño Masas *y* Milan[1] (petitioner) and co-accused Gerry Ong (Ong) were charged before the Regional Trial Court of Calamba, Misamis Occidental, Branch 36 (RTC-Branch 36) with violation of Section 5, Article 2 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 for having in their possession one sachet of shabu and for selling two sachets with two strips of aluminum foil to the poseur buyer. Upon arraignment, petitioner, assisted by a lawyer from the Public Attorney's Office (PAO), pleaded not guilty to the crime charged. After trial, the RTC-Branch 36 rendered judgment finding petitioner guilty as charged and sentencing him to suffer the penalty of life imprisonment and a fine of ₱500,000 without subsidiary imprisonment in case of insolvency. The RTC-Branch 36 acquitted co-accused Ong for failure of the prosecution to prove his guilt beyond reasonable doubt.

[1] Spelled as "Millan" in the Information and the Decision of the trial court, *rollo*, pp. 26-42.

Petitioner seasonably appealed to the Court of Appeals but the latter dismissed the appeal for failure to file the appellant's brief within the required period, citing Section 1(e), Rule 50 of the Rules of Court in its Resolution dated 22 September 2006.

On motion for reconsideration, petitioner, thru the PAO, contended that Section 8 of Rule 124 admits of an exception, that is, where the appellant is represented by counsel *de oficio*.

The motion for reconsideration was denied in the Resolution dated 6 February 2007. The Court of Appeals ruled that petitioner could not take refuge under the exception in Section 8 of Rule 124 "lest it could set as a precedent for other counsels *de oficio* to take their own sweet time in filing the appellant's brief." The Court of Appeals noted that Atty. Carmelito Sumile (Atty. Sumile), petitioner's counsel *de oficio*, received the resolution directing him to file the required appellant's brief but no brief was filed nor a motion for its extension. No explanation was offered by petitioner or counsel for their failure to comply with the resolution. Atty. Sumile is a lawyer from the PAO in Calamba, Misamis Occidental.

The present petition raises the lone issue of whether or not the Court of Appeals failed to consider the exception in dismissing the appeal.

We take note of the Resolution dated 22 September 2006 where the Court of Appeals declared that petitioner's "appeal is deemed ABANDONED and accordingly DISMISSED for failure to file the required Appellant's Brief." It cited "Section 1(e), Rule 50 of the Rules of Court" as its basis for dismissing the appeal. This is erroneous. Rule 50 is under the Rules of Civil Procedure. Since the instant case is a criminal case, the appropriate rule is found in the Revised Rules of Criminal Procedure.

As ground for the petition, petitioner invokes Section 8 of Rule 124 of the Revised Rules of Criminal Procedure and contends that he was represented by counsel *de oficio* and that he was not furnished a prior notice to show cause why his appeal should not be dismissed. The Court of Appeals outrightly dismissed petitioner's appeal without looking into the merits of the case

and disregarded the exception under Section 8 of Rule 124. Petitioner points out that a mere reading of the decision of the RTC-Branch 36 will reveal several glaring errors which necessitate a review of the case. These errors include the conviction of petitioner for violation of Section 5 (sale of dangerous drugs) despite the fact that the information merely alleged possession of dangerous drugs; the sentence of life imprisonment despite the absence in the Information of any allegation on the weight or volume of the alleged drugs; the questionable findings of a buy-bust operation; and obvious irregularity in the chain of custody of the confiscated items.

Section 8 of Rule 124 of the Revised Rules of Criminal Procedure provides:

SEC. 8. *Dismissal of appeal for abandonment or failure to prosecute.* — The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, **except where the appellant is represented by a counsel *de oficio*.**

The Court of Appeals may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal. (emphasis supplied)

The provision is clear and unambiguous. Section 8 provides for an exception in the dismissal of appeal for failure to file the appellant's brief, that is, where the appellant is represented by a counsel *de oficio*.

The respondent, thru the Office of the Solicitor General, opposes the petition and argues that petitioner is not represented by a counsel *de oficio* as the latter was not duly appointed by the court to represent petitioner. However, it should be noted that in the Resolution dated 22 September 2006 dismissing the appeal and the Resolution dated 6 February 2007 denying petitioner's motion for reconsideration, the Court of Appeals itself referred to Atty. Sumile as petitioner's counsel *de oficio* and ruled that the failure of petitioner's "counsel *de oficio* to comply with Our resolution [is] a gross disregard to the Rules."

Further, petitioner even filed a motion to litigate as pauper[2] in this Court as he has no work and no real property where he could derive any income. Obviously, he could not afford the services of a counsel *de parte* for which reason he was previously represented by a PAO lawyer even in the trial court.

This notwithstanding, also under Section 8, a criminal case may be dismissed by the Court of Appeals *motu proprio* and with notice to the appellant if the latter fails to file his brief within the prescribed time. The phrase "with notice to the appellant" means that a notice must first be furnished the appellant to show cause why his appeal should not be dismissed.[3] No notice was given to petitioner to this effect. Besides, petitioner, in his motion for reconsideration, reiterated to the court that it cannot "order the dismissal of the appeal without prior notice to the appellant."[4]

As the Court held in *De Guzman v. People*:[5]

> A healthy respect for petitioner's rights should caution courts against *motu proprio* dismissals of appeals, especially in criminal cases where the liberty of the accused is at stake. The rules allowing *motu proprio* dismissals of appeals merely confer a power and do not impose a duty; and the same are not mandatory but merely directory which thus require a great deal of circumspection, considering all the attendant circumstances. Courts are not exactly impotent to enforce their orders, including those requiring the filing of appellant's brief. This is precisely the *raison d'etre* for the court's inherent contempt power. *Motu proprio* dismissals of appeals are thus not always called for. Although the right to appeal is a statutory, not a natural, right, it is an essential part of the judicial system and courts should proceed with caution so as not to deprive a party of this prerogative, but instead afford every party-litigant the amplest opportunity for the proper and

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[2] *Rollo*, pp. 2-3.

[3] *Foralan v. CA*, 311 Phil. 182 (1995).

[4] *Rollo*, p. 51.

[5] G.R. No. 167492, 22 March 2007, 518 SCRA 767, 772-773.

just disposition of his cause, freed from the constraints of technicalities. More so must this be in criminal cases where, as here, the appellant is an indigent who could ill-afford the services of a counsel *de parte.*

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Resolutions dated 22 September 2006 and 6 February 2007 of the Court of Appeals. We order the Court of Appeals to *REINSTATE* petitioner's appeal in CA-G.R. CR-HC No. 00071 entitled "*People of the Philippines v. Niño Jesson Masas y Milan*." Petitioner shall file his appellant's brief in the Court of Appeals within a non-extendible period of fifteen days from receipt of this Resolution.

SO ORDERED.

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

THIRD DIVISION

[A.C. No. 5510. December 20, 2007]

SAJID D. AGAGON, *complainant, vs.* **ATTY. ARTEMIO F. BUSTAMANTE,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; FAILURE TO INCLUDE COPY OF THE DEED OF SALE IN NOTARIAL REPORT AND FAILURE TO REQUIRE PARTIES THEREIN TO EXHIBIT THEIR COMMUNITY TAX CERTIFICATES ARE VIOLATIONS OF THE CODE OF PROFESSIONAL

RESPONSIBILITY AND THE NOTIARIAL LAW.— There is no doubt that respondent violated the Code of Professional Responsibility and the Notarial Law when he failed to include a copy of the Deed of Sale in his Notarial Report and for failing to require the parties to the deed to exhibit their respective community tax certificates. Doubts were cast as to the existence and due execution of the subject deed, thus undermining the integrity and sanctity of the notarization process and diminishing public confidence in notarial documents since the subject deed was introduced as an annex to the Affidavit of Title/Right of Possession of Third Party Claimant relative to NLRC Case No. RAB-CAR-12-0672-00. Canon 1 of the Code of Professional Responsibility requires every lawyer to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes. Moreover, the Notarial Law and the 2004 Rules on Notarial Practice require a duly commissioned notary public to make the proper entries in his Notarial Register and to refrain from committing any dereliction or act which constitutes good cause for the revocation of commission or imposition of administrative sanction. Unfortunately, respondent failed in both respects.

2. **ID.; ID.; IMPORTANCE OF NOTARIZATION OF DOCUMENTS, EMPHASIZED.—** A notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgment and affirmation of a document or instrument. In the performance of such notarial acts, the notary public must be mindful of the significance of the notarial seal as affixed on a document. The notarial seal converts the document from private to public, after which it may be presented as evidence without need for proof of its genuineness and due execution. Thus, notarization should not be treated as an empty, meaningless, or routinary act. As early as *Panganiban v. Borromeo*, we held that notaries public must inform themselves of the facts which they intend to certify and to take no part in illegal transactions. They must guard against any illegal or immoral arrangements. It cannot be overemphasized that notarization of documents is not an empty, meaningless or routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. It is through the act of notarization that a private document is converted into a public one, making it

admissible in evidence without need of preliminary proof of authenticity and due execution. Indeed, a notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe utmost care in complying with the elementary formalities in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

Complainant Sajid D. Agagon filed the instant administrative case against respondent Atty. Artemio Bustamante charging the latter with malpractice and violation of the lawyer's oath. Complainant alleged that respondent acted as Notary Public to the "Deed of Sale" allegedly executed by and between Dominador Panglao and Alessandro Panglao. However, upon verification with the Office of the Clerk of Court of the Regional Trial Court of Baguio City, it was discovered that the alleged Deed of Sale was not included in the notarial report. Instead, Doc. No. 375 appearing on Page 76 of Book XXXIII, Series of 2000 of respondent Atty. Bustamante referred to an Affidavit executed by a certain Teofilo M. Malapit. Moreover, the Community Tax Certificates used by the parties in the Deed of Sale were fictitious, as certified to by the City Treasurer's Office.

In his Comment, respondent admitted that he was the one who prepared the Deed of Sale. However, he claimed that the parties merely dictated to him their Community Tax Certificate Numbers; that he inadvertently failed to include the Deed of Sale in the report submitted to the Office of the Clerk of Court; that it was pure inadvertence that the document that was reported and included in the report to the Office of the Clerk of Court and which bore the document number assigned to the Deed of Sale was an Affidavit executed by Teofilo Malapit.

The case was referred to the Integrated Bar of the Philippines for investigation, report and recommendation.

In the Report and Recommendation of Investigating Commissioner Dennis A.B. Funa, the following findings were made:

On May 11, 2001, Jofie S. Agagon, wife of herein Complainant, won in a labor case docketed as NLRC Case No. RAB-CAR-12-0672 against Dominador Panglao. Dominador Panglao owned and operated a meatshop. The decision in said case became final and executory. A writ of execution was issued on July 13, 2001. In the meantime, the meatshop business owned by Dominador Panglao was sold and transferred to Alessandro Panglao. The meatshop was now called Sandro's Meatshop. Upon service of the writ, Alessandro Panglao, owner of Sandro's Meatshop, verbally requested from the sheriff to temporarily withhold the service of the writ with the promise that "they will satisfy the judgment in cash". Subsequently, Alessandro Panglao offered ₱10,000 as "settlement" which was promptly rejected by Jofie Agagon for being "way below the amount duly awarded by the NLRC". Hence, on August 20, 2001, a levy was made on certain properties upon the issuance of an alias writ of execution.

Sometime in the last week of August, Alessandro Panglao, through his lawyer, herein Respondent, filed before the NLRC in NLRC Case No. RAB-CAR-12-0672 an "*Affidavit of Title/Right of Possession of Third Party Claimant*" claiming that the levied properties were sold to him by Dominador Panglao and that the same are exempt from levy. Alessandro Panglao desired to establish himself as a third party to the case since the respondent in the labor case was Dominador Panglao, as owner of his own meatshop before it was sold. **Attached to this Affidavit is a supposed Deed of Sale dated October 6, 2000 executed by Dominador Panglao and Alessandro Panglao and notarized by herein Respondent**. The Deed of Sale has the notarial series of: Doc. No. 375, Page No. 76, Book No. XXXIII, Series of 2000.

In a bid to verify the authenticity of the Deed of Sale, Complainant verified with the Office of the Clerk of Court, RTC, Baguio City on September 4, 2001 that said Deed of Sale does not appear in Respondent's Notarial Reports and, in fact, **a different document** corresponds with the aforesaid notarial entries. Complainant submits a Certificate to this effect.

Moreover, on September 13, 2001, a check with the Baguio City Treasurer's Office showed that the supposed Community Tax

Certificate (CTC) numbers of the two affiants in the Deed of Sale were, in fact, never issued to either of the two affiants. CTC No. 00856509 was not at all issued by Baguio City although it is what is stated in the Deed of Sale; while CTC No. 01276192 was issued to a certain Edilberto Bautista not to Alessandro Panglao.

xxx xxx xxx[1]

Based on the foregoing, the Investigating Commissioner recommended that:

Respondent will have to be held accountable for GROSS NEGLIGENCE as a Notary Public. While there is no basis to say that falsification was committed, Respondent's negligence constitutes in the a) notarization of a document where the affiants have no valid and existing CTCs; and b) failure to include the Deed of Sale in his Notarial Reports.

That such facts did occur are beyond dispute. The only question that remains is whether Respondent's excuses can be accepted as satisfactory that would thus classify his acts as "excusable negligence." There is nothing on record that can excuse Respondent or that can justify his lapses. That the Respondent did not ask to see the CTC of the affiants and that the affiants simply dictated to him their CTC numbers out of memory is an unacceptable excuse and explanation. This is gross negligence. In fact, it is funny. How many people in this country can recite their CTC numbers from memory? Besides, how many people would spend their time memorizing their CTC number? And yet, Respondent accepted this suspicious behavior without question. This is not to say that no person in this world would want to memorize their CTC number. Only that such an exceptional circumstance should have raised Respondent's suspicions. As it turned out, the CTC numbers were merely plucked out of thin air by the affiants. In other words, Respondent was fooled by his own clients.

Respondent's failure to include the Deed of Sale in his notarial report is another act of gross negligence. This negligence is highlighted by the fact that said Deed of Sale was subsequently introduced into a quasi-judicial proceeding when it was attached to Alessandro Panglao's "*Affidavit of Title/Right of Possession of Third Party Claimant*". Its non-inclusion in the notarial report is inexcusable

[1] Citations omitted.

and for which only the lawyer himself, and not his secretary, should be held to account.

The combination of these circumstances casts justified doubts upon the due execution and notarization of the Deed of Sale.

Accordingly, Respondent should be held guilty of **GROSS NEGLIGENCE** as a Notary Public.

For the foregoing infractions, the Investigating Commissioner recommended that respondent be reprimanded for violating the Code of Professional Responsibility and his notarial commission suspended for one (1) year.

The Board of Governors of the IBP adopted the findings of the Investigating Commissioner but modified the recommended penalty to suspension from the practice of law for one (1) year and revocation and suspension of respondent's notarial commission for two (2) years.

We adopt the findings of the IBP. However, we find the penalty of suspension from the practice of law for six (6) months and revocation and suspension of respondent's notarial commission for one (1) year more appropriate under the circumstances.

There is no doubt that respondent violated the Code of Professional Responsibility and the Notarial Law when he failed to include a copy of the Deed of Sale in his Notarial Report and for failing to require the parties to the deed to exhibit their respective community tax certificates. Doubts were cast as to the existence and due execution of the subject deed, thus undermining the integrity and sanctity of the notarization process and diminishing public confidence in notarial documents[2] since the subject deed was introduced as an annex to the Affidavit of Title/Right of Possession of Third Party Claimant relative to NLRC Case No. RAB-CAR-12-0672-00.

A notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgment and affirmation of a document or instrument. In the performance

[2] See *Heirs of the Late Spouses Lucas v. Atty. Beradio*, A.C. No. 6270, January 22, 2007.

of such notarial acts, the notary public must be mindful of the significance of the notarial seal as affixed on a document. The notarial seal converts the document from private to public, after which it may be presented as evidence without need for proof of its genuineness and due execution. Thus, notarization should not be treated as an empty, meaningless, or routinary act. As early as *Panganiban v. Borromeo*, we held that notaries public must inform themselves of the facts which they intend to certify and to take no part in illegal transactions. They must guard against any illegal or immoral arrangements.[3]

It cannot be overemphasized that notarization of documents is not an empty, meaningless or routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. It is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without need of preliminary proof of authenticity and due execution. Indeed, a notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe utmost care in complying with the elementary formalities in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.[4]

Canon 1 of the Code of Professional Responsibility requires every lawyer to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes. Moreover, the Notarial Law and the 2004 Rules on Notarial Practice [5] require a duly commissioned notary public to make the proper entries in his Notarial Register and to refrain from committing any dereliction or act which constitutes good cause for the revocation of commission or imposition of administrative sanction. Unfortunately, respondent failed in both respects.

WHEREFORE, respondent Atty. Artemio Bustamante is *GUILTY* of violating the Notarial Law, the 2004 Rules on Notarial

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[3] *Id.*

[4] *Pantoja-Mumar v. Atty. Flores*, A.C. No. 5426, April 4, 2007.

[5] A.M. No. 02-8-13-SC.

Practice and the Code of Professional Responsibility. His notarial commission, if still existing, is hereby *REVOKED*, and he is *DISQUALIFIED* from reappointment as Notary Public for a period of one (1) year. He is, likewise, *SUSPENDED* from the practice of law for six (6) months effective immediately. He is *DIRECTED* to report the date of his receipt of this Decision to enable this Court to determine when his suspension shall take effect.

Let copies of this decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as member of the Bar. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

EN BANC

[G.R. No. 164641. December 20, 2007]

BANK OF THE PHILIPPINE ISLANDS, as successor of Far East Bank and Trust Company, *petitioner, vs.* **SECURITIES AND EXCHANGE COMMISSION, REHABILITATION RECEIVER, ASB HOLDINGS, INC., ASB DEVELOPMENT CORPORATION, ASB LAND, INC., ASB FINANCE, INC., MAKATI HOPE CHRISTIAN SCHOOL, INC., BEL-AIR HOLDINGS CORP., WINCHESTER TRADING, INC., VYL DEVELOPMENT CORP., GERRICK HOLDINGS CORP., NEIGHBORHOOD HOLDINGS, INC., and THE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION LAWS; P.D. NO. 902-A REHABILITATION PROCEEDINGS; ELUCIDATED.—** Rehabilitation proceedings in our jurisdiction, much like the bankruptcy laws of the United States, have equitable and rehabilitative purposes. On the one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs. The rationale of P.D. No. 902-A, as amended, is to "effect a feasible and viable rehabilitation," by preserving a foundering business as going concern, because the assets of a business are often more valuable when so maintained than they would be when liquidated.

2. **ID.; ID.; ID.; REHABILITATION PLAN; APPROVAL OF THE SECURITIES AND EXCHANGE COMMISSION (SEC) THEREON AND THE *DACION EN PAGO* PROPOSED, NOT AN IMPAIRMENT OF RIGHT TO CONTRACT; CASE AT BAR.—** The Court reiterates that the SEC's approval of the Rehabilitation Plan did not impair BPI's right to contract. As correctly contended by private respondents, the non-impairment clause is a limit on the exercise of legislative power and not of judicial or quasi-judicial power. The SEC, through the hearing panel that heard the petition for approval of the Rehabilitation Plan, was acting as a quasi-judicial body and thus, its order approving the plan cannot constitute an impairment of the right and the freedom to contract. Besides, the mere fact that the Rehabilitation Plan proposes a *dacion en pago* approach does not render it defective on the ground of impairment of the right to contract. *Dacion en pago* is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. The undertaking really partakes in a sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, the payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely; consent, object certain, and cause or consideration must be present. Being a form of contract, the *dacion en pago* agreement cannot be perfected without the

consent of the parties involved. Thus, if BPI does not find the *dacion en pago* modality acceptable, the ASB Group can propose to settle its debts at such amount as is equivalent to the selling price of the mortgaged properties. If BPI still refuses this option, it can assert its rights in the liquidation and distribution of the ASB Group's assets. It will not lose its status as a secured creditor, retaining its preference over unsecured creditors when the assets of the corporation are finally liquidated.

APPEARANCES OF COUNSEL

Benedicto Versoza Gealogo and Burkley Law Offices for petitioner.

Juname C. De Leon for F.B. Cruz.

The Solicitor General for public respondent.

Siazon De Jesus & Salvador for private respondents.

Javier Jose Mendoza & Associates for ASB Group of Companies.

D E C I S I O N

TINGA, *J.*:

For resolution is a petition seeking to nullify the 30 January 2004 Decision[1] of the Court of Appeals in C.A. G.R. SP No. 77309[2] upholding the Securities and Exchange Commission's (SEC) approval of the ASB Group's rehabilitation in SEC *En Banc* Case No. EB-726.[3]

The antecedent facts are as follows:

Bank of the Philippine Islands (BPI), through its predecessor-in- interest, Far East Bank and Trust Company (FEBTC), extended

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[1] *Rollo*, pp. 19-29.

[2] *Bank of the Philippine Islands, as successor-in-interest of Far East Bank and Trust Company v. Securities and Exchange Commission, et al.*

[3] *Bank of the Philippine Islands (Successor-in-interest of Far East Bank and Trust Company) v. Honorable Hearing Panel, et al.*

credit accommodations to the ASB Group of Companies (ASB Group)[4] with an outstanding aggregate principal amount of ₱86,800,000.00, secured by a real estate mortgage over two (2) properties located in Greenhills, San Juan.[5] On 2 May 2000, the ASB Group filed a petition for rehabilitation and suspension of payments before the SEC, docketed as SEC Case No. 05-00-6609.[6] Thereafter, on 18 August 2000, the interim receiver submitted its Proposed Rehabilitation Plan (Rehabilitation Plan)[7] for the ASB Group. The Rehabilitation Plan provides, among others, a *dacion en pago* by the ASB Group to BPI of one of the properties mortgaged to the latter at the ASB Group as selling value of ₱84,000,000.00 against the total amount of the ASB Group's exposure to the bank. In turn, ASB Group would require the release of the other property mortgaged to BPI, to be thereafter placed in the asset pool. Specifically, the pertinent portion of the plan reads:

> "x x x ASB plans to invoke a *dacion en pago* for its #35 Eisenhower property at ASB's selling value of ₱84 million against the total amount of the ASB's exposure to the bank. In return, ASB requests the release of the #27 Annapolis property which will be placed in the ASB creditors' asset pool."[8]

The *dacion* would constitute full payment of the entire obligation due to BPI because the balance was then to be considered waived, as per the Rehabilitation Plan.[9]

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[4] ASB Realty Corporation, ASB Development Corporation, ASB Land, Inc. and ASB Holdings, Inc. have been renamed St. Francis Square Realty Corporation, St. Francis Square Development Corporation, St. Francis Square Land, Inc., and St. Francis Square Holdings, Inc., respectively. Amended Articles of Incorporation for the said companies were approved by the SEC on 29 March 2007, 02 April 2007, 28 February 2007 and 12 April 2007, respectively; *Rollo,* pp. 201-206.

[5] *Id*. at 6.

[6] *Id*. at 5.

[7] *Id*. at 48-126.

[8] Rehabilitation Plan, *id*. at 98.

[9] *Id*.

BPI opposed the Rehabilitation Plan and moved for the dismissal of the ASB Group's petition for rehabilitation.[10] However, on 26 April 2001, the SEC hearing panel issued an order[11] approving ASB Group's proposed rehabilitation plan and appointed Mr. Fortunato Cruz as rehabilitation receiver.

BPI filed a petition for review[12] of the 26 April 2001 order before the SEC *en banc*, imputing grave abuse of discretion on the part of the hearing panel. It argued that the Order constituted an arbitrary violation of BPI's freedom and right to contract since the Rehabilitation Plan compelled BPI to enter into a *dacion en pago* agreement with the ASB Group.[13] The SEC *en banc* denied the petition.[14]

BPI then filed a petition for review[15] before the Court of Appeals (CA), claiming that the SEC *en banc* erred in affirming the approval of the Rehabilitation Plan despite being violative of BPI's contractual rights. BPI contended that the terms of the Rehabilitation Plan would impair its freedom to contract, and alleged that the *dacion en pago* was a mode of payment beneficial to the ASB Group only.[16]

The CA dismissed the petition for lack of merit. It held that considering that the *dacion en pago* transaction could proceed only proceed upon the mutual agreement of the parties, BPI's assertion that it is being coerced could not be sustained. At no point would the Rehabilitation Plan compel secured creditors such as BPI to agree to a settlement agreement against their will, the CA added. Moreover, BPI could refuse to accept any arrangement contemplated by the receiver and just assert its preferred right in the liquidation and distribution of the assets

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[10] *Id.* at 172-175.

[11] *Id.* at 128-132.

[12] SEC Case No. EB 726; *id.* at 133-142.

[13] *Id.* at 139.

[14] *Id.* at 44-47.

[15] *Id.* at 31-39.

[16] *Id.* at 34-35.

of the ASB Group.[17] BPI filed a motion for reconsideration, but the same was denied for lack of merit.[18]

Before this Court, BPI asserts that the CA erred in ruling that the approval by the SEC of the ASB Group's Rehabilitation Plan did not violate BPI's rights as a creditor.[19] It maintains its position that the *dacion en pago* is a form of coercion or compulsion, and violative of the rights of secured creditors.[20] It asserts that in order for the Rehabilitation Plan to be feasible and legally tenable, it must reflect the express and free consent of the parties; *i.e,* that the conditions should not be imposed but agreed upon by the parties. By approving the Rehabilitation Plan, the SEC hearing panel totally disregarded the efficacy of the mortgage agreements between the parties, and sanctioned a mode of payment which is solely for the unilateral benefit of the ASB Group.[21] This is so because in the event that the secured creditors such as itself would not agree to *dacion en pago*, the ASB Group's obligations would be settled at the selling prices of the mortgaged properties to be dictated by the ASB Group,[22] rendering BPI's status as a preferred creditor illusory.[23]

BPI further claims that despite its rejection of the Rehabilitation Plan, no effort was made to resolve the impasse on the valuation of the mortgaged properties. With no repayment scheme for secured creditors not accepting the Rehabilitation Plan, the same has become discriminatory.[24] Moreover, any interference on the rights of the secured creditors must not be so indefinite and open-ended as to effectively deprive secured creditors of their right to their security,[25] BPI adds.

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[17] *Id*. at 23-28.

[18] Resolution dated 13 July 2004; *id*. at 30.

[19] *Id*. at 8.

[20] *Id*. at 11.

[21] Petitioner's Memorandum; pp. 268-276; 271.

[22] *Rollo*, pp. 9, 272.

[23] *Id*. at 273.

[24] *Id*. at 274-275.

[25] *Id*.

In its Comment,[26] the SEC, through the Office of the Solicitor General, claims that the terms and conditions of the Rehabilitation Plan do not violate BPI's right as a creditor because the *dacion en pago* transaction contemplated in the plan can only proceed upon mutual agreement of the parties. Moreover, being a secured creditor, BPI enjoys preference over unsecured creditors, thus there is no reason for BPI to fear the non-payment of the loan, or the inability to assert its preferred right over the mortgaged property.[27]

On the other hand, private respondents maintain that the non-impairment clause of the Constitution relied on by BPI is a limit on the exercise of legislative power and not of judicial or quasi-judicial power. The SEC's approval of the Rehabilitation Plan was an exercise of adjudicatory power by an administrative agency and thus the non-impairment clause does not apply.[28] In addition, they stress that there is no coercion or compulsion that would be employed under the Rehabilitation Plan. If *dacion en pago* fails to materialize, the Rehabilitation Plan contemplates to settle the obligations to secured creditors with mortgaged properties at selling prices.[29] Finally, they claim that BPI failed to submit any valuation of the mortgage properties to substantiate its objection to the Rehabilitation Plan, making its objection thereto totally unreasonable.[30]

The petition must be denied.

The very same issues confronted the Court in the case of *Metropolitan Bank & Trust Company v. ASB Holdings, et al.*[31] In this case, Metropolitan Bank & Trust Company (MBTC) refused to enter into a *dacion en pago* arrangement contained

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[26] *Id.* at 217-227.

[27] *Citing Rizal Commercial Banking Corporation v. IAC*, 378 Phil. 10 (1999).

[28] *Rollo,* p. 200, *citing Lim v. Secretary of Agriculture*, No. L-26990, 31 August 1970, 34 SCRA 751.

[29] *Id.* at 207.

[30] *Id*.

[31] G.R. No. 166197, 27 February 2007.

in ASB's proposed Rehabilitation Plan.[32] MBTC argued, among others, that the forced transfer of properties and the diminution of its right to enforce its lien on the mortgaged properties violate its constitutional right against impairment of contracts and right to due process. The Court ruled that there is no impairment of contracts because the approval of the Rehabilitation Plan and the appointment of a rehabilitation receiver merely suspends the action for claims against the ASB Group, and MBTC may still enforce its preference when the assets of the ASB Group will be liquidated. But if the rehabilitation is found to be no longer feasible, then the claims against the distressed corporation would have to be settled eventually and the secured creditors shall enjoy preference over the unsecured ones. Moreover, the Court stated that there is no compulsion to enter into a *dacion en pago* agreement, nor to waive the interests, penalties and related charges, since these are merely proposals to creditors such as MBTC, such that in the event the secured creditors refuse the *dacion*, the Rehabilitation Plan proposes to settle the obligations to secured creditors with mortgaged properties at selling prices.

Rehabilitation proceedings in our jurisdiction, much like the bankruptcy laws of the United States, have equitable and rehabilitative purposes. On the one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs.[33] The rationale of P.D. No. 902-A, as amended, is to "effect a feasible and viable rehabilitation,"[34] by preserving a foundering business as going concern, because the assets of a

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[32] The very same Rehabilitation Plan that is the subject of the instant petition. MBTC is also a creditor of ASB Group. In the Rehabilitation Plan, ASB Group proposed payment by *dacion* on some of the properties mortgaged to MBTC.

[33] *Westmoreland Human Opportunities, Inc, v. Walsh*, 246 F. 3d 233, C.A.3 (Pa)., 2001. see also In re: Epstein (39 B.R. 938, Bkrtcy. D.N.M. 1984).

[34] *Supra* note 27 at 25.

business are often more valuable when so maintained than they would be when liquidated.[35]

The Court reiterates that the SEC's approval of the Rehabilitation Plan did not impair BPI's right to contract. As correctly contended by private respondents, the non-impairment clause is a limit on the exercise of legislative power and not of judicial or quasi-judicial power.[36] The SEC, through the hearing panel that heard the petition for approval of the Rehabilitation Plan, was acting as a quasi-judicial body and thus, its order approving the plan cannot constitute an impairment of the right and the freedom to contract.

Besides, the mere fact that the Rehabilitation Plan proposes a *dacion en pago* approach does not render it defective on the ground of impairment of the right to contract. *Dacion en pago* is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt.[37] The undertaking really partakes in a sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, the payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely; consent, object certain, and cause or consideration must be present.[38] Being a form of contract, the *dacion en pago* agreement cannot be perfected without the consent of the parties involved.

We find no element of compulsion in the *dacion en pago* provision of the Rehabilitation Plan. It was not the only solution presented by the ASB to pay its creditors. In fact, it was stated in the Rehabilitation Plan that:

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[35] In re: Edward R. Fitzsimmons, 725 F.2d 1208, 76 A.L.R. Fed. 845.

[36] Bernas, THE 1987 CONST. OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 1996 Edition, p. 397 citing *Lim v. Secreatry of Agriculture*, 34 SCRA 751, 764 (1970).

[37] *Uy v. Sandiganbayan, et al.*, G.R. No. 111544, 06 July 2004, 433 SCRA 424, 438.

[38] *Philippine Lawin Bus, et al. v. Court of Appeals,* 425 Phil. 146, 155 (2002).

x x x. If the *dacion en pago* herein contemplated does not materialize for failure of the secured creditors to agree thereto, the rehabilitation plan contemplates to settle the obligations (without interest, penalties and other related charges accruing after the date of the initial suspension order) to secured creditors with mortgaged properties at ASB selling prices for the general interest of the employees, creditors, unit buyers, government, general public and the economy.[39]

Thus, if BPI does not find the *dacion en pago* modality acceptable, the ASB Group can propose to settle its debts at such amount as is equivalent to the selling price of the mortgaged properties. If BPI still refuses this option, it can assert its rights in the liquidation and distribution of the ASB Group's assets. It will not lose its status as a secured creditor, retaining its preference over unsecured creditors when the assets of the corporation are finally liquidated.[40]

WHEREFORE, in view of the foregoing, the petition is *DENIED* and the Decision dated 30 January 2004 of the Court of Appeals in G.R. No. 16461 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Puno, C.J.(Chairperson), Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Azcuna, Velasco, Jr., Nachura, Reyes, and *Leonardo-de Castro, JJ.,* concur.

Carpio, J., on leave.

Chico-Nazario, J., certify that *J. Nazario* concurred with the decision.

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[39] Rehabilitation Plan, pp. 17-18; *Rollo*, pp. 70-71.

[40] *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, *supra* note 27 at 26.

SECOND DIVISION

[G.R. No. 139285. December 21, 2007]

ROMAN CATHOLIC ARCHBISHOP OF CACERES, *petitioner, vs.* **SECRETARY OF AGRARIAN REFORM and DAR REGIONAL DIRECTOR (Region V),** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM; COVERAGE; THE LAWS SIMPLY SPEAK OF THE "LANDOWNER" WITHOUT QUALIFICATION AS TO WHAT TITLE THE LAND IS HELD OR WHAT RIGHTS TO THE LAND THE LANDOWNER MAY EXERCISE; NO DISTINCTION WHETHER THE LANDOWNER HOLDS "NAKED TITLE" ONLY OR CAN EXERCISE ALL THE RIGHTS OF OWNERSHIP.— Archbishop's arguments, while novel, must fail in the face of the law and the dictates of the 1987 Constitution. The laws simply speak of the "landowner" without qualification as to under what title the land is held or what rights to the land the landowner may exercise. There is no distinction made whether the landowner holds "naked title" only or can exercise all the rights of ownership. Archbishop would have us read deeper into the law, to create exceptions that are not stated in PD 27 and RA 6657, and to do so would be to frustrate the revolutionary intent of the law, which is the redistribution of agricultural land for the benefit of landless farmers and farmworkers.

2. ID.; ID.; ID.; AS THE REGISTERED OWNER OF THE LANDS IN QUESTION, THE ARCHBISHOP OF CACERES, FOR PURPOSES OF THE LAW IS THE LANDOWNER, WITHOUT THE NECESSITY OF GOING BEYOND THE REGISTERED TITLES.— Archbishop was found to be the registered owner of the lands in question, and does not contest that fact. For the purposes of the law, this makes him the landowner, without the necessity of going beyond the registered titles. He cannot demand a deeper examination of the registered titles and demand further that the intent of the original owners

be ascertained and followed. To adopt his reasoning would create means of sidestepping the law, wherein the mere act of donation places lands beyond the reach of agrarian reform.

3. ID.; ID.; ID.; ID.; RETENTION LIMITS; THE LAW IS CLEAR AND SIMPLE THAT THERE SHALL ONLY BE ONE RIGHT OF RETENTION PER LANDOWNER; NO BASIS FOR THE ARGUMENT THAT IT IS THE "BENEFICIAL OWNERSHIP" THAT SHOULD BE USED TO DETERMINE WHICH PARTY WOULD HAVE THE RIGHT OF RETENTION.— There can be no claim of more than one right of retention per landowner. Neither PD 27 nor RA 6657 has a provision for a landowner to exercise more than one right of retention. The law is simple and clear as to the retention limits per landowner. PD 27 states, "In all cases, the landowner may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it"; while RA 6657 states: SEC. 6. *Retention Limits.*—Except as otherwise provided in this Act, no person may own or retain, directly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall the retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: *Provided,* That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; *Provided, further,* That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead. Nothing in either law supports Archbishop's claim to more than one right of retention on behalf of each *cestui que trust*. The provisions of PD 27 and RA 6657 are plain and require no further interpretation––there is only one right of retention per landowner, and no multiple rights of retention can be held by a single party. Furthermore, the scheme proposed by Archbishop would create as many rights of retention as there

are beneficiaries, which could in effect protect the entire available land area from agrarian reform. Under Archbishop's reasoning, there is not even a definite landowner to claim separate rights of retention, and no specific number of rights of retention to be claimed by the landowners. There is simply no basis in the law or jurisprudence for his argument that it is the "beneficial ownership" that should be used to determine which party would have the right of retention.

4. ID.; ID.; ID.; ID.; SALE UNDER THE AGRARIAN REFORM IS AKIN TO A FORCED SALE WHERE THE OBLIGATION TO TRANSFER ARISES BY COMPULSION OF LAW.— Archbishop makes much of the conditional donation, that he does not have the power to sell, exchange, lease, transfer, encumber or mortgage the transferred properties. He claims that these conditions do not make him the landowner as contemplated by the law. This matter has already been answered in *Hospicio de San Jose de Barili, Cebu City* (*Hospicio*) *v. Department of Agrarian Reform.* In that case, wherein Act No. 3239 prohibited the sale under any consideration of lands donated to the Hospicio, a charitable organization, the Court found that the lands of the Hospicio were not exempt from the coverage of agrarian reform. In characterizing the sale of land under agrarian reform, we stated: Generally, sale arises out of contractual obligation. Thus, it must meet the first essential requisite of every contract that is the presence of consent. Consent implies an act of volition in entering into the agreement. The absence or vitiation of consent renders the sale either void or voidable. In this case, the deprivation of the Hospicio's property did not arise as a consequence of the Hospicio's consent to the transfer. There was no meeting of minds between the Hospicio, on one hand, and the DAR or the tenants, on the other, on the properties and the cause which are to constitute the contract that is to serve ultimately as the basis for the transfer of ownership of the subject lands. Instead, the obligation to transfer arises by compulsion of law, particularly P.D. No. 27. We discussed further: The twin process of expropriation under agrarian reform and the payment of just compensation is akin to a forced sale, which has been aptly described in common law jurisdictions as "sale made under the process of the court and in the mode prescribed by law," and "which is not the voluntary act of the owner, such as to

satisfy a debt, whether of a mortgage, judgment, tax lien, etc." The term has not been precisely defined in this jurisdiction, but reference to the phrase itself is made in Articles 223, 242, 237 and 243 of the Civil Code, which uniformly exempt the family home "from execution, forced sale, or attachment." Yet a forced sale is clearly different from the sales described under Book V of the Civil Code which are conventional sales, as it does not arise from the consensual agreement of the vendor and vendee, but by compulsion of law. Still, since law is recognized as one of the sources of obligation, there can be no dispute on the efficacy of a forced sale, so long as it is authorized by law.

5. **ID.; ID.; ID.; ID.; THE ARCHBISHOP OF CACERES CANNOT CLAIM, UNDER P.D. 27 AND RA 6657, THAT THE ALLEGED CONDITIONS OF THE DONATIONS WOULD HAVE PRIMACY OVER THE APPLICATION OF THE LAW; THE APPLICATION OF THE LAW CANNOT AND SHOULD NOT BE DEFEATED BY THE CONDITIONS LAID DOWN BY THE DONORS OF THE LAND.—** Archbishop's claim that he does not have *jus disponendi* over the subject properties is unavailing. The very nature of the compulsory sale under PD 27 and RA 6657 defeats such a claim. Other less scrupulous parties may even attempt creating trusts to prevent their lands from coming under agrarian reform, and say that the trustee has no power to dispose of the properties. The disposition under PD 27 and RA 6657 is of a different character than what is contemplated by *jus disponendi*, wherein under these laws, voluntariness is not an issue, and the disposition is necessary for the laws to be effective. Under PD 27 and RA 6657, Archbishop cannot claim that the alleged conditions of the donations would have primacy over the application of the law. This forced sale is not even a violation of the conditions of the donation, since it is by application of law and beyond Archbishop's control. The application of the law cannot and should not be defeated by the conditions laid down by the donors of the land. If such were allowed, it would be a simple matter for other landowners to place their lands without limit under the protection of religious organizations or create trusts by the mere act of donation, rendering agrarian reform but a pipe dream.

6. ID.; ID.; ID.; ID.; THE ARCHBISHOP'S CONTENTION THAT HE IS MERELY AN ADMINISTRATOR OF THE DONATED PROPERTIES WILL NOT SERVE TO REMOVE THE LANDS FROM THE COVERAGE OF THE AGRARIAN REFORM; THE LANDS IN ARCHBISHOP'S NAME ARE AGRICULTURAL LANDS THAT FALL WITHIN THE SCOPE OF THE LAW AND DO NOT FALL UNDER THE EXEMPTIONS.— Archbishop's contention that he is merely an administrator of the donated properties will not serve to remove these lands from the coverage of agrarian reform. Under PD 27, the coverage is lands devoted to rice and corn. Section 4 of RA 6657 states, "The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture." The lands in Archbishop's name are agricultural lands that fall within the scope of the law, and do not fall under the exemptions. Archbishop would claim exemption from the coverage of agrarian reform by stating that he is a mere administrator, but his position does not appear under the list of exemptions under RA 6657. His claimed status as administrator does not create another class of lands exempt from the coverage of PD 27 or RA 6657, and *The Roman Catholic Apostolic Administrator of Davao, Inc.* does not create another definition for the term "landowner." We explained in *Hospicio*: It is axiomatic that where a general rule is established by a statute with exceptions, the Court will not curtail nor add to the latter by implication, and it is a rule that an express exception excludes all others. We cannot simply impute into a statute an exception which the Congress did not incorporate. Moreover general welfare legislation such as land reform laws is to be construed in favor of the promotion of social justice to ensure the well-being and economic security of the people. Since a broad construction of the provision listing the properties exempted under the CARL would tend to denigrate the aims of agrarian reform, a strict application of these exceptions is in order. Archbishop cannot claim exemption in behalf of the millions of Filipino faithful, as the lands are clearly not exempt under the law. He should not fear that his followers are simply being deprived of land, as under both PD 27 and RA 6657, he is entitled to just compensation, which he may then use for

the benefit of his followers. His situation is no different from other landowners affected by agrarian reform––they are somewhat deprived of their land, but it is all for a greater good.

7. **ID.; ID.; ID.; ID.; THE GRAND PURPOSE UNDER THE COMPREHENSIVE AGRARIAN REFORM PROGRAM MUST NOT BE HINDERED BY THE SIMPLE EXPEDIENT OF APPENDING CONDITIONS TO A DONATION OF LAND TO A CHURCH.—** As *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform* recognized the revolutionary character of the expropriation under the agrarian reform law, we follow such lofty ideal for the resolution of this case. This grand purpose under the CARL must not be hindered by the simple expedient of appending conditions to a donation of land, or by donating land to a church. This is not to cast aspersions on religious organizations, but it is not fitting for them to be used as vehicles for keeping land out of the hands of the landless. The law is indubitably in line with the charitable ideals of religious organizations to ensure that the land they own falls into the hands of able caretakers and owners. As a religious leader, Archbishop can take solace in the fact that his lands are going to be awarded to those who need and can utilize them to the fullest.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.

The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Comprehensive Agrarian Reform Law (CARL) has truly noble goals, and these noble goals should not be stymied by the creation of exemptions or exceptions not contemplated by the law.

The Case

In this Petition for Review on *Certiorari* under Rule 45, petitioner Roman Catholic Archbishop of Caceres (Archbishop)

questions the February 4, 1999 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 48282, which upheld the December 8, 1997 and June 10, 1998 Orders of the Department of Agrarian Reform (DAR).

The Facts

Archbishop is the registered owner of several properties in Camarines Sur, with a total area of 268.5668 hectares. Of that land, 249.0236 hectares are planted with rice and corn, while the remaining 19.5432 hectares are planted with coconut trees.

In 1985, Archbishop filed with the Municipal Agrarian Reform District Office No. 19, Naga City, Camarines Sur several petitions for exemption of certain properties located in various towns of Camarines Sur from the coverage of Operation Land Transfer (OLT) under Presidential Decree No. (PD) 27.[2] Two of these petitions were denied in an Order dated November 6, 1986, issued by the Regional Director of DAR, Region V, Juanito L. Lorena.[3]

Archbishop appealed from the order of the Regional Director, and sought exemption from OLT coverage of all lands planted with rice and corn which were registered in the name of the Roman Catholic Archdiocese of Caceres. In his appeal, Archbishop cited the following grounds:

a) That said properties are all covered by conditional donations subject to the prohibitions of the donors to SELL, EXCHANGE, LEASE, TRANSFER, ENCUMBER OR MORTGAGE the properties;

b) That they are used for charitable and religious purposes;

c) That the parishes located in depressed areas badly need them for the furtherance of their mission work, propagation of

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[1] Penned by Associate Justice Oswaldo D. Agcaoili and concurred in by Associate Justices Corona Ibay-Somera and Teodoro P. Regino.

[2] "Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor" (1972).

[3] *Rollo*, p. 87.

the faith, maintenance and support of their chapels, churches and educational religious institutions like the Holy Rosary Major and Minor Seminaries for the promotion of the priesthood vocation;

d) For the preservation of good relationship between church and state thru non-infringement of the right to exercise religious profession and worship;

e) For the maintenance of the Cathedral and Peñafrancia Shrine, which now include the Basilica Minore Housing our venerable image of Our Lady of Peñafrancia and the venerable portrait of Divine Rostro;

f) That the petitioner (church) is amenable to continue the leasehold system with the present cultivators or tenants.[4]

This appeal was denied by then DAR Secretary Ernesto D. Garilao in an Order dated December 8, 1997.[5] A subsequent motion for reconsideration was denied in an Order dated June 10, 1998.[6]

The matter was then raised to the CA via Petition for Review on *Certiorari*. Archbishop argued that even if the lands in question are registered in his name, he holds the lands in trust for the benefit of his followers as *cestui que trust*. Archbishop further argued that the deeds of donation by which the lands were transferred to him imposed numerous fiduciary obligations, such that he cannot sell, exchange, lease, transfer, encumber, or mortgage the subject lands. By this reasoning, Archbishop concluded that he is not the "landowner" contemplated by PD 27 and Republic Act No. (RA) 6657, the CARL of 1988. He then prayed that the assailed orders of the DAR be reversed, or in the alternative, that the alleged beneficiaries of the trust be each allowed to exercise rights of retention over the landholdings.[7]

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

[5] *Id*. at 87-101.

[6] *Id*. at 102-105.

[7] *Id*. at 38.

The petition was dismissed by the CA in its February 4, 1999 Decision.[8] Archbishop filed a motion for reconsideration, but was denied in the June 18, 1999 CA Resolution.[9]

Archbishop now brings the matter before us through this petition.

The Issues

Archbishop raises issues he had raised previously, which, he contends, the CA failed to properly address. He claims that the CA erred in holding that he is only entitled to assert one right of retention as the subject properties are registered in his name. He further claims that an express trust had been created wherein he only held naked title to the subject properties on behalf of the beneficiaries. He argues that it is not the "landowner" contemplated by the law, but merely a trustee, and as such is entitled to as many rights of retention on behalf of the beneficiaries of each particular property. He then raises the question of the applicability of the ruling in *The Roman Catholic Apostolic Administrator of Davao, Inc. v. The Land Registration Commission and the Register of Deeds of Davao City*,[10] which, he cites, ruled that properties held by the Church are held by it as a mere administrator for the benefit of the members of that particular religion. As Archbishop claims to be merely an administrator of the subject properties, he argues that these subject properties should have been exempt from the OLT.

The Court's Ruling

The petition has no merit.

Archbishop's arguments, while novel, must fail in the face of the law and the dictates of the 1987 Constitution.

The laws simply speak of the "landowner" without qualification as to under what title the land is held or what rights to the land the landowner may exercise. There is no distinction made whether the landowner holds "naked title" only or can exercise all the

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[8] *Id.* at 37-42.

[9] *Id.* at 44.

[10] 102 Phil 596 (1957).

rights of ownership. Archbishop would have us read deeper into the law, to create exceptions that are not stated in PD 27 and RA 6657, and to do so would be to frustrate the revolutionary intent of the law, which is the redistribution of agricultural land for the benefit of landless farmers and farmworkers.

Archbishop was found to be the registered owner of the lands in question, and does not contest that fact. For the purposes of the law, this makes him the landowner, without the necessity of going beyond the registered titles. He cannot demand a deeper examination of the registered titles and demand further that the intent of the original owners be ascertained and followed. To adopt his reasoning would create means of sidestepping the law, wherein the mere act of donation places lands beyond the reach of agrarian reform.

There can be no claim of more than one right of retention per landowner. Neither PD 27 nor RA 6657 has a provision for a landowner to exercise more than one right of retention. The law is simple and clear as to the retention limits per landowner. PD 27 states, "In all cases, the landowner may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it"; while RA 6657 states:

> SEC. 6. *Retention Limits.*— Except as otherwise provided in this Act, no person may own or retain, directly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall the retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: *Provided,* That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; *Provided, further,* That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

Nothing in either law supports Archbishop's claim to more than one right of retention on behalf of each *cestui que trust*. The provisions of PD 27 and RA 6657 are plain and require no further interpretation––there is only one right of retention per landowner, and no multiple rights of retention can be held by a single party. Furthermore, the scheme proposed by Archbishop would create as many rights of retention as there are beneficiaries, which could in effect protect the entire available land area from agrarian reform. Under Archbishop's reasoning, there is not even a definite landowner to claim separate rights of retention, and no specific number of rights of retention to be claimed by the landowners. There is simply no basis in the law or jurisprudence for his argument that it is the "beneficial ownership" that should be used to determine which party would have the right of retention.

Archbishop makes much of the conditional donation, that he does not have the power to sell, exchange, lease, transfer, encumber or mortgage the transferred properties. He claims that these conditions do not make him the landowner as contemplated by the law. This matter has already been answered in *Hospicio de San Jose de Barili, Cebu City* (*Hospicio*) *v. Department of Agrarian Reform.*[11] In that case, wherein Act No. 3239 prohibited the sale under any consideration of lands donated to the Hospicio, a charitable organization, the Court found that the lands of the Hospicio were not exempt from the coverage of agrarian reform. In characterizing the sale of land under agrarian reform, we stated:

> Generally, sale arises out of contractual obligation. Thus, it must meet the first essential requisite of every contract that is the presence of consent. Consent implies an act of volition in entering into the agreement. The absence or vitiation of consent renders the sale either void or voidable.
>
> In this case, the deprivation of the Hospicio's property did not arise as a consequence of the Hospicio's consent to the transfer. There was no meeting of minds between the Hospicio, on one hand, and the DAR or the tenants, on the other, on the properties and the cause which are to constitute the contract that is to serve ultimately

[11] G.R. No. 140847, September 23, 2005, 470 SCRA 609.

as the basis for the transfer of ownership of the subject lands. Instead, the obligation to transfer arises by compulsion of law, particularly P.D. No. 27.[12]

We discussed further:

> The twin process of expropriation under agrarian reform and the payment of just compensation is akin to a forced sale, which has been aptly described in common law jurisdictions as "sale made under the process of the court and in the mode prescribed by law," and "which is not the voluntary act of the owner, such as to satisfy a debt, whether of a mortgage, judgment, tax lien, etc." The term has not been precisely defined in this jurisdiction, but reference to the phrase itself is made in Articles 223, 242, 237 and 243 of the Civil Code, which uniformly exempt the family home "from execution, forced sale, or attachment." Yet a forced sale is clearly different from the sales described under Book V of the Civil Code which are conventional sales, as it does not arise from the consensual agreement of the vendor and vendee, but by compulsion of law. Still, since law is recognized as one of the sources of obligation, there can be no dispute on the efficacy of a forced sale, so long as it is authorized by law.[13]

Archbishop's claim that he does not have *jus disponendi* over the subject properties is unavailing. The very nature of the compulsory sale under PD 27 and RA 6657 defeats such a claim. Other less scrupulous parties may even attempt creating trusts to prevent their lands from coming under agrarian reform, and say that the trustee has no power to dispose of the properties. The disposition under PD 27 and RA 6657 is of a different character than what is contemplated by *jus disponendi*, wherein under these laws, voluntariness is not an issue, and the disposition is necessary for the laws to be effective.

Under PD 27 and RA 6657, Archbishop cannot claim that the alleged conditions of the donations would have primacy over the application of the law. This forced sale is not even a violation of the conditions of the donation, since it is by application of law and beyond Archbishop's control. The application of

[12] *Id.* at 616.

[13] *Id.* at 618.

the law cannot and should not be defeated by the conditions laid down by the donors of the land. If such were allowed, it would be a simple matter for other landowners to place their lands without limit under the protection of religious organizations or create trusts by the mere act of donation, rendering agrarian reform but a pipe dream.

Archbishop's contention that he is merely an administrator of the donated properties will not serve to remove these lands from the coverage of agrarian reform. Under PD 27, the coverage is lands devoted to rice and corn. Section 4 of RA 6657 states, "The Comprehensive Agrarian Reform Law of 1988 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture." The lands in Archbishop's name are agricultural lands that fall within the scope of the law, and do not fall under the exemptions.

The exemptions under RA 6657 form an exclusive list, as follows:

> SEC. 10. *Exemptions and Exclusions.––*
>
> (a) Lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds and mangroves shall be exempt from the coverage of this Act.
>
> (b) Private lands actually, directly and exclusively used for prawn farms and fishponds shall be exempt from the coverage of this Act: *Provided,* That said prawn farms and fishponds have not been distributed and Certificate of Land Ownership Award (CLOA) issued under the Agrarian Reform Program.
>
> In cases where the fishponds or prawn farms have been subjected to the Comprehensive Agrarian Reform Law, by voluntary offer to sell, or commercial farms deferment or notices of compulsory acquisition, a simple and absolute majority of the actual regular workers or tenants must consent to the exemption within one (1) year from the effectivity of this Act. When the workers or tenants do not agree to this exemption, the fishponds or prawn farms shall be distributed collectively to the worker-beneficiaries or

tenants who shall form cooperative or association to manage the same.

In cases where the fishponds or prawn farms have not been subjected to the Comprehensive Agrarian Reform Law, the consent of the farmworkers shall no longer be necessary; however, the provision of Section 32-A hereof on incentives shall apply.

(c) Lands actually, directly and exclusively used and found to be necessary for national defense, school sites and campuses, including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production center, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed, shall be exempt from the coverage of this Act. (As amended by R. A. 7881)

Archbishop would claim exemption from the coverage of agrarian reform by stating that he is a mere administrator, but his position does not appear under the list of exemptions under RA 6657. His claimed status as administrator does not create another class of lands exempt from the coverage of PD 27 or RA 6657, and *The Roman Catholic Apostolic Administrator of Davao, Inc.*[14] does not create another definition for the term "landowner."

We explained in *Hospicio*:

It is axiomatic that where a general rule is established by a statute with exceptions, the Court will not curtail nor add to the latter by implication, and it is a rule that an express exception excludes all others. We cannot simply impute into a statute an exception which the Congress did not incorporate. Moreover general welfare legislation such as land reform laws is to be construed in favor of the promotion of social justice to ensure the well-being and economic security of the people. Since a broad construction of the provision listing the properties exempted under the CARL would tend to denigrate the aims of agrarian reform, a strict application of these

[14] *Supra* note 10.

exceptions is in order.[15]

Archbishop cannot claim exemption in behalf of the millions of Filipino faithful, as the lands are clearly not exempt under the law. He should not fear that his followers are simply being deprived of land, as under both PD 27 and RA 6657, he is entitled to just compensation, which he may then use for the benefit of his followers. His situation is no different from other landowners affected by agrarian reform—they are somewhat deprived of their land, but it is all for a greater good.

As *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*[16] recognized the revolutionary character of the expropriation under the agrarian reform law, we follow such lofty ideal for the resolution of this case. This grand purpose under the CARL must not be hindered by the simple expedient of appending conditions to a donation of land, or by donating land to a church. This is not to cast aspersions on religious organizations, but it is not fitting for them to be used as vehicles for keeping land out of the hands of the landless. The law is indubitably in line with the charitable ideals of religious organizations to ensure that the land they own falls into the hands of able caretakers and owners. As a religious leader, Archbishop can take solace in the fact that his lands are going to be awarded to those who need and can utilize them to the fullest.

WHEREFORE, we *DENY* the petition, and *AFFIRM* the February 4, 1999 Decision in CA-G.R. SP No. 48282.

SO ORDERED.

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

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[15] *Supra* note 11, at 622.

[16] G.R. No. 78742, July 14, 1989, 175 SCRA 343.

SECOND DIVISION

[G.R. No. 172598. December 21, 2007]

PILIPINAS SHELL PETROLEUM CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONDITIONAL OBLIGATIONS; ARTICLE 1181 OF THE CIVIL CODE DOES NOT APPLY TO THE PRESENT CASE SINCE THE PARTIES DID NOT AGREE TO A SUSPENSIVE CONDITION.—** Art.1181 tells us that the condition is suspensive when the acquisition of rights or demandability of the obligation must await the occurrence of the condition. However, Art. 1181 does not apply to the present case since the parties did ***NOT*** agree to a suspensive condition. Rather, specific laws, rules, and regulations govern the subject TCCs, not the general provisions of the Civil Code. Among the applicable laws that cover the TCCs are EO 226 or the Omnibus Investments Code, Letter of Instructions No. 1355, EO 765, RP-US Military Agreement, Sec. 106(c) of the Tariff and Customs Code, Sec. 106 of the NIRC, BIR Revenue Regulations (RRs), and others. Nowhere in the aforementioned laws does the post-audit become necessary for the validity or effectivity of the TCCs. Nowhere in the aforementioned laws is it provided that a TCC is issued subject to a suspensive condition.

2. **ID.; ID.; ID.; THE SUBJECT TAX CREDIT CERTIFICATES (TCC's) ARE IMMEDIATELY VALID AND EFFECTIVE AFTER THEIR ISSUANCE AND IS NOT SUBJECT TO A SUSPENSIVE CONDITION.—** We cannot subscribe to the CTA *En Banc*'s holding that the suspensive condition suspends the effectivity of the TCCs as payment until after the post-audit. This strains the very nature of a TCC. A tax credit is not specifically defined in our Tax Code, but Art. 21 of EO 226 defines a tax credit as "any of the credits against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or the Board

(of Investments), if so delegated by the Secretary of Finance." Tax credits were granted under EO 226 as incentives to encourage investments in certain businesses. A tax credit generally refers to an amount that may be "subtracted directly from one's total tax liability." It is therefore an "allowance against the tax itself" or "a deduction from what is owed" by a taxpayer to the government. In RR 5-2000, a tax credit is defined as "the amount due to a taxpayer resulting from an overpayment of a tax liability or erroneous payment of a tax due." A TCC is a certification, duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and in accordance with the limitations, if any, as may be prescribed by the provisions of these Regulations. From the above definitions, it is clear that a TCC is an undertaking by the government through the BIR or DOF, acknowledging that a taxpayer is entitled to a certain amount of tax credit from either an overpayment of income taxes, a direct benefit granted by law or other sources and instances granted by law such as on specific unused input taxes and excise taxes on certain goods. As such, tax credit is transferable in accordance with pertinent laws, rules, and regulations. Therefore, the TCCs are immediately valid and effective after their issuance.

3. **TAXATION; EXCISE TAX; TAX CREDITS; A TAX PAYMENT THROUGH A TAX CREDIT CERTIFICATE CANNOT BE BOTH EFFECTIVE WHEN MADE AND DEPENDENT ON A FUTURE EVENT FOR ITS EFFECTIVITY.—** As aptly pointed out in the dissent of Justice Lovell Bautista in CTA EB No. 64, this is clear from the Guidelines and Instructions found at the back of each TCC, which provide: 1. This Tax Credit Certificate (TCC) shall entitle the grantee to apply the tax credit against taxes and duties until the amount is fully utilized, in accordance with the pertinent tax and customs laws, rules and regulations. x x x 4. To acknowledge application of payment, the One-Stop-Shop Tax Credit Center shall issue the

corresponding Tax Debit Memo (TDM) to the grantee. The authorized Revenue Officer/Customs Collector to which payment/utilization was made shall accomplish the Application of Tax Credit portion at the back of the certificate and affix his signature on the column provided. The foregoing guidelines cannot be clearer on the validity and effectivity of the TCC to pay or settle tax liabilities of the grantee or transferee, as they do not make the effectivity and validity of the TCC dependent on the outcome of a post-audit. In fact, if we are to sustain the appellate tax court, it would be absurd to make the effectivity of the payment of a TCC dependent on a post-audit since there is no contemplation of the situation wherein there is no post-audit. Does the payment made become effective if no post-audit is conducted? Or does the so-called suspensive condition still apply as no law, rule, or regulation specifies a period when a post-audit should or could be conducted with a prescriptive period? Clearly, a tax payment through a TCC cannot be both effective when made and dependent on a future event for its effectivity. Our system of laws and procedures abhors ambiguity.

4. **ID.; ID.; ID.; TO RULE THAT TAX CREDIT CERTIFICATES ARE SUBJECT TO POST AUDIT AS A SUSPENSIVE CONDITION WOULD DEFEAT ITS VERY PURPOSE AS THERE WOULD BE NO GUARANTEE THAT IT WOULD BE HONORED BY THE GOVERNMENT AS PAYMENT FOR TAXES.—** If the TCCs are considered to be subject to post-audit as a suspensive condition, the very purpose of the TCC would be defeated as there would be no guarantee that the TCC would be honored by the government as payment for taxes. No investor would take the risk of utilizing TCCs if these were subject to a post-audit that may invalidate them, without prescribed grounds or limits as to the exercise of said post-audit. The inescapable conclusion is that the TCCs are not subject to post-audit as a suspensive condition, and are thus valid and effective from their issuance. As such, in the present case, if the TCCs have already been applied as partial payment for the tax liability of PSPC, a post-audit of the TCCs cannot simply annul them and the tax payment made through said TCCs. Payment has already been made and is as valid and effective as the issued TCCs. The subsequent post-audit cannot void the TCCs and allow the respondent to declare that utilizing canceled TCCs results in nonpayment on the part of PSPC. As

will be discussed, respondent and the Center expressly recognize the TCCs as valid payment of PSPC's tax liability.

5. **ID.; ID.; ID.; THE POST AUDIT CONTEMPLATED IN THE TAX CREDIT CERTIFICATES DOES NOT PERTAIN TO THEIR GENUINENESS OR VALIDITY, BUT ON COMPUTATIONAL DISCREPANCIES THAT MAY HAVE RESULTED FROM ITS TRANSFER AND UTILIZATION.—** The only conditions the TCCs are subjected to are those found on its face. And these are: 1. Post-audit and subsequent adjustment in the event of computational discrepancy; 2. A reduction for any outstanding account/obligation of herein claimant with the BIR and/or BOC; and 3. Revalidation with the Center in case the TCC is not utilized or applied within one (1) year from date of issuance/date of last utilization. The above conditions clearly show that the post-audit contemplated in the TCCs does not pertain to their genuineness or validity, but on computational discrepancies that may have resulted from the transfer and utilization of the TCC. This is shown by a close reading of the first and second conditions above; the third condition is self explanatory. Since a tax credit partakes of what is owed by the State to a taxpayer, if the taxpayer has an outstanding liability with the BIR or the BOC, the money value of the tax credit covered by the TCC is primarily applied to such internal revenue liabilities of the holder as provided under condition number two. Elsewise put, the TCC issued to a claimant is applied first and foremost to any outstanding liability the claimant may have with the government. Thus, it may happen that upon post-audit, a TCC of a taxpayer may be reduced for whatever liability the taxpayer may have with the BIR which remains unpaid due to inadvertence or computational errors, and such reduction necessarily affects the balance of the monetary value of the tax credit of the TCC.

6. **ID.; ID.; PETITIONER IS NOT REQUIRED BY LAW TO BE THE CAPITAL EQUIPMENT PROVIDER OR A SUPPLIER OF RAW MATERIAL AND/OR COMPONENT SUPPLIER TO THE TRANSFERORS; THE LAW ONLY REQUIRES THAT THE TRANSFEREE BE A BOARD OF INVESTMENT-REGISTERED COMPANY SIMILAR TO THE BOARD OF INVESTMENT REGISTERED TRANSFERORS.—** The post-audit the Center conducted on the transferred TCCs, delving into their issuance and validity on alleged violations by PSPC

of the August 29, 1989 MOA between the DOF and BOI, is completely misplaced. As may be recalled, the Center required PSPC to submit copies of pertinent sales invoices and delivery receipts covering sale transactions of PSPC products to the TCC assignors/transferors purportedly in connection with an ongoing post audit. As correctly protested by PSPC but which was completely ignored by the Center, PSPC is not required by law to be a capital equipment provider or a supplier of raw material and/or component supplier to the transferors. What the law requires is that the transferee be a BOI-registered company similar to the BOI-registered transferors. The IRR of EO 226, which incorporated the October 5, 1982 MOA between the MOF and BOI, pertinently provides for the guidelines concerning the transferability of TCCs: [T]he MOF and the BOI, through their respective representatives, have agreed on the following guidelines to govern the transferability of tax credit certificates: 1) All tax credit certificates issued to BOI-registered enterprises under P.D. 1789 may be transferred under conditions provided herein; 2) *The* **transferee should be a BOI-registered firm;** 3) The transferee may apply such tax credit certificates for payment of taxes, duties, charges or fees directly due to the national government for as long as it enjoys incentives under P.D. 1789. The above requirement has not been amended or repealed during the unfolding of the instant controversy. Thus, it is clear from the above proviso that it is only required that a TCC transferee be BOI-registered. In requiring PSPC to submit sales documents for its purported post-audit of the TCCs, the Center gravely abused its discretion as these are not required of the transferee PSPC by law and by the rules.

7. ID.; ID.; ID.; EVEN IF THE AUGUST 29, MEMORANDUM OF AGREEMENT (MOA) HAS AMENDED THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF EO 226, IT IS INEFFECTIVE AND CANNOT PREJUDICE THIRD PARTIES FOR LACK OF PUBLICATION AS MANDATORILY REQUIRED UNDER CHAPTER 2 OF BOOK VII, EO 292, OTHERWISE KNOWN AS THE ADMINISTRATIVE CODE OF 1987.— While the October 5, 1982 MOA appears to have been amended by the August 29, 1989 MOA between the DOF and BOI, such may not operate to prejudice transferees like PSPC. For one, the August 29,

1989 MOA remains only an internal agreement as it has neither been elevated to the level of nor incorporated as an amendment in the IRR of EO 226. For another, even if the August 29, 1989 MOA has indeed amended the IRR, which it has not, still, it is ineffective and cannot prejudice third parties for lack of publication as mandatorily required under Chapter 2 of Book VII, EO 292, otherwise known as the Administrative Code of 1987. It is clear that the Center or DOF cannot compel PSPC to submit sales documents for the purported post-audit, as PSPC has duly complied with the requirements of the law and rules to be a qualified transferee of the subject TCCs.

8. ID.; ID.; ID.; ANY FRAUD OR BREACH OF LAW OR RULE RELATING TO THE ISSUANCE OF THE TAX CREDIT CERTIFICATE BY THE ONE STOP SHOP INTER-AGENCY TAX CREDIT AND DUTY DRAWBACK CENTER ("CENTER") TO THE TRANSFEROR OR THE ORIGINAL GRANTEE IS THE LATTER'S RESPONSIBILITY AND LIABILITY; THE TRANSFEREE IN GOOD FAITH AND FOR VALUE MAY NOT BE UNJUSTLY PREJUDICED BY FRAUD COMMITTED BY THE CLAIMANT OR TRANSFEROR IN THE PROCUREMENT OR ISSUANCE OF A CERTIFICATE FROM THE CENTER.— We likewise fail to see the liability clause at the dorsal portion of the TCCs to be a suspensive condition relative to the result of the post-audit. Said liability clause indicates: LIABILITY CLAUSE Both the TRANSFEROR and the TRANSFEREE shall be jointly and severally liable for any fraudulent act or violation of the pertinent laws, rules and regulations relating to the transfer of this TAX CREDIT CERTIFICATE. The above clause to our mind clearly provides only for the solidary liability relative to the transfer of the TCCs from the original grantee to a transferee. There is nothing in the above clause that provides for the liability of the transferee in the event that the validity of the TCC issued to the original grantee by the Center is impugned or where the TCC is declared to have been fraudulently procured by the said original grantee. Thus, the solidary liability, if any, applies only to the sale of the TCC to the transferee by the original grantee. Any fraud or breach of law or rule relating to the issuance of the TCC by the Center to the transferor or the original grantee is the latter's responsibility and liability. The transferee in good faith and for value may not be unjustly

prejudiced by the fraud committed by the claimant or transferor in the procurement or issuance of the TCC from the Center. It is not only unjust but well-nigh violative of the constitutional right not to be deprived of one's property without due process of law. Thus, a re-assessment of tax liabilities previously paid through TCCs by a transferee in good faith and for value is utterly confiscatory, more so when surcharges and interests are likewise assessed.

9. **ID.; ID.; ID.; A TRANSFEREE IN GOOD FAITH AND FOR VALUE OF A TAX CREDIT CERTIFICATE WHO HAS RELIED ON THE CENTER'S REPRESENTATION OF THE GENUINENESS AND VALIDITY OF THE CERTIFICATE TRANSFERRED TO IT MAY NOT BE LEGALLY REQUIRED TO PAY AGAIN THE TAX COVERED BY THE CERTIFICATE.—** A transferee in good faith and for value of a TCC who has relied on the Center's representation of the genuineness and validity of the TCC transferred to it may not be legally required to pay again the tax covered by the TCC which has been belatedly declared null and void, that is, after the TCCs have been fully utilized through settlement of internal revenue tax liabilities. Conversely, when the transferee is party to the fraud as when it did not obtain the TCC for value or was a party to or has knowledge of its fraudulent issuance, said transferee is liable for the taxes and for the fraud committed as provided for by law. In the instant case, a close review of the factual milieu and the records reveals that PSPC is a transferee in good faith and for value. No evidence was adduced that PSPC participated in any way in the issuance of the subject TCCs to the corporations who in turn conveyed the same to PSPC. It has likewise been shown that PSPC was not involved in the processing for the approval of the transfers of the subject TCCs from the various BOI-registered transferors.

10. **ID.; ID.; ID.; THE THREE-YEAR PRESCRIPTIVE PERIOD FOR ASSESSMENT UNDER ARTICLE 203 OF THE NATIONAL INTERNAL REVENUE CODE HAS ALREADY SET IN AND BARS RESPONDENT FROM ASSESSING ANEW PETITIONER FOR THE EXCISE TAXES ALREADY PAID IN 1992 AND 1994 TO 1997; EVEN IF THE PERIOD FOR ASSESSMENT HAS NOT PRESCRIBED, STILL THERE IS NO VALID GROUND FOR ASSESSMENT AS THE EXCISE TAX LIABILITIES OF PETITIONER HAVE**

BEEN DULY SETTLED AND PAID.— It is clear that PSPC is a transferee in good faith and for value of the subject TCCs and may not be prejudiced with a re-assessment of excise tax liabilities it has already settled when due with the use of the subject TCCs. Logically, therefore, the excise tax returns filed by PSPC duly covered by the TDM and ATAPETs issued by the BIR confirming the full payment and satisfaction of the excise tax liabilities of PSPC, have not been fraudulently filed. Consequently, as PSPC is a transferee in good faith and for value, Sec. 222(a) of the NIRC does not apply in the instant case as PSPC has neither been shown nor proven to have committed any fraudulent act in the transfer and utilization of the subject TCCs. With more reason, therefore, that the three-year prescriptive period for assessment under Art. 203 of the NIRC has already set in and bars respondent from assessing anew PSPC for the excise taxes already paid in 1992 and 1994 to 1997. Besides, even if the period for assessment has not prescribed, still, there is no valid ground for the assessment as the excise tax liabilities of PSPC have been duly settled and paid.

11. **ID.; ID.; ID.; PETITIONER CANNOT BE FAULTED IN RELYING ON THE BUREAU OF INTERNAL REVENUE'S ACCEPTANCE OF THE SUBJECT TRANSFER CREDIT CERTIFICATES AS PAYMENT FOR ITS EXCISE TAX LIABILITIES; THE RELIANCE IS SUPPORTED BY THE FACT THAT THE SUBJECT CERTIFICATES HAVE PASSED THROUGH STRINGENT REVIEWS, THE CENTER'S APPROVAL, AND FINALLY THE ACCEPTANCE BY THE BUREAU OF INTERNAL REVENUE AS PAYMENT THROUGH THE ISSUANCE OF ITS OWN TAX DEBIT MEMORANDA (TDM) AND AUTHORITIES TO ACCEPT PAYMENT OF EXCISE TAXES (ATAPET).—** PSPC cannot be blamed for relying on the Center's approval for the transfers of the subject TCCs and the Center's acceptance of the TCCs for the payment of its excise tax liabilities. Likewise, PSPC cannot be faulted in relying on the BIR's acceptance of the subject TCCs as payment for its excise tax liabilities. This reliance is supported by the fact that the subject TCCs have passed through stringent reviews starting from the claims of the transferors, their issuance by the Center, the Center's approval for their transfer to PSPC,

the Center's acceptance of the TCCs to pay PSPC's excise tax liabilities through the issuance of the Center's TDM, and finally the acceptance by the BIR of the subject TCCs as payment through the issuance of its own TDM and ATAPETs. Therefore, PSPC cannot be prejudiced by the Center's turnaround in assailing the validity of the subject TCCs which it issued in due course.

12. **ID.; ID.; ID.; THE SUBJECT TAX CREDIT CERTIFICATES MAY NO LONGER BE CANCELLED AS THEY HAVE ALREADY BEEN CANCELLED AND USED UP AFTER THEIR ACCEPTANCE AS PAYMENT FOR PETITIONER'S EXCISE TAX LIABILITIES.—** We are of the view that the subject TCCs cannot be canceled by the Center as these had already been cancelled after their application to PSPC's excise tax liabilities. PSPC contends they are already *functus officio*, not quite in the sense of being no longer effective, but in the sense that they have been used up. When the subject TCCs were accepted by the BIR through the latter's issuance of TDM and the ATAPETs, the subject TCCs were duly cancelled. The tax credit of a taxpayer evidenced by a TCC is used up or, in accounting parlance, debited when applied to the taxpayer's internal revenue tax liability, and the TCC cancelled after the tax credit it represented is fully debited or used up. A credit is a payable or a liability. A tax credit, therefore, is a liability of the government evidenced by a TCC. Thus, the tax credit of a taxpayer evidenced by a TCC is debited by the BIR through a TDM, not only evidencing the payment of the tax by the taxpayer, but likewise deducting or debiting the existing tax credit with the amount of the tax paid. In the instant case, with due application, approval, and acceptance of the payment by PSPC of the subject TCCs for its then outstanding excise tax liabilities in 1992 and 1994 to 1997, the subject TCCs have been cancelled as the money value of the tax credits these represented have been used up. Therefore, the DOF through the Center may not now cancelled the subject TCCs as these have already been cancelled and used up after their acceptance as payment for PSPC's excise tax liabilities. What has been used up, debited, and cancelled cannot anymore be declared to be void, ineffective, and cancelled anew.

13. **ID.; ID.; ID.; EVEN ASSUMING THAT FRAUD ATTENDED THE PROCUREMENT OF THE SUBJECT TAX CREDIT**

CERTIFICATES, IT CANNOT PREJUDICE PETITIONER'S RIGHTS, SINCE IT HAS NOT BEEN SHOWN OR PROVEN THAT PETITIONER PARTICIPATED IN THE PERPETRATION OF THE FRAUDULENT ACTS, NOR IS IT SHOWN THAT IT COMMITTED FRAUD IN THE TRANSFER AND UTILIZATION OF THE SUBJECT CERTIFICATES.— On the issue of the fraudulent procurement of the TCCs, it has been asseverated that fraud was committed by the TCC claimants who were the transferors of the subject TCCs. We see no need to rule on this issue in view of our finding that the real issue in this petition does not dwell on the validity of the TCCs procured by the transferor from the Center but on whether fraud or breach of law attended the transfer of said TCCs by the transferor to the transferee. The finding of the CTA *En Banc* that there was fraud in the procurement of the subject TCCs is, therefore, irrelevant and immaterial to the instant petition. Moreover, there are pending criminal cases arising from the alleged fraud. We leave the matter to the anti-graft court especially considering the failure of the affiants to the affidavits to appear, making these hearsay evidence. But even assuming that fraud attended the procurement of the subject TCCs, it cannot prejudice PSPC's rights as earlier explained since PSPC has not been shown or proven to have participated in the perpetration of the fraudulent acts, nor is it shown that PSPC committed fraud in the transfer and utilization of the subject TCCs.

14. **ID.; ID.; ID.; SINCE EXCOM RESOLUTION NO. 03-05-99 PROVIDING FOR THE "GUIDELINES AND PROCEDURES FOR THE CANCELLATION, RECALL AND RECOVERY OF FRAUDULENTLY ISSUED TAX CREDIT CERTIFICATES" WAS NEITHER REGISTERED WITH THE U.P. LAW CENTER NOR PUBLISHED, IT IS INEFFECTIVE AND UNENFORCEABLE.—** On the issue of the publication of the Center's Excom Resolution No. 03-05-99 providing for the "Guidelines and Procedures for the Cancellation, Recall and Recovery of Fraudulently Issued Tax Credit Certificates," we find that the resolution is invalid and unenforceable. It authorizes the cancellation of TCCs and TDM which are found to have been granted without legal basis or based on fraudulent documents. The cancellation of the TCCs

and TDM is covered by a penal provision of the assailed resolution. Such being the case, it should have been published and filed with the National Administrative Register of the U.P. Law Center in accordance with Secs. 3, 4, and 5, Chapter 2 of Book VII, EO 292 or the Administrative Code of 1987. We explained in *People v. Que Po Lay* that a rule which carries a penal sanction will bind the public if the public is officially and specifically informed of the contents and penalties prescribed for the breach of the rule. Since Excom Resolution No. 03-05-99 was neither registered with the U.P. Law Center nor published, it is ineffective and unenforceable. Even if the resolution need not be published, the punishment for any alleged fraudulent act in the procurement of the TCCs must not be visited on PSPC, an innocent transferee for value, which has not been shown to have participated in the fraud. Respondent must go after the perpetrators of the fraud.

15. **ID.; ID.; ID.; RESPONDENT DID NOT COMPLY WITH THE REQUIREMENTS OF STATUTORY AND PROCEDURAL DUE PROCESS.—** PSPC claims that having no deficiency excise tax liabilities, it may not be liable for the late payment surcharges and annual interests. This issue has been mooted by our disquisition above resolving the first issue in that PSPC has duly settled its excise tax liabilities for 1992 and 1994 to 1997. Consequently, there is no basis for the imposition of a late payment surcharges and for interests, and no need for further discussion on the matter.

APPEARANCES OF COUNSEL

Arthur Autea & Associates for petitioner.
The Solicitor General for respondent.

DECISION

VELASCO, JR., *J.*:

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 assailing the April 28, 2006 Decision[1] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 64, which upheld respondent's assessment against petitioner for deficiency excise taxes for the taxable years 1992 and 1994 to 1997. Said *En Banc* decision reversed and set aside the August 2, 2004 Decision[2] and January 20, 2005 Resolution[3] of the CTA Division in CTA Case No. 6003 entitled *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*, which ordered the withdrawal of the April 22, 1998 collection letter of respondent and enjoined him from collecting said deficiency excise taxes.

The Facts

Petitioner Pilipinas Shell Petroleum Corporation (PSPC) is the Philippine subsidiary of the international petroleum giant Shell, and is engaged in the importation, refining and sale of petroleum products in the country.

From 1988 to 1997, PSPC paid part of its excise tax liabilities with Tax Credit Certificates (TCCs) which it acquired through the Department of Finance (DOF) One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (Center) from other Board of Investment (BOI)-registered companies. The Center

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[1] *Rollo*, pp. 109-130. Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova and Olga Palanca-Enriquez; with Dissenting Opinion of Associate Justice Lovell R. Bautista, concurred in by Presiding Justice Ernesto D. Acosta, *id*. at 131-145.

[2] *Id*. at 1708-1742. Penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta; with Dissenting Opinion of Associate Justice Juanito C. Castañeda, Jr., *id*. at 1743-1757.

[3] *Id*. at 1758-1761, with Dissenting Opinion of Associate Justice Juanito C. Castañeda, Jr., *id*. at 1762-1767.

is a composite body run by four government agencies, namely: the DOF, Bureau of Internal Revenue (BIR), Bureau of Customs (BOC), and BOI.

Through the Center, PSPC acquired for value various Center-issued TCCs which were correspondingly transferred to it by other BOI-registered companies through Center-approved Deeds of Assignments. Subsequently, when PSPC signified its intent to use the TCCs to pay part of its excise tax liabilities, said payments were duly approved by the Center through the issuance of Tax Debit Memoranda (TDM), and the BIR likewise accepted as payments the TCCs by issuing its own TDM covering said TCCs, and the corresponding Authorities to Accept Payment for Excise Taxes (ATAPETs).

However, on April 22, 1998, the BIR sent a collection letter[4] to PSPC for alleged deficiency excise tax liabilities of PhP 1,705,028,008.06 for the taxable years 1992 and 1994 to 1997, inclusive of delinquency surcharges and interest. As basis for the collection letter, the BIR alleged that PSPC is not a qualified transferee of the TCCs it acquired from other BOI-registered companies. These alleged excise tax deficiencies covered by the collection letter were already paid by PSPC with TCCs acquired through, and issued and duly authorized by the Center, and duly covered by TDMs of both the Center and BIR, with the latter also issuing the corresponding ATAPETs.

PSPC protested the April 22, 1998 collection letter, but the protest was denied by the BIR through the Regional Director of Revenue Region No. 8. PSPC filed its motion for reconsideration. However, due to respondent's inaction on the motion, on February 2, 1999, PSPC filed a petition for review before the CTA, docketed as CTA Case No. 5728.

On July 23, 1999, the CTA rendered a Decision[5] in CTA Case No. 5728 ruling, *inter alia*, that the use by PSPC of the

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[4] *Id*. at 651.

[5] CA *rollo*, pp. 19-40. Penned by Associate Justice Amancio Q. Saga and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Ramon O. De Veyra.

TCCs was legal and valid, and that respondent's attempt to collect alleged delinquent taxes and penalties from PSPC without an assessment constitutes denial of due process. The dispositive portion of the July 23, 1999 CTA Decision reads:

> [T]he instant petition for review is GRANTED. The collection letter issued by the Respondent dated April 22, 1998 is considered withdrawn and he is ENJOINED from any attempts to collect from petitioner the specific tax, surcharge and interest subject of this petition.[6]

Respondent elevated the July 23, 1999 CTA Decision in CTA Case No. 5728 to the Court of Appeals (CA) through a petition for review[7] docketed as CA-G.R. SP No. 55329. This case was subsequently consolidated with the similarly situated case of Petron Corporation under CA-G.R. SP No. 55330. To date, these consolidated cases are still pending resolution before the CA.

Meanwhile, in late 1999, and despite the pendency of CA-G.R. SP No. 55329, the Center sent several letters to PSPC dated August 31, 1999,[8] September 1, 1999,[9] and October 18, 1999.[10] The first required PSPC to submit copies of pertinent sales invoices and delivery receipts covering sale transactions of PSPC products to the TCC assignors/transferors purportedly in connection with an ongoing post audit. The second letter similarly required submission of the same documents covering PSPC Industrial Fuel Oil (IFO) deliveries to Spintex International, Inc. The third letter is in reply to the September 29, 1999 letter sent by PSPC requesting a list of the serial numbers of the TCCs assigned or transferred to it by various BOI-registered companies, either assignors or transferors.

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[6] *Id.* at 39.

[7] *Rollo*, pp. 511-526.

[8] *Id.* at 163-164.

[9] *Id.* at 165.

[10] *Id.* at 166-177.

In its letter dated October 29, 1999 and received by the Center on November 3, 1999, PSPC emphasized that the required submission of these documents had no legal basis, for the applicable rules and regulations on the matter only require that both the assignor and assignee of TCCs be BOI-registered entities.[11] On November 3, 1999, the Center informed PSPC of the cancellation of the first batch of TCCs transferred to PSPC and the TDM covering PSPC's use of these TCCs as well as the corresponding TCC assignments. PSPC's motion for reconsideration was not acted upon.

On November 22, 1999, PSPC received the November 15, 1999 assessment letter[12] from respondent for excise tax deficiencies, surcharges, and interest based on the first batch of cancelled TCCs and TDM covering PSPC's use of the TCCs. All these cancelled TDM and TCCs were also part of the subject matter in CTA Case No. 5728, now pending before the CA in CA-G.R. SP No. 55329.

PSPC protested[13] the assessment letter, but the protest was denied by the BIR, constraining it to file another petition for review[14] before the CTA, docketed as CTA Case No. 6003.

Parenthetically, on March 30, 2004, Republic Act No. (RA) 9282[15] was promulgated amending RA 1125,[16] expanding the jurisdiction of the CTA and enlarging its membership. It became effective on April 23, 2004 after its due publication. Thus, CTA Case No. 6003 was heard and decided by a CTA Division.

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[11] *Id.* at 178-184.

[12] *Id.* at 193-208.

[13] *Id.* at 209-222, Letter-Protest of PSPC dated December 2, 1999.

[14] *Id.* at 227-286.

[15] "An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Sections of Republic Act No. 1125, otherwise known as the Law Creating the Court of Tax Appeals."

[16] Enacted on June 16, 1954.

The Ruling of the Court of Tax Appeals Division (CTA Case No. 6003)

On August 2, 2004, the CTA Division rendered a Decision[17] granting the PSPC's petition for review. The dispositive portion reads:

> [T]he instant petition is hereby GRANTED. Accordingly, the assessment issued by the respondent dated November 15, 1999 against petitioner is hereby CANCELLED and SET ASIDE.[18]

In granting PSPC's petition for review, the CTA Division held that respondent failed to prove with convincing evidence that the TCCs transferred to PSPC were fraudulently issued as respondent's finding of alleged fraud was merely speculative. The CTA Division found that neither the respondent nor the Center could state what sales figures were used as basis for the TCCs to issue, as they merely based their conclusions on the audited financial statements of the transferors which did not clearly show the actual export sales of transactions from which the TCCs were issued.

In the same vein, the CTA Division held that the machinery and equipment cannot be the basis in concluding that transferor could not have produced the volume of products indicated in its BOI registration. It further ruled that the Center erroneously based its findings of fraud on two possibilities: either the transferor did not declare its export sales or underdeclare them. Thus, no specific fraudulent acts were identified or proven. The CTA Division concluded that the TCCs transferred to PSPC were not fraudulently issued.

On the issue of whether a TCC transferee should be a supplier of either capital equipment, materials, or supplies, the CTA Division ruled in the negative as the Memorandum of Agreement (MOA)[19] between the DOF and BOI executed on August 29, 1989 specifying such requirement was not incorporated in the

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[17] *Supra* note 3.

[18] *Rollo*, p. 1741.

[19] *Id.* at 159-160.

Implementing Rules and Regulations (IRR) of Executive Order No. (EO) 226.[20] The CTA Division found that only the October 5, 1982 MOA between the then Ministry of Finance (MOF) and BOI was incorporated in the IRR of EO 226. It held that while the August 29, 1989 MOA indeed amended the October 5, 1982 MOA still it was not incorporated in the IRR. Moreover, according to the CTA Division, even if the August 29, 1989 MOA was elevated or incorporated in the IRR of EO 226, still, it is ineffective and could not bind nor prejudice third parties as it was never published.

Anent the affidavits of former Officers or General Managers of transferors attesting that no IFO deliveries were made by PSPC, the CTA Division ruled that such cannot be given probative value as the affiants were not presented during trial of the case. However, the CTA Division said that the November 15, 1999 assessment was not precluded by the prior CTA Case No. 5728 as the latter concerned the validity of the transfer of the TCCs, while CTA Case No. 6003 involved alleged fraudulent procurement and transfer of the TCCs.

Respondent forthwith filed his motion for reconsideration of the above decision which was rejected on January 20, 2005. And, pursuant to Section 11[21] of RA 9282, respondent appealed

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[20] THE OMNIBUS INVESTMENTS CODE of 1987, as Amended.

[21] Section 11. Section 18 of [RA 1125] is hereby amended as follows:

SEC. 18. Appeal to the Court of Tax Appeals *En Banc*.—No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*.

SEC. 19. Review by *Certiorari*.—A party adversely affected by a decision or ruling of the CTA *en banc* may file with the Supreme Court a verified petition for review on *certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

the above decision through a petition for review [22] before the CTA *En Banc*.

The Ruling of the Court of Tax Appeals *En Banc* (CTA EB No. 64)

The CTA *En Banc*, however, rendered the assailed April 28, 2006 Decision [23] setting aside the August 2, 2004 Decision and the January 20, 2005 Resolution of the CTA Division. The *fallo* reads:

WHEREFORE, premises considered, the Petition for Review is hereby GRANTED. The assailed Decision and Resolution dated August 2, 2004 and January 20, 2005, respectively, are hereby SET ASIDE and a new one entered dismissing respondent Pilipinas Shell Petroleum Corporation's Petition for Review filed in C.T.A. Case No. 6003 for lack of merit. Accordingly, respondent is ORDERED TO PAY the petitioner the amount of P570,577,401.61 as deficiency excise tax for the taxable years 1992 and 1994 to 1997, inclusive of 25% surcharge and 20% interest, computed as follows:

Basic Tax	₱285,766,987.00
Add:	
Surcharge (25%)	71,441,746.75
Interest (20%)	213,368,667.86
Total Tax Due	₱570,577,401.61

In addition, respondent is hereby ORDERED TO PAY 20% delinquency interest thereon per annum computed from December 4, 1999 until full payment thereof, pursuant to Sections 248 and 249 of the NIRC of 1997.

SO ORDERED.[24]

The CTA *En Banc* resolved respondent's appeal by holding that PSPC was liable to pay the alleged excise tax deficiencies arising from the cancellation of the TDM issued against its TCCs which were used to pay some of its excise tax liabilities for the

[22] *Rollo*, pp. 1768-1863, dated March 28, 2005.

[23] *Supra* note 2.

[24] *Rollo*, p. 129.

years 1992 and 1994 to 1997. It ratiocinated in this wise, to wit:

First, the finding of the DOF that the TCCs had no monetary value was undisputed. Consequently, there was a non-payment of excise taxes corresponding to the value of the TCCs used for payment. Since it was PSPC which acquired the subject TCCs from a third party and utilized the same to discharge its own obligations, then it must bear the loss.

Second, the TCCs carry a suspensive condition, that is, their issuance was subject to post audit in order to determine if the holder is indeed qualified to use it. Thus, until final determination of the holder's right to the issuance of the TCCs, there is no obligation on the part of the DOF or BIR to recognize the rights of the holder or assignee. And, considering that the subject TCCs were cancelled after the DOF's finding of fraud in its issuance, the assignees must bear the consequence of such cancellation.

Third, PSPC was not an innocent purchaser for value of the TCCs as they contained liability clauses expressly stipulating that the transferees are solidarily liable with the transferors for any fraudulent act or violation of pertinent laws, rules, or regulations relating to the transfer of the TCC.

Fourth, the BIR was not barred by estoppel as it is a settled rule that in the performance of its governmental functions, the State cannot be estopped by the neglect of its agents and officers. Although the TCCs were confirmed to be valid in view of the TDM, the subsequent finding on post audit by the Center declaring the TCCs to be fraudulently issued is entitled to the presumption of regularity. Thus, the cancellation of the TCCs was legal and valid.

Fifth, the BIR's assessment did not prescribe considering that no payment took effect as the subject TCCs were canceled upon post audit. Consequently, the filing of the tax return sans payment due to the cancellation of the TCCs resulted in the falsity and/or omission in the filing of the tax return which put them in the ambit of the applicability of the 10-year prescriptive period from the discovery of falsity, fraud, or omission.

Finally, however, the CTA *En Banc* applied *Aznar v. Court of Tax Appeals*,[25] where this Court held that without proof that the taxpayer participated in the fraud, the 50% fraud surcharge is not imposed, but the 25% late payment and the 20% interest per annum are applicable.

Thus, PSPC filed this petition with the following issues:

I

WHETHER OR NOT THE COURT OF TAX APPEALS GRAVELY ERRED IN ORDERING PETITIONER PSPC TO PAY THE AMOUNT OF TWO HUNDRED EIGHTY FIVE MILLION SEVEN HUNDRED SIXTY SIX THOUSAND NINE HUNDRED EIGHTY SEVEN PESOS (₱285,766,987.00), AS ALLEGED DEFICIENCY EXCISE TAXES, FOR THE TAXABLE YEARS, 1992 AND 1994 TO 1997.

II

WHETHER OR NOT THE COURT OF TAX APPEALS GRAVELY ERRED IN ISSUING THE QUESTIONED DECISION DATED 28 APRIL 2006 UPHOLDING THE CANCELLATION OF THE TAX CREDIT CERTIFICATES UTILIZED BY PETITIONER PSPC IN PAYING ITS EXCISE TAX LIABILITIES.

III

WHETHER OR NOT THE COURT OF TAX APPEALS GRAVELY ERRED IN IMPOSING SURCHARGES AND INTERESTS ON THE ALLEGED DEFICIENCY EXCISE TAX OF PETITIONER PSPC.

IV

WHETHER OR NOT THE ASSESSMENT DATED 15 NOVEMBER 1999 IS VOID CONSIDERING THAT IT FAILED TO COMPLY WITH THE STATUTORY AS WELL AS REGULATORY REQUIREMENTS IN THE ISSUANCE OF ASSESSMENTS.[26]

The Court's Ruling

The petition is meritorious.

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[25] No. L-20569, August 23, 1974, 58 SCRA 519.

[26] *Rollo*, pp. 26-27. Original in boldface.

First Issue: Assessment of excise tax deficiencies

PSPC contends that respondent had no basis in issuing the November 15, 1999 assessment as PSPC had no pending unpaid excise tax liabilities. PSPC argues that under the IRR of EO 226, it is allowed to use TCCs transferred from other BOI-registered entities. On one hand, relative to the validity of the transferred TCCs, PSPC asserts that the TCCs are not subject to a suspensive condition; that the post-audit of a transferred TCC refers only to computational discrepancy; that the solidary liability of the transferor and transferee refers to computational discrepancy resulting from the transfer and not from the issuance of the TCC; that a post-audit cannot affect the validity and effectivity of a TCC after it has been utilized by the transferee; and that the BIR duly acknowledged the use of the subject TCCs, accepting them as payment for the excise tax liabilities of PSPC. On the other hand, PSPC maintains that if there was indeed fraud in the issuance of the subject TCCs, of which it had no knowledge nor participation, the Center's remedy is to go after the transferor for the value of the TCCs the Center may have erroneously issued.

PSPC likewise assails the BIR assessment on prescription for having been issued beyond the three-year prescriptive period under Sec. 203 of the National Internal Revenue Code (NIRC); and neither can the BIR use the 10-year prescriptive period under Sec. 222(a) of the NIRC, as PSPC has neither failed to file a return nor filed a false or fraudulent return with intent to evade taxes.

Respondent, on the other hand, counters that petitioner is liable for the tax liabilities adjudged by the CTA *En Banc* since PSPC, as transferee of the subject TCCs, is bound by the liability clause found at the dorsal side of the TCCs which subjects the genuineness, validity, and value of the TCCs to the outcome of the post-audit to be conducted by the Center. He relies on the CTA *En Banc*'s finding of the presence of a suspensive condition in the issuance of the TCCs. Thus, according to him, with the finding by the Center that the TCCs were fraudulently procured

the subsequent cancellation of the TCCs resulted in the non-payment by PSPC of its excise tax liabilities equivalent to the value of the cancelled TCCs.

Respondent likewise posits that the Center erred in approving the transfer and issuance of the TDM, and of the TDM and ATAPETs issued by the BIR in accepting the utilization by PSPC of the subject TCCs, as payments for excise taxes cannot prejudice the BIR from assessing the tax deficiencies of PSPC resulting from the non-payment of the deficiencies after due cancellation by the Center of the subject TCCs and corresponding TDM.

Respondent concludes that due to the fraudulent procurement of the subject TCCs, his right to assess has not yet prescribed. He relies on the finding of the Center that the fraud was discovered only after the post-audit was conducted; hence, Sec. 222(a) of the NIRC applies, reckoned from October 24, 1999 or the date of the post-audit report. *In fine*, he points that what is at issue is the resulting non-payment of PSPC's excise tax liabilities from the cancellation of subject TCCs and not the amount of deficiency taxes due from PSPC, as what was properly assessed on November 15, 1999 was the amount of tax declared and found in PSPC's excise tax returns covered by the subject TCCs.

We find for PSPC.

The CTA *En Banc* upheld respondent's theory by holding that the Center has the authority to do a post-audit on the TCCs it issued; the TCCs are subject to the results of the post-audit since their issuance is subject to a suspensive condition; the transferees of the TCCs are solidarily liable with the transferors on the result of the post-audit; and the cancellation of the subject TCCs resulted in PSPC having to bear the loss anchored on its solidary liability with the transferor of the subject TCCs.

We can neither sustain respondent's theory nor that of the CTA *En Banc*.

First, in overturning the August 2, 2004 Decision of the CTA Division, the CTA *En Banc* applied Article 1181 of the Civil Code in this manner:

To completely understand the matter presented before Us, it is worth emphasizing that the statement on the subject certificate stating that it is issued subject to post-audit is in the nature of a suspensive condition under Article 1181 of the Civil Code, which is quoted hereunder for ready reference, to wit:

> 'In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.'

The above-quoted article speaks of obligations. 'These conditions affect obligations in diametrically opposed ways. If the suspensive condition happens, the obligation arises; in other words, if the condition does not happen, the obligation does not come into existence. On the other hand, the resolutory condition extinguishes rights and obligations already existing; in other words, the obligations and rights already exist, but under the threat of extinction upon the happening of the resolutory condition'. (8 Manresa 130-131, cited on page 140, Civil Code of the Philippines, Tolentino, 1962 ed., Vol. IV).

In adopting the foregoing provision of law, this Court rules that the issuance of the tax credit certificate is subject to the condition that a post-audit will subsequently be conducted in order to determine if the holder is indeed qualified for its issuance. As stated earlier, the holder takes the same subject to the outcome of the post-audit. Thus, unless and until there is a final determination of the holder's right to the issuance of the certificate, there exists no obligation on the part of the DOF or the BIR to recognize the rights of then holder or transferee. x x x

xxx xxx xxx

The validity and propriety of the TCC to effectively constitute payment of taxes to the government are still subject to the outcome of the post-audit. In other words, when the issuing authority (DOF) finds, as in the case at bar, circumstances which may warrant the cancellation of the certificate, the holder is inevitably bound by the outcome by the virtue of the express provisions of the TCCs.[27]

The CTA *En Banc* is incorrect.

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[27] *Id.* at 119-120.

Art.1181 tells us that the condition is **suspensive** when the acquisition of rights or demandability of the obligation must await the occurrence of the condition.[28] However, Art. 1181 does not apply to the present case since the parties did **NOT** agree to a suspensive condition. Rather, specific laws, rules, and regulations govern the subject TCCs, not the general provisions of the Civil Code. Among the applicable laws that cover the TCCs are EO 226 or the Omnibus Investments Code, Letter of Instructions No. 1355, EO 765, RP-US Military Agreement, Sec. 106(c) of the Tariff and Customs Code, Sec. 106 of the NIRC, BIR Revenue Regulations (RRs), and others. Nowhere in the aforementioned laws does the post-audit become necessary for the validity or effectivity of the TCCs. Nowhere in the aforementioned laws is it provided that a TCC is issued subject to a suspensive condition.

The CTA *En Banc*'s holding of the presence of a suspensive condition is untenable as the subject TCCs duly issued by the Center are immediately effective and valid. The suspensive condition as ratiocinated by the CTA *En Banc* is one where the transfer contract was duly effected on the day it was executed between the transferee and the transferor but the TCC cannot be enforced until after the post-audit has been conducted. In short, under the ruling of the CTA *En Banc*, even if the TCC has been issued, the real and true application of the tax credit happens only after the post-audit confirms the TCC's validity and not before the confirmation; thus, the TCC can still be cancelled even if it has already been ostensibly applied to specific internal revenue tax liabilities.

We are not convinced.

We cannot subscribe to the CTA *En Banc*'s holding that the suspensive condition suspends the effectivity of the TCCs as payment until after the post-audit. This strains the very nature of a TCC.

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[28] III J. Vitug, *CIVIL LAW OBLIGATIONS AND CONTRACTS 27* (2003); citation omitted.

A tax credit is not specifically defined in our Tax Code,[29] but Art. 21 of EO 226 defines a tax credit as "any of the credits against taxes and/or duties equal to those actually paid or would have been paid to evidence which a tax credit certificate shall be issued by the Secretary of Finance or his representative, or the Board (of Investments), if so delegated by the Secretary of Finance." Tax credits were granted under EO 226 as incentives to encourage investments in certain businesses. A tax credit generally refers to an amount that may be "subtracted directly from one's total tax liability."[30] It is therefore an "allowance against the tax itself"[31] or "a deduction from what is owed"[32] by a taxpayer to the government. In RR 5-2000,[33] a tax credit is defined as "the amount due to a taxpayer resulting from an overpayment of a tax liability or erroneous payment of a tax due."[34]

A TCC is

> a certification, duly issued to the taxpayer named therein, by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the grantee-taxpayer named therein is legally entitled a tax credit, the money value of which may be used in payment or in satisfaction of any of his internal revenue tax liability (except those excluded), or may be converted as a cash refund, or may otherwise be disposed of in the manner and

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[29] RA 8424 as amended by RAs 8761 and 9010. Likewise, the term "tax credit" is not defined in PD 1158, otherwise known as the NATIONAL INTERNAL REVENUE CODE of 1977, as amended.

[30] Garner, ed., *BLACK'S LAW DICTIONARY* 1501 (8th ed., 1999).

[31] Smith, *WEST'S TAX LAW DICTIONARY* 177-178 (1993).

[32] Oran and Tosti, *ORAN'S DICTIONARY OF THE LAW* 124 (3rd ed., 2000).

[33] "Prescribing the Regulations Governing the Manner of the Issuance of Tax Credit Certificates, and the Conditions for their Use, Revalidation and Transfer," issued by then Secretary of Finance Jose T. Pardo on July 19, 2000.

[34] *Id.*, Section 1, A.

in accordance with the limitations, if any, as may be prescribed by the provisions of these Regulations.[35]

From the above definitions, it is clear that a TCC is an undertaking by the government through the BIR or DOF, acknowledging that a taxpayer is entitled to a certain amount of tax credit from either an overpayment of income taxes, a direct benefit granted by law or other sources and instances granted by law such as on specific unused input taxes and excise taxes on certain goods. As such, tax credit is transferable in accordance with pertinent laws, rules, and regulations.

Therefore, the TCCs are immediately valid and effective after their issuance. As aptly pointed out in the dissent of Justice Lovell Bautista in CTA EB No. 64, this is clear from the Guidelines and Instructions found at the back of each TCC, which provide:

1. This Tax Credit Certificate (TCC) **shall entitle the grantee to apply the tax credit against taxes and duties until the amount is fully utilized,** in accordance with the pertinent tax and customs laws, rules and regulations.

xxx xxx xxx

4. To acknowledge application of payment, the One-Stop-Shop Tax Credit Center shall issue the corresponding Tax Debit Memo (TDM) to the grantee.

The authorized Revenue Officer/Customs Collector to which payment/utilization was made shall accomplish the Application of Tax Credit portion at the back of the certificate and affix his signature on the column provided. (Emphasis supplied.)

The foregoing guidelines cannot be clearer on the validity and effectivity of the TCC to pay or settle tax liabilities of the grantee or transferee, as they do not make the effectivity and validity of the TCC dependent on the outcome of a post-audit. In fact, if we are to sustain the appellate tax court, it would be absurd to make the effectivity of the payment of a TCC dependent on a post-audit since there is no contemplation of the situation wherein there is no post-audit. Does the payment made become

[35] *Id*., Section 1, B.

effective if no post-audit is conducted? Or does the so-called suspensive condition still apply as no law, rule, or regulation specifies a period when a post-audit should or could be conducted with a prescriptive period? Clearly, a tax payment through a TCC cannot be both effective when made and dependent on a future event for its effectivity. Our system of laws and procedures abhors ambiguity.

Moreover, if the TCCs are considered to be subject to post-audit as a suspensive condition, the very purpose of the TCC would be defeated as there would be no guarantee that the TCC would be honored by the government as payment for taxes. No investor would take the risk of utilizing TCCs if these were subject to a post-audit that may invalidate them, without prescribed grounds or limits as to the exercise of said post-audit.

The inescapable conclusion is that the TCCs are not subject to post-audit as a suspensive condition, and are thus valid and effective from their issuance. As such, in the present case, if the TCCs have already been applied as partial payment for the tax liability of PSPC, a post-audit of the TCCs cannot simply annul them and the tax payment made through said TCCs. Payment has already been made and is as valid and effective as the issued TCCs. The subsequent post-audit cannot void the TCCs and allow the respondent to declare that utilizing cancelled TCCs results in nonpayment on the part of PSPC. As will be discussed, respondent and the Center expressly recognize the TCCs as valid payment of PSPC's tax liability.

Second, the only conditions the TCCs are subjected to are those found on its face. And these are:

1. Post-audit and subsequent adjustment in the event of computational discrepancy;
2. A reduction for any outstanding account/obligation of herein claimant with the BIR and/or BOC; and
3. Revalidation with the Center in case the TCC is not utilized or applied within one (1) year from date of issuance/date of last utilization.

The above conditions clearly show that the post-audit contemplated in the TCCs does not pertain to their genuineness or validity, but on computational discrepancies that may have resulted from the transfer and utilization of the TCC.

This is shown by a close reading of the first and second conditions above; the third condition is self explanatory. Since a tax credit partakes of what is owed by the State to a taxpayer, if the taxpayer has an outstanding liability with the BIR or the BOC, the money value of the tax credit covered by the TCC is primarily applied to such internal revenue liabilities of the holder as provided under condition number two. Elsewise put, the TCC issued to a claimant is applied first and foremost to any outstanding liability the claimant may have with the government. Thus, it may happen that upon post-audit, a TCC of a taxpayer may be reduced for whatever liability the taxpayer may have with the BIR which remains unpaid due to inadvertence or computational errors, and such reduction necessarily affects the balance of the monetary value of the tax credit of the TCC.

For example, Company A has been granted a TCC in the amount of PhP 500,000 through its export transactions, but it has an outstanding excise tax liability of PhP 250,000 which due to inadvertence was erroneously assessed and paid at PhP 225,000. On post-audit, with the finding of a deficiency of PhP 25,000, the utilization of the TCC is accordingly corrected and the tax credit remaining in the TCC correspondingly reduced by PhP 25,000. This is a concrete example of a computational discrepancy which comes to light after a post-audit is conducted on the utilization of the TCC. The same holds true for a transferee's use of the TCC in paying its outstanding internal revenue tax liabilities.

Other examples of computational errors would include the utilization of a single TCC to settle several internal revenue tax liabilities of the taxpayer or transferee, where errors committed in the reduction of the credit tax running balance are discovered in the post-audit resulting in the adjustment of the TCC utilization and remaining tax credit balance.

Third, the post-audit the Center conducted on the transferred TCCs, delving into their issuance and validity on alleged violations by PSPC of the August 29, 1989 MOA between the DOF and BOI, is completely misplaced. As may be recalled, the Center required PSPC to submit copies of pertinent sales invoices and delivery receipts covering sale transactions of PSPC products to the TCC assignors/transferors purportedly in connection with an ongoing post audit. As correctly protested by PSPC but which was completely ignored by the Center, PSPC is not required by law to be a capital equipment provider or a supplier of raw material and/or component supplier to the transferors. What the law requires is that the transferee be a BOI-registered company similar to the BOI-registered transferors.

The IRR of EO 226, which incorporated the October 5, 1982 MOA between the MOF and BOI, pertinently provides for the guidelines concerning the transferability of TCCs:

[T]he MOF and the BOI, through their respective representatives, have agreed on the following guidelines to govern the transferability of tax credit certificates:

1) All tax credit certificates issued to BOI-registered enterprises under P.D. 1789 may be transferred under conditions provided herein;

2) The **transferee should be a BOI-registered firm;**

3) The transferee may apply such tax credit certificates for payment of taxes, duties, charges or fees directly due to the national government for as long as it enjoys incentives under P.D. 1789. (Emphasis supplied.)

The above requirement has not been amended or repealed during the unfolding of the instant controversy. Thus, it is clear from the above proviso that it is only required that a TCC transferee be BOI-registered. In requiring PSPC to submit sales documents for its purported post-audit of the TCCs, the Center gravely abused its discretion as these are not required of the transferee PSPC by law and by the rules.

While the October 5, 1982 MOA appears to have been amended by the August 29, 1989 MOA between the DOF and BOI, such

may not operate to prejudice transferees like PSPC. For one, the August 29, 1989 MOA remains only an internal agreement as it has neither been elevated to the level of nor incorporated as an amendment in the IRR of EO 226. As aptly put by the CTA Division:

If the 1989 MOA has validly amended the 1982 MOA, it would have been incorporated either expressly or by reference in Rule VII of the Implementing Rules and Regulations (IRRs) of E.O. 226. To date, said Rule VII has not been repealed, amended or otherwise modified. It is noteworthy that the 1999 edition of the official publication by the BOI of E.O. 226 and its IRRs (*Exhibit R*) which is the latest version, as amended, has not mentioned expressly or by reference [*sic*] 1989 MOA. The MOA mentioned therein is still the 1982 MOA.

The 1982 MOA, although executed as a mere agreement between the DOF and the BOI was elevated to the status of a rule and regulation applicable to the general public by reason of its having been expressly incorporated in Rule VII of the IRRs. On the other hand, the 1989 MOA which purportedly amended the 1982 MOA, remained a mere agreement between the DOF and the BOI because, unlike the 1982 MOA, it was never incorporated either expressly or by reference to any amendment or revision of the said IRRs. Thus, it cannot be the basis of any invalidation of the transfers of TCCs to petitioner nor of any other sanction against petitioner.[36]

For another, even if the August 29, 1989 MOA has indeed amended the IRR, which it has not, still, it is ineffective and cannot prejudice third parties for lack of publication as mandatorily required under Chapter 2 of Book VII, EO 292, otherwise known as the Administrative Code of 1987, which pertinently provides:

Section 3. *Filing*.––(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or person.

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[36] *Rollo*, pp. 1731-1732.

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

Section 4. *Effectivity*.— In addition to other rule-making requirement provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

Section 5. x x x

(2) Every rule establishing an offense or defining an act which pursuant to law, is punishable as a crime or subject to a penalty shall in all cases be published in full text.

It is clear that the Center or DOF cannot compel PSPC to submit sales documents for the purported post-audit, as PSPC has duly complied with the requirements of the law and rules to be a qualified transferee of the subject TCCs.

Fourth, we likewise fail to see the liability clause at the dorsal portion of the TCCs to be a suspensive condition relative to the result of the post-audit. Said liability clause indicates:

LIABILITY CLAUSE

Both the TRANSFEROR and the TRANSFEREE shall be jointly and severally liable for any fraudulent act or violation of the pertinent laws, rules and regulations relating to the **transfer** of this TAX CREDIT CERTIFICATE. (Emphasis supplied.)

The above clause to our mind clearly provides only for the solidary liability relative to the **transfer** of the TCCs from the original grantee to a transferee. There is nothing in the above clause that provides for the liability of the transferee in the event that the validity of the TCC issued to the original grantee by the Center is impugned or where the TCC is declared to

have been fraudulently procured by the said original grantee. Thus, the solidary liability, if any, applies only to the sale of the TCC to the transferee by the original grantee. Any fraud or breach of law or rule relating to the issuance of the TCC by the Center to the transferor or the original grantee is the latter's responsibility and liability. The transferee in good faith and for value may not be unjustly prejudiced by the fraud committed by the claimant or transferor in the procurement or issuance of the TCC from the Center. It is not only unjust but well-nigh violative of the constitutional right not to be deprived of one's property without due process of law. Thus, a re-assessment of tax liabilities previously paid through TCCs by a transferee in good faith and for value is utterly confiscatory, more so when surcharges and interests are likewise assessed.

A transferee in good faith and for value of a TCC who has relied on the Center's representation of the genuineness and validity of the TCC transferred to it may not be legally required to pay again the tax covered by the TCC which has been belatedly declared null and void, that is, after the TCCs have been fully utilized through settlement of internal revenue tax liabilities. Conversely, when the transferee is party to the fraud as when it did not obtain the TCC for value or was a party to or has knowledge of its fraudulent issuance, said transferee is liable for the taxes and for the fraud committed as provided for by law.

In the instant case, a close review of the factual milieu and the records reveals that PSPC is a transferee in good faith and for value. No evidence was adduced that PSPC participated in any way in the issuance of the subject TCCs to the corporations who in turn conveyed the same to PSPC. It has likewise been shown that PSPC was not involved in the processing for the approval of the transfers of the subject TCCs from the various BOI-registered transferors.

Respondent, through the Center, made much of the alleged non-payment through non-delivery by PSPC of the IFOs it purportedly sold to the transferors covered by supply agreements which were allegedly the basis of the Center for the approval of the transfers. Respondent points to the requirement under

the August 29, 1989 MOA between the DOF and BOI, specifying the requirement that "[t]he transferee should be a BOI-registered firm which is a domestic capital equipment supplier, or a raw material and/or component supplier of the transferor."[37]

As discussed above, the above amendment to the October 5, 1982 MOA between BOI and MOF cannot prejudice any transferee, like PSPC, as it was neither incorporated nor elevated to the IRR of EO 226, and for lack of due publication. The pro-forma supply agreements allegedly executed by PSPC and the transferors covering the sale of IFOs to the transferors have been specifically denied by PSPC. Moreover, the above-quoted requirement is not required under the IRR of EO 226. Therefore, it is incumbent for respondent to present said supply agreements to prove participation by PSPC in the approval of the transfers of the subject TCCs. Respondent failed to do this.

PSPC claims to be a transferee in good faith of the subject TCCs. It believed that its tax obligations for 1992 and 1994 to 1997 had in fact been paid when it applied the subject TCCs, considering that all the necessary authorizations and approvals attendant to the transfer and utilization of the TCCs were present. It is undisputed that the transfers of the TCCs from the original holders to PSPC were duly approved by the Center, which is composed of a number of government agencies, including the BIR. Such approval was annotated on the reverse side of the TCCs, and the Center even issued TDM which is proof of its approval for PSPC to apply the TCCs as payment for the tax liabilities. The BIR issued its own TDM, also signifying approval of the TCCs as payment for PSPC's tax liabilities. The BIR also issued ATAPETs covering the aforementioned BIR-issued TDM, further proving its acceptance of the TCCs as valid tax payments, which formed part of PSPC's total tax payments along with checks duly acknowledged and received by BIR's authorized agent banks.

Several approvals were secured by PSPC before it utilized the transferred TCCs, and it relied on the verification of the

[37] *Id.* at 160.

various government agencies concerned of the genuineness and authenticity of the TCCs as well as the validity of their issuances. Furthermore, the parties stipulated in open court that the BIR-issued ATAPETs for the taxes covered by the subject TCCs confirm the correctness of the amount of excise taxes paid by PSPC during the tax years in question.

Thus, it is clear that PSPC is a transferee in good faith and for value of the subject TCCs and may not be prejudiced with a re-assessment of excise tax liabilities it has already settled when due with the use of the subject TCCs. Logically, therefore, the excise tax returns filed by PSPC duly covered by the TDM and ATAPETs issued by the BIR confirming the full payment and satisfaction of the excise tax liabilities of PSPC, have not been fraudulently filed. Consequently, as PSPC is a transferee in good faith and for value, Sec. 222(a) of the NIRC does not apply in the instant case as PSPC has neither been shown nor proven to have committed any fraudulent act in the transfer and utilization of the subject TCCs. With more reason, therefore, that the three-year prescriptive period for assessment under Art. 203 of the NIRC has already set in and bars respondent from assessing anew PSPC for the excise taxes already paid in 1992 and 1994 to 1997. Besides, even if the period for assessment has not prescribed, still, there is no valid ground for the assessment as the excise tax liabilities of PSPC have been duly settled and paid.

Fifth, PSPC cannot be blamed for relying on the Center's approval for the transfers of the subject TCCs and the Center's acceptance of the TCCs for the payment of its excise tax liabilities. Likewise, PSPC cannot be faulted in relying on the BIR's acceptance of the subject TCCs as payment for its excise tax liabilities. This reliance is supported by the fact that the subject TCCs have passed through stringent reviews starting from the claims of the transferors, their issuance by the Center, the Center's approval for their transfer to PSPC, the Center's acceptance of the TCCs to pay PSPC's excise tax liabilities through the issuance of the Center's TDM, and finally the acceptance by the BIR of the subject TCCs as payment through the issuance of its own TDM and ATAPETs.

Therefore, PSPC cannot be prejudiced by the Center's turnaround in assailing the validity of the subject TCCs which it issued in due course.

Sixth, we are of the view that the subject TCCs cannot be cancelled by the Center as these had already been cancelled after their application to PSPC's excise tax liabilities. PSPC contends they are already *functus officio*, not quite in the sense of being no longer effective, but in the sense that they have been used up. When the subject TCCs were accepted by the BIR through the latter's issuance of TDM and the ATAPETs, the subject TCCs were duly cancelled.

The tax credit of a taxpayer evidenced by a TCC is used up or, in accounting parlance, debited when applied to the taxpayer's internal revenue tax liability, and the TCC cancelled after the tax credit it represented is fully debited or used up. A credit is a payable or a liability. A tax credit, therefore, is a liability of the government evidenced by a TCC. Thus, the tax credit of a taxpayer evidenced by a TCC is debited by the BIR through a TDM, not only evidencing the payment of the tax by the taxpayer, but likewise deducting or debiting the existing tax credit with the amount of the tax paid.

For example, a transferee or the tax claimant has a TCC of PhP 1 million, which was used to pay income tax liability of PhP 500,000, documentary stamp tax liability of PhP 100,000, and value-added tax liability of PhP 350,000, for an aggregate internal revenue tax liability of PhP 950,000. After the payments through the PhP 1 million TCC have been approved and accepted by the BIR through the issuance of corresponding TDM, the TCC money value is reduced to only PhP 50,000, that is, a credit balance of PhP 50,000. In this sense, the tax credit of the TCC has been cancelled or used up in the amount of PhP 950,000. Now, let us say the transferee or taxpayer has excise tax liability of PhP 250,000, s/he only has the remaining PhP 50,000 tax credit in the TCC to pay part of said excise tax. When the transferee or taxpayer applies such payment, the TCC is cancelled as the money value of the tax credit it represented has been fully debited or used up. In short, there is no more

tax credit available for the taxpayer to settle his/her other tax liabilities.

In the instant case, with due application, approval, and acceptance of the payment by PSPC of the subject TCCs for its then outstanding excise tax liabilities in 1992 and 1994 to 1997, the subject TCCs have been cancelled as the money value of the tax credits these represented have been used up. Therefore, the DOF through the Center may not now cancel the subject TCCs as these have already been cancelled and used up after their acceptance as payment for PSPC's excise tax liabilities. What has been used up, debited, and canceled cannot anymore be declared to be void, ineffective, and cancelled anew.

Besides, it is indubitable that with the issuance of the corresponding TDM, not only is the TCC cancelled when fully utilized, but the payment is also final subject only to a post-audit on computational errors. Under RR 5-2000, a TDM is

> a certification, duly issued by the Commissioner or his duly authorized representative, reduced in a BIR Accountable Form in accordance with the prescribed formalities, acknowledging that the taxpayer named therein has duly paid his internal revenue tax liability in the form of and through the use of a Tax Credit Certificate, duly issued and existing in accordance with the provisions of these Regulations. The **Tax Debit Memo shall serve as the official receipt from the BIR evidencing a taxpayer's payment or satisfaction of his tax obligation.** The amount shown therein shall be charged against and deducted from the credit balance of the aforesaid Tax Credit Certificate.

Thus, with the due issuance of TDM by the Center and TDM by the BIR, the payments made by PSPC with the use of the subject TCCs have been effected and consummated as the TDMs serve as the official receipts evidencing PSPC's payment or satisfaction of its tax obligation. Moreover, the BIR not only issued the corresponding TDM, but it also issued ATAPETs which doubly show the payment of the subject excise taxes of PSPC.

Based on the above discussion, we hold that respondent erroneously and without factual and legal basis levied the

assessment. Consequently, the CTA *En Banc* erred in sustaining respondent's assessment.

Second Issue: Cancellation of TCCs

PSPC argues that the CTA *En Banc* erred in upholding the cancellation by the Center of the subject TCCs it used in paying some of its excise tax liabilities as the subject TCCs were genuine and authentic, having been subjected to thorough and stringent procedures, and approvals by the Center. Moreover, PSPC posits that both the CTA's Division and *En Banc* duly found that PSPC had neither knowledge, involvement, nor participation in the alleged fraudulent issuance of the subject TCCs, and, thus, as a transferee in good faith and for value, it cannot be held solidarily liable for any fraud attendant to the issuance of the subject TCCs. PSPC further asserts that the Center has no authority to cancel the subject TCCs as such authority is lodged exclusively with the BOI. Lastly, PSPC said that the Center's Excom Resolution No. 03-05-99 which the Center relied upon as basis for the cancellation is defective, ineffective, and cannot prejudice third parties for lack of publication.

As we have explained above, the subject TCCs after being fully utilized in the settlement of PSPC's excise tax liabilities have been cancelled, and thus cannot be cancelled anymore. For being immediately effective and valid when issued, the subject TCCs have been duly utilized by transferee PSPC which is a transferee in good faith and for value.

On the issue of the fraudulent procurement of the TCCs, it has been asseverated that fraud was committed by the TCC claimants who were the transferors of the subject TCCs. We see no need to rule on this issue in view of our finding that the real issue in this petition does not dwell on the validity of the TCCs procured by the transferor from the Center but on whether fraud or breach of law attended the transfer of said TCCs by the transferor to the transferee.

The finding of the CTA *En Banc* that there was fraud in the procurement of the subject TCCs is, therefore, irrelevant and immaterial to the instant petition. Moreover, there are pending

criminal cases arising from the alleged fraud. We leave the matter to the anti-graft court especially considering the failure of the affiants to the affidavits to appear, making these hearsay evidence.

We note in passing that PSPC and its officers were not involved in any fraudulent act that may have been undertaken by the transferors of subject TCCs, supported by the finding of the Ombudsman Special Prosecutor Leonardo P. Tamayo that Pacifico R. Cruz, PSPC General Manager of the Treasury and Taxation Department, who was earlier indicted as accused in OMB-0-99-2012 to 2034 for violation of Sec. 3(e) and (j) of RA 3019, as amended, otherwise known as the "Anti-Graft and Corrupt Practices Act," for allegedly conspiring with other accused in defrauding and causing undue injury to the government,[38] did not in any way participate in alleged fraudulent activities relative to the transfer and use of the subject TCCs.

In a Memorandum[39] addressed to then Ombudsman Aniano A. Desierto, the Special Prosecutor Leonardo P. Tamayo recommended dropping Pacifico Cruz as accused in Criminal Case Nos. 25940-25962 entitled *People of the Philippines v. Antonio P. Belicena, et al.*, pending before the Sandiganbayan Fifth Division for lack of probable cause. Special Prosecutor Tamayo found that Cruz's involvement in the transfers of the subject TCCs came after the applications for the transfers had been duly processed and approved; and that Cruz could not have been part of the conspiracy as he cannot be presumed to have knowledge of the irregularity, because the 1989 MOA, which prescribed the additional requirement that the transferee of a TCC should be a supplier of the transferor, was not yet published and made known to private parties at the time the subject TCCs were transferred to PSPC. The Memorandum of Special Prosecutor Tamayo was duly approved by then Ombudsman Desierto. Consequently, on May 31, 2000, the

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[38] *Id.* at 1535-1584. March 27, 2000 Joint Resolution of the Office of the Ombudsman Evaluation and Preliminary Investigation Bureau.

[39] *Id.* at 4253-4257.

Sandiganbayan Fifth Division, hearing Criminal Case Nos. 25940-25962, dropped Cruz as accused.[40]

But even assuming that fraud attended the procurement of the subject TCCs, it cannot prejudice PSPC's rights as earlier explained since PSPC has not been shown or proven to have participated in the perpetration of the fraudulent acts, nor is it shown that PSPC committed fraud in the transfer and utilization of the subject TCCs.

On the issue of the authority to cancel duly issued TCCs, we agree with respondent that the Center has concurrent authority with the BIR and BOC to cancel the TCCs it issued. The Center was created under Administrative Order No. (AO) 266 in relation to EO 226. A scrutiny of said executive issuances clearly shows that the Center was granted the authority to issue TCCs pursuant to its mandate under AO 266. Sec. 5 of AO 266 provides:

SECTION 5. **Issuance of Tax Credit Certificates and/or Duty Drawback**.—The Secretary of Finance shall designate his representatives who shall, upon the recommendation of the CENTER, issue tax credit certificates within thirty (30) working days from acceptance of applications for the enjoyment thereof. (Emphasis supplied.)

On the other hand, it is undisputed that the BIR under the NIRC and related statutes has the authority to both issue and cancel TCCs it has issued and even those issued by the Center, either upon full utilization in the settlement of internal revenue tax liabilities or upon conversion into a tax refund of unutilized TCCs in specific cases under the conditions provided.[41] AO 266 however is silent on whether or not the Center has authority to cancel a TCC it itself issued. Sec. 3 of AO 266 reveals:

SECTION 3. Powers, Duties and Functions.—The Center shall have the following powers, duties and functions:

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[40] *Id.* at 1258-1260. May 31, 2000 Resolution penned Associate Justice Minita V. Chico-Nazario (Chairperson, now a member of this Court) and concurred in by Associate Justices Rodolfo G. Palatiao and Ma. Cristina G. Cortez-Estrada.

[41] See Sec. 204 in relation to Sec. 230 of the NIRC.

a. **To promulgate the necessary rules and regulations and/ or guidelines for the effective implementation of this administrative order;**

xxx xxx xxx

g. **To enforce compliance with tax credit/duty drawback policy and procedural guidelines;**

xxx xxx xxx

l. **To perform such other functions/duties as may be necessary or <u>incidental</u> in the furtherance of the purpose for which it has been established.** (Emphasis supplied.)

Sec. 3, letter l. of AO 266, in relation to letters a. and g., does give ample authority to the Center to cancel the TCCs it issued. Evidently, the Center cannot carry out its mandate if it cannot cancel the TCCs it may have erroneously issued or those that were fraudulently issued. It is axiomatic that when the law and its implementing rules are silent on the matter of cancellation while granting explicit authority to issue, an inherent and incidental power resides on the issuing authority to cancel that which was issued. A caveat however is required in that while the Center has authority to do so, it must bear in mind the nature of the TCC's immediate effectiveness and validity for which cancellation may only be exercised before a transferred TCC has been fully utilized or cancelled by the BIR after due application of the available tax credit to the internal revenue tax liabilities of an innocent transferee for value, unless of course the claimant or transferee was involved in the perpetration of the fraud in the TCC's issuance, transfer, or utilization. The utilization of the TCC will not shield a guilty party from the consequences of the fraud committed.

While we agree with respondent that the State in the performance of governmental function is not estopped by the neglect or omission of its agents, and nowhere is this truer than in the field of taxation,[42] yet this principle cannot be applied to

[42] See *Commissioner of Internal Revenue v. Proctor and Gamble PMC*, G.R. No. 66838, April 15, 1988, 160 SCRA 560.

work injustice against an innocent party. In the case at bar, PSPC's rights as an innocent transferee for value must be protected. Therefore, the remedy for respondent is to go after the claimant companies who allegedly perpetrated the fraud. This is now the subject of a criminal prosecution before the Sandiganbayan docketed as Criminal Case Nos. 25940-25962 for violation of RA 3019.

On the issue of the publication of the Center's Excom Resolution No. 03-05-99 providing for the "Guidelines and Procedures for the Cancellation, Recall and Recovery of Fraudulently Issued Tax Credit Certificates," we find that the resolution is invalid and unenforceable. It authorizes the cancellation of TCCs and TDM which are found to have been granted without legal basis or based on fraudulent documents. The cancellation of the TCCs and TDM is covered by a penal provision of the assailed resolution. Such being the case, it should have been published and filed with the National Administrative Register of the U.P. Law Center in accordance with Secs. 3, 4, and 5, Chapter 2 of Book VII, EO 292 or the Administrative Code of 1987.

We explained in *People v. Que Po Lay*[43] that a rule which carries a penal sanction will bind the public if the public is officially and specifically informed of the contents and penalties prescribed for the breach of the rule. Since Excom Resolution No. 03-05-99 was neither registered with the U.P. Law Center nor published, it is ineffective and unenforceable. Even if the resolution need not be published, the punishment for any alleged fraudulent act in the procurement of the TCCs must not be visited on PSPC, an innocent transferee for value, which has not been shown to have participated in the fraud. Respondent must go after the perpetrators of the fraud.

Third Issue: Imposition of surcharges and interests

PSPC claims that having no deficiency excise tax liabilities, it may not be liable for the late payment surcharges and annual interests.

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[43] 94 Phil. 640 (1954).

This issue has been mooted by our disquisition above resolving the first issue in that PSPC has duly settled its excise tax liabilities for 1992 and 1994 to 1997. Consequently, there is no basis for the imposition of a late payment surcharges and for interests, and no need for further discussion on the matter.

Fourth Issue: Non-compliance with statutory and procedural due process

Finally, PSPC avers that its statutory and procedural right to due process was violated by respondent in the issuance of the assessment. PSPC claims respondent violated RR 12-99 since no pre-assessment notice was issued to PSPC before the November 15, 1999 assessment. Moreover, PSPC argues that the November 15, 1999 assessment effectively deprived it of its statutory right to protest the pre-assessment within 30 days from receipt of the disputed assessment letter.

While this has likewise been mooted by our discussion above, it would not be amiss to state that PSPC's rights to substantive and procedural due process have indeed been violated. The facts show that PSPC was not accorded due process before the assessment was levied on it. The Center required PSPC to submit certain sales documents relative to supposed delivery of IFOs by PSPC to the TCC transferors. PSPC contends that it could not submit these documents as the transfer of the subject TCCs did not require that it be a supplier of materials and/or component supplies to the transferors in a letter dated October 29, 1999 which was received by the Center on November 3, 1999. On the same day, the Center informed PSPC of the cancellation of the subject TCCs and the TDM covering the application of the TCCs to PSPC's excise tax liabilities. The objections of PSPC were brushed aside by the Center and the assessment was issued by respondent on November 15, 1999, without following the statutory and procedural requirements clearly provided under the NIRC and applicable regulations.

What is applicable is RR 12-99, which superseded RR 12-85, pursuant to Sec. 244 in relation to Sec. 245 of the NIRC implementing Secs. 6, 7, 204, 228, 247, 248, and 249 on the assessment of national internal revenue taxes, fees, and charges. The procedures delineated in the said statutory provisos and RR 12-99 were not followed by respondent, depriving PSPC of due process in contesting the formal assessment levied against it. Respondent ignored RR 12-99 and did not issue PSPC a notice for informal conference[44] and a preliminary assessment notice, as required.[45] PSPC's November 4, 1999 motion for reconsideration of the purported Center findings and cancellation of the subject TCCs and the TDM was not even acted upon.

PSPC was merely informed that it is liable for the amount of excise taxes it declared in its excise tax returns for 1992 and 1994 to 1997 covered by the subject TCCs via the formal letter of demand and assessment notice. For being formally defective, the November 15, 1999 formal letter of demand and assessment notice is void. Paragraph 3.1.4 of Sec. 3, RR 12-99 pertinently provides:

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[44] RR 12-99, Sec. 3, par. 3.1.1 states:

3.1.1 Notice for informal conference.––The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

[45] RR 12-99, Sec. 3, par. 3.1.2 states:

3.1.4 Formal Letter of Demand and Assessment Notice.––The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes **shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based**, **otherwise, the formal letter of demand and assessment notice shall be void**. The same shall be sent to the taxpayer only by registered mail or by personal delivery. x x x (Emphasis supplied.)

In short, respondent merely relied on the findings of the Center which did not give PSPC ample opportunity to air its side. While PSPC indeed protested the formal assessment, such does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued. Respondent must be more circumspect in the exercise of his functions, as this Court aptly held in *Roxas v. Court of Tax Appeals*:

> The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously.[46]

3.1.2 Preliminary Assessment Notice (PAN).—If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

[46] No. L-25043, April 26, 1968, 23 SCRA 276, 282.

WHEREFORE, the petition is *GRANTED*. The April 28, 2006 CTA *En Banc* Decision in CTA EB No. 64 is hereby *REVERSED* and *SET ASIDE,* and the August 2, 2004 CTA Decision in CTA Case No. 6003 disallowing the assessment is hereby *REINSTATED*. The assessment of respondent for deficiency excise taxes against petitioner for 1992 and 1994 to 1997 inclusive contained in the April 22, 1998 letter of respondent is cancelled and declared without force and effect for lack of legal basis. No pronouncement as to costs.

SO ORDERED.

Carpio and *CarpioMorales, JJ.,* concur.

Quisumbing, J., in the result.

Tinga, J., concurs in the result, based on perception only.

EN BANC

[A.M. No. P-05-2100. December 27, 2007]

A VERY CONCERNED EMPLOYEE AND CITIZEN, *complainant, vs.* **LOURDES S. DE MATEO, CLERK III, MUNICIPAL TRIAL COURT in CITIES, KORONADAL CITY, SOUTH COTABATO,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; DISHONESTY AND GRAVE MISCONDUCT; RESPONDENT OFFERED NO EXPLANATION ON THE DISCREPANCY BETWEEN THE ENTRIES IN HER DAILY TIME RECORD AND THE ENTRIES LOGGED BY THE HEAD GUARD.—**Based on the record of this administrative matter we note, first, that

respondent offered no explanation on the discrepancy between the entries in her DTR and the entries logged by the Head Guard. Although the DTRs were signed by Presiding Judge Agustin T. Sardido, certifying to the correctness of the entries, we find, however, that the Head Guard had discreetly logged in the actual times of respondent's arrival and departures, upon the instruction of Executive Judge Francisco S. Ampig, Jr. There appears no reason why the Head Guard should falsify his entries which differ from those of respondent, and thus we agree to rely on his entries. Moreover, as the OCA report stated, it was the task of the Clerk of Court, and not the Judge (particularly Judge Sardido) to certify to the correctness of entries in the DTR.

2. ID.; ID.; ID.; ID.; ID.; EVIDENCE RELIED UPON BY THE INVESTIGATING JUDGE DOES NOT INDUBITABLY SHOW THAT RESPONDENT HAD A DIRECT HAND IN THE FALSIFICATION OF THE ALLEGED DOCUMENTS SUPPORTING THE BAIL BOND APPLICATION; THE DOCUMENTS THEMSELVES, WITHOUT FURTHER CORROBORATION BY CREDIBLE WITNESSES, DO NOT SHOW THAT THEY WERE INDEED FALSIFIED.— As to respondent's participation in the falsification of a bail bond document, the OCA report gave credence to the sworn statement of Lydia Jayme who made a detailed narration of how the falsifications were done. The OCA also considered as supporting evidence the contested documents supporting the bail bond, *e.g.*, the falsified tax declarations, a handwritten note by the respondent addressed to one Nita Frias evidencing that respondent knew of the questioned bail bonds and she had, in fact, asked Diding to speed up the processing. Furthermore, as Clerk III, respondent de Mateo had the task to docket criminal complaints and keep a record book of warrants of arrest issued. Significantly, we note, second, that respondent de Mateo denied all the accusations levelled at her and averred that her accusers were motivated mainly by ill will. Be that as it may, we abide by the established doctrine, in administrative proceedings, that the complainant has the burden of proving by substantial evidence the allegations in the complaint. We shall proceed with the task of evaluating complainant's evidence. Substantial evidence in an administrative case consists of that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. In this case, the evidence relied

upon by Judge Dinopol, who investigated the case, does not indubitably show that respondent had a direct hand in the falsification of the documents. First, the sworn statement of witness Lydia Jayme cannot be the sole basis to determine the liability of respondent without any corroboration. We find, based on the record, that she was not even physically available during hearings to vouch for her statements. Second, the handwritten note of respondent addressed to one Nita Frias was not authenticated or corroborated by any witness. Third, the alleged documents supporting the bail bond application, by themselves, do not show that these were indeed falsifications, without further corroboration by credible witnesses.

3. **ID.; ID.; ID.; ID.; ID.; RECOMMENDED PENALTY OF DISMISSAL IS APPROPRIATE; DISHONESTY IS A MALEVOLENT ACT THAT HAS NO PLACE IN THE JUDICIARY.—** We agree that falsification of daily time records is patent dishonesty. Dishonesty is "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Dishonesty, being a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and with perpetual disqualification from re-employment in government service. Finding that the respondent offered no satisfactory explanation concerning the charges of dishonesty against her, and absent any circumstance to mitigate the imposable penalty, the Court finds the OCA recommendation of her dismissal appropriate.

4. **ID.; ID.; ID.; ID.; ID.; RESPONDENT FAILED TO LIVE UP TO THE STANDARDS OF HONESTY AND INTEGRITY IN THE PUBLIC SERVICE; THE COURT CANNOT COUNTENANCE ANY ACT OR OMISSION BY ANY COURT EMPLOYEE THAT VIOLATES THE NORM OF PUBLIC ACCOUNTABILITY WHICH WOULD DIMINISH THE FAITH OF THE PEOPLE IN THE JUDICIARY.—** Respondent, it should be stressed, failed to live up to the standards of honesty and integrity in the public service. As the Constitution felicitously phrases it, public office is a public trust. Inherent in this mandate of trust is the observance of prescribed office hours and the efficient use thereof for public

service, if only to recompense the Government, and ultimately the people, who shoulder the cost of maintaining the Judiciary. Thus, to inspire public confidence and respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. They must bear in mind that punctuality is a virtue, but absenteeism and tardiness are impermissible. The Court is duty-bound to sternly wield a corrective hand to discipline errant employees and to weed out those who are found undesirable. We cannot countenance any act or omission by any court employee that violates the norm of public accountability, which would diminish the faith of the people in the Judiciary.

RESOLUTION

PER CURIAM:

In a period of one year, Lourdes S. de Mateo, Clerk III of the Municipal Trial Court in Cities (MTCC), Koronadal City, South Cotabato, found herself at the receiving end of several anonymous letter-complaints specifically charging her with falsification, dishonesty and grave misconduct.

According to the letter-complaints, respondent was habitually tardy but she falsified her Daily Time Records (DTRs). She habitually reported for work between 10:30 a.m. and 12:00 noon, but entered in her DTR that she regularly reported 8:00 a.m.[1] Further, her absences were not reflected in her DTR. The complaints also charged that respondent and her husband were known influence peddlers, engaged in "fixing" activities and associated with known "fixers" in the Hall of Justice, among them one Amy Gonzales and one Diding Pregua. The complaint specifically cited the case filed by Marbel Fit Mart, Inc.[2] Another complaint alleged that she was responsible for using salt to destroy a bundy clock, but this allegation was not proven.[3]

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[1] *Rollo,* pp. 30-31.

[2] *Id.* at 1.

[3] *Id.* at 32-33.

In her Comment dated November 17, 2000 and October 7, 2002, respondent denied all the charges. She claimed she was only implicated in the case of Diding Pregua because they were friends; but the allegations against her were not substantiated;[4] and that the complainant was only motivated by ill will and personal animosity towards her.[5] She also denied that she had a hand in preparing Venus Pascua's property bail bond in the Marbel Fit Mart case.

Upon this Court's order to investigate, report and recommend action regarding the complaints, Regional Trial Court Judge Oscar E. Dinopol found respondent liable for grave misconduct and falsification on August 16, 2005. He found that there was insufficient proof, however, that respondent gave advance information to an accused for monetary consideration. Judge Dinopol recommended that respondent be meted the disciplinary penalty of one-year suspension without pay for participation in the falsification of the bail bond document. Lastly, he recommended that the respondent be dismissed from the service for falsification, instructing the falsification, and consenting to the falsification of an official document, which is her daily time record.[6]

Following receipt and review of the aforementioned investigation, report and recommendation by Judge Dinopol, the Office of the Court Administrator (OCA) concluded that:

> 1. The comparative exposition of the genuine and certified documents against the simulated Tax Declarations and Certificate of Real Estate Tax Payments verily shows that the falsification could not have been consummated without the knowledge and participation of respondent;
>
> 2. The indorsement dated 17 November 2000 of then Judge Agustin T. Sardido vouching favorably on respondent's non-complicity in the preparation of the fictitious documents relative to the questioned property bond [was] without merit because

[4] *Id*. at 55, 70-71.

[5] *Id*. at 70.

[6] *Id*. at 86-117.

documents would show that dismissed Judge Sardido himself had complicity in the questioned release of the accused on the subject property bond;

3. Respondent [was] closely associated with one Gloria "Diding" Pregua, who [was] not an employee of the Halls of Justice and a known fixer who help[ed] her out in the processing of the bail bonds of accused in their sala;

4. Respondent was involved in the anomalous activities concerning the case filed by Marbel Fit Mart, Inc., where the assessed and market values of the property of the bondsmen were bloated and the certificates of tax clearance were falsified. She was even the one who typed the bail bond papers, prepared the tax declaration and filled up the entries covered by correction fluid;

5. The evidence and documents on record [warrant] a conclusion that respondent [was] guilty of grave misconduct in connection with the performance of her official functions and duties as Clerk III. She participated in the falsification of documents relative to the subject property bond of the named accused, which, as Clerk III, she has the duty to receive and record, and to refer to the Clerk of Court;

6. Respondent indeed initiated and consented to the falsification of her DTR for the period covering 11 to 25 October 1999. Her usual tardiness for the said period, except on 21 October 1999, was not reflected in her DTR, as well as her absence the whole day of 12 October 1999. During the said period covering 11 to 25 October 1999, there were times that respondent's DTR card was being punched-in by her fellow MTC employees. There was no sufficient evidence, however, to prove the alleged tardiness of respondent and the falsification of her DTR prior to the period of investigation.[7]

The OCA recommended that respondent Lourdes S. de Mateo, Clerk III of the MTCC, Koronadal City, South Cotabato, be HELD GUILTY of Dishonesty and Grave Misconduct and be DISMISSED from the service with forfeiture of all benefits and with prejudice to reemployment in the government or any of its subdivisions, instrumentalities, or agencies including

[7] *Id*. at 327, 330-331.

government-owned or controlled corporations.[8]

Based on the record of this administrative matter we note, first, that respondent offered no explanation on the discrepancy between the entries in her DTR and the entries logged by the Head Guard. Although the DTRs were signed by Presiding Judge Agustin T. Sardido, certifying to the correctness of the entries,[9] we find, however, that the Head Guard had discreetly logged in the actual times of respondent's arrival and departures, upon the instruction of Executive Judge Francisco S. Ampig, Jr.[10] There appears no reason why the Head Guard should falsify his entries which differ from those of respondent, and thus we agree to rely on his entries. Moreover, as the OCA report stated, it was the task of the Clerk of Court, and not the Judge (particularly Judge Sardido) to certify to the correctness of entries in the DTR.[11]

As to respondent's participation in the falsification of a bail bond document, the OCA report gave credence to the sworn statement of Lydia Jayme who made a detailed narration of how the falsifications were done. The OCA also considered as supporting evidence the contested documents supporting the bail bond,[12] *e.g.*, the falsified tax declarations, a handwritten note by the respondent addressed to one Nita Frias evidencing that respondent knew of the questioned bail bonds and she had, in fact, asked Diding to speed up the processing.[13] Furthermore, as Clerk III, respondent de Mateo had the task to docket criminal complaints and keep a record book of warrants of arrest issued.[14]

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[8] *Id*. at 332. OCA Report Re: Administrative Matter No. OCA IPI 00-975-P (*A Very Concerned Employee and Citizen v. Lourdes S. de Mateo, Clerk III of MTC, Koronadal City, South Cotabato*).

[9] *Id*. at 54.

[10] *Id*. at 44-45.

[11] *Id*. at 113. OCA Report and Recommendation, citing Paragraph 2, Section A, Chapter VII of the Manual for Clerk of Court.

[12] *Id*. at 12-20, 24-29.

[13] *Id*. at 11.

[14] *Id*. at 105.

Significantly, we note, second, that respondent de Mateo denied all the accusations levelled at her and averred that her accusers were motivated mainly by ill will. Be that as it may, we abide by the established doctrine, in administrative proceedings, that the complainant has the burden of proving by substantial evidence the allegations in the complaint.[15] We shall proceed with the task of evaluating complainant's evidence.

Substantial evidence in an administrative case consists of that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[16] In this case, the evidence relied upon by Judge Dinopol, who investigated the case, does not indubitably show that respondent had a direct hand in the falsification of the documents. First, the sworn statement of witness Lydia Jayme cannot be the sole basis to determine the liability of respondent without any corroboration. We find, based on the record, that she was not even physically available during hearings to vouch for her statements. Second, the handwritten note of respondent addressed to one Nita Frias was not authenticated or corroborated by any witness. Third, the alleged documents supporting the bail bond application, by themselves, do not show that these were indeed falsifications, without further corroboration by credible witnesses.

Coming now to the imposable penalty, we agree that falsification of daily time records is patent dishonesty.[17] Dishonesty is "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud,

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[15] *Alcantara v. Judge De Leon*, A.M. OCA IPI No. 05-2393-RTJ, August 23, 2006, p. 3 (Unsigned Resolution); *Eugalca v. Atty. Lao*, A.M. OCA IPI No. 05-2177-P, April 5, 2006, p. 5 (Unsigned Resolution).

[16] *Nueva Ecija Electric Cooperative (NEECO) II v. National Labor Relations Commission*, G.R. No. 157603, June 23, 2005, 461 SCRA 169, 185; *Po v. Lamano*, A.M. No. P-05-2081 (Formerly A.M. OCA IPI No. 04-1873-P), October 19, 2005, p. 4 (Unsigned Resolution).

[17] *Re: Falsification of Daily Time Records of Maria Fe P. Brooks, Court Interpreter, RTC, Quezon City, Br. 96*, A.M. No. P-05-2086 (Formerly OCA I.P.I. No. 05-9-583-RTC), October 20, 2005, 473 SCRA 483, 488.

deceive or betray."[18] Dishonesty, being a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and with perpetual disqualification from re-employment in government service.[19] Indeed, dishonesty is a malevolent act that has no place in the Judiciary.[20] Finding that the respondent offered no satisfactory explanation concerning the charges of dishonesty against her, and absent any circumstance to mitigate the imposable penalty, the Court finds the OCA recommendation of her dismissal appropriate.

Respondent, it should be stressed, failed to live up to the standards of honesty and integrity in the public service. As the Constitution felicitously phrases it, public office is a public trust. Inherent in this mandate of trust is the observance of prescribed office hours and the efficient use thereof for public service, if only to recompense the Government, and ultimately the people, who shoulder the cost of maintaining the Judiciary. Thus, to inspire public confidence and respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. They must bear in mind that punctuality is a virtue, but absenteeism and tardiness are impermissible.[21]

The Court is duty-bound to sternly wield a corrective hand to discipline errant employees and to weed out those who are found undesirable.[22] We cannot countenance any act or omission

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[18] *Corpuz v. Ramiterre*, Adm. Matter No. P-04-1779 (Formerly A.M. No. 03-12-703-RTC), November 25, 2005, 476 SCRA 108, 121.

[19] *Office of the Court Administrator v. Magno*, A.M. No. P-00-1419 (Formerly A.M. No. 99-5-60-MTC), October 17, 2001, 367 SCRA 312, 319.

[20] *Civil Service Commission v. Javier*, A. M. No. P-05-1981 (Formerly OCA I.P.I. No. 02-1516-P), April 6, 2005, 455 SCRA 24, 33.

[21] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Off. Clerk of Court,* A.M. No. 2001-7-SC & No. 2001-8-SC, July 22, 2005, 464 SCRA 1, 16.

[22] *Reyes-Macabeo v. Valle*, A.M. No. P-02-1650, April 3, 2003, 400 SCRA 478, 482.

by any court employee that violates the norm of public accountability, which would diminish the faith of the people in the Judiciary.[23]

WHEREFORE, for falsification and dishonesty, respondent Lourdes S. de Mateo, Clerk III of the Municipal Trial Court in Cities (MTCC), stationed in Koronadal City, South Cotabato, is hereby *DISMISSED* from the service, with forfeiture of retirement benefits (except accrued leave credits), and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Puno, C.J. (Chairperson), Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and *Leonardo-de Castro, JJ.,* concur.

Carpio, J., on leave.

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[23] *Office of the Court Administrator v. Duque*, A.M. P-05-1958 (Formerly OCA-IPI No. 03-1718-P), February 7, 2005, 450 SCRA 527, 533; *Flores v. Falcotelo*, A.M. No. P-05-2038 (Formerly OCA I.P.I. No. 04-2055-P), January 25, 2006, 480 SCRA 16, 25.

SECOND DIVISION

[G.R. No. 124518. December 27, 2007]

WILSON SY, *petitioner, vs.* **COURT OF APPEALS, Regional Trial Court of Manila, Branch 48, and MERCEDES TAN UY-SY,** *respondents.*

SYLLABUS

1. **CIVIL LAW; FAMILY CODE; PARENTAL AUTHORITY; CUSTODY OF MINOR CHILDREN IN CASE OF LEGAL SEPARATION OF THE PARENTS.—** In case of legal separation of the parents, the custody of the minor children shall be awarded to the innocent spouse, unless otherwise directed by the court in the interest of the minor children. But when the husband and wife are living separately and apart from each other, without decree of the court, the court shall award the care, custody, and control of each child as will be for his best interest, permitting the child to choose which parent he prefers to live with if he is over seven (7) years of age unless the parent so chosen be unfit to take charge of the child by reason of moral depravity, habitual drunkenness or poverty.

2. **ID.; ID.; ID.; ID.; ABSENT ANY COMPELLING REASON TO THE CONTRARY, THE TRIAL COURT WAS CORRECT IN RESTORING THE CUSTODY OF THE CHILDREN TO THE MOTHER, HEREIN RESPONDENT, THE CHILDREN BEING LESS THAN SEVEN YEARS OF AGE, AT THE TIME THE CASE WAS DECIDED.—** In all controversies regarding the custody of minors, the sole and foremost consideration is the physical, educational, social and moral welfare of the child concerned, taking into account the respective resources and social and moral situations of the contending parents. However, the law favors the mother if she is a fit and proper person to have custody of her children so that they may not only receive her attention, care, supervision but also have the advantage and benefit of a mother's love and devotion for which there is no substitute. Generally, the love, solicitude and devotion of a mother cannot be replaced by another and are worth more to a child of tender years than all

other things combined. The Civil Code Commission, in recommending the preference for the mother, explained, thus: The general rule is recommended in order to avoid many a tragedy where a mother has seen her baby torn away from her. No man can sound the deep sorrows of a mother who is deprived of her child of tender age. The exception allowed by the rule has to be for "compelling reasons" for the good of the child: those cases must indeed be rare, if the mother's heart is not to be unduly hurt. If she has erred, as in cases of adultery, the penalty of imprisonment and the (relative) divorce decree will ordinarily be sufficient punishment for her. Moreover, her moral dereliction will not have any effect upon the baby who is as yet unable to understand the situation. This preference favoring the mother over the father is even reiterated in Section 6, Rule 99 of the Rules of Court (the Rule on Adoption and Custody of Minors) underscoring its significance. The above-quoted provision expressly acknowledges and authorizes that the matter of care and custody of the children may be raised and adjudicated as an incident to any proceeding, such as a case for *habeas corpus*. Evidently, absent any compelling reason to the contrary, the trial court was correct in restoring the custody of the children to the mother, herein respondent, the children being less than seven years of age, at least at the time the case was decided. Moreover, petitioner's contention that respondent is unfit to have custody over the minor children has not been substantiated as found by both courts below. Thus, it is already too late for petitioner to reiterate the assertion for only questions of law may be raised before this Court. Furthermore, the determination of whether the mother is fit or unfit to have custody over the children is a matter well within the sound discretion of the trial court, and unless it is shown that said discretion has been abused the selection will not be interfered with. Consequently, the Court affirms the award of custody in respondent's favor.

3. **ID.; ID.; SUPPORT; OBLIGATION TO GIVE SUPPORT IS DEMANDABLE FROM THE TIME THE PERSON WHO HAS A RIGHT TO RECEIVE THE SAME NEEDS IT FOR MAINTENANCE, BUT IT SHALL NOT BE PAID EXCEPT FROM THE DATE OF JUDICIAL OR EXTRAJUDICIAL DEMAND; RATIONALE.—** Article 203 of the Family Code states that the obligation to give support is demandable from the time the person who has a right to receive the same needs

it for maintenance, but it shall not be paid except from the date of judicial or extrajudicial demand. The case of *Jocson v. The Empire Ins. Co. and Jocson Lagniton* explains the rationale for this rule: xxx Support does include what is necessary for the education and clothing of the person entitled thereto (Art. 290, New Civil Code). But support must be demanded and the right to it established before it becomes payable (Art. 298, New Civil Code; *Marcelo v. Estacio*, 70 Phil. 215). For the right to support does not arise from the mere fact of relationship, even from the relationship of parents and children, but "from imperative necessity without which it cannot be demanded, and the law presumes that such necessity does not exist unless support is demanded (Civil Code of the Philippines, Annotated, Tolentino, Vol. 1, p. 181, citing 8 Manresa 685). In the present case, it does not appear that support for the minors, be it only for their education and clothing, was ever demanded from their father and the need for it duly established. The need for support, as already stated, cannot be presumed, and especially must this be true in the present case where it appears that the minors had means of their own.

4. **ID.; ID.; ID.; SINCE THE ISSUE OF SUPPORT WAS TRIED WITH THE IMPLIED CONSENT OF THE PARTIES, IT SHOULD BE TREATED IN ALL RESPECTS AS IF IT HAD BEEN RAISED IN THE PLEADINGS; EVEN IF NO MOTION HAD BEEN FILED AND NO AMENDMENT HAD BEEN ORDERED, THE TRIAL COURT VALIDLY RENDERED JUDGMENT ON THE ISSUE.—** Contrary to petitioner's assertions, respondent testified during trial, without any objection on petitioner's part, regarding the need for support for the children's education and other necessities. Moreover, based on the transcript of stenographic notes, petitioner was clearly made aware that the issue of support was being deliberated upon. The trial court judge even propounded questions to petitioner regarding his sources of income for the purpose of determining the amount of support to be given to the children. Applying Section 5, Rule 10 of the 1997 Rules of Civil Procedure, since the issue of support was tried with the implied consent of the parties, it should be treated in all respects as if it had been raised in the pleadings. And since there was implied consent, even if no motion had been filed and no amendment had been ordered, the Court holds that the

trial court validly rendered a judgment on the issue. Significantly, in the case of *Bank of America v. American Realty Corporation,* the Court stated: There have been instances where the Court has held that even without the necessary amendment, the amount proved at the trial may be validly awarded, as in *Tuazon v. Bolanos* (95 Phil. 106), where we said that if the facts shown entitled plaintiff to relief other than that asked for, no amendment to the complaint was necessary, especially where defendant had himself raised the point on which recovery was based. The appellate court could treat the pleading as amended to conform to the evidence although the pleadings were actually not amended. Amendment is also unnecessary when only clerical error or non substantial matters are involved, as we held in *Bank of the Philippine Islands vs. Laguna* (48 Phil. 5). In *Co Tiamco v. Diaz* (75 Phil. 672), we stressed that the rule on amendment need not be applied rigidly, particularly where no surprise or prejudice is caused the objecting party. And in the recent case of *National Power Corporation v. Court of Appeals* (113 SCRA 556), we held that where there is a variance in the defendant's pleadings and the evidence adduced by it at the trial, the Court may treat the pleading as amended to conform with the evidence.

5. **ID.; ID.; ID.; AWARD OF ₱50,000.00 AS SUPPORT FOR PETITIONER'S MINOR CHILDREN, AFFIRMED; PETITIONER'S REPRESENTATIONS REGARDING HIS FAMILY'S WEALTH AND HIS CAPACITY TO PROVIDE FOR HIS FAMILY MORE THAN PROVIDED A FAIR INDICATION OF HIS FINANCIAL STANDING EVEN THOUGH HE PROVED TO BE LESS THAN FORTHRIGHT ON THE MATTER.—** The Court likewise affirms the award of ₱50,000.00 as support for the minor children. As found by both courts, petitioner's representations regarding his family's wealth and his capability to provide for his family more than provided a fair indication of his financial standing even though he proved to be less than forthright on the matter. In any event, this award of support is merely provisional as the amount may be modified or altered in accordance with the increased or decreased needs of the needy party and with the means of the giver.

APPEARANCES OF COUNSEL

Farcon Gabriel Farcon and *Associates* for petitioner.
Dante H. Cortez for respondent.

D E C I S I O N

TINGA, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, petitioner Wilson Sy assails the Decision[2] dated 29 February 1996 of the Court of Appeals in C.A. G.R. SP No. 38936 and its Resolution[3] dated 15 April 1996 denying his motion for reconsideration.

The following are the antecedents:

On 19 January 1994, respondent Mercedes Tan Uy-Sy filed a petition for *habeas corpus* against petitioner Wilson Sy before the Regional Trial Court of Manila, Branch 48, docketed as Special Proceeding No. 94-69002. Respondent prayed that said writ be issued ordering petitioner to produce their minor children Vanessa and Jeremiah before the court and that after hearing, their care and custody be awarded to her as their mother.[4]

In his answer, petitioner prayed that the custody of the minors be awarded to him instead. Petitioner maintained that respondent was unfit to take custody of the minors. He adduced the following reasons: firstly, respondent abandoned her family in 1992; secondly, she is mentally unstable; and thirdly, she cannot provide proper care to the children.[5]

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[1] *Rollo*, pp. 27-52; dated 24 May 1996.

[2] *Id*. at 7-20; penned by Associate Justice Minerva P. Gonzaga-Reyes with the concurrence of Associate Justices Buenaventura J. Guerrero and Romeo A. Brawner.

[3] *Id*. at 70-72.

[4] *Id*. at 8.

[5] *Id*. at 9-10, 31.

After trial, the trial court caused the issuance of a writ of *habeas corpus* and awarded custody of the children to respondent, to wit:

> WHEREFORE, judgment is hereby rendered maintaining to the petitioner the custody of the minors Vanessa and Jeremiah, all surnamed Uy-Sy, without, however, prejudice to the visitorial rights of the father, herein respondent, and the temporary arrangement of the custody made by the parties during pendency of this proceeding is hereby revoked, and without any further effect. The Court further orders the respondent to pay by way of monthly support for the minors, the amount of ₱50,000.00 payable to petitioner from [the] date of judgment for failure on the part of respondent to show by preponderance of evidence that the petitioner is unfit to the custody of the minor children who are only 6 and 4 years old.[6]

Petitioner appealed the order of the trial court to the Court of Appeals. Before the appellate court, he alleged that the trial court erred: (1) in awarding the custody of the minor children solely to respondent; and (2) in ordering him to provide respondent support in the amount of ₱50,000.00 per month.[7]

The Court of Appeals found no merit in the appeal and affirmed the decision of the trial court. The Court of Appeals did not find any reason to disturb the conclusions of the trial court, particularly petitioner's failure to prove by preponderance of evidence that respondent was unfit to take custody over the minor children.

The Court of Appeals held that petitioner was not able to substantiate his contention that respondent was unfit to have custody of the children. On respondent's supposed abandonment of the family, the appellate court found instead that respondent had been driven away by petitioner's family because of religious differences. Respondent's stay in Taiwan likewise could hardly be called abandonment as she had gone there to earn enough money to reclaim her children. Neither could respondent's act

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[6] *Id.* at 7; dispositive portion of the Decision dated 14 December 1994 penned by Hon. Demetrio M. Batario, Jr.

[7] *Id.* at 8.

of praying outdoors in the rain be considered as evidence of insanity as it may simply be an expression of one's faith. Regarding the allegation that respondent was unable to provide for a decent dwelling for the minors, to the contrary, the appellate court was satisfied with respondent's proof of her financial ability to provide her children with the necessities of life.[8]

As to the second assignment of error, the Court of Appeals held that questions as to care and custody of children may be properly raised in a petition for writ of *habeas corpus*. Moreover, petitioner was properly heard on the matter relative to the issue of support. He was questioned about his sources of income for the purpose of determining his ability to give support. As to the propriety of the amount awarded, the appellate court was unwilling to alter the trial court's conclusion for petitioner did not forthrightly testify on his actual income. Neither did he produce income tax returns or other competent evidence, although within his power to do so, to provide a fair indication of his resources. At any rate, the appellate court declared that a judgment of support is never final and petitioner is not precluded at any time from seeking a modification of the same and produce evidence of his claim.[9]

Petitioner filed a motion for reconsideration of the Court of Appeals' decision but the same was denied.[10] Hence, this appeal by *certiorari* wherein petitioner asserts that: (1) the Court of Appeals erred in awarding the custody of the minor children solely to respondent; (2) the Court of Appeals had no jurisdiction to award support in a *habeas corpus* case as: (a) support was neither alleged nor prayed for in the petition; (b) there was no express or implied consent on the part of the parties to litigate the issue; and (c) Section 6, Rule 99 of the Rules of Court does not apply because the trial court failed to consider the Civil Code provisions on support; and (3) the award of ₱50,000.00

[8] *Id.* at 15-16.

[9] *Id.* at 17-19.

[10] *Id.* at 21-23; in a Resolution dated 15 April 1996.

as support is arbitrary, unjust, unreasonable and tantamount to a clear deprivation of property without due process of law.[11]

For her part, respondent claims that petitioner had lost his privilege to raise the first issue, having failed to raise it before the appellate court. Anent the second issue, respondent takes refuge in the appellate court's statement that the questions regarding the care and custody of children may properly be adjudicated in a *habeas corpus* case. Regarding the third issue, respondent maintains that the amount of support awarded is correct and proper.[12]

There is no merit in the petition regarding the question of care and custody of the children.

The applicable provision is Section 213 of the Family Code which states that:

> Section 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent is unfit.
>
> No child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise.

In case of legal separation of the parents, the custody of the minor children shall be awarded to the innocent spouse, unless otherwise directed by the court in the interest of the minor children.[13] But when the husband and wife are living separately and apart from each other, without decree of the court, the court shall award the care, custody, and control of each child as will be for his best interest, permitting the child to choose which parent he prefers to live with if he is over seven (7)

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[11] *Id.* at 37.

[12] *Id.* at 88-90; Comment dated 7 October 1996.

[13] FAMILY CODE, Art. 63; *TOLENTINO, CIVIL CODE OF THE PHILIPPINES*, Vol. 1, p. 609.

years of age unless the parent so chosen be unfit to take charge of the child by reason of moral depravity, habitual drunkenness or poverty.[14]

In all controversies regarding the custody of minors, the sole and foremost consideration is the physical, educational, social and moral welfare of the child concerned, taking into account the respective resources and social and moral situations of the contending parents.[15]

However, the law favors the mother if she is a fit and proper person to have custody of her children so that they may not only receive her attention, care, supervision but also have the advantage and benefit of a mother's love and devotion for which there is no substitute.[16] Generally, the love, solicitude and devotion of a mother cannot be replaced by another and are worth more to a child of tender years than all other things combined.[17] The Civil Code Commission, in recommending the preference for the mother, explained, thus:

> The general rule is recommended in order to avoid many a tragedy where a mother has seen her baby torn away from her. No man can sound the deep sorrows of a mother who is deprived of her child of tender age. The exception allowed by the rule has to be for "compelling reasons" for the good of the child: those cases must indeed be rare, if the mother's heart is not to be unduly hurt. If she has erred, as in cases of adultery, the penalty of imprisonment and the (relative) divorce decree will ordinarily be sufficient punishment for her. Moreover, her moral dereliction will not have any effect upon the baby who is as yet unable to understand the situation.[18]

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[14] *Id.* at 610.

[15] *Unson III v. Navarro*, No. 52242, 17 November 1980, 101 SCRA 183, 189.

[16] STA. MARIA, JR., *PERSONS AND FAMILY RELATIONS*, p. 697, citing *Peavey v. Peavey*, 85 Nev. 571, 460 P2d 110.

[17] *Id.* at 698, citing *Horst v. Mclain*, 466 Sw2d 187.

[18] *Lacson v. San Jose-Lacson*, 133 Phil. 884, 894-895 (1968).

This preference favoring the mother over the father is even reiterated in Section 6, Rule 99 of the Rules of Court (the Rule on Adoption and Custody of Minors) underscoring its significance, to wit:

> SEC. 6. *Proceedings as to child whose parents are separated. Appeal.—* When husband and wife are divorced or living separately and apart from each other, and the question as to the care, custody and control of a child or children of their marriage is brought before a Regional Trial Court **by petition or as an incident to any other proceeding**, the court, upon hearing the testimony as may be pertinent, shall award the care, custody and control of each such child as will be for its best interest, permitting the child to choose which parent it prefers to live with if it be over ten years of age, unless the parent so chosen be unfit to take charge of the child by reason of moral depravity, habitual drunkenness, incapacity, or poverty. If upon such hearing, it appears that both parents are improper persons to have the care, custody, and control of the child, the court may either designate the paternal or maternal grandparent of the child, or his oldest brother or sister, or some reputable and discreet person to take charge of such child, or commit it to any suitable asylum, children's home, or benevolent society. The court may in conformity with the provisions of the Civil Code order either or both parents to support or help support said child, irrespective of who may be its custodian, and may make any order that is just and reasonable permitting the parent who is deprived of its care and custody to visit the child or have temporary custody thereof. Either parent may appeal from an order made in accordance with the provisions of this section. **No child under seven years of age shall be separated from its mother, unless the court finds there are compelling reasons therefor.** (Emphasis supplied)

The above-quoted provision expressly acknowledges and authorizes that the matter of care and custody of the children may be raised and adjudicated as an incident to any proceeding, such as a case for *habeas corpus.*

Evidently, absent any compelling reason to the contrary, the trial court was correct in restoring the custody of the children to the mother, herein respondent, the children being less than seven years of age, at least at the time the case was decided. Moreover, petitioner's contention that respondent is unfit to

have custody over the minor children has not been substantiated as found by both courts below. Thus, it is already too late for petitioner to reiterate the assertion for only questions of law may be raised before this Court. Furthermore, the determination of whether the mother is fit or unfit to have custody over the children is a matter well within the sound discretion of the trial court, and unless it is shown that said discretion has been abused the selection will not be interfered with.[19]

Consequently, the Court affirms the award of custody in respondent's favor.

Now, the issue of support.

Article 203 of the Family Code states that the obligation to give support is demandable from the time the person who has a right to receive the same needs it for maintenance, but it shall not be paid except from the date of judicial or extrajudicial demand. The case of *Jocson v. The Empire Ins. Co. and Jocson Lagniton*[20] explains the rationale for this rule:

> x x x Support does include what is necessary for the education and clothing of the person entitled thereto (Art. 290, New Civil Code). But support must be demanded and the right to it established before it becomes payable (Art. 298, New Civil Code; *Marcelo v. Estacio*, 70 Phil. 215). For the right to support does not arise from the mere fact of relationship, even from the relationship of parents and children, but "from imperative necessity without which it cannot be demanded, and the law presumes that such necessity does not exist unless support is demanded (Civil Code of the Philippines, Annotated, Tolentino, Vol. 1, p. 181, citing 8 Manresa 685). In the present case, it does not appear that support for the minors, be it only for their education and clothing, was ever demanded from their father and the need for it duly established. The need for support, as already stated, cannot be presumed, and especially must this be true in the present case where it appears that the minors had means of their own.[21]

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[19] *Pelayo v. Lavin Aedo*, 40 Phil. 501, 504 (1919).

[20] 103 Phil. 580 (1958).

[21] *Id.* at 582-583.

As intimated earlier, the Court agrees with the courts below that Section 6, Rule 99[22] of the Rules of Court permits the ventilation of the question regarding the care and custody of the children as an incident to any proceeding, even a *habeas corpus* proceeding. Petitioner would have us believe, however, that since respondent's petition did not include a prayer[23] for support of the children in accordance with the above-quoted Family Code provision, the trial court was not justified in awarding support in respondent's favor. In addition, petitioner claims that he did not give consent to the trial and the threshing out of the issue as it was not raised in the pleadings.[24] He claims that

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[22] SEC. 6. *Proceedings as to child whose parents are separated. Appeal.* – When husband and wife are divorced or living separately and apart from each other, and the question as to the care, custody and control of a child or children of their marriage is brought before a Regional Trial Court by **petition or as an incident to any other proceeding,** the court, upon hearing the testimony as may be pertinent, shall award the care, custody and control of each such child as will be for its best interest, permitting the child to choose which parent it prefers to live with if it be over ten years of age, unless the parent so chosen be unfit to take charge of the child by reason of moral depravity, habitual drunkenness, incapacity, or poverty. If upon such hearing, it appears that both parents are improper persons to have the care, custody, and control of the child, the court may either designate the paternal or maternal grandparent of the child, or his oldest brother or sister, or some reputable and discreet person to take charge of such child, or commit it to any suitable asylum, children's home, or benevolent society. The court may in conformity with the provisions of the Civil Code order either or both parents to support or help support said child, irrespective of who may be its custodian, and may make any order that is just and reasonable permitting the parent who is deprived of its care and custody to visit the child or have temporary custody thereof. Either parent may appeal from an order made in accordance with the provisions of this section. No child under seven years of age shall be separated from its mother, unless the court finds there are compelling reasons therefor. (Emphasis supplied)

[23] Records, Vol. 1, p. 3.

WHEREFORE, it is most respectfully prayed that a [W]rit of *Habeas Corpus* be issued by this Honorable Court, commanding Wilson L. Sy to produce the bodies of Vanessa and Jeremiah Uy Sy before this court at the time and place specified, and to summon the respondent then and there to appear and to show cause for their detention; and that, after hearing, said minors be turned over to the care and custody of their mother Mercedes Uy Sy.

[24] CA *rollo*, pp. 16-17.

in fact, he testified on his financial status only to prove that he is financially able to provide for his children and not for the purpose of determining the amount of support.[25] Besides, he contends that the trial court did not order the amendment of the pleadings to conform to the evidence presented pursuant to Section 5[26] Rule 10 of the 1997 Rules of Civil Procedure, an aspect that supports his contention that the parties never consented, expressly or impliedly, to try the issue of support.[27]

The Court is not convinced. Contrary to petitioner's assertions, respondent testified during trial, without any objection on petitioner's part, regarding the need for support for the children's education and other necessities, *viz:*

ADD'L DIRECT EXAMINATION OF THE WITNESS
MERCEDES TAN UY-SY

Q: With the kind permission of this Honorable Court.

Q: Ms. Sy, the custody of the two minors[,] of course[,] require some expenses on your part notwithstanding that you said you have savings intended for them, is it not?

A: Yes, sir.

Q: And what is the nature of these expenses that you expect to disburse for the children?

A: For the medicine or health care.

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[25] *Id.* at 19 of Petitioner's Memorandum.

[26] SEC. 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 not 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.

[27] *Rollo*, p. 17.

Q: What else?

A: For education, for emergency expenses, for basically for food.

Q: In your estimate, how much would these expenses be per month?

A: Well, I think, perhaps ₱50,000.00, sir.

Q: Which the respondent should furnish?

A: Yes, sir.

ATTY. CORTEZ

That is all for the witness, Your Honor.[28]

Moreover, based on the transcript of stenographic notes, petitioner was clearly made aware that the issue of support was being deliberated upon, to wit:

WITNESS:

WILSON SY: will be testifying under the same oath.[29]

xxx xxx xxx

ATTY. ALBON:

Q: In the hearing of July 23, 1994 as appearing on page 3, Mercedes Sy testified that she would be needing ₱50,000.00 a month expenses for her children, what can you say about that?

A: That is a dillusion [sic] on her part.[30]

The trial court judge even propounded questions to petitioner regarding his sources of income for the purpose of determining the amount of support to be given to the children:

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[28] Records, Vol. 1; TSN, dated 25 July 1994, p. 3.

[29] *Id.* at 547; TSN, dated 4 November 1994, p. 6.

[30] *Id.* at 552; TSN, 4 November 1994, p. 11.

COURT:

I want to find out how much his income now for the purposes of giving support to the children. Please answer the question.

WITNESS:

A: Shares of stocks.

ATTY. CORTEZ:

Q: A shares [*sic*] of stock is the evidence of your investment in the corporation. My question is: What investment did you put in to enable you to get a share, was it money or property?

A: There is no money but it was given by my father.

COURT:

Q: Upon the death of your father you just inherited it?

A: Before.

Q: After the death, did you not acquire some of the shares of your father?

A: No, your Honor.

Q: What happened to the shares of your father?

A: It is with my mother.

xxx xxx xxx

COURT:

Never mind the share of the mother. What is material is his share.

ATTY. CORTEZ:

Q: How many shares do you have in the corporation?

A: Right now I have only ten (10) shares.

Q: What is the value of that [sic] shares?

A: I [do not] give any importance.

COURT

Q: For purposes of this case, the Court is asking you how much is your share?

A: I [do not] how to appraise.

Q: More or less, how much? Use the word more or less, is that one million more or less, 2 million, more or less, 10 million, more or less? Anyway, this is not a BIR proceeding, this is a Court proceeding?

A: I want to speak the truth but I [do not] know. I did not even see the account.

COURT:

Proceed.

ATTY. CORTEZ

xxx xxx xxx

Q: At that time of your father's death[,] you were [sic]already holding ten (10) shares or was it less?

A: More.

Q: More than ten (10) shares?

A: Yes, sir.

COURT

Q: What is the par value of that one (1) share?

A: I [do not] know, your Honor.

xxx xxx xxx

COURT:

Let it remain that he owns ten (10) shares.

ATTY. CORTEZ:

xxx xxx xxx

A: Yes, 10 shares. The other shares I already sold it.

Q: How many shares did you sell?

A: I only have 10 shares now. I don't know how many shares that I have left. I only know the 20 shares.[31]

Applying Section 5,[32] Rule 10 of the 1997 Rules of Civil Procedure, since the issue of support was tried with the implied consent of the parties, it should be treated in all respects as if it had been raised in the pleadings. And since there was implied consent, even if no motion had been filed and no amendment had been ordered, the Court holds that the trial court validly rendered a judgment on the issue.[33] Significantly, in the case of *Bank of America v. American Realty Corporation*,[34] the Court stated:

There have been instances where the Court has held that even without the necessary amendment, the amount proved at the trial may be validly awarded, as in *Tuazon v. Bolanos* (95 Phil. 106), where we said that if the facts shown entitled plaintiff to relief other than that asked for, no amendment to the complaint was necessary, especially where defendant had himself raised the point on which recovery was based. The appellate court could treat the pleading as amended to conform to the evidence although the pleadings were actually not amended. Amendment is also unnecessary when only clerical error or non substantial matters are involved, as we held in *Bank of the Philippine Islands vs. Laguna* (48 Phil. 5). In *Co Tiamco v. Diaz* (75 Phil. 672), we stressed that the rule on amendment need not be applied rigidly, particularly where no surprise or prejudice

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[31] *Id*. at 563-566, TSN, 4 November 1994, pp. 22-25.

[32] SEC. 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 not 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.

[33] HERRERA, *REMEDIAL LAW*, Vol.1, p. 598.

[34] 378 Phil. 1279 (1999).

is caused the objecting party. And in the recent case of *National Power Corporation v. Court of Appeals* (113 SCRA 556), we held that where there is a variance in the defendant's pleadings and the evidence adduced by it at the trial, the Court may treat the pleading as amended to conform with the evidence.[35]

The Court likewise affirms the award of ₱50,000.00 as support for the minor children. As found by both courts, petitioner's representations regarding his family's wealth and his capability to provide for his family more than provided a fair indication of his financial standing even though he proved to be less than forthright on the matter.[36] In any event, this award of support is merely provisional as the amount may be modified or altered in accordance with the increased or decreased needs of the needy party and with the means of the giver.[37]

WHEREFORE, the Decision dated 29 February 1996 of the Eleventh Division of the Court of Appeals in C.A. G.R. SP No. 38936 and its Resolution[38] dated 15 April 1996 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[35] *Id*. at 1301-1302.

[36] *Rollo*, pp. 18-19.

[37] *Advincula v. Advincula*, 119 Phil. 448, 451 (1964).

[38] *Supra* note 3.

THIRD DIVISION

[G.R. No. 148516. December 27, 2007]

MANUEL LUIS SANCHEZ, *petitioner, vs.* **MAPALAD REALTY CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS ARE GENERALLY BINDING ON THE COURT; EXCEPTIONS TO THE RULE.—** In petitions for review on *certiorari* such as in the present case, the findings of fact of the CA are generally conclusive on this Court, save for the following admitted exceptions: (1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is mainly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.
2. **ID.; ID.; ID.; INSTANT CASE FALLS WITHIN THE EXCEPTION TO THE RULE THAT FACTUAL ISSUES MAY NOT BE ENTERTAINED BY THE COURT.—** We note that the basis for the trial court's disposition in favor of Nordelak is Mapalad's apparent failure to adduce sufficient evidence to prove that Miguel Magsaysay's signatures on the two deeds of sale by Mapalad in favor of Nordelak were forged. The CA, however, went beyond the mere determination of whether the

signatures of Miguel Magsaysay were forged or not. It looked into the validity of the deed of absolute sale as a whole, based on the testimonies of Miguel Magsaysay himself, quoted in its decision. Aside from categorically denying under oath that the signatures appearing on the deeds of absolute sale were his, witness Miguel Magsaysay gave another reason why it was impossible for those signatures to be his. According to him, he was no longer connected in any way whatsoever with Mapalad, when it supposedly sold the properties. He divested himself of all his interests in Mapalad way back in 1982. There was no reason for him to sign the subject deeds of absolute sale as president and chairman of the board of Mapalad in 1989. This was another basis for Mapalad to convince the appellate court that the signatures purporting to be those of Magsaysay on the questioned deeds of sale were not written by him. We sustain the CA finding and conclusion. While there have been guidelines cited in the petition used by this Court in determining what constitutes sufficient proof to establish whether a signature was forged, it does not preclude a party from adducing other possible proofs to establish whether a particular signature is genuine or not. In the case at bench, not only did Magsaysay disown the signatures appearing on the deed of sale, he cited a valid legal reason for him not to have signed such document at all. He had no more power and authority to sign for and in behalf of Mapalad because as early as 1982, he had already divested himself of all his interests in said corporation. His testimonies in this case constitute sufficient basis for the Court to conclude that the signatures appearing on the two deeds of sale (Exhibits "D" and "F") were not his signatures. This factual determination on the genuineness or forgery of the signatures purporting to be those of Miguel Magsaysay on the subject deeds of sale is most crucial. When compared with this one, all other factual issues raised in the petition become immaterial, such as: whether the owner's duplicate copies of the TCT were voluntarily delivered to, or surreptitiously taken from Mapalad's custodian of such documents; whether the deeds of sale were in fact notarized by Atty. Elpidio Clemente considering that these documents do not exist in the archives or files in the notarial registry; or even whether there were two or only one document purporting to be the deed of absolute sale dated November 2, 1989. There is, therefore, no cogent reason for this Court to delve further into these other factual matters.

3. **CIVIL LAW; CONTRACTS; DEFINITION; ESSENTIAL ELEMENTS.—** A contract is defined as a juridical convention manifested in legal form, by virtue of which one or more persons bind themselves in favor of another, or others, or reciprocally, to the fulfillment of a prestation to give, to do, or not to do. There can be no contract unless the following concur: (a) consent of the contracting parties; (b) object certain which is the subject matter of the contract; (c) cause of the obligation which is established.Specifically, by the contract of sale, one of the contracting parties obligates himself to transfer ownership of and to deliver a determinate thing and the other party to pay therefor a price certain in money or its equivalent.

4. **ID.; SPECIAL CONTRACTS; SALES; ESSENTIAL REQUISITES OF A VALID CONTRACT OF SALE.—** The essential requisites of a valid contract of sale are: (1) Consent of the contracting parties by virtue of which the vendor obligates himself to transfer ownership of and to deliver a determinate thing, and the vendee obligates himself to pay therefor a price certain in money or its equivalent. (2) Object certain which is the subject matter of the contract. The object must be licit and at the same time determinate or, at least, capable of being made determinate without the necessity of a new or further agreement between the parties. (3) Cause of the obligation which is established. The cause as far as the vendor is concerned is the acquisition of the price certain in money or its equivalent, which the cause as far as the vendee is concerned is the acquisition of the thing which is the object of the contract. Contracts of sale are perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. Consent may be given only by a person with the legal capacity to give consent. In the case of juridical persons such as corporations like Mapalad, consent may only be granted through its officers who have been duly authorized by its board of directors.

5. **ID.; ID.; ID.; THE CONTRACT OF SALE IN CASE AT BAR IS VOIDABLE FOR LACK OF AUTHORITY RESULTING IN THE INCAPACITY OF RESPONDENT CORPORATION'S FORMER PRESIDENT AND CHAIRMAN OF THE BOARD TO GIVE CONSENT FOR**

AND IN BEHALF OF THE CORPORATION.— In the present case, consent was purportedly given by Miguel Magsaysay, the person who signed for and in behalf of Mapalad in the deed of absolute sale dated November 2, 1989. However, as he categorically stated on the witness stand during trial, he was no longer connected with Mapalad on the said date because he already divested all his interests in said corporation as early as 1982. Even assuming, for the sake of argument, that the signatures purporting to be his were genuine, it would still be voidable for lack of authority resulting in his incapacity to give consent for and in behalf of the corporation. On this score, the contract of sale may be annulled for lack of consent on the part of Mapalad.

6. ID.; ID.; ID.; THE PURPORTED CONTRACT IS ALSO VOID *AB INITIO* FOR BEING FICTITIOUS ON ACCOUNT OF LACK OF CONSIDERATION.— The CA also noted that the alleged contract of sale on November 2, 1989 had no consideration. There was no payment effected by Nordelak for this transaction. Josef testified that no funds were infused into Mapalad's coffers on account of this transaction. This testimony remained uncontroverted. In fact, the CA further noted that Nordelak could have easily produced the cancelled check before the trial court, if there was any. Again, Nordelak did not. The third element for a valid contract of sale is likewise lacking. Lack of consideration makes a contract of sale fictitious. A fictitious sale is void *ab initio*. The alleged deed of absolute sale dated November 2, 1989 notwithstanding, the contract of sale between Mapalad and Nordelak is not only voidable on account of lack of valid consent on the part of the purported seller, but also void *ab initio* for being fictitious on account of lack of consideration.

7. ID.; ID.; ID.; PETITIONER AS TRANSFEREE *PENDENTE LITE* MERELY STEPS INTO THE SHOES OF HIS PREDECESSOR-IN-INTEREST WHO HAD NO VALID TITLE; NO RIVER OR STREAM CAN RISE HIGHER THAN ITS SOURCE.— As We have said, Nordelak did not acquire ownership or title over the four properties subject of this case because the contract of sale between Mapalad and Nordelak was not only voidable but also void *ab inito*. Not having any title to the property, Nordelak had nothing to transfer to petitioner Sanchez. *Nemo dat non quod habet.* ***Hindi***

maibibigay ng isang tao ang hindi kanya. No one can give what he does not have. Petitioner acquired the property subject of litigation during the pendency of the case in the trial court. It is undisputed that notices of *lis pendens* were annotated on the TCTs in Nordelak's name covering the subject properties as Entry No. 93-91718. In *Lim v. Vera Cruz,* this Court explained: ***Lis pendens*** is a Latin term which literally means a pending suit. Notice of *lis pendens* is filed for the purpose of warning all persons that the title to certain property is in litigation and that if they purchase the same, they are in danger of being bound by an adverse judgment. The notice is, therefore, intended to be a warning to the whole world that one who buys the property does so at his own risk. This is necessary in order to save innocent third persons from any involvement in any future litigation concerning the property. By virtue of the notice of *lis pendens* annotated on the four TCTs in this case, petitioner had notice that the property he was intending to buy is under litigation. He is, therefore, a transferee *pendente lite* who, as held by this Court in *Voluntad v. Dizon,* stands exactly in the shoes of the transferor and is bound by any judgment or decree which may be rendered for or against the transferor. Under the circumstances petitioner cannot acquire any better right than his predecessor, Nordelak. No river or stream can rise higher than its source. ***Walang ilog o batis na ang taas ay higit sa kanyang pinagmulan.*** There is thus no question that a judgment of reconveyance can be legally enforced by Mapalad against petitioner as transferee *pendente lite* of Nordelak.

8. ID.; ID.; ID.; THE SUBJECT PARCELS OF LAND MUST BE RESTORED TO THE CUSTODY OF THE GOVERNMENT UNTIL THEIR TRUE OWNER IS FINALLY DETERMINED.— The four parcels of land surrendered by former Marcos associate Jose Y. Campos and sequestered by the PCGG must eventually be returned to their rightful owners. If forfeiture proceedings in the Marcos ill-gotten wealth cases prosper, and these properties are finally shown to form part of such ill-gotten wealth, these properties should go to the Filipino people. If they are not ill-gotten, they should be turned over to the Marcoses. But definitely, these properties cannot be transferred to Nordelak nor to petitioner Manuel Luis Sanchez.

APPEARANCES OF COUNSEL

Antonio M. Chavez & Associates for petitioner.

Reynaldo Z. Calabio for respondent.

D E C I S I O N

REYES, *J.*:

KAPAG ang isang kasunduan ng bilihan ay may kaakibat na pandaraya at napatunayang huwad, ang bumili ay walang nakamit na titulo ng pag-aari. Ang bentahan ng apat na parsela ng mamahaling lupa sa Roxas Boulevard na isinuko ng dating kasamahan ng Pangulong Marcos sa pamahalaang Aquino ay nagtataglay ng mga palatandaan ng isang malakihang pandaraya na isinagawa mismo ng mga taong hinirang ng Presidential Commission on Good Government (PCGG) upang pangalagaan ang pag-aari ng isang na-sequester na kumpanya.

Ang mga ito ay dapat ibalik sa pamahalaan hanggang di pa tiyak ang tunay na may-ari. Hindi kanais-nais na nagpakahirap ang PCGG sa pagbawi ng nasabing pag-aari para lamang mawala ito dahil sa manipulasyon ng isang di mapagkakatiwalaang opisyal.

Where a deed of sale was attended by fraud and proved to be fictitious, the buyer acquired no title to the subject property. The sale of four parcels of prime land along Roxas Boulevard surrendered by a former associate of President Marcos to the Aquino government bears the earmarks of a grand scam perpetrated by the very same persons appointed by the Presidential Commission on Good Government (PCGG) to safeguard the assets of the sequestered companies.[1]

They must be restored to the custody of the government until their true owner is finally determined. It would be odious to have the PCGG work so hard to recover them only to have them lost due to manipulation of an unscrupulous official.

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[1] *Rollo,* p. 26.

This petition for review on *certiorari* seeks a reversal of the Decision[2] of the Court of Appeals (CA) which reversed and set aside that[3] of the Regional Trial Court (RTC), Branch 135, Makati City in an action for annulment of deed of sale and reconveyance[4] filed by respondent Mapalad Realty Corporation (Mapalad, for brevity).

Petitioner Manuel Luis Sanchez, who bought the properties during the pendency of the case at the trial court, intervened in the appeal before the CA.

The Facts

The facts, as gleaned from the records, are as follows:

Respondent Mapalad was the registered owner of four (4) parcels of land located along Roxas Boulevard, Baclaran, Parañaque. The properties, covered by Transfer Certificates of Title (TCT) Nos. S-81403, S-81404, S-81405 and S-81406 have a total land area of 4,038 square meters.[5]

On March 21, 1986, shortly after the February 1986 EDSA Revolution, Jose Y. Campos executed an affidavit[6] admitting, among others, that Mapalad was one of the companies he held in trust for former President Ferdinand E. Marcos. Campos turned over all assets, properties, records and documents pertaining to Mapalad to the new administration led by then President Corazon C. Aquino.

On March 23, 1986, the PCGG issued writs of sequestration for Mapalad and all its properties.[7]

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[2] Penned by Associate Justice Salvador J. Valdez, Jr. (now deceased) as Chairman, with Associate Justices Wenceslao I. Agnir, Jr. (now retired) and Rebecca De Guia-Salvador, concurring.

[3] Penned by then Judge Omar U. Amin.

[4] Civil Case No. 93-365, entitled "*Mapalad Realty Corporation v. Nordelak Development Corporation, et al*."

[5] Exhibits "O", "P", "Q", and "R", *rollo,* p. 11.

[6] Exhibit "A-1", *id.*

[7] Exhibit "A", *id.*

On August 2, 1992, the PCGG appointed Rolando E. Josef as Vice President/Treasurer and General Manager of Mapalad. He immediately conducted an inventory of the assets of the corporation. This was when it was discovered that four (4) TCTs were missing, namely, TCT Nos. S-81403, S-81404, S-81405, and S-81406.

Josef inquired on the whereabouts of these missing TCTs from Luis R. Narciso, an employee of Port Center Development Corporation, a sister company of Mapalad. Josef was informed that Mapalad's former director and general manager, Felicito L. Manalili (GM Manalili) took the said missing TCTs sometime in July 1992.

On September 8, 1992, Narciso executed an affidavit[8] stating that the missing TCTs were taken from him by GM Manalili.

Josef personally talked to GM Manalili to inquire about what happened to the titles he took from Narciso. GM Manalili promised to return the titles as soon as he found them. He never did, despite repeated demands on him.

On November 16, 1992, Felimon Oliquiano, Jr., president of Nordelak Development Corporation (Nordelak, for brevity), filed a notice of adverse claim[9] over the subject properties based on a deed of sale purportedly executed on November 2, 1989 by Miguel Magsaysay in his capacity as president and board chairman of Mapalad, selling the four lots to Nordelak for the total purchase price of ₱20,190,000.00. This deed of sale was notarized by Elpidio T. Clemente as Document No. 121, Page 26, Book No. 82 Series of 1989.[10]

Josef notified the Register of Deeds (RD) of Parañaque by three successive letters dated November 18, December 7 and 8, 1992 that the owner's duplicate copies of four (4) TCTs in the name of Mapalad were missing, and requested the RD not to entertain any transaction, particularly any attempt to transfer

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[8] Exhibit "B", *id.* at 101.

[9] Annotated as Entry No. 92-13861 on November 17, 1992.

[10] Exhibit "F", *rollo,* p. 13.

ownership thereof, or annotate any encumbrance or lien of any kind on these four TCTs.

Since Josef's letters to the RD were not verified, the RD instructed him to submit a verified petition or cancellation of adverse claim; Josef complied.

On December 22, 1992, Mapalad filed with the RD a verified petition for cancellation of adverse claim annotated on its titles by Nordelak.[11] The petition also included a notice of loss of the owners' duplicate copies of the TCTs concerned. This was annotated on the titles as Entry No. 154431 on the next day.

On January 14, 1993, Mapalad discovered, after verification with the records of the RD, that its titles to the four (4) properties were cancelled as early as December 22, 1992. In lieu of them, TCT Nos. 68493, 68494, 68495, and 68496 in the name of Nordelak were issued[12] by virtue of another deed of sale also dated November 2, 1989 and purportedly signed by the same Miguel Magsaysay in his capacity as president and chairman of the board of Mapalad.

Although this document was also notarized by the same Elpidio T. Clemente, bearing the same Document No. 121, Page 26, Book No. 82, Series of 1989, the amount indicated in this deed of sale as total purchase price was ₱7,268,400.00 instead of ₱20,190,000.00 as earlier annotated in the title per the adverse claim on November 16, 1992. In other words, there were two deeds of absolute sale, bearing the same dates, involving the same parties, the same parcel of land, and notarized by the same Notary Public under identical notarial entries, with different considerations or purchase price.

Way back October 13, 1978, A. Magsaysay, Inc., a corporation controlled by Miguel Magsaysay, acquired ownership of all shares of stock of Mapalad.[13]

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[11] *Id.* at 101.

[12] Exhibits "G", "H", "I", and "J", *id.*

[13] Exhibit "N", *id.* at 14.

On December 3, 1982, however, A. Magsaysay, Inc. sold all its shares to Novo Properties, Inc.[14] Miguel Magsaysay also sold his one and only share to Novo Properties, Inc., thus completely terminating any and all rights or interest he used to have over the properties of Mapalad.

Immediately upon learning of the cancellation of Mapalad's four TCTs, Josef conferred with Miguel Magsaysay to find out whether the latter indeed signed the purported deeds of absolute sale both dated November 2, 1989.

Magsaysay denied having signed those deeds.

On January 19, 1993, the PCGG asked the Parañaque RD to immediately recall, revoke and cancel the four (4) titles that were issued in favor of Nordelak.[15]

On January 22, 1993, the PCGG issued a writ of injunction, enjoining and restraining the Parañaque RD from entertaining and processing any document or transaction relative to the titles in the name of Nordelak. This PCGG injunction was annotated on the titles as Entry No. 93-14786.

On January 25, 1993, the RD in turn requested Nordelak to surrender the titles issued in its name, but Nordelak refused to comply.

On February 3, 1993, Mapalad commenced, before the RTC, Makati City, the present action for annulment of deed of sale and reconveyance of title with damages against Nordelak, that is now the subject of this petition.

Mapalad's complaint alleged that: (a) the deed of sale is falsified and a forgery; (b) defendant Felicito L. Manalili[16] conspired and confederated with the other defendants to defraud Mapalad by fabricating a fictitious, spurious and falsified deed of sale; and (c) there is another deed of absolute sale with the same

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[14] Exhibit "T", *id.*

[15] Exhibit "C-4", *id.*

[16] In his capacity as Director and General Manager of Mapalad at that time.

date of November 2, 1989 and also bearing the purported signature of Miguel Magsaysay, but the two deeds of sale differ in the amounts of consideration, one for ₱20,190,000.00 and the other for ₱7,268,400.00, which was used in the transfer of Mapalad's titles in favor of Nordelak.

Mapalad prayed for judgment: (a) declaring the two (2) deeds of absolute sale null and void; (b) ordering Nordelak to reconvey the four (4) parcels of land in favor of Mapalad; (c) ordering the Register of Deeds to cancel TCT Nos. 68493, 68494, 68495, and 68496, and in lieu thereof, to issue replacement titles in the name of Mapalad; and (d) ordering Nordelak to pay exemplary damages, attorney's fees and costs of suit.

On February 22, 1993, a notice of *lis pendens* was annotated as Entry No. 93-91718 on the TCTs in Nordelak's name.[17]

On March 4, 1993, the RD, through the Office of the Solicitor General, filed its answer alleging that when the requirements of registration are complied with, the duty of the register of deeds becomes simply ministerial.

On April 26, 1993, Nordelak and its president, Oliquiano filed their answer with special and affirmative defenses, alleging that Nordelak is a buyer in good faith, and that it never dealt with defendant Manalili in the purchase of the subject properties.

Defendant Manalili, however, failed to file any answer within the reglementary period. The RTC declared him in default despite Section 14, Rule 18 of the Rules of Court stating that "when a complaint states a common cause of action against several defendants, some of whom answer, and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented x x x."

On October 24, 1994, while the case was still pending before the RTC, Nordelak sold the subject properties for ₱50,000,000.00 to a certain Manuel Luis S. Sanchez, now petitioner before Us.

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[17] *Rollo,* p. 16.

RTC Judgment

On December 6, 1994, ruling that Mapalad failed to adduce positive proof of forgery, the RTC upheld the validity of the deed of absolute sale as a notarial document and rendered judgment[18] with the following *fallo*:

> WHEREFORE, premises considered, for failure of plaintiff to establish preponderance of evidence to support its herein Complaint, the above-entitled case is ordered DISMISSED for lack of cause of action and for being without merit.
>
> On the other hand, judgment is hereby rendered in favor of defendants against the plaintiff by way of counterclaim, for the latter to pay actual and compensatory damages in favor of private defendants (excluding public defendant Register of deeds of Parañaque herein represented by the Office of the Solicitor General) the sum of ₱50,000.00; attorney's fees in the sum of ₱30,000.00; and the costs of the proceedings.
>
> Furthermore, Entry No. 15431 re a Verified Petition for cancellation of the adverse claim annotated at the back of TCT Nos. S-81403, S-81404, S-81405, and S-81406, (Exhs. "O", "P", "Q", and "R") filed by Rolando E. Josef, V/P-General Manager of Mapalad Realty Corporation inscribed on December 17, 1992 is ordered CANCELLED.
>
> SO ORDERED.[19]

On December 19, 1994, upon Nordelak's manifestation, the RTC issued a Supplemental Decision cancelling the notice of *lis pendens* annotated as Entry No. 93-91718 at the back of Nordelak's TCTs Nos. 68493, 68494, 68495, and 68496, and also lifting the restraining order issued by the PCGG annotated on the said titles as Entry No. 93-14786.

On December 29, 1994 and January 2, 1995, Mapalad filed a motion for reconsideration and supplemental motion for reconsideration, respectively, to which an opposition was filed by Nordelak on January 13, 1995.

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[18] Penned by Judge Omar U. Amin.

[19] *Rollo,* p. 110.

On January 2, 1995, the RTC issued an order denying the twin motions for reconsideration. Mapalad then seasonably appealed to the CA.

Having previously bought the properties from Nordelak during the pendency of the case with the RTC, petitioner Sanchez moved to be joined with Nordelak as party defendant-appellee before the CA. The CA granted the motion to intervene.

CA Disposition

Finding merit in the appeal, the CA disposed of it, as follows:

WHEREFORE, premises considered, the assailed decision is **REVERSED and SET ASIDE** and a new one entered—

1. DECLARING as null and void the deed of absolute sale dated 02 November 1989 executed by and between Mapalad Realty Corporation and Nordelak Development Corporation;
2. DECLARING as null and void the deed of absolute sale dated 24 October 1994 executed by and between Nordelak Development Corporation and Manuel Luis S. Sanchez;
3. ORDERING the Register of Deeds of Parañaque to cancel TCT Nos. 68493, 68494, 68495, and 68496 and in lieu thereof, to issue new certificates of title covering the subject properties in the name of Mapalad Realty Corporation.

Further, appellee Nordelak is ordered to pay appellant ₱100,000.00 as attorney's fees.

SO ORDERED.[20]

This ruling was arrived at after the CA's re-evaluation of the entire records, finding clear evidence of fraud in obtaining the certificates of title over the disputed properties, to wit:

First. Miguel A. Magsaysay was no longer appellant Mapalad's President and Chairman of the Board when the subject deed of absolute sale was executed on 02 November 1989. The evidence shows that by virtue of a Deed of Sale of Shares of Stock dated 03 December 1982, Miguel Magsaysay ceded and sold his one and only share of

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[20] *Id*. at 29-30.

stock in Mapalad Realty Corporation in favor of Novo Properties, Inc. x x x. And in his testimony, Miguel Magsaysay denied having affixed his signature on the questioned deed of sale and categorically stated that he ceased to be connected with appellant Mapalad after the sale of his share in 1982.

xxx xxx xxx

Second. The Deed of Absolute Sale indicating a consideration of ₱7,268,400.00, which was the basis for the issuance of Transfer Certificates of Title Nos. 68493, 68494, 68495, and 68496 in the name of appellee Nordelak is dated 02 November 1989 but was only registered more than three (3) years later. This bolsters the testimony of Luis R. Narciso that the owner's duplicate original of appellant Mapalad's titles were taken from him by defendant Felicito Manalili in July 1992 and were never returned. Obviously, Manalili got the titles for the purpose of registering the fictitious deed of absolute sale because under the Property Registration Decree (P.D. 1529), no voluntary instrument shall be registered by the Register of Deeds unless the owner's duplicate is presented with the instrument of transfer.

Third. Atty. Elpidio T. Clemente, the Notary Public who notarized the questioned Deed of Absolute Sale, did not submit a copy of said deed in the Notarial Section of the Regional Trial Court of Manila.

xxx xxx xxx

x x x. As pointed out by appellant Mapalad in its brief, the notary public notarized two separate deeds of sale "referring to the same parcels of land on the very same day, and made only one and the same entry for the two documents in his notarial registry. In fact, NOT ONE witness was ever presented by defendants-appellees to explain these highly anomalous documentations.

Fourth. There was no consideration for the deed of sale. On this point, Rolando Josef testified that appellant Mapalad did not receive any amount with respect to the alleged transaction involving the sale of its properties. This was not disputed by the appellees. Since the alleged consideration is in the millions of pesos, it can be assumed that payment was made by check. It was easy enough for appellee Nordelak to have presented the cancelled check. Its failure to do so speaks volumes of truth of Josef's testimony. x x x.

Fifth. In the questioned deed of sale, Nordelak was represented by one Felimon R. Oliquiano, Jr., in his capacity as President of the corporation. Thus, he was in the best position to testify on the validity of the questioned deed of sale and categorically state that it was Magsaysay who signed the deed of sale and refute Magsaysay's testimony. But he was never presented and the failure to present him was never explained. In fact, no one was presented to testify having negotiated with and concluded the transaction with Magsaysay or that he personally saw Magsaysay sign the deed of sale. Defendant-appellee Nordelak presented only two witnesses both of whom were not connected with Nordelak and, in fact, did not know Mapalad.

xxx xxx xxx

We therefore find that the execution of the deed of absolute sale was attended by fraud, hence, a nullity. Thus, appellee Nordelak never acquired title over the subject properties. And given the evidence on record, We are left to wonder in no small measure how the court *a quo* could have upheld the validity of the questioned deed of sale. The transaction has all the earmarks of a grand scam perpetrated by the very same persons appointed by PCGG to safeguard the assets of sequestered companies.[21]

The CA further ruled that petitioner Sanchez, who was a transferee *pendente lite,* was not a buyer in good faith, having purchased the property with an annotation of a notice of *lis pendens*.

Without prior motion for reconsideration of the CA decision, intervenor-appellee Sanchez elevated the case to Us, raising the following assignment of errors:

I

<u>CONTRARY TO THE EXPRESS FINDINGS OF THE TRIAL COURT THAT THE QUESTIONED DEED OF SALE IS GENUINE, VALID AND SUBSISTING,</u> THE COURT OF APPEALS RULED THAT THERE WAS FRAUD ON THE PART OF NORDELAK IN OBTAINING THE CERTIFICATES OF TITLES OVER THE DISPUTED PROPERTY, AND CONSEQUENTLY THE QUESTIONED DEED IS FICTITIOUS.

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[21] *Id*. at 20-26.

II

COROLLARILY, CONTRARY TO THE EXPRESS FINDINGS OF THE TRIAL COURT THAT NORDELAK IS A BUYER IN GOOD FAITH AND FOR VALUE, THE COURT OF APPEALS RULED OTHERWISE. (Underscoring supplied)

Issues

Two critical issues are plainly posed for our determination. First, on whether or not there was a valid sale between Mapalad and Nordelak. Second, whether or not petitioner Sanchez acquired valid title over the properties as innocent purchaser for value despite a defect in Nordelak's title.

A procedural issue was raised by the Solicitor General in his Comment, too: whether or not petitioner may raise questions of fact in the present petition.

We shall resolve them in the reverse order, dealing with the procedural ahead of the substantive question.

Our Ruling

I. The case falls within the exception to the rule that factual issues may not be entertained by this Court.

In petitions for review on *certiorari* such as in the present case, the findings of fact of the CA are generally conclusive on this Court, save for the following admitted exceptions:

(1) the factual findings of the Court of Appeals and the trial court are contradictory;

(2) the findings are grounded entirely on speculation, surmises or conjectures;

(3) the inference made by the Court of Appeals from its findings of fact is mainly mistaken, absurd or impossible;

(4) there is grave abuse of discretion in the appreciation of facts;

(5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee;

(6) the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and

(8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.[22]

We note that the basis for the trial court's disposition in favor of Nordelak is Mapalad's apparent failure to adduce sufficient evidence to prove that Miguel Magsaysay's signatures on the two deeds of sale by Mapalad in favor of Nordelak were forged.

The CA, however, went beyond the mere determination of whether the signatures of Miguel Magsaysay were forged or not. It looked into the validity of the deed of absolute sale as a whole, based on the testimonies of Miguel Magsaysay himself, quoted in its decision, as follows:

Atty Calabio: x x x I am showing to you this Deed of Absolute Sale marked as Exhibit "D", there is here appearing on page 3 above the typewritten name Miguel A. Magsaysay, is this your signature?

A: No, definitely not, so far away from my signature, not even in forgery; and besides I am not the president when it was sold already.

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[22] *Landbank of the Philippines v. Monet's Export and Manufacturing Corporation,* G.R. No. 161865, March 10, 2005, 453 SCRA 173, 184-185, citing *MEA Builders, Inc. v. Court of Appeals,* G.R. No. 121484, January 31, 2005, 450 SCRA 155.

Q: So on the date herein November 2, 1989, you were no longer president, Sir?

A: No, I have nothing to do with them, of the corporation, after the sale in 1982.

Atty. Calabio: Likewise, showing to you the Deed of Absolute Sale, also dated November 2, 1989, previously marked as Exhibit "F", specifically on page 3, Sir, there is a signature also above the typewritten name, Miguel Magsaysay?

A: Definitely, this is not my signature, and besides I am not the president anymore. It looks exactly like the other one.

Atty. Calabio: Which for purposes of identification, Your Honor, may I respectfully request that his also be encircled and marked as Exhibit "F-1"?[23]

Aside from categorically denying under oath that the signatures appearing on the deeds of absolute sale were his, witness Miguel Magsaysay gave another reason why it was impossible for those signatures to be his. According to him, he was no longer connected in any way whatsoever with Mapalad, when it supposedly sold the properties. He divested himself of all his interests in Mapalad way back in 1982. There was no reason for him to sign the subject deeds of absolute sale as president and chairman of the board of Mapalad in 1989. This was another basis for Mapalad to convince the appellate court that the signatures purporting to be those of Magsaysay on the questioned deeds of sale were not written by him.

We sustain the CA finding and conclusion.

While there have been guidelines cited in the petition[24] used by this Court in determining what constitutes sufficient proof to establish whether a signature was forged, it does not preclude a party from adducing other possible proofs to establish whether a particular signature is genuine or not.

[23] *Rollo,* pp. 21-22.

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

In the case at bench, not only did Magsaysay disown the signatures appearing on the deed of sale, he cited a valid legal reason for him not to have signed such document at all. He had no more power and authority to sign for and in behalf of Mapalad because as early as 1982, he had already divested himself of all his interests in said corporation. His testimonies in this case constitute sufficient basis for the Court to conclude that the signatures appearing on the two deeds of sale (Exhibits "D" and "F") were not his signatures.

This factual determination on the genuineness or forgery of the signatures purporting to be those of Miguel Magsaysay on the subject deeds of sale is most crucial. When compared with this one, all other factual issues raised in the petition become immaterial, such as: whether the owner's duplicate copies of the TCT were voluntarily delivered to, or surreptitiously taken from Mapalad's custodian of such documents; whether the deeds of sale were in fact notarized by Atty. Elpidio Clemente considering that these documents do not exist in the archives or files in the notarial registry; or even whether there were two or only one document purporting to be the deed of absolute sale dated November 2, 1989.

There is, therefore, no cogent reason for this Court to delve further into these other factual matters.

II. There can be no valid contract of sale between Mapalad and Nordelak.

A contract is defined as a juridical convention manifested in legal form, by virtue of which one or more persons bind themselves in favor of another, or others, or reciprocally, to the fulfillment of a prestation to give, to do, or not to do. There can be no contract unless the following concur: (a) consent of the contracting parties; (b) object certain which is the subject matter of the contract; (c) cause of the obligation which is established.[25]

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[25] *Swedish Match, AB v. Court of Appeals,* G.R. No. 128120, October 20, 2004, 441 SCRA 1, 17-18.

Specifically, by the contract of sale, one of the contracting parties obligates himself to transfer ownership of and to deliver a determinate thing and the other party to pay therefor a price certain in money or its equivalent.[26]

The essential requisites of a valid contract of sale are:

(1) Consent of the contracting parties by virtue of which the vendor obligates himself to transfer ownership of and to deliver a determinate thing, and the vendee obligates himself to pay therefor a price certain in money or its equivalent.

(2) Object certain which is the subject matter of the contract. The object must be licit and at the same time determinate or, at least, capable of being made determinate without the necessity of a new or further agreement between the parties.

(3) Cause of the obligation which is established. The cause as far as the vendor is concerned is the acquisition of the price certain in money or its equivalent, which the cause as far as the vendee is concerned is the acquisition of the thing which is the object of the contract.[27]

Contracts of sale are perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[28]

Consent may be given only by a person with the legal capacity to give consent. In the case of juridical persons such as corporations like Mapalad, consent may only be granted through its officers who have been duly authorized by its board of directors.[29]

In the present case, consent was purportedly given by Miguel Magsaysay, the person who signed for and in behalf of Mapalad

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[26] Civil Code, Art. 1458.

[27] Jurado, D., *Civil Law Reviewer*, 19th ed., p. 841.

[28] *Swedish Match, AB v. Court of Appeals, supra* note 25.

[29] Since a corporation is only a juridical person, it must act through its officers or agents in the normal course of business (*Consumido v. Ros*, G.R. No. 166875, July 31, 2007).

in the deed of absolute sale dated November 2, 1989. However, as he categorically stated on the witness stand during trial, he was no longer connected with Mapalad on the said date because he already divested all his interests in said corporation as early as 1982. Even assuming, for the sake of argument, that the signatures purporting to be his were genuine, it would still be voidable for lack of authority resulting in his incapacity to give consent for and in behalf of the corporation.

On this score, the contract of sale may be annulled for lack of consent on the part of Mapalad.

The CA also noted that the alleged contract of sale on November 2, 1989 had no consideration. There was no payment effected by Nordelak for this transaction. Josef testified that no funds were infused into Mapalad's coffers on account of this transaction. This testimony remained uncontroverted. In fact, the CA further noted that Nordelak could have easily produced the cancelled check before the trial court, if there was any. Again, Nordelak did not.

The third element for a valid contract of sale is likewise lacking.

Lack of consideration makes a contract of sale fictitious. A fictitious sale is void *ab initio*.[30]

The alleged deed of absolute sale dated November 2, 1989 notwithstanding, the contract of sale between Mapalad and Nordelak is not only voidable on account of lack of valid consent on the part of the purported seller, but also void *ab initio* for being fictitious on account of lack of consideration.

Despite a void sale between Mapalad and Nordelak, may petitioner still claim valid title to the subject properties?

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[30] See *Nazareno v. Nazareno,* G.R. No. 138842, October 18, 2000, 343 SCRA 637, 655.

III. Petitioner as transferee *pendente lite* merely steps into the shoes of his predecessor-in-interest who had no valid title.

As We have said, Nordelak did not acquire ownership or title over the four properties subject of this case because the contract of sale between Mapalad and Nordelak was not only voidable but also void *ab initio*. Not having any title to the property, Nordelak had nothing to transfer to petitioner Sanchez.

Nemo dat non quod habet. ***Hindi maibibigay ng isang tao ang hindi kanya.*** No one can give what he does not have.

Petitioner acquired the property subject of litigation during the pendency of the case in the trial court. It is undisputed that notices of *lis pendens* were annotated on the TCTs in Nordelak's name covering the subject properties as Entry No. 93-91718.

In *Lim v. Vera Cruz,*[31] this Court explained:

> ***Lis pendens*** is a Latin term which literally means a pending suit. Notice of *lis pendens* is filed for the purpose of warning all persons that the title to certain property is in litigation and that if they purchase the same, they are in danger of being bound by an adverse judgment. The notice is, therefore, intended to be a warning to the whole world that one who buys the property does so at his own risk. This is necessary in order to save innocent third persons from any involvement in any future litigation concerning the property.

By virtue of the notice of *lis pendens* annotated on the four TCTs in this case, petitioner had notice that the property he was intending to buy is under litigation. He is, therefore, a transferee *pendente lite* who, as held by this Court in *Voluntad v. Dizon,*[32] stands exactly in the shoes of the transferor and is bound by any judgment or decree which may be rendered for or against the transferor.

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[31] G.R. No. 143646, April 4, 2001, 356 SCRA 386, 388.

[32] G.R. No. 132294, August 26, 1999, 313 SCRA 209.

Under the circumstances petitioner cannot acquire any better right than his predecessor, Nordelak. No river or stream can rise higher than its source. ***Walang ilog o batis na ang taas ay higit sa kanyang pinagmulan.*** There is thus no question that a judgment of reconveyance can be legally enforced by Mapalad against petitioner as transferee *pendente lite* of Nordelak.

The four parcels of land surrendered by former Marcos associate Jose Y. Campos and sequestered by the PCGG must eventually be returned to their rightful owners. If forfeiture proceedings in the Marcos ill-gotten wealth cases prosper, and these properties are finally shown to form part of such ill-gotten wealth, these properties should go to the Filipino people. If they are not ill-gotten, they should be turned over to the Marcoses. But definitely, these properties cannot be transferred to Nordelak nor to petitioner Manuel Luis Sanchez.

WHEREFORE, the petition is hereby *DENIED* and the appealed Court of Appeals decision *AFFIRMED in toto.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 162938. December 27, 2007]

ALFREDO C. BUYAGAO, *petitioner, vs.* **HADJI FAIZAL G. KARON, NORMA PASANDALAN, TAYA CANDAO AND VIRGILIO TORRES,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT; CORRUPT PRACTICES OF PUBLIC OFFICERS; CAUSING UNDUE INJURY TO ANY PARTY; MERE BAD FAITH OR PARTIALITY IS NOT ENOUGH FOR ONE TO BE HELD LIABLE UNDER THE LAW; SINCE THE ELEMENT OF BAD FAITH OR PARTIALITY MUST, IN THE FIRST PLACE, BE EVIDENT.—** Respondents were indicted for violation of Section 3(e) of Rep. Act No. 3019, which provides: ***Section. 3. Corrupt Practices of Public Officer***. – 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 hereby declared to be unlawful. 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 inex[c]usable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. x x x To hold a person liable under this section, the prosecution must establish beyond reasonable doubt that: (1) the accused is a public officer or a private person charged in conspiracy with the former; (2) the public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public functions; (3) he or she causes undue injury to any party, whether the government or a private party; and (4) the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence. *Undue* means more than necessary; not proper; or illegal while *injury* denotes any wrong or damage done to another, either in his person, rights, reputation, or property. In the context of these definitions, jurisprudence has interpreted “undue injury” to mean actual damage, similar to that in civil law. *Bad faith* on the other hand does not simply connote bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity. Thus, mere bad faith or partiality is not enough for one to be held liable under the law since the element of bad faith or partiality must, in the

first place, be *evident*. It is further required that undue injury impacts upon a specified party.

2. **ID.; ID.; ID.; ID.; MERE DELAY IN THE IMPLEMENTATION OF THE CIVIL SERVICE COMMISSION IN MINDANAO (CSC-ARMM) ORDER DID NOT CONSTITUTE EVIDENT BAD FAITH; EVIDENT BAD FAITH CONNOTES A MANIFEST DELIBERATE INTENT TO DO WRONG OR CAUSE DAMAGE WHICH IS NOT PRESENT IN CASE AT BAR.—** Respondents dropped petitioner from the roll of employees in obedience to Section 2, Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions. For acting within the purview of law, no bad faith can be ascribed to them. Neither was bad faith evident when respondents failed to immediately carry out the Order of CSC-ARMM. While the Order was executory after 15 days from receipt by respondents, and the appeal did not stay execution, mere delay in its implementation did not constitute evident bad faith. Evident bad faith connotes a manifest deliberate intent to do wrong or cause damage, which we did not find present in this case. Even assuming that the action taken by respondents was erroneous, it was certainly not criminal in nature. At most, the liability of respondents may be civil if not administrative. Section 83 of the Uniform Rules on Administrative Cases in the Civil Service is pertinent: Sec. 83. *Non-Execution of Decision*. – Any officer or employee who willfully refuses or fails to implement the final resolution, decision, order or ruling of the Commission to the prejudice of the public service and the affected party, may be cited in contempt of the Commission and administratively charged with conduct prejudicial to the best interest of the service or neglect of duty. Note, however, that this rule applies to a final resolution, decision, order or ruling of the Commission, and not one on appeal.

3. **ID.; ID.; ID.; ID.; NO UNDUE INJURY CAN BE CLAIMED IN CASE AT BAR; BEFORE THE CIVIL SERVICE COMMISSION PROPER ISSUED RESOLUTION NO. 020312, PETITIONER WAS REINSTATED IN OFFICE AND PAID HIS SALARIES AND BENEFITS; UNLIKE IN ACTIONS FOR TORTS, UNDUE INJURY IN SECTION 3(e) OF R.A. 3019 CANNOT BE PRESUMED EVEN AFTER A WRONG OR VIOLATION OF A RIGHT HAS BEEN ESTABLISHED BECAUSE ITS EXISTENCE MUST BE SPECIFIED,**

QUANTIFIED AND PROVEN WITH MORAL CERTAINTY.— As to petitioner's allegation of undue injury, the ruling of the Court in *Llorente, Jr. v. Sandiganbayan* is instructive: After an employee, whose salary was withheld, fully received her monetary claims, there is no longer any basis for compensatory damages or undue injury, there being nothing more to compensate. Moreover, in the case of *Jacinto v. Sandiganbayan*, we held that: Nevertheless, no real or actual damage was suffered by her. She got her withheld salary released. Her name was restored in the plantilla. Thus, the complainant did not suffer *undue injury* as an element required by the law. Such an injury must be more than necessary, excessive, improper or illegal. Hence, before CSC Proper issued Resolution No. 020312, petitioner was reinstated in office and paid his salaries and benefits. Thus, no undue injury can be claimed in this case. Unlike in actions for torts, undue injury in Section 3(e) cannot be presumed even after a wrong or violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punishable under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.

APPEARANCES OF COUNSEL

Lagman Lagman & Mones Law Firm for petitioner.
Ferdinand J. Tamse for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This appeal seeks the reversal of the Resolutions dated January 13, 2004[1] and February 16, 2004[2] of the Sandiganbayan in

[1] *Rollo*, pp. 26-29. Penned by Associate Justice Teresita Leonardo-De Castro, with Associate Justices Diosdado M. Peralta and Roland B. Jurado concurring.

[2] *Id*. at 30.

Criminal Case No. 26906. The Sandiganbayan had granted the Manifestation and Motion to Withdraw Information filed by the Office of the Special Prosecutor (OSP) on behalf of the respondents in this case, and had denied the motion for reconsideration of petitioner.

The factual antecedents are as follows:

Petitioner Alfredo C. Buyagao held the position of Engineer IV in the Surveys Division of the Land Management Bureau (LMB), Department of Environment and Natural Resources – Autonomous Region of Muslim Mindanao (DENR-ARMM).

On January 25, 2000, Buyagao was notified of his dismissal from office for incurring absences of 115 days without approved leave. The next day, he was dropped from the roll of employees. Aggrieved, Buyagao filed a complaint before the Civil Service Commission in Mindanao (CSC-ARMM). On February 17, 2000, CSC-ARMM issued an Order declaring void the dropping of Buyagao from the rolls, decreeing as follows:

> WHEREFORE, the act of DENR-ARMM in dropping Buyagao from the rolls is hereby considered null and void and is ineffective.
>
> The DENR-ARMM is hereby ordered to release the salaries of Alfredo Buyagao for the month of January and to reinstate him in the payroll.
>
> Parallel to this, a reprimand is hereby imposed against Alfredo Buyagao for inconsistent leave records and further ordered to report to work regularly and sign the logbook.
>
> So Ordered.[3]

Respondent DENR-ARMM Regional Secretary Hadji Faizal G. Karon appealed the Order to the CSC National Office (CSC Proper). In the meantime, Buyagao was not reinstated in office, and his salaries and benefits remained unpaid.

On July 24, 2001, Buyagao charged respondents before the Office of the Deputy Ombudsman for Mindanao with violation

[3] *Id*. at 38.

of Section 3(e)[4] of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act for alleged unlawful withholding of salaries and benefits. The Office of the Ombudsman for Mindanao found probable cause and recommended the filing of an Information against respondents. The Information dated September 24, 2001 and docketed as Criminal Case No. 26906 in the Sandiganbayan reads as follows:

> That in January 2000 or sometime prior or subsequent thereto, in Cotabato, Philippines and within the jurisdiction of this Honorable Court, accused **FAIZAL KARON**, a high ranking public official being the Regional Secretary; **NORMA PASANDALAN**, OIC AFMS Director; **TAYA CANDAO**, Personnel Officer **and VIRGILIO TORRES**, Legal Officer, all of the Department of Environment and Natural Resources (DENR) in Autonomous Region of Muslim Mindanao, Cotabato City, while in the performance of their official duties, thus committing the act in relation to their office, wil[l]fully, feloniously and unlawfully, did then and there, with grave abuse of authority, and evident bad faith, drop a certain Alfredo C. Buyagao from the rolls and defy the orders of the Civil Service Commission for the immediate reinstatement of the same Alfredo C. Buyagao to his position as Engineer IV and to correspondingly pay his salaries as such thereby causing undue injury to the latter who was deprived of his salaries and wages.
>
> CONTRARY TO LAW.[5]

The Sandiganbayan ordered the OSP to conduct a reinvestigation of the case in light of the pendency of the appeal

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[4] **Section 3.** ***Corrupt Practices of Public Officer***. – 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 hereby declared to be unlawful.

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(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 inex[c]usable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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[5] Sandiganbayan *rollo*, pp. 1-2.

filed by respondents before the CSC Proper. Meanwhile, Buyagao was reinstated in office and paid his salaries on January 8, 2002.[6]

On February 28, 2002, the CSC Proper issued Resolution No. 020312, which upheld the dropping of Buyagao from the roll of employees. It reads:

> WHEREFORE, the appeal of ARMM Regional Secretary Hadji Faizal G. Karon is hereby **GRANTED.** Accordingly, the Orders dated February 17, 2000 and November 8, 2000 of the CSC-ARMM are reversed and set aside and the dropping of Alfredo C. Buyagao from the rolls is affirmed.[7]

In deference, Ombudsman Prosecutor Diosdado V. Calonge of the OSP issued a Resolution[8] dated August 13, 2002. He recommended the dismissal of the graft case against respondents for lack of probable cause. Then, Calonge filed a Manifestation and Motion to Withdraw Information on behalf of the respondents before the Sandiganbayan. On January 13, 2004, the Sandiganbayan issued the assailed Resolution, whose dispositive portion reads:

> **WHEREFORE,** the prosecution's Motion to Withdraw Information is **GRANTED.** As prayed for, this case is hereby **DISMISSED** against all the accused for lack of probable cause.
>
> SO ORDERED.[9]

Buyagao filed a motion for reconsideration, but it was denied in a Resolution dated February 16, 2004.

Thus, Buyagao appealed to us raising the following issues:

I.

RESPONDENTS COMMITTED EVIDENT BAD FAITH IN DROPPING THE PETITIONER FROM THE ROLL OF

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[6] *Id*. at 39-47.

[7] *Rollo*, p. 71.

[8] *Id*. at 50-54.

[9] *Id*. at 29.

PERSONNEL OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES OF THE AUTONOMOUS REGION OF MUSLIM MINDANAO.

II.

RESPONDENTS CAUSED UNDUE DAMAGE OR INJURY TO THE PETITIONER FOR FAILURE OF THE RESPONDENTS TO IMMEDIATELY REINSTATE THE PETITIONER AND PAY HIS SALARIES AND BACKWAGES DEFINED AND PUNISHED UNDER SECTION 3(e) OF REPUBLIC ACT [NO.] 3019.[10]

Stated simply, the issues are: (1) whether respondents acted with evident bad faith when they dropped Buyagao from the roll of employees; and (2) whether Buyagao suffered undue injury when respondents failed to immediately execute the Order of CSC-ARMM.

Buyagao imputes bad faith on respondents for dropping him from the roll of employees. Further, he argues that respondents should have immediately executed the Order of CSC-ARMM. Buyagao asserts that his reinstatement and the payment of his salaries, two years after the Order was made, did not compensate for the undue damage he already suffered.

The Office of the Ombudsman, thru the OSP, filed its Comment[11] for the People. The OSP averred that while the Order of CSC-ARMM was on appeal, respondents had nothing to defy. It added that since the CSC Proper found respondents' act of dropping Buyagao from the rolls to be consistent with law, the latter could not claim damage or undue injury. The OSP espoused the view that Buyagao's claims were extinguished when he was restored to office, and paid his salaries.

The Office of the Solicitor General (OSG) likewise maintains that respondents acted in good faith when they relieved Buyagao from office. The OSG quoted Section 2,[12] Rule XII of the

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[10] *Id.* at 19.

[11] *Id.* at 176-195.

[12] SEC. 2. *Dropping from the Rolls.* Officers and employees who are either habitually absent or have unsatisfactory or poor performance or have

Revised Omnibus Rules on Appointments and Other Personnel Actions, as amended, as the basis for respondents' action. According to the OSG, Buyagao's belated presentation of medical certificates did not justify his continuous absence without official leave. The certificates did not indicate that Buyagao's ailment had prevented him from reporting for work. The OSG contends that respondents could not have acted in bad faith, considering that the CSC confirmed that their action was in accordance with Civil Service Rules and Regulations. The OSG submits that respondents deferred execution of the Order of CSC-ARMM by reason of their pending appeal, and not because of any ill motive.

For their part, respondents allege that the Sandiganbayan did not abuse its discretion when it dismissed the charges against them. Respondents cited the case of *Espinosa v. Office of the Ombudsman*[13] that the duty of a government prosecutor to prosecute crimes does not preclude him from refusing to file an information when he believes there is no *prima facie* evidence to do so.[14] Thus, the power to withdraw an information already filed is a mere adjunct or consequence of the Ombudsman's overall power to prosecute. Respondents contend that Buyagao's charge of graft has no basis since the CSC upheld their act of dropping him from the rolls. This Order, the respondents stressed, was buttressed by the findings of lack of probable cause by the Ombudsman and the Sandiganbayan.

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shown to be physically and mentally unfit to perform their duties may be dropped from the rolls subject to the following procedures:

2.1 Absence without approved leave

"a. An officer or employee who is continuously absent without approved leave (AWOL) for at leas[t] thirty (30) working days shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed of his separation from the service not later than (5) days from its effectivity which shall be sent to the address appearing on his 201 files or to his last known address;

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[13] G.R. No. 135775, October 19, 2000, 343 SCRA 744.

[14] *Id.* at 751.

After a thorough consideration of the circumstances in this case, we are in agreement that the petition is bereft of merit.

Respondents were indicted for violation of Section 3(e) of Rep. Act No. 3019, which provides:

Section. 3. ***Corrupt Practices of Public Officer***. – 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 hereby declared to be unlawful.

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(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 inex[c]usable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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To hold a person liable under this section, the prosecution must establish beyond reasonable doubt that:

(1) the accused is a public officer or a private person charged in conspiracy with the former;

(2) the public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public functions;

(3) he or she causes undue injury to any party, whether the government or a private party; and

(4) the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.[15]

Undue means more than necessary; not proper; or illegal[16] while *injury* denotes any wrong or damage done to another,

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[15] *Sistoza v. Desierto*, G.R. No. 144784, September 3, 2002, 388 SCRA 307, 324.

[16] H.C. Black, *BLACK'S LAW DICTIONARY* 1528 (6th ed., 1990).

either in his person, rights, reputation, or property.[17] In the context of these definitions, jurisprudence[18] has interpreted "undue injury" to mean actual damage, similar to that in civil law. *Bad faith* on the other hand does not simply connote bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity.[19] Thus, mere bad faith or partiality is not enough for one to be held liable under the law since the element of bad faith or partiality must, in the first place, be *evident*. It is further required that undue injury impacts upon a specified party.[20]

Respondents dropped petitioner from the roll of employees in obedience to Section 2,[21] Rule XII of the Revised Omnibus Rules on Appointments and Other Personnel Actions. For acting within the purview of law, no bad faith can be ascribed to them. Neither was bad faith evident when respondents failed to immediately carry out the Order of CSC-ARMM. While the Order was executory after 15 days from receipt by respondents,[22] and the appeal did not stay execution,[23] mere delay in its

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[17] *Id.* at 785.

[18] *Pecho v. Sandiganbayan*, G.R. No. 111399, November 14, 1994, 238 SCRA 116, 133.

[19] *Supra* note 16, at 139.

[20] *Sistoza v. Desierto*, *supra*.

[21] *Supra* note 12.

[22] UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE.

Sec. 80. *Execution of Decision*. – The decision of the Commission Proper or its Regional Offices shall be immediately executory after fifteen (15) days from receipt thereof, unless a motion for reconsideration is seasonably filed, in which case the execution of the decision shall be held in abeyance.

[23] Rules Implementing Book V of Executive Order No. 292 AND OTHER PERTINENT CIVIL SERVICE LAWS, Rule VII.

Sec. 13. Appeals in connection with personnel actions shall be governed by the following:

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(d) An appeal even seasonably filed shall not stay the action, order, decision or ruling of the MSPB or CSC Regional/Provincial/Field

implementation did not constitute evident bad faith. Evident bad faith connotes a manifest deliberate intent to do wrong or cause damage,[24] which we did not find present in this case. Even assuming that the action taken by respondents was erroneous, it was certainly not criminal in nature.[25] At most, the liability of respondents may be civil if not administrative. Section 83 of the Uniform Rules on Administrative Cases in the Civil Service is pertinent:

> Sec. 83. *Non-Execution of Decision*. – Any officer or employee who willfully refuses or fails to implement the final resolution, decision, order or ruling of the Commission to the prejudice of the public service and the affected party, may be cited in contempt of the Commission and administratively charged with conduct prejudicial to the best interest of the service or neglect of duty.

Note, however, that this rule applies to a final resolution, decision, order or ruling of the Commission, and not one on appeal.

As to petitioner's allegation of undue injury, the ruling of the Court in *Llorente, Jr. v. Sandiganbayan*[26] is instructive:

> After an employee, whose salary was withheld, fully received her monetary claims, there is no longer any basis for compensatory damages or undue injury, there being nothing more to compensate.[27]

Moreover, in the case of *Jacinto v. Sandiganbayan*,[28] we held that:

Office, as the case may be, on appeal except [when] otherwise ordered by the CSC.

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[24] *Marcelo v. Sandiganbayan*, G.R. No. 69983, May 14, 1990, 185 SCRA 346, 349.

[25] *Jacinto v. Sandiganbayan*, G.R. No. 84571, October 2, 1989, 178 SCRA 254, 260.

[26] G.R. No. 122166, March 11, 1998, 287 SCRA 382.

[27] *Id.* at 400.

[28] G.R. No. 84571, October 2, 1989, 178 SCRA 254.

Nevertheless, no real or actual damage was suffered by her. She got her withheld salary released. Her name was restored in the plantilla. Thus, the complainant did not suffer *undue injury* as an element required by the law. Such an injury must be more than necessary, excessive, improper or illegal.[29]

Hence, before CSC Proper issued Resolution No. 020312, petitioner was reinstated in office and paid his salaries and benefits. Thus, no undue injury can be claimed in this case. Unlike in actions for torts, undue injury in Section 3(e) cannot be presumed even after a wrong or violation of a right has been established.[30] Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punishable under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.[31]

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Resolutions dated January 13, 2004 and February 16, 2004 of the Sandiganbayan in Criminal Case No. 26906 are hereby *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[29] *Id.* at 260.

[30] *Llorente, Jr. v. Sandiganbayan*, supra at 399.

[31] *Id.*

SECOND DIVISION

[G.R. No. 163785. December 27, 2007]

KKK FOUNDATION, INC., *petitioner, vs.* **HON. ADELINA CALDERON-BARGAS, in her capacity as Presiding Judge of the REGIONAL TRIAL COURT, Branch 78 of Morong, Rizal, SHERIFF IV SALES T. BISNAR, THE REGISTER OF DEEDS FOR MORONG, RIZAL, and IMELDA A. ANGELES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PETITIONER'S MOTION FOR EXTENSION AND COMMENT WERE NOT SEASONABLY FILED AND SUCH PROCEDURAL LAPSE IS BINDING UPON HIM.—** We note that in its September 9, 2002 Order, the trial court gave petitioner ten (10) days to file its comment to Angeles's Motion for Issuance of Writ of Execution. While petitioner claims that it received the Order only on September 21, 2002, Angeles counters that petitioner received it on September 12, 2002. We are more inclined to believe Angeles's allegation since the trial court itself declared in its Order dated October 10, 2002 that the Order dated September 9, 2002 was personally served upon petitioner on September 12, 2002. Thus, petitioner had until September 22, 2002 within which to file its comment or to request for an extension of time. Consequently, petitioner's motion for extension and comment were not seasonably filed and such procedural lapse binds petitioner.

2. **ID.; ID.; MOTIONS; NOTICE OF HEARING; A MANDATORY REQUIREMENT AND FAILURE OF MOVANTS TO COMPLY WITH THE REQUIREMENTS RENDERS THEIR MOTIONS FATALLY DEFECTIVE; EXCEPTIONS TO THE RULE.—** We have consistently held that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper, which the Clerk of Court has no right to receive and the trial court has no authority to act upon. Service of a copy of a motion containing a notice of the time and the place of

hearing of that motion is a mandatory requirement, and the failure of movants to comply with these requirements renders their motions fatally defective. However, there are exceptions to the strict application of this rule. These exceptions are: (1) where a rigid application will result in a manifest failure or miscarriage of justice especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.

3. **ID.; ID.; ID.; ID.; NO DENIAL OF PROCEDURAL DUE PROCESS DESPITE THE FACT THAT THE NOTICE OF HEARING DID NOT PARTICULARLY STATE THE DATE AND TIME OF HEARING; PETITIONER WAS GIVEN TIME TO STUDY AND COMMENT ON THE PETITION FOR WHICH REASON, THE VERY PURPOSE OF NOTICE OF HEARING HAD BEEN ACHIEVED.—** A notice of hearing is an integral component of procedural due process to afford the adverse parties a chance to be heard before a motion is resolved by the court. Through such notice, the adverse party is given time to study and answer the arguments in the motion. Records show that while Angeles's Motion for Issuance of Writ of Execution contained a notice of hearing, it did not particularly state the date and time of the hearing. However, we still find that petitioner was not denied procedural due process. Upon receiving the Motion for Issuance of Writ of Execution, the trial court issued an Order dated September 9, 2002 giving petitioner ten (10) days to file its comment. The trial court ruled on the motion only after the reglementary period to file comment lapsed. Clearly, petitioner was given time to study and comment on the motion for which reason, the very purpose of a notice of hearing had been achieved. The notice requirement is not a ritual to be followed blindly. Procedural due process is not based solely on a mechanical and literal application that renders any deviation inexorably fatal. Instead, procedural rules are liberally construed to promote their objective and to assist in obtaining a just, speedy and inexpensive determination of any action and proceeding.

4. ID.; ID.; EXECUTION OF JUDGMENT; BECAUSE THE WRIT OF EXECUTION VARIED THE TERMS OF THE JUDGMENT AND EXCEEDED THEM, IT HAD NO VALIDITY.— We note that the Compromise Agreement approved by the trial court in its Decision dated June 28, 2002 merely provided that petitioner would pay Angeles the bid price of ₱5,500,000, for the eight parcels of land subject of the auction sale, within twenty (20) days. Upon payment, Angeles would execute a Certificate of Deed of Redemption and a Deed of Cancellation of Mortgage, and surrender to petitioner the titles to the eight parcels of land. Nevertheless, when the trial court issued the writ of execution, the writ gave Sheriff Bisnar the option "to allow the consolidation of the subject real properties in favor of the defendant Imelda Angeles." Undoubtedly, the writ of execution imposed upon petitioner an alternative obligation which was not included or contemplated in the Compromise Agreement. While the complaint originally sought to restrain Angeles from consolidating her ownership to the foreclosed properties, that has been superseded by the Compromise Agreement. Therefore, the writ of execution which directed Sheriff Bisnar to "cause the Register of Deeds of Morong, Rizal, to allow the consolidation of the subject real properties in favor of the defendant Imelda Angeles" is clearly erroneous because the judgment under execution failed to provide for consolidation. Because the writ of execution varied the terms of the judgment and exceeded them, it had no validity. The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Neither may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has *pro tanto* no validity.

APPEARANCES OF COUNSEL

Joel F. Pradia and *Mayda E. Lintag* for petitioner.

Quiason Makalintal Barot Torres & Ibarra for I. A. Angeles.

D E C I S I O N

QUISUMBING, ***J.:***

In this petition for review under Rule 45 of the Rules of Court, petitioner urges this Court to reverse and set aside the Decision[1] dated November 28, 2003, and the Resolution[2] dated May 26, 2004, of the Court of Appeals in CA-G.R. SP No. 73965.

The antecedent facts are as follows:

On March 1, 2002, petitioner KKK Foundation, Inc. filed a complaint for Annulment of Extra-judicial Foreclosure of Real Estate Mortgage and/or Nullification of Sheriff's Auction Sale and Damages with Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction.[3] Petitioner alleged that: (1) the auction sale was made with fraud and/or bad faith since there was no public bidding; (2) the sheriff did not post the requisite Notice of Sheriff's Sale; (3) the petition for extrajudicial foreclosure was fatally defective since it sought to foreclose properties of two different entities; (4) the foreclosed properties were awarded and sold to Imelda A. Angeles for an inadequate bid of only ₱4,181,450; and (5) the auction sale involved eight parcels of land covered by individual titles but the same were sold *en masse*.

On March 7, 2002, Judge Adelina Calderon-Bargas issued a temporary restraining order preventing Angeles from consolidating her ownership to the foreclosed properties. On even date, petitioner and Angeles executed a Compromise Agreement wherein petitioner agreed to pay Angeles the bid price of the eight parcels of land within 20 days. The parties then filed a Motion to Approve Compromise Agreement.[4]

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[1] *Rollo*, pp. 130-136. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Amelita G. Tolentino and Arturo D. Brion concurring.

[2] *Id*. at 163-164.

[3] CA *rollo*, pp. 26-37.

[4] *Id*. at 38-39.

On April 1, 2002, petitioner filed an Urgent *Ex-Parte* Motion to Recall Compromise Agreement[5] since the other property owner and other trustees of petitioner were not consulted prior to the signing of the agreement. Angeles opposed the motion.

On May 2, 2002, Judge Calderon-Bargas issued an Order,[6] which reads in part:

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Record shows that the Urgent *Ex-Parte* Motion to Recall Compromise Agreement and Motion to Approve Compromise Agreement both failed to comply with Sec[s]. 4 and 5, Rule 15 of the Civil Procedure. Both proceedings have no specific date of hearing. The reason why the Motion to Approve Compromise Agreement up to now has not yet been acted upon was that it has no date of hearing.

WHEREFORE, the Urgent *Ex-Parte* Motion to Recall Compromise Agreement and the Motion to [Approve] Compromise Agreement are considered mere scrap[s] of paper.

SO ORDERED.

In its Decision[7] dated June 28, 2002, the trial court approved the Compromise Agreement, as follows:

The parties, duly assisted by their respective counsels, submitted before this Court a Compromise Agreement, as follows:

xxx xxx xxx

[1.] The plaintiff shall pay to the defendant, Imelda Angeles, the amount of ₱5,500,000.00 representing the bid price for all the eight titles (TCT Nos. M-95417, 95419, 95418, 95420, 95421, 50889, 50890 and 50893) subject of the auction sale dated March 7, 2001 plus whatever taxes [and/or] assessments and expenses of the public auction as prescribed under Act 3135, within twenty (20) days from the signing of this compromise agreement. Said payment shall be considered full settlement of all obligations stated under that Real Estate Mortgage, dated July 15, 1997…and that Deed of Assumption of Mortgage dated August 11, 1999….

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[5] *Id*. at 40-41.

[6] *Id*. at 50.

[7] *Id*. at 51-53.

2. Upon the payment of the afore-stated amount, the defendant shall make, sign, execute and deliver to the plaintiff a Certificate of Deed of Redemption of all the above titles, and shall surrender and deliver to the plaintiff all the eight titles mentioned above. The defendant shall also make, sign, execute and deliver to the plaintiff a Deed of Cancellation of Mortgage annotated at the back of all the eight titles above-mentioned. The defendant shall also return to the plaintiff all checks issued by the plaintiff to the defendant as payment of its obligations.

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Finding the Compromise Agreement quoted above to be not contrary to law, morals, good customs and public policy, the same is hereby APPROVED.

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Angeles then moved for the issuance of a writ of execution. On September 9, 2002, the trial court required petitioner to comment on the motion within ten (10) days.[8] On October 3, 2002, the trial court directed the Clerk of Court to issue a writ of execution.[9] On the same date, the trial court received petitioner's Motion for Extension of Time to File Comment with Entry of Appearance which was denied on October 10, 2002.[10] Petitioner then moved for reconsideration of the October 3, 2002 Order.

Petitioner came to the Court of Appeals *via* petition for *certiorari* alleging that Judge Calderon-Bargas committed grave abuse of discretion amounting to lack or excess of jurisdiction when: (1) she issued the October 3, 2002 and the October 10, 2002 Orders even before petitioner could file its comment; (2) she granted the Motion for Issuance of Writ of Execution although it lacked the requisite notice of hearing; and (3) the writ of execution changed the tenor of the decision dated June 28, 2002.

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[8] *Id.* at 58.

[9] *Id.* at 61-62.

[10] *Id.* at 78.

In dismissing the petition, the appellate court ruled that petitioner was not deprived of due process when the trial court issued the October 3, 2002 and the October 10, 2002 Orders since it was given sufficient time to file its comment. The appellate court did not rule on the second and third issues after noting that petitioner's motion for reconsideration of the October 3, 2002 Order had not yet been resolved by the trial court. It did not resolve the issues even after the trial court denied petitioner's motion for reconsideration on December 12, 2003,[11] ratiocinating that the trial court's denial of petitioner's motion for reconsideration did not operate to reinstate the petition because at the time it was filed, petitioner had no cause of action.

In the instant petition before us, petitioner alleges that the appellate court seriously erred:

I.

… IN NOT HOLDING THAT PETITIONER WAS DENIED THE REQUISITE PROCEDURAL DUE PROCESS WHEN PUBLIC RESPONDENT ISSUED THE QUESTIONED ORDERS OF OCTOBER 3, 2002 AND OCTOBER 10, 2002 EVEN BEFORE PETITIONER COULD FILE ITS COMMENT AND IN FURTHER ISSUING THE WRIT OF EXECUTION EVEN BEFORE THE RESOLUTION OF THE PETITIONER'S MOTION FOR RECONSIDERATION OF THE ORDER OF OCTOBER 3, 2002.

II.

… IN NOT HOLDING THAT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT GRANTED PRIVATE RESPONDENT'S MOTION FOR ISSUANCE OF WRIT OF EXECUTION ALTHOUGH THE SAME WAS FILED WITHOUT AN ACCOMPANYING NOTICE OF HEARING.

III.

… IN NOT HOLDING THAT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN NOT HOLDING THAT EVEN ASSUMING THAT THE DECISION RENDERED IN ACCORDANCE WITH THE COMPROMISE AGREEMENT IS VALID AND BINDING UPON THE

[11] *Id.* at 200-201.

PETITIONER, THE WRIT OF EXECUTION ISSUED PURSUANT THERETO IS VOID AS IT VARIES THE TENOR OF THE JUDGMENT.[12]

Simply, the issues are whether the trial court seriously erred: (1) in issuing the October 3, 2002 and the October 10, 2002 Orders without awaiting petitioner's comment; (2) in granting the Motion for Issuance of Writ of Execution although it lacked the requisite notice of hearing; and (3) in issuing the writ of execution since it varied the tenor of the decision dated June 28, 2002.

Petitioner contends that it was denied due process when the trial court granted Angeles's Motion for Issuance of Writ of Execution on October 3, 2002, despite its receipt of petitioner's Motion for Extension of Time to File Comment with Entry of Appearance on the same day. Further, Sheriff Sales T. Bisnar served upon petitioner the Notice to Settle and/or Pay the Compromise Judgment Amount although its motion for reconsideration of the October 3, 2002 Order was still pending. Petitioner also argues that Angeles's Motion for Issuance of Writ of Execution lacked the requisite notice of hearing. Finally, petitioner claims that the writ of execution varied the tenor of the decision dated June 28, 2002.

Respondent Angeles counters that petitioner was not denied due process since it was given ten (10) days to comment on the Motion for Issuance of Writ of Execution which period had lapsed without petitioner filing any comment. Petitioner filed its Motion for Extension of Time to File Comment with Entry of Appearance only after the reglementary period had expired. Angeles further contends that the Motion for Issuance of Writ of Execution contained the requisite notice of hearing. Finally, she argues that the writ of execution did not vary the tenor of the decision dated June 28, 2002.

On the *first* issue, we note that in its September 9, 2002 Order, the trial court gave petitioner ten (10) days to file its comment to Angeles's Motion for Issuance of Writ of Execution.

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[12] *Rollo*, pp. 16-17.

While petitioner claims that it received the Order only on September 21, 2002, Angeles counters that petitioner received it on September 12, 2002. We are more inclined to believe Angeles's allegation since the trial court itself declared in its Order dated October 10, 2002 that the Order dated September 9, 2002 was personally served upon petitioner on September 12, 2002.[13] Thus, petitioner had until September 22, 2002 within which to file its comment or to request for an extension of time. Consequently, petitioner's motion for extension and comment were not seasonably filed and such procedural lapse binds petitioner.

Anent the *second* issue, we have consistently held that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15[14] of the Rules of Court is considered a worthless piece of paper, which the Clerk of Court has no right to receive and the trial court has no authority to act upon.[15] Service of a copy of a motion containing a notice of the time and the place of hearing of that motion is a mandatory requirement, and the failure of movants to comply with these requirements renders their motions fatally defective. However, there are exceptions to the strict application of this rule. These exceptions are: (1) where a rigid application will result in a manifest failure or miscarriage of justice especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained

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[13] CA *rollo*, p. 78.

[14] SEC. 4. *Hearing of motion.* - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. *Notice of hearing.* - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[15] *Pallada v. Regional Trial Court of Kalibo, Aklan, Br. 1*, G.R. No. 129442, March 10, 1999, 304 SCRA 440, 446.

therein; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[16]

A notice of hearing is an integral component of procedural due process to afford the adverse parties a chance to be heard before a motion is resolved by the court. Through such notice, the adverse party is given time to study and answer the arguments in the motion.[17] Records show that while Angeles's Motion for Issuance of Writ of Execution contained a notice of hearing, it did not particularly state the date and time of the hearing. However, we still find that petitioner was not denied procedural due process. Upon receiving the Motion for Issuance of Writ of Execution, the trial court issued an Order dated September 9, 2002 giving petitioner ten (10) days to file its comment. The trial court ruled on the motion only after the reglementary period to file comment lapsed. Clearly, petitioner was given time to study and comment on the motion for which reason, the very purpose of a notice of hearing had been achieved.

The notice requirement is not a ritual to be followed blindly. Procedural due process is not based solely on a mechanical and literal application that renders any deviation inexorably fatal. Instead, procedural rules are liberally construed to promote their objective and to assist in obtaining a just, speedy and inexpensive determination of any action and proceeding.[18]

On the *last* issue, we note that the Compromise Agreement approved by the trial court in its Decision dated June 28, 2002 merely provided that petitioner would pay Angeles the bid price of ₱5,500,000, for the eight parcels of land subject of the auction sale, within twenty (20) days. Upon payment, Angeles would

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[16] *Vlason Enterprises Corporation v. Court of Appeals*, G.R. Nos. 121662-64, July 6, 1999, 310 SCRA 26, 53-54.

[17] *Id.* at 54.

[18] *Id.* at 55.

execute a Certificate of Deed of Redemption and a Deed of Cancellation of Mortgage, and surrender to petitioner the titles to the eight parcels of land. Nevertheless, when the trial court issued the writ of execution, the writ gave Sheriff Bisnar the option "to allow the consolidation of the subject real properties in favor of the defendant Imelda Angeles."[19]

Undoubtedly, the writ of execution imposed upon petitioner an alternative obligation which was not included or contemplated in the Compromise Agreement. While the complaint originally sought to restrain Angeles from consolidating her ownership to the foreclosed properties, that has been superseded by the Compromise Agreement. Therefore, the writ of execution which directed Sheriff Bisnar to "cause the Register of Deeds of Morong, Rizal, to allow the consolidation of the subject real properties in favor of the defendant Imelda Angeles" is clearly erroneous because the judgment under execution failed to provide for consolidation.

Because the writ of execution varied the terms of the judgment and exceeded them, it had no validity. The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Neither may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has *pro tanto* no validity.[20]

WHEREFORE, the instant petition is *PARTIALLY GRANTED*. The Decision dated November 28, 2003 and the Resolution dated May 26, 2004 of the Court of Appeals in CA-G.R. SP No. 73965 are *MODIFIED* such that the writ of execution issued on October 11, 2002 by Judge Adelina Calderon-Bargas is declared *NULL* and *VOID*.

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[19] CA *rollo*, p. 82.

[20] *Windor Steel Mfg. Co., Inc. v. Court of Appeals*, No. L-34332, January 27, 1981, 102 SCRA 275, 283-284; See *Greater Metropolitan Manila Solid Waste Management Committee v. Jancom Environmental Corporation*, G.R. No. 163663, June 30, 2006, 494 SCRA 280, 297.

Let this case be *REMANDED* to the Regional Trial Court of Morong, Rizal, Branch 78, which is hereby *ORDERED* to issue another writ of execution against petitioner KKK Foundation, Inc., in conformity with the Decision dated June 28, 2002 of the trial court. This is without prejudice to filing a new motion for consolidation by respondent Angeles.

No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 166780. December 27, 2007]

F/O AUGUSTUS Z. LEDESMA, *petitioner, vs.* **COURT OF APPEALS, AIR TRANSPORTATION OFFICE and CIVIL AERONAUTICS BOARD,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS; SATISFIED WHEN A PERSON IS NOTIFIED OF THE CHARGE AGAINST HIM AND IS GIVEN AN OPPORTUNITY TO EXPLAIN OR DEFEND HIMSELF.— The issue of due process in the proceedings before the ATO had already been raised and passed upon by the CAB and the Court of Appeals. The petitioner merely reiterates the same arguments in support of this position. These arguments relate to the right to be informed of the charge, the requirements of administrative due process and the right to counsel and the nature of the license in relation to due process. The tribunals below correctly concluded that the minimum requirements of administrative due process have been complied

with. Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply 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.

2. **ID.; ID.; ID.; ABSENCE OF A COMPLAINANT DID NOT AFFECT THE REGULARITY OF THE COMPLAINT IN CASE AT BAR; THE OVERRIDING CONSIDERATIONS OF PUBLIC SAFETY WARRANTED THE INVESTIGATION OF FALSIFICATION OF THE SUBJECT ATO-AEB CERTIFICATION, WHICH ALLOWED PETITIONER TO UNDERGO TRAINING DESPITE HIS LACK OF QUALIFICATION.—** Petitioner's plaint that he did not fully appreciate the nature of the charges against him because the ATO even without an ostensible complainant against him failed to state or announce that petitioner was being charged with falsification, is incorrect. The subpoena issued to him clearly stated that petitioner should appear before the panel investigating his "alleged falsification of the AEB examination results." The absence of a complainant also did not affect the regularity of the investigation. As opposed to a regular trial court, an administrative agency, vested with quasi-judicial functions, may investigate an irregularity on its own initiative. Particularly in the instant case, the overriding considerations of public safety warranted the investigation of the falsification of the subject ATO-AEB certification, which allowed petitioner to undergo training despite his lack of qualifications.

3. **ID.; ID.; ID.; RIGHT TO REPRESENTATION; IT IS SUFFICIENT THAT PETITIONER'S COUNSEL OF CHOICE WAS ALLOWED TO SUBMIT IN WRITING HIS OBSERVATIONS ON THE INVESTIGATION; ADMINISTRATIVE DUE PROCESS CANNOT BE FULLY EQUATED WITH DUE PROCESS IN ITS STRICT JUDICIAL SENSE FOR IT IS ENOUGH THAT THE PARTY IS GIVEN THE CHANCE TO BE HEARD BEFORE THE**

CASE AGAINST HIM IS DECIDED.— Concerning the right to representation, it is sufficient that petitioner's counsel of choice was allowed to submit in writing his observations on the investigation. Petitioner's counsel even filed a memorandum before the CAB. What is frowned upon is the absolute deprivation of the right to counsel. The counsel's participation in a proceeding similar to that of a courtroom trial is not required. Administrative due process cannot be fully equated with due process in its strict judicial sense for it is enough that the party is given the chance to be heard before the case against him is decided.

4. **ID.; ID.; ID.; PETITIONER'S AIRMAN LICENSE CANNOT BE CONSIDERED A PROPERTY RIGHT, IT IS A MERE PRIVILEGE, SUBJECT TO THE RESTRICTIONS IMPOSED BY THE ATO AND ITS REVOCATION IF WARRANTED.—** Petitioner contends that his airman license has become a property right protected by due process and could not be taken away capriciously. Petitioner argues that due process and fair play demand that there must be a determination of his capacity by allowing him to take another examination in Weight and Balance. As already discussed above, the ATO has complied with the minimum standards of administrative due process in investigating petitioner on the fabrication of his ATO-AEB certification and the conclusions arrived at by the ATO were supported by evidence on record and affirmed by the CAB and the Court of Appeals. Thus, the revocation of petitioner's airman license was imposed in accordance with the requirements of due process. Moreover, petitioner's airman license cannot be considered a property right, it is but a mere privilege, subject to the restrictions imposed by the ATO and its revocation if warranted.

5. **ID.; ID.; ID.; FINDINGS OF FACTS IN ADMINISTRATIVE DECISIONS ARE TO BE RESPECTED SO LONG AS THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.—** The Court of Appeals is correct in ruling that whatever irregularity in the ATO proceedings was cured by petitioner's filing of a motion for reconsideration. Petitioner insists that the denial of the motion for reconsideration was issued hastily because the motion pointed out irregularities in the conduct of the investigation, hence, the motion for reconsideration did not cure the irregularity in the ATO proceedings. That petitioner

appears to have been singled out by the Investigating Committee does not negate its finding that he was guilty of securing a tampered ATO-AEB certification by buying off the middleman, Areopagita. Notwithstanding the perceived irregularity and impartiality of the investigating committee, the truth of the matter is that the ATO's finding on petitioner's participation in the falsification of the ATO-AEB certification is supported by evidence on record. Significantly, petitioner seeks redress even though since day one, he has already fully realized he is not entitled to it, as he comes to court with unclean hands and admitted that he paid Areopagita ₱25,000.00 to allegedly protect his test results from tampering. Aside from petitioner's admission, there is adequate evidence proving that petitioner's ATO-AEB certification was falsified. It is undisputed that the test result on Weight and Balance was tampered. Both the ATO and the CAB found that petitioner knew about the tampering for he paid ₱25,000.00 to Areopagita. Petitioner's pretense that the money was given merely to ensure that his grade would be protected is absurd and flimsy. The Court has reviewed the findings of the ATO and fully concurs with its conclusion. In reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. Administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned.

6. **ID.; ID.; ID.; PENALTY OF REVOCATION OF LICENSE IS COMMENSURATE WITH PETITIONER'S INFRACTION AND WARRANTED BY PUBLIC SAFETY CONSIDERATIONS.—** On the propriety of the penalty of revocation of petitioner's license, the Court finds the penalty commensurate with petitioner's infraction. Under Executive Order No. 125, Sec. 12, the ATO is vested with the function to establish and prescribe rules and regulations for the issuance

of license to qualified airmen. Corollary to this function is the power to impose sanctions on erring airmen. The Court cannot fault the ATO for the revocation of petitioner's airman license because it is the bounden duty of the ATO to order the revocation of licenses when warranted by public safety considerations.

APPEARANCES OF COUNSEL

Zulueta Puno & Associates for petitioner.

The Solicitor General for respondents.

D E C I S I O N

TINGA, *J*.:

This is a Petition for Review on *Certiorari*[1] under the 1997 Rules of Civil Procedure assailing the Decision[2] and Resolution[3] dated 29 September 2004 and 18 January 1995, respectively, of the Court of Appeals in CA-G.R. SP No. 79414 that affirmed the resolutions of the Air Transportation Office (ATO) and the Civil Aeronautics Board (CAB) and denied petitioner's motion for reconsideration. The CAB resolution affirmed the ATO's order revoking petitioner's airman license and banning him from taking any theoretical examination in the future.

The antecedent facts are as follows:

Petitioner was a commercial airline pilot holding the rank of Second Officer on the Boeing 747-400 aircraft of the Philippine Airlines (PAL). To become a First Officer, petitioner must acquire an Airline Transport Pilot License (ATPL). Pursuant to Civil Air Regulation Administrative Order No. 60, series of 1956, petitioner must accomplish the following to secure from the

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[1] *Rollo*, pp. 10-55.

[2] *Id*. at 60-74; penned by Justice Eugenio S. Labitoria, Chairperson, Special Fourth Division, and concurred in by Justices. Rebecca De Guia-Salvador and Rosalinda Asuncion-Vicente.

[3] *Id*. at 76-77.

ATO the issuance of the ATPL: (1) 1,200 hours of accumulated flight and/or command time, including at least 300 hours of accumulated night/instrument flight/command time; (2) a successful completion of the written theoretical examination; (3) Airmen Examination Board (AEB) Certification of Official Release evidencing that he has successfully hurdled 6 (six) examination subjects, namely, Civil Air Regulations, Theory of Flight, Navigation, Meteorology, Air Traffic Control and Weight and Balance; (4) a first-class medical examination; and (5) Proficiency Flight/Simulator Check.[4]

Between 1998 and 2000, petitioner took the examination on the six subjects. In particular, petitioner took the test in Theory of Flight on 18 May 2000. Petitioner passed the tests in Navigation, Meteorology, Air Traffic Control and Civil Air Regulations. After taking the test in Theory of Flight, a certain Mr. Borja summoned petitioner and told him that he obtained a grade of 26% in said subject. Petitioner complained and, thereafter, Mr. Borja clarified that he actually scored 55% on the subject. Petitioner again took the examination in Theory of Flight and in Weight and Balance on 27 July 2000. On 02 August 2000, a certain Leopoldo Areopagita issued an ATO-AEB certification of Official Release to petitioner which the latter submitted to PAL and ATO for purposes of obtaining a simulator training schedule and a check ride permit for the B747-400 training. Petitioner underwent training at the GECAT/CX Training Center in Hong Kong.[5]

On 17 August 2000, petitioner received a subpoena requiring him to appear and testify before the five-member panel of the ATO which was then investigating the alleged fabrication of the AEB examination results. The ATO directed petitioner to bring the original copy of the ATO-AEB certification in his possession. Petitioner informed the ATO that his copy of the Certificate of Official Release was missing and that he would not appear at the hearings without the presence of counsel.

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

[5] *Id.* at 16-17.

On 30 January 2001, the ATO investigating committee issued a resolution[6] finding that the control number on petitioner's ATO-AEB certification dated 31 July 2000 was exactly the same control number previously issued to a certain Ernest Stephen V. Pante. The committee further revealed a disparity in the examination results entered in the ATO-AEB certification presented by petitioner and in the entries of examination grades in the ATO-AEB Index Card kept in the ATO records. Petitioner also admitted that he paid Areopagita ₱25,000.00 to protect his grades from tampering.

The committee recommended the banning of petitioner from taking theoretical examination in the future, to wit:

> In view of the above, it is recommended that all the airmen licenses of F/O Ledesma be revoked and that he be banned from taking any theoretical examination in the future at the Airmen Examination Board, without prejudice to the filing of appropriate criminal charges against him, and those who later on will be found to have participated, directly or indirectly, in the fabrication of the questioned document, subject matter of this case.
>
> With regard to Mr. Leopoldo Areopagita and Capt. Rommel Cadingan, the investigation will be continued, as far as they are concerned, considering that there are still other pending cases involving their names.
>
> For ASEC's concurrence/approval of the recommendation.[7]

Petitioner filed a motion for reconsideration[8] of the resolution, raising the following arguments: (1) that he was not fully accorded the opportunity to comprehend the accusation against him; (2) that he was not given the opportunity to adduce evidence on his behalf; (3) that the ATO investigating committee sweepingly concluded that his ATO-AEB certification was spurious; and (4) that one of the members of the said committee, Captain Octavio Sunga, signed the spurious ATO-AEB certification but did not inhibit himself from the proceedings.

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[6] *Id*. at 131-134.

[7] *Id*. at 133-134.

[8] *Id*. at 135-145.

In a letter[9] dated 21 September 2001, Assistant Secretary Adelberto F. Yap informed petitioner's counsel of the denial of the motion for reconsideration. Petitioner appealed to the CAB.[10] In Resolution No. 164[11] dated 26 July 2002, the CAB denied petitioner's appeal for lack of merit. Thus, petitioner elevated the case to the Court of Appeals via a petition for review[12] arguing that: (1) the ATO failed to observe administrative due process in the conduct of the investigation; (2) the Board and the ATO erred in concluding that petitioner paid Areopagita in exchange for securing the spurious ATO-AEB certification; (3) the CAB erred in ruling that petitioner's motion for reconsideration cleared any irregularities in the proceedings before the ATO; and (4) the ATO should have allowed petitioner to retake the examination in Weight and Balance.[13]

In the assailed Decision dated 29 September 2004,[14] the Court of Appeals affirmed the resolutions of the Board. It also denied petitioner's motion for reconsideration. The appellate court disregarded petitioner's allegation that certain requirements of administrative due process were not observed in the investigation before the ATO because, according to the court, it was shown that petitioner was informed of the accusation against him through the subpoena, his counsel was allowed to manifest in writing his observations on the proceedings albeit he was barred from intervening therein, and any irregularity in the proceedings was cured by petitioner's motion for reconsideration. It also affirmed the finding that petitioner had paid Areopagita ₱25,000.00 in exchange for his services in securing the spurious ATO-AEB certification.

The instant petition attributes the following errors to the Court of Appeals:

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[9] *Id.* at 148.

[10] *Id.* at 149-162.

[11] *Id.* at 122-124.

[12] CA *rollo*, pp. 10-52.

[13] *Id.* at 18-19.

[14] *Supra* note 2.

I

THE AIRMEN LICENSE GRANTED TO PETITIONER HAS EVOLVED INTO A PROPERTY RIGHT THAT CANNOT BE TAKEN AWAY CAPRICIOUSLY AND WHIMSICALLY BY THE AIR TRANSPORTATION OFFICE AND CIVIL AERONAUTICS BOARD WITHOUT DUE PROCESS OF LAW.

II

THE COURT OF APPEALS ERRED IN [THE] RULING THAT PETITIONER WAS NOT DEPRIVED OF HIS RIGHT TO BE INFORMED OF THE NATURE OF CAUSE OF ACCUSATION AGAINST HIM AND HIS RIGHT TO COUNSEL.

III

THE COURT OF APPEALS ERRED IN RULING THAT A MOTION FOR RECONSIDERATION FILED BY PETITIONER CURED ANY DEFECTS OR IRREGULARITIES DURING THE AIR TRANSPORTATION OFFICE AND CIVIL AERONAUTICS BOARD PROCEEDINGS.

IV

THE COURT OF APPEALS ERRED IN HASTILY CONCLUDING THAT THE CERTIFICATION OF RELEASE ISSUED IN FAVOR OF PETITIONER WAS TAMPERED.

V

THE COURT OF APPEALS ERRED IN RULING THAT THE ADMISSION OF PETITIONER IN GIVING [₱]25,000 WAS A BRIBE TO SECURE A FICTITIOUS CERTIFICATE OF RELEASE.

VI

THE ATO SHOULD HAVE ORDERED PETITIONER TO TAKE ANOTHER EXAM IN WEIGHT AND BALANCE IN ORDER TO FULLY DETERMINE HIS CAPACITY AND KNOWLEDGE OVER THE SAID SUBJECT MATTER.[15]

Essentially, the assigned errors raise three major arguments, namely: denial of due process in the proceedings before the ATO and the CAB; the undue weight accorded to petitioner's

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[15] *Rollo*, p. 21.

giving of ₱25,000.00 to a "middleman" operating at the ATO; and the alleged harshness of the penalty imposed on petitioner.

The issue of due process in the proceedings before the ATO had already been raised and passed upon by the CAB and the Court of Appeals. The petitioner merely reiterates the same arguments in support of this position. These arguments relate to the right to be informed of the charge, the requirements of administrative due process and the right to counsel and the nature of the license in relation to due process.

The tribunals below correctly concluded that the minimum requirements of administrative due process have been complied with. Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.[16] The essence of due process is simply 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.[17]

Petitioner's plaint that he did not fully appreciate the nature of the charges against him because the ATO even without an ostensible complainant against him failed to state or announce that petitioner was being charged with falsification, is incorrect. The subpoena issued to him clearly stated that petitioner should appear before the panel investigating his "alleged falsification of the AEB examination results."[18]

The absence of a complainant also did not affect the regularity of the investigation. As opposed to a regular trial court, an administrative agency, vested with quasi-judicial functions, may

[16] *Cayago v. Lina*, G.R. No. 149539, 19 January 2005, 449 SCRA 29, 44-45.

[17] *Libres v. NLRC*, 367 Phil. 181, 190 (1999).

[18] *Rollo*, p. 128.

investigate an irregularity on its own initiative. Particularly in the instant case, the overriding considerations of public safety warranted the investigation of the falsification of the subject ATO-AEB certification, which allowed petitioner to undergo training despite his lack of qualifications.

Concerning the right to representation, it is sufficient that petitioner's counsel of choice was allowed to submit in writing his observations on the investigation. Petitioner's counsel even filed a memorandum before the CAB. What is frowned upon is the absolute deprivation of the right to counsel. The counsel's participation in a proceeding similar to that of a courtroom trial is not required. Administrative due process cannot be fully equated with due process in its strict judicial sense for it is enough that the party is given the chance to be heard before the case against him is decided.[19]

Petitioner contends that his airman license has become a property right protected by due process and could not be taken away capriciously. Petitioner argues that due process and fair play demand that there must be a determination of his capacity by allowing him to take another examination in Weight and Balance.

As already discussed above, the ATO has complied with the minimum standards of administrative due process in investigating petitioner on the fabrication of his ATO-AEB certification and the conclusions arrived at by the ATO were supported by evidence on record and affirmed by the CAB and the Court of Appeals. Thus, the revocation of petitioner's airman license was imposed in accordance with the requirements of due process. Moreover, petitioner's airman license cannot be considered a property right, it is but a mere privilege, subject to the restrictions imposed by the ATO and its revocation if warranted.

In any event, the Court of Appeals is correct in ruling that whatever irregularity in the ATO proceedings was cured by petitioner's filing of a motion for reconsideration.

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[19] *Montemayor v. Bundalian*, 453 Phil. 158, 166-167 (2003).

Petitioner insists that the denial of the motion for reconsideration was issued hastily because the motion pointed out irregularities in the conduct of the investigation, hence, the motion for reconsideration did not cure the irregularity in the ATO proceedings.

That petitioner appears to have been singled out by the Investigating Committee does not negate its finding that he was guilty of securing a tampered ATO-AEB certification by buying off the middleman, Areopagita. Notwithstanding the perceived irregularity and impartiality of the investigating committee, the truth of the matter is that the ATO's finding on petitioner's participation in the falsification of the ATO-AEB certification is supported by evidence on record.

Significantly, petitioner seeks redress even though since day one, he has already fully realized he is not entitled to it, as he comes to court with unclean hands and admitted that he paid Areopagita ₱25,000.00 to allegedly protect his test results from tampering. Aside from petitioner's admission, there is adequate evidence proving that petitioner's ATO-AEB certification was falsified. It is undisputed that the test result on Weight and Balance was tampered. Both the ATO and the CAB found that petitioner knew about the tampering for he paid ₱25,000.00 to Areopagita. Petitioner's pretense that the money was given merely to ensure that his grade would be protected is absurd and flimsy.

The Court has reviewed the findings of the ATO and fully concurs with its conclusion. In reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. Administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted

therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned.[20]

On the propriety of the penalty of revocation of petitioner's license, the Court finds the penalty commensurate with petitioner's infraction.

Under Executive Order No. 125, Sec. 12,[21] the ATO is vested with the function to establish and prescribe rules and regulations for the issuance of license to qualified airmen. Corollary to this function is the power to impose sanctions on erring airmen. The Court cannot fault the ATO for the revocation of petitioner's airman license because it is the bounden duty of the ATO to order the revocation of licenses when warranted by public safety considerations.

WHEREFORE, the instant petition for review on *certiorari* is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 79414 are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Quisumbing (Chairpeson), Carpio Morales, and *Velasco, Jr., JJ.,* concur.

Carpio, J., on leave.

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[20] *Id.* at 167.

[21] Entitled, "Reorganization Act of the Ministry of Transportation and Communications," dated January 30, 1987.

EN BANC

[G.R. No. 167173. December 27, 2007]

STANDARD CHARTERED BANK (Philippine Branch), PAUL SIMON MORRIS, SUNDARA RAMESH, OWEN BELMAN, SANJAY AGGARWAL, RAJAMANI CHANDRASHEKAR, MARIVEL GONZALES, MA. ELLEN VICTOR, CHONA G. REYES, ZENAIDA IGLESIAS, RAMONA BERNAD, MICHAELANGELO AGUILAR, and FERNAND TANSINGCO, *petitioners, vs.* **SENATE COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES, as represented by its Chairperson, HON. EDGARDO J. ANGARA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; SENATE; POWER OF LEGISLATIVE INQUIRY IN AID OF LEGISLATION; CASE OF *BENGSON, JR. V. SENATE BLUE RIBBON COMMITTEE* DOES NOT APPLY TO PETITIONERS' CASE; THE PRIVILEGE SPEECH WHICH INITIATED THE INQUIRY IN *BENGSON* CONTAINED NO SUGGESTION OF ANY CONTEMPLATED LEGISLATION.— *Bengzon* does not apply squarely to petitioners' case. It is true that in *Bengzon*, the Court declared that the issue to be investigated was one over which jurisdiction had already been acquired by the Sandiganbayan, and to allow the [Senate Blue Ribbon] Committee to investigate the matter would create the possibility of conflicting judgments; and that the inquiry into the same justiciable controversy would be an encroachment on the exclusive domain of judicial jurisdiction that had set in much earlier. To the extent that, in the case at bench, there are a number of cases already pending in various courts and administrative bodies involving the petitioners, relative to the alleged sale of unregistered foreign securities, there is a resemblance between this case and *Bengzon.* However, the similarity ends there. Central to the Court's ruling in *Bengzon* — that the Senate Blue Ribbon Committee was without any constitutional mooring to conduct the legislative investigation

— was the Court's determination that the intended inquiry was not in aid of legislation. The Court found that the speech of Senator Enrile, which sought such investigation contained no suggestion of any contemplated legislation; it merely called upon the Senate to look into possible violations of Section 5, Republic Act No. 3019. Thus, the Court held that the requested probe failed to comply with a fundamental requirement of Section 21, Article VI of the Constitution, which states: ***The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.*** Accordingly, we stopped the Senate Blue Ribbon Committee from proceeding with the legislative investigation in that case.

2. **ID.; ID.; ID.; ID.; THE LAST THREE *WHEREAS* CLAUSES OF P.S. RESOLUTION NO. 166 INDUBITABLY SHOW THAT THE INQUIRY IN CASE AT BAR IS IN AID OF LEGISLATION.—** Unfortunately for the petitioners, this distinguishing factual milieu in *Bengzon* does not obtain in the instant case. P.S. Resolution No. 166 is explicit on the subject and nature of the inquiry to be (and already being) conducted by the respondent Committee, as found in the last three *Whereas* clauses thereof. The unmistakable objective of the investigation, as set forth in the said resolution, exposes the error in petitioners' allegation that the inquiry, as initiated in a privilege speech by the very same Senator Enrile, was simply "to denounce the illegal practice committed by a foreign bank in selling unregistered foreign securities x x x." This fallacy is made more glaring when we consider that, at the conclusion of his privilege speech, Senator Enrile urged the Senate "to immediately conduct an inquiry, in aid of legislation, so as to prevent the occurrence of a similar fraudulent activity in the future."

3. **ID.; ID.; ID.; ID.; MERE FILING OF A CRIMINAL OR AN ADMINISTRATIVE COMPLAINT BEFORE A COURT OR A QUASI-JUDICIAL BODY SHOULD NOT AUTOMATICALLY BAR THE CONDUCT OF LEGISLATIVE INVESTIGATION; THE EXERCISE OF SOVEREIGN LEGISLATIVE AUTHORITY, OF WHICH THE POWER OF LEGISLATIVE INQUIRY IS AN**

ESSENTIAL COMPONENT, CANNOT BE MADE SUBORDINATE TO A CRIMINAL OR ADMINISTRATIVE INVESTIGATION.— the mere filing of a criminal or an administrative complaint before a court or a quasi-judicial body should not automatically bar the conduct of legislative investigation. Otherwise, it would be extremely easy to subvert any intended inquiry by Congress through the convenient ploy of instituting a criminal or an administrative complaint. Surely, the exercise of sovereign legislative authority, of which the power of legislative inquiry is an essential component, cannot be made subordinate to a criminal or an administrative investigation. As succinctly stated in the landmark case *Arnault v. Nazareno* – [T]he power of inquiry – with process to enforce it – is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information – which is not infrequently true – recourse must be had to others who possess it.

4. ID.; ID.; ID.; ID.; THE OBJECTIVE OF THE INVESTIGATION IS THE QUEST FOR REMEDIES, IN TERMS OF LEGISLATION, TO PREVENT THE RECURRENCE OF THE ALLEGEDLY FRAUDULENT ACTIVITY.— Neither can the petitioners claim that they were singled out by the respondent Committee. The Court notes that among those invited as resource persons were officials of the Securities and Exchange Commission (SEC) and the Bangko Sentral ng Pilipinas (BSP). These officials were subjected to the same critical scrutiny by the respondent relative to their separate findings on the illegal sale of unregistered foreign securities by SCB-Philippines. It is obvious that the objective of the investigation was the quest for remedies, in terms of legislation, to prevent the recurrence of the allegedly fraudulent activity.

5. ID.; ID.; ID.; ID.; CONTEMPT CITATION AGAINST PETITIONERS FOUND REASONABLE AND JUSTIFIED.— The Court has already expounded on the essence of the contempt power of Congress and its committees in this wise – The principle that Congress or any of its bodies has the power to punish recalcitrant witnesses is founded upon reason and policy. Said power must be considered implied or incidental

to the exercise of legislative power. How could a legislative body obtain the knowledge and information on which to base intended legislation if it cannot require and compel the disclosure of such knowledge and information, if it is impotent to punish a defiance of its power and authority? When the framers of the Constitution adopted the principle of separation of powers, making each branch supreme within the realm of its respective authority, it must have intended each department's authority to be full and complete, independently of each other's authority or power. And how could the authority and power become complete if for every act of refusal, every act of defiance, every act of contumacy against it, the legislative body must resort to the judicial department for the appropriate remedy, because it is impotent by itself to punish or deal therewith, with affronts committed against its authority or dignity. The exercise by Congress or by any of its committees of the power to punish contempt is based on the principle of self-preservation. As the branch of the government vested with the legislative power, independently of the judicial branch, it can assert its authority and punish contumacious acts against it. Such power is *sui generis,* as it attaches not to the discharge of legislative functions per se, but to the sovereign character of the legislature as one of the three independent and coordinate branches of government. In this case, petitioners' imputation that the investigation was "in aid of collection" is a direct challenge against the authority of the Senate Committee, as it ascribes ill motive to the latter. In this light, we find the contempt citation against the petitioners reasonable and justified.

6. ID.; ID.; ID.; ID.; POWER OF LEGISLATIVE INVESTIGATION INCLUDES THE POWER TO COMPEL ATTENDANCE OF WITNESSES.— it is axiomatic that the power of legislative investigation includes the power to compel the attendance of witnesses. Corollary to the power to compel the attendance of witnesses is the power to ensure that said witnesses would be available to testify in the legislative investigation. In the case at bench, considering that most of the officers of SCB-Philippines are not Filipino nationals who may easily evade the compulsive character of respondent's summons by leaving the country, it was reasonable for the respondent to request the assistance of the Bureau of Immigration and Deportation to prevent said witnesses from evading the inquiry and defeating its purpose. In any event, no HDO was issued by a court. The

BID instead included them only in the Watch List, which had the effect of merely delaying petitioners' intended travel abroad for five (5) days, provided no HDO is issued against them.

7. ID.; ID.; ID.; ID.; RIGHT TO PRIVACY IS NOT ABSOLUTE WHERE THERE IS OVERRIDING COMPELLING STATE INTEREST THAT IS TO PROTECT THE PUBLIC WHO INVEST IN FOREIGN SECURITIES.— With respect to the right of privacy which petitioners claim respondent has violated, suffice it to state that privacy is not an absolute right. While it is true that Section 21, Article VI of the Constitution, guarantees respect for the rights of persons affected by the legislative investigation, not every invocation of the right to privacy should be allowed to thwart a legitimate congressional inquiry. In *Sabio v. Gordon*, we have held that the right of the people to access information on matters of public concern generally prevails over the right to privacy of ordinary financial transactions. In that case, we declared that the right to privacy is not absolute where there is an overriding compelling state interest. Employing the *rational basis relationship test*, as laid down in *Morfe v. Mutuc,* there is no infringement of the individual's right to privacy as the requirement to disclosure information is for a valid purpose, in this case, to ensure that the government agencies involved in regulating banking transactions adequately protect the public who invest in foreign securities. Suffice it to state that this purpose constitutes a reason compelling enough to proceed with the assailed legislative investigation.

8. ID.; ID.; ID.; ID.; RIGHT AGAINST SELF-INCRIMINATION; MAY BE INVOKED ONLY WHEN A QUESTION CALLING FOR AN INCRIMINATING ANSWER IS PROPOUNDED.— As regards the issue of self-incrimination, the petitioners, officers of SCB-Philippines, are not being indicted as accused in a criminal proceeding. They were summoned by respondent merely as resource persons, or as witnesses, in a legislative inquiry. As distinguished by this Court – [An] accused occupies a different tier of protection from an ordinary witness. Whereas an ordinary witness may be compelled to take the witness stand and claim the privilege as each question requiring an incriminating answer is shot at him, an accused may altogether refuse to take the witness stand and refuse to answer any and all questions. Concededly, this right of the accused against

self-incrimination is extended to respondents in administrative investigations that partake of the nature of or are analogous to criminal proceedings. The privilege has consistently been held to extend to all proceedings sanctioned by law; and to all cases in which punishment is sought to be visited upon a witness, whether a party or not. However, in this case, petitioners neither stand as accused in a criminal case nor will they be subjected by the respondent to any penalty by reason of their testimonies. Hence, they cannot altogether decline appearing before respondent, although they may invoke the privilege when a question calling for an incriminating answer is propounded.

9. **ID.; ID.; ID.; ID.; THE INTENT OF LEGISLATIVE INQUIRIES IS TO ARRIVE AT POLICY DETERMINATION, WHICH MAY OR MAY NOT BE ENACTED INTO LAW, AND NOT THE PROSECUTION OF OFFENDERS WHO TRANSGRESS THE LAW EVEN IF THERE IS OVERWHELMING EVIDENCE OF CRIMINAL CULPABILITY.—** The prosecution of offenders by the prosecutorial agencies and the trial before the courts is for the punishment of persons who transgress the law. The intent of legislative inquiries, on the other hand, is to arrive at a policy determination, which may or may not be enacted into law. Except only when it exercises the power to punish for contempt, the respondent, as with the other Committees of the Senate or of the House of Representatives, cannot penalize violators even if there is overwhelming evidence of criminal culpability. Other than proposing or initiating amendatory or remedial legislation, respondent can only recommend measures to address or remedy whatever irregularities may be unearthed during the investigation, although it may include in its Report a recommendation for the criminal indictment of persons who may appear liable. At best, the recommendation, along with the evidence, contained in such a Report would be persuasive, but it is still up to the prosecutorial agencies and the courts to determine the liabilities of the offender.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc and *Delos Angeles* for petitioners.

Senate Legal Counsel and *Jeri Alanz A. Banta* for respondent.

DECISION

NACHURA, *J.*:

Before us is a Petition for Prohibition (With Prayer for Issuance of Temporary Restraining Order and/or Injunction) dated and filed on March 11, 2005 by petitioners against respondent Senate Committee on Banks, Financial Institutions and Currencies, as represented by its Chairperson Edgardo J. Angara (respondent).

Petitioner Standard Chartered Bank (SCB)-Philippines is an institution incorporated in England with limited liability and is licensed to engage in banking, trust, and other related operations in the Philippines. Petitioners Paul Simon Morris, Sundara Ramesh, Owen Belman, Sanjay Aggarwal, Rajamani Chandrashekar, Marivel Gonzales, Ma. Ellen Victor, Chona G. Reyes, Zenaida Iglesias, Ramona Bernad, Michaelangelo Aguilar, and Fernand Tansingco are the Chief Executive Officer, Chief Operations Officer, Country Head of Consumer Banking, General Manager for Credit Card and Personal Loans, Chief Financial Officer, Legal and Compliance Officer, former Trust and Investment Services Head, Country Tax Officer, Head of Corporate Affairs, Head of Banking Services, Head of Client Relationships, and the Head of Global Markets of SCB-Philippines, respectively. Respondent, on the other hand, is one of the permanent committees of the Senate of the Philippines.

The petition seeks the issuance of a temporary restraining order (TRO) to enjoin respondent from (1) proceeding with its inquiry pursuant to Philippine Senate (P.S.) Resolution No. 166; (2) compelling petitioners who are officers of petitioner SCB-Philippines to attend and testify before any further hearing to be conducted by respondent, particularly that set on March 15, 2005; and (3) enforcing any hold-departure order (HDO) and/or putting the petitioners on the Watch List. It also prays that judgment be rendered (1) annulling the *subpoenae ad testificandum* and *duces tecum* issued to petitioners, and (2) prohibiting the respondent from compelling petitioners to appear and testify in the inquiry being conducted pursuant to P.S. Resolution No. 166.

The facts are as follows:

On February 1, 2005, Senator Juan Ponce Enrile, Vice Chairperson of respondent, delivered a privilege speech entitled *"Arrogance of Wealth"*[1] before the Senate based on a letter from Atty. Mark R. Bocobo denouncing SCB-Philippines for selling unregistered foreign securities in violation of the Securities Regulation Code (R.A. No. 8799) and urging the Senate to immediately conduct an inquiry, in aid of legislation, to prevent the occurrence of a similar fraudulent activity in the future. Upon motion of Senator Francis Pangilinan, the speech was referred to respondent. Prior to the privilege speech, Senator Enrile had introduced P.S. Resolution No. 166,[2] to wit:

RESOLUTION

DIRECTING THE COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES, TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE ILLEGAL SALE OF UNREGISTERED AND HIGH-RISK SECURITIES BY STANDARD CHARTERED BANK, WHICH RESULTED IN BILLIONS OF PESOS OF LOSSES TO THE INVESTING PUBLIC

WHEREAS, Republic Act No. 7721, otherwise known as the *"Law Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines,"* was approved on May 18, 1994 to promote greater participation of foreign banks in the Philippine Banking Industry that will stimulate economic growth and serve as a channel for the flow of funds into the economy;

WHEREAS, to promote greater competition in the Philippine Banking Industry, foreign banks were accorded the same privileges, allowed to perform the same functions and subjected to the same limitations under relevant banking laws imposed upon domestic banks;

WHEREAS, Standard Chartered Bank was among the foreign banks granted the privilege to do business in our country under Republic Act No. 7721;

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[1] *Rollo*, pp. 63-72.

[2] *Id*. at 59-60.

WHEREAS, there are complaints against Standard Chartered Bank whose actions have reportedly defrauded hundreds of Filipino investors of billions of pesos through the sale of unregistered securities in the form of high-risk mutual funds falsely advertised and marketed as safe investment havens;

WHEREAS, there are reports that Standard Chartered Bank clearly knew that its actions were violative of Philippine banking and securities laws but cleverly disguised its illegal acts through the use of pro-forma agreements containing waivers of liability in favor of the bank;

WHEREAS, there are reports that in the early stages of conducting these questionable activities, the Bangko Sentral ng Pilipinas warned and eventually fined Standard Chartered Bank a measly ₱30,000 for violating Philippine banking laws;

WHEREAS, the particular operations of Standard Chartered Bank may constitute *"conducting business in an unsafe and unsound manner,"* punishable under Section 37 of Republic Act No. 7653 and should have drawn the higher penalty of revocation of its quasi-banking license;

WHEREAS, Republic Act No. 8791 or the *"General Banking Act of 2000"* deems a particular act or omission as conducting business in an unsafe and unsound manner as follows:

> *"Section 56.2 The act or omission has resulted or may result in material loss or damage or abnormal risk to the institution's depositors, creditors, investors, stockholders or to the Bangko Sentral or to the public in general."*

WHEREAS, the sale of unregistered securities is also a clear violation of Republic Act No. 8799 or *"The Securities Regulation Code of 2000"* which states:

> *"Section 8.1 Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser."*

WHEREAS, the Securities and Exchange Commission (SEC) reportedly issued a Cease-and-Desist Order (CDO) against Standard Chartered Bank for the sale of these unregistered securities but the case was reportedly settled administratively and dismissed after Standard Chartered Bank paid a fine of ₱7 Million;

WHEREAS, the SEC reportedly made an official finding that Standard Chartered Bank actively engaged in promoting and marketing the so-called *"Global Third Party Mutual Funds"* to the investing public and even set revenue quotas for the sale of these funds;

WHEREAS, existing laws including the Securities Regulation Code seem to be inadequate in preventing the sale of unregistered securities and in effectively enforcing the registration rules intended to protect the investing public from fraudulent practices;

WHEREAS, the regulatory intervention by the SEC and BSP likewise appears inadequate in preventing the conduct of proscribed activities in a manner that would protect the investing public;

WHEREAS, there is a need for remedial legislation to address the situation, having in mind the imposition of proportionate penalties to offending entities and their directors, officers and representatives among other additional regulatory measures;

Now, therefore, **BE IT RESOLVED, AS IT IS HEREBY RESOLVED,** to direct the Committee on Banks, Currencies, and Financial Institutions, to conduct an inquiry, in aid of legislation, into the reported sale of unregistered and high-risk securities by Standard Chartered Bank which resulted in billions of losses to the investing public.

Acting on the referral, respondent, through its Chairperson, Senator Edgardo J. Angara, set the initial hearing on February 28, 2005 to investigate, in aid of legislation, the subject matter of the speech and resolution filed by Senator Enrile.

Respondent invited petitioners, among others, to attend the hearing, requesting them to submit their written position paper. Petitioners, through counsel, submitted to respondent a letter[3] dated February 24, 2005 presenting their position, particularly stressing that there were cases pending in court allegedly involving

[3] *Id.* at 73-83.

the same issues subject of the legislative inquiry, thereby posing a challenge to the jurisdiction of respondent to continue with the inquiry.

On February 28, 2005, respondent commenced the investigation. Senator Enrile inquired who among those invited as resource persons were present and who were absent. Thereafter, Senator Enrile moved that subpoenae be issued to those who did not attend the hearing and that the Senate request the Department of Justice, through the Bureau of Immigration and Deportation, to issue an HDO against them and/or include them in the Bureau's Watch List. Senator Juan Flavier seconded the motion and the motion was approved.

Respondent then proceeded with the investigation proper. Towards the end of the hearing, petitioners, through counsel, made an Opening Statement[4] that brought to the attention of respondent the lack of proper authorization from affected clients for the bank to make disclosures of their accounts and the lack of copies of the accusing documents mentioned in Senator Enrile's privilege speech, and reiterated that there were pending court cases regarding the alleged sale in the Philippines by SCB-Philippines of unregistered foreign securities.

The February 28, 2005 hearing was adjourned without the setting of the next hearing date. However, petitioners were later served by respondent with *subpoenae ad testificandum* and *duces tecum* to compel them to attend and testify at the hearing set on March 15, 2005. Hence, this petition.

The grounds relied upon by petitioners are as follows:

I.

THE COMMITTEE ACTED WITHOUT JURISDICTION AND/OR ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN CONDUCTING AN INVESTIGATION, PURPORTEDLY IN AID OF LEGISLATION, BUT IN REALITY PROBING INTO THE ISSUE OF WHETHER THE STANDARD CHARTERED BANK HAD SOLD UNREGISTERED FOREIGN

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[4] *Id*. at 86-90.

SECURITIES IN THE PHILIPPINES. SAID ISSUE HAS LONG BEEN THE SUBJECT OF CRIMINAL AND CIVIL ACTIONS NOW PENDING BEFORE THE COURT OF APPEALS, REGIONAL TRIAL COURT OF PASIG CITY, METROPOLITAN TRIAL COURT OF MAKATI CITY AND THE PROSECUTOR'S OFFICE OF MAKATI CITY.

II.

THE COMMITTEE ACTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION BY CONDUCTING AN INVESTIGATION, PURPORTEDLY "IN AID OF LEGISLATION," BUT IN REALITY IN "AID OF COLLECTION" BY A HANDFUL OF TWO (2) CLIENTS OF STANDARD CHARTERED BANK OF LOSSES WHICH WERE FOR THEIR ACCOUNT AND RISK. AT ANY RATE, SUCH COLLECTION IS WITHIN THE PROVINCE OF THE COURT RATHER THAN OF THE LEGISLATURE.

III.

THE COMMITTEE ACTED WITHOUT JURISDICTION AND/OR ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN COMPELLING PETITIONERS, SOME OF WHOM ARE RESPONDENTS IN THE PENDING CRIMINAL AND CIVIL ACTIONS BROUGHT BY SAID CLIENTS, IN VIOLATION OF PETITIONERS' RIGHT AGAINST SELF-INCRIMINATION AND RIGHT TO PURSUE AND DEFEND THEIR CAUSE IN COURT RATHER THAN ENGAGE IN TRIAL BY PUBLICITY – A CLEAR VIOLATION OF DUE PROCESS, RIGHT TO PRIVACY AND TO TRAVEL.

IV.

THE COMMITTEE ACTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION BY DISREGARDING ITS OWN RULES.[5]

Petitioners argue that respondent has no jurisdiction to conduct the inquiry because its subject matter is the very same subject matter of the following cases, to wit:

(a) CA-G.R. SP No. 85078, entitled *"Manuel V. Baviera vs. Hon. Esperanza P. Rosario, et al.,* pending before the 9th Division of

[5] *Id*. at 15-16.

the Court of Appeals. In the petition, Mr. Baviera seeks to annul and set aside the dismissal by the Department of Justice of his complaint against Standard Chartered Bank and its officers accusing them of **SELLING UNREGISTERED FOREIGN SECURITIES IN VIOLATION OF P.D. NO. 1869 (SYNDICATED ESTAFA) AND ARTICLE 315 OF THE REVISED PENAL CODE.**

(b) CA-G.R. SP No. 86200, entitled *"Manuel V. Baviera vs. Hon. Rafael Buenaventura, et al."*, pending before the 15th Division of the Court of Appeals. In the petition, Mr. Baviera seeks to annul and set aside the termination for lack of probable cause by the Anti-Money Laundering Council ("AMLC") of the investigation of Standard Chartered Bank for money laundering activities **BY SELLING UNREGISTERED FOREIGN SECURITIES.**

(c) CA-G.R. SP No. 87328, entitled *"Manuel V. Baviera vs. Hon. Esperanza Paglinawan Rozario, et al.,"* pending before the 16th Division of the Court of Appeals. The petition seeks to annul and set aside the dismissal by the Department of Justice of Mr. Baviera's complaint accusing SCB and its officers of violation of the Securities Regulation Code by **SELLING UNREGISTERED FOREIGN SECURITIES.**

(d) Civil Case No. 70173, entitled *"Mr. Noel G. Sanchez, et al. vs. Standard Chartered Bank,"* pending before Branch 155 of the Regional Trial Court of Pasig City. Plaintiff seeks damages and recovery of their investment accusing the bank of **SELLING UNREGISTERED FOREIGN SECURITIES.**

(e) Criminal Case No. 332034, entitled *"People of the Philippines vs. Manuel V. Baviera,"* pending before Branch 64 of the Metropolitan Trial Court of Makati City. Petitioner Morris is the private complainant in this information for extortion or blackmail against Mr. Baviera for demanding the payment of US$2 Million with the threat to **EXPOSE THE BANK'S "LARGE SCALE SCAM" CONSISTING [OF] ILLEGAL SELLING OF UNREGISTERED FOREIGN SECURITIES BY THE BANK,** before various government offices, such as the Department of Justice, the BIR, Bangko Sentral ng Pilipinas, Regional Trial Courts, and both houses of Congress.

(f) Criminal Case No. 331395, entitled *"People of the Philippines vs. Manuel V. Baviera,"* pending before Branch 64 of the Metropolitan Trial Court of Makati City. Petitioners Victor and Chona Reyes are the private complainants in this information for

perjury committed by Mr. Baviera in securing a hold departure order against the petitioners herein from the Department of Justice for their alleged involvement in syndicated estafa and swindling **BY SELLING UNREGISTERED FOREIGN SECURITIES.**

(g) I.S. No. 2004-B-2279-80, entitled *"Aurelio Litonjua III and Aurelio Litonjua, Jr. vs. Antonette de los Reyes, et al.,"* pending before the Office of the Prosecutor, Makati City. This is a criminal complaint accusing SCB and its officers of estafa for **SELLING UNREGISTERED FOREIGN SECURITIES.**[6]

Citing *Bengzon, Jr. v. Senate Blue Ribbon Committee,*[7] the petitioners claim that since the issue of whether or not SCB-Philippines illegally sold unregistered foreign securities is already preempted by the courts that took cognizance of the foregoing cases, the respondent, by this investigation, would encroach upon the judicial powers vested solely in these courts.

The argument is misplaced. *Bengzon* does not apply squarely to petitioners' case.

It is true that in *Bengzon*, the Court declared that the issue to be investigated was one over which jurisdiction had already been acquired by the Sandiganbayan, and to allow the [Senate Blue Ribbon] Committee to investigate the matter would create the possibility of conflicting judgments; and that the inquiry into the same justiciable controversy would be an encroachment on the exclusive domain of judicial jurisdiction that had set in much earlier.

To the extent that, in the case at bench, there are a number of cases already pending in various courts and administrative bodies involving the petitioners, relative to the alleged sale of unregistered foreign securities, there is a resemblance between this case and *Bengzon.* However, the similarity ends there.

Central to the Court's ruling in *Bengzon* — that the Senate Blue Ribbon Committee was without any constitutional mooring to conduct the legislative investigation — was the Court's

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[6] *Id.* at 18-19.

[7] G.R. No. 89914, November 20, 1991, 203 SCRA 767, 784.

determination that the intended inquiry was **not in aid of legislation.** The Court found that the speech of Senator Enrile, which sought such investigation contained no suggestion of any contemplated legislation; it merely called upon the Senate to look into possible violations of Section 5, Republic Act No. 3019. Thus, the Court held that the requested probe failed to comply with a fundamental requirement of Section 21, Article VI of the Constitution, which states:

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

Accordingly, we stopped the Senate Blue Ribbon Committee from proceeding with the legislative investigation in that case.

Unfortunately for the petitioners, this distinguishing factual milieu in *Bengzon* does not obtain in the instant case. P.S. Resolution No. 166 is explicit on the subject and nature of the inquiry to be (and already being) conducted by the respondent Committee, as found in the last three *Whereas* clauses thereof, *viz.*:

WHEREAS, **existing laws including the Securities Regulation Code seem to be inadequate** in preventing the sale of unregistered securities and in effectively enforcing the registration rules intended to protect the investing public from fraudulent practices;

WHEREAS, **the regulatory intervention by the SEC and BSP likewise appears inadequate** in preventing the conduct of proscribed activities in a manner that would protect the investing public;

WHEREAS, **there is a need for remedial legislation to address the situation,** having in mind the imposition of proportionate penalties to offending entities and their directors, officers and representatives among other additional regulatory measures; (*emphasis supplied*)

The unmistakable objective of the investigation, as set forth in the said resolution, exposes the error in petitioners' allegation that the inquiry, as initiated in a privilege speech by the very same Senator Enrile, was simply "to denounce the illegal practice

committed by a foreign bank in selling unregistered foreign securities x x x." This fallacy is made more glaring when we consider that, at the conclusion of his privilege speech, Senator Enrile urged the Senate **"to immediately conduct an inquiry, in aid of legislation, so as to prevent the occurrence of a similar fraudulent activity in the future**."

Indeed, the mere filing of a criminal or an administrative complaint before a court or a quasi-judicial body should not automatically bar the conduct of legislative investigation. Otherwise, it would be extremely easy to subvert any intended inquiry by Congress through the convenient ploy of instituting a criminal or an administrative complaint. Surely, the exercise of sovereign legislative authority, of which the power of legislative inquiry is an essential component, cannot be made subordinate to a criminal or an administrative investigation.

As succinctly stated in the landmark case *Arnault v. Nazareno*[8]–

> [T]he power of inquiry – with process to enforce it – is an essential and appropriate auxiliary to the legislative function. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information – which is not infrequently true – recourse must be had to others who possess it.

Neither can the petitioners claim that they were singled out by the respondent Committee. The Court notes that among those invited as resource persons were officials of the Securities and Exchange Commission (SEC) and the Bangko Sentral ng Pilipinas (BSP). These officials were subjected to the same critical scrutiny by the respondent relative to their separate findings on the illegal sale of unregistered foreign securities by SCB-Philippines. It is obvious that the objective of the investigation was the quest for remedies, in terms of legislation, to prevent the recurrence of the allegedly fraudulent activity.

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[8] 87 Phil. 29, 45 (1950), citing *McGrain v. Daugherty*, 273 U.S. 135; 71 L. ed. 580, 50 A.L.R. 1 [1927].

Still, petitioners insist that the inquiry conducted by respondent was, in fact, "in aid of collection." They claim that Atty. Bocobo and Manuel Baviera, the latter a party to the pending court cases cited by petitioners, were only seeking a friendly forum so that they could recover their investments from SCB-Philippines; and that the respondent has allowed itself to be used as the conveniently available vehicle to effect this purpose.

However, as correctly pointed out by respondent in its Comment on the petition, Atty. Bocobo did not file a complaint before the Senate for the purpose of recovering his investment. On the contrary, and as confirmed during the initial hearing on February 28, 2005, his letter-complaint humbly requested the Senate to conduct an inquiry into the purportedly illegal activities of SCB-Philippines, with the end view of preventing the future occurrence of any similar fraudulent activity by the banks in general.[9] Baviera, on the other hand, was not a "complainant" but merely a witness in the investigation, invited to testify on the alleged illegal sale of unregistered foreign securities by SCB-Philippines, being one of the supposed victims thereof.

The Court further notes that when it denied petitioners' prayer for the issuance of a TRO to restrain the hearing set on March 15, 2005,[10] respondent proceeded with the investigation. On the said date, outraged by petitioners' imputation that it was conducting the investigation "in aid of collection," respondent held petitioners, together with their counsel, Atty. Reynaldo Geronimo, in contempt and ordered their detention for six hours.

Petitioners filed a Motion for Partial Reconsideration of this Court's Resolution dated March 14, 2005 only with respect to the denial of the prayer for the issuance of a TRO and/or writ of preliminary injunction, alleging that their being held in contempt was without legal basis, as the phrase "in aid of collection" partakes of an absolutely privileged allegation in the petition.

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[9] *Rollo*, p. 1064.

[10] Per the Resolution dated March 14, 2005.

We do not agree. The Court has already expounded on the essence of the contempt power of Congress and its committees in this wise –

> The principle that Congress or any of its bodies has the power to punish recalcitrant witnesses is founded upon reason and policy. Said power must be considered implied or incidental to the exercise of legislative power. How could a legislative body obtain the knowledge and information on which to base intended legislation if it cannot require and compel the disclosure of such knowledge and information, if it is impotent to punish a defiance of its power and authority? When the framers of the Constitution adopted the principle of separation of powers, making each branch supreme within the realm of its respective authority, it must have intended each department's authority to be full and complete, independently of each other's authority or power. And how could the authority and power become complete if for every act of refusal, every act of defiance, every act of contumacy against it, the legislative body must resort to the judicial department for the appropriate remedy, because it is impotent by itself to punish or deal therewith, with affronts committed against its authority or dignity.[11]

The exercise by Congress or by any of its committees of the power to punish contempt is based on the principle of self-preservation. As the branch of the government vested with the legislative power, independently of the judicial branch, it can assert its authority and punish contumacious acts against it. Such power is *sui generis,* as it attaches not to the discharge of legislative functions per se, but to the sovereign character of the legislature as one of the three independent and coordinate branches of government.[12]

In this case, petitioners' imputation that the investigation was "in aid of collection" is a direct challenge against the authority of the Senate Committee, as it ascribes ill motive to the latter. In this light, we find the contempt citation against the petitioners reasonable and justified.

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[11] *Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panlungsod of Dumaguete,* No. L-72492, November 5, 1987, 155 SCRA 421, 429, citing *Arnault v. Balagtas*, 97 Phil. 358, 370 (1955).

[12] *Id.* at 430.

Furthermore, it is axiomatic that the power of legislative investigation includes the power to compel the attendance of witnesses. Corollary to the power to compel the attendance of witnesses is the power to ensure that said witnesses would be available to testify in the legislative investigation. In the case at bench, considering that most of the officers of SCB-Philippines are not Filipino nationals who may easily evade the compulsive character of respondent's summons by leaving the country, it was reasonable for the respondent to request the assistance of the Bureau of Immigration and Deportation to prevent said witnesses from evading the inquiry and defeating its purpose. In any event, no HDO was issued by a court. The BID instead included them only in the Watch List, which had the effect of merely delaying petitioners' intended travel abroad for five (5) days, provided no HDO is issued against them.[13]

With respect to the right of privacy which petitioners claim respondent has violated, suffice it to state that privacy is not an absolute right. While it is true that Section 21, Article VI of the Constitution, guarantees respect for the rights of persons affected by the legislative investigation, not every invocation of the right to privacy should be allowed to thwart a legitimate congressional inquiry. In *Sabio v. Gordon*,[14] we have held that the right of the people to access information on matters of public concern generally prevails over the right to privacy of ordinary financial transactions. In that case, we declared that the right to privacy is not absolute where there is an overriding compelling state

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[13] Under the BID's **Rules and Guideline In Handling Travelers Under Watchlist (November 19, 1999)**:

1. A passenger whose name is in the Bureau's Watchlist shall be allowed to depart after the lapse of five (5) days from his first attempt, provided no Hold Departure Order is issued;
2. The head Supervisor and/or Alien Control Officer shall immediately notify the requesting person/agency of the attempt to leave by the person whose name appears in the watchlist and the said requesting person/agency has only five (5) days to secure a Hold Departure Order (HDO) from the Department of Justice or the Courts; otherwise, after five (5) days and there is no HDO issued, the passenger shall be allowed to leave.

[14] G.R. Nos. 174340, 174318, 174177, October 16, 2006, 504 SCRA 704.

interest. Employing the *rational basis relationship test*, as laid down in *Morfe v. Mutuc,*[15] there is no infringement of the individual's right to privacy as the requirement to disclosure information is for a valid purpose, in this case, to ensure that the government agencies involved in regulating banking transactions adequately protect the public who invest in foreign securities. Suffice it to state that this purpose constitutes a reason compelling enough to proceed with the assailed legislative investigation.[16]

As regards the issue of self-incrimination, the petitioners, officers of SCB-Philippines, are not being indicted as accused in a criminal proceeding. They were summoned by respondent merely as resource persons, or as witnesses, in a legislative inquiry. As distinguished by this Court –

> [An] accused occupies a different tier of protection from an ordinary witness. Whereas an ordinary witness may be compelled to take the witness stand and claim the privilege as each question requiring an incriminating answer is shot at him, an accused may altogether refuse to take the witness stand and refuse to answer any and all questions.[17]

Concededly, this right of the accused against self-incrimination is extended to respondents in administrative investigations that partake of the nature of or are analogous to criminal proceedings. The privilege has consistently been held to extend to all proceedings sanctioned by law; and to all cases in which punishment is sought to be visited upon a witness, whether a party or not.[18]

However, in this case, petitioners neither stand as accused in a criminal case nor will they be subjected by the respondent to any penalty by reason of their testimonies. Hence, they cannot altogether decline appearing before respondent, although they

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[15] No. L-20387, January 31, 1968, 22 SCRA 424, citing *Whalen v. Roe*, 429 U.S. 589 (1977).

[16] *Supra* note 14 at 738.

[17] *Chavez v. Court of Appeals,* 133 Phil. 661, 679 (1968).

[18] *Bengzon, Jr. v. Senate Blue Ribbon Committee*, *supra* note 7, at 786, citing *Galman v. Pamaran,* 138 SCRA 294 (1985).

may invoke the privilege when a question calling for an incriminating answer is propounded.[19]

Petitioners' argument, that the investigation before respondent may result in a recommendation for their prosecution by the appropriate government agencies, such as the Department of Justice or the Office of the Ombudsman, does not persuade.

As held in *Sinclair v. United States*[20] —

> It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its Committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits. x x x It is plain that investigation of the matters involved in suits brought or to be commenced under the Senate resolution directing the institution of suits for the cancellation of the leases might directly aid in respect of legislative action.

The prosecution of offenders by the prosecutorial agencies and the trial before the courts is for the punishment of persons who transgress the law. The intent of legislative inquiries, on the other hand, is to arrive at a policy determination, which may or may not be enacted into law.

Except only when it exercises the power to punish for contempt, the respondent, as with the other Committees of the Senate or of the House of Representatives, cannot penalize violators even if there is overwhelming evidence of criminal culpability. Other than proposing or initiating amendatory or remedial legislation, respondent can only recommend measures to address or remedy whatever irregularities may be unearthed during the investigation, although it may include in its Report a recommendation for the criminal indictment of persons who may appear liable. At best, the recommendation, along with the evidence, contained in such

[19] Senate Rules of Procedure Governing Inquiries in Aid of Legislation, Sec. 19.

[20] 279 U.S. 263, 73 L ed. 692, 698 (1928).

a Report would be persuasive, but it is still up to the prosecutorial agencies and the courts to determine the liabilities of the offender.

Finally, petitioners sought anew, in their Manifestation and Motion[21] dated June 21, 2006, the issuance by this Court of a TRO and/or writ of preliminary injunction to prevent respondent from submitting its Committee Report No. 75 to the Senate in plenary for approval. However, 16 days prior to the filing of the Manifestation and Motion, or on June 5, 2006, respondent had already submitted the report to the Senate in plenary. While there is no showing that the said report has been approved by the Senate, the subject of the Manifestation and Motion has inescapably become moot and academic.

WHEREFORE, the Petition for Prohibition is *DENIED* for lack of merit. The Manifestation and Motion dated June 21, 2006 is, likewise, *DENIED* for being moot and academic.

SO ORDERED.

Puno, C.J. (Chairperson), Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., and *Reyes JJ.,* concur.

Leonardo-de Castro, J., no part.

Quisumbing, J., on leave.

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[21] *Rollo*, pp. 1152-1177.

THIRD DIVISION

[G.R. No. 169454. December 27, 2007]

THE HEIRS OF MARCELINO DORONIO, NAMELY: REGINA AND FLORA, BOTH SURNAMED DORONIO, *petitioners, vs.* **HEIRS OF FORTUNATO DORONIO, NAMELY: TRINIDAD ROSALINA DORONIO-BALMES, MODING DORONIO, FLORENTINA DORONIO, AND ANICETA ALCANTARA-MANALO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; OFFER AND OBJECTION; WHERE A DOCUMENT WRITTEN IN AN UNOFFICIAL LANGUAGE IS NOT ACCOMPANIED WITH A TRANSLATION IN ENGLISH OR FILIPINO, IS OFFERED IN EVIDENCE AND NOT OBJECTED TO EITHER BY THE PARTIES OR THE COURT, IT IS PRESUMED THAT THE LANGUAGE IN WHICH THE DOCUMENT IS WRITTEN IS UNDERSTOOD BY ALL AND THE DOCUMENT IS A ADMISSIBLE IN EVIDENCE.— The requirement that documents written in an unofficial language must be accompanied with a translation in English or Filipino as a prerequisite for its admission in evidence must be insisted upon by the parties at the trial to enable the court, where a translation has been impugned as incorrect, to decide the issue. Where such document, not so accompanied with a translation in English or Filipino, is offered in evidence and not objected to, either by the parties or the court, it must be presumed that the language in which the document is written is understood by all, and the document is admissible in evidence. Since petitioners did not object to the offer of said documentary evidence on time, it is now too late in the day for them to question its admissibility. The rule is that evidence not objected may be deemed admitted and may be validly considered by the court in arriving at its judgment. This is true even if by its nature, the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time. As a matter

of fact, instead of objecting, petitioners admitted the contents of Exhibit "A", that is, OCT No. 352 in their comment on respondents' formal offer of documentary evidence. In the said comment, petitioners alleged, among others, that "Exhibits A, B, C, D, E, F and G, are admitted but not for the purpose they are offered because **these exhibits being public and official documents are the best evidence of that they contain** and not for what a party would like it to prove." Said evidence was admitted by the RTC. Once admitted without objection, even though not admissible under an objection, We are not inclined now to reject it. Consequently, the evidence that was not objected to became property of the case, and all parties to the case are considered amenable to any favorable or unfavorable effects resulting from the said evidence.

2. ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSON; ISSUES ON IMPAIRMENT OF LEGITIME SHOULD BE THRESHED OUT IN A SPECIAL PROCEEDING, NOT IN A CIVIL ACTION FOR RECONVEYANCE AND DAMAGES.— Petitioners are correct in alleging that the issue regarding the impairment of legitime of Fortunato Doronio must be resolved in an action for the settlement of estates of spouses Simeon Doronio and Cornelia Gante. It may not be passed upon in an action for reconveyance and damages. A probate court, in the exercise of its limited jurisdiction, is the best forum to ventilate and adjudge the issue of impairment of legitime as well as other related matters involving the settlement of estate. An action for reconveyance with damages is a civil action, whereas matters relating to settlement of the estate of a deceased person such as advancement of property made by the decedent, partake of the nature of a special proceeding. Special proceedings require the application of specific rules as provided for in the Rules of Court.

3. CIVIL LAW; CONTRACTS; DECLARATION OF VALIDITY OF DONATION CAN BE CHALLENGED BY AN INTERESTED PARTY NOT IMPLEADED IN A PETITION FOR QUIETING OF TITLE OR DECLARATORY RELIEF.— We cannot agree with petitioners' contention that respondents may no longer question the validity of the deed of donation on the ground that they already impliedly admitted

it. Under the provisions of the Civil Code, a void contract is inexistent from the beginning. The right to set up the defense of its illegality cannot be waived. The right to set up the nullity of a void or non-existent contract is not limited to the parties as in the case of annullable or voidable contracts; it is extended to third persons who are directly affected by the contract. Consequently, although respondents are not parties in the deed of donation, they can set up its nullity because they are directly affected by the same. The subject of the deed being the land they are occupying, its enforcement will definitely affect them.

4. ID.; PROPERTY; QUIETING OF TITLE; RESPONDENTS ARE NOT BOUND BY THE DECISION IN PETITION CASE NO. U-290 AS THEY WERE NOT MADE PARTIES TO THE CASE; SUITS TO QUIET TITLE ARE CHARACTERIZED AS *QUASI IN REM* AND THE JUDGMENT IN SUCH PROCEEDINGS IS CONCLUSIVE ONLY BETWEEN THE PARTIES.— Petitioners cannot also use the finality of the RTC decision in Petition Case No. U-920 as a shield against the verification of the validity of the deed of donation. According to petitioners, the said final decision is one for quieting of title. In other words, it is a case for declaratory relief under Rule 64 (now Rule 63) of the Rules of Court. However, respondents were not made parties in the said Petition Case No. U-920. Worse, instead of issuing summons to interested parties, the RTC merely allowed the posting of notices on the bulletin boards of *Barangay* Cabalitaan, Municipalities of Asingan and Lingayen, Pangasinan. As pointed out by the CA, citing the ruling of the RTC: x x x In the said case or Petition No. U-920, notices were posted on the bulletin boards of *barangay* Cabalitaan, Municipalities of Asingan and Lingayen, Pangasinan, so that there was a notice to the whole world and during the initial hearing and/or hearings, no one interposed objection thereto. Suits to quiet title are not technically suits *in rem*, nor are they, strictly speaking, *in personam*, but being against the person in respect of the *res*, these proceedings are characterized as *quasi in rem*. The judgment in such proceedings is conclusive only between the parties. Thus, respondents are not bound by the decision in Petition Case No. U-920 as they were not made parties in the said case. The rules on quieting of title expressly provide that any declaration in a suit to quiet title shall not prejudice persons who are not parties to the

action. That respondents filed a subsequent pleading in the same Petition Case No. U-920 after the decision there had become final did not change the fact that said decision became final without their being impleaded in the case. Said subsequent pleading was dismissed on the ground of finality of the decision. Thus, the RTC totally failed to give respondents their day in court. As a result, they cannot be bound by its orders. Generally accepted is the principle that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. Moreover, for the principle of *res judicata* to apply, the following must be present: (1) a decision on the merits; (2) by a court of competent jurisdiction; (3) the decision is final; and (4) the two actions involve identical parties, subject matter and causes of action. The fourth element is not present in this case. The parties are not identical because respondents were not impleaded in Petition Case No. U-920. While the subject matter may be the same property covered by OCT No. 352, the causes of action are different. Petition Case No. U-920 is an action for declaratory relief while the case below is for recovery of property.

5. ID.; ID.; ID.; THE VALIDITY AND ENFORCEABILITY OF THE DEED OF DONATION IS THE DETERMINING FACTOR IN RESOLVING THE ISSUE OF WHO HAS A BETTER RIGHT OVER THE PROPERTY; ALTHOUGH THE VALIDITY OF THE DEED OF DONATION WAS NOT RAISED AS AN ISSUE BEFORE THE TRIAL COURT, THE COURT IS CLOTHED WITH AMPLE AUTHORITY TO REVIEW MATTERS, EVEN IF NOT ASSIGNED AS ERROR, IF IT FINDS THAT THEIR CONSIDERATION IS NECESSARY IN ARRIVING AT A JUST DECISION.— We are not persuaded by petitioners' posture that the only issue in this action for reconveyance is who has a better right over the land; and that the validity of the deed of donation is beside the point. It is precisely the validity and enforceability of the deed of donation that is the determining factor in resolving the issue of who has a better right over the property. Moreover, notwithstanding procedural lapses as to the appropriateness of the remedies prayed for in the petition filed before Us, this Court can brush aside the technicalities in the interest of justice. In some instances, this Court even suspended its own rules and excepted a case from their operation whenever the higher interests of justice so demanded. Moreover, although

respondents did not directly raise the issue of validity of the deed of donation at the commencement of the case before the trial court, it was stipulated by the parties during the pre-trial conference. In any event, this Court has authority to inquire into any question necessary in arriving at a just decision of a case before it. Though not specifically questioned by the parties, additional issues may also be included, if deemed important for substantial justice to be rendered. Furthermore, this Court has held that although a factual issue is not squarely raised below, still in the interest of substantial justice, this Court is not prevented from considering a pivotal factual matter. The Supreme Court is clothed with ample authority to review palpable errors not assigned as such if it finds that their consideration is necessary in arriving at a just decision. A rudimentary doctrine on appealed cases is that this Court is clothed with ample authority to review matters, even if they are not assigned as errors on appeal, if it finds that their consideration is necessary at arriving at a just decision of the case. Also, an unassigned error closely related to an error properly assigned or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as an error.

6. **ID.; ID.; ID.; OLD CIVIL CODE; DONATION *PROPTER NUPTIAS* MUST BE MADE IN A PUBLIC INSTRUMENT IN WHICH THE PROPERTY MUST BE SPECIFICALLY DESCRIBED.—** It is settled that only laws existing at the time of the execution of a contract are applicable to it and not the later statutes, unless the latter are specifically intended to have retroactive effect. Accordingly, the Old Civil Code applies in this case as the donation *propter nuptias* was executed in 1919, while the New Civil Code took effect only on August 30, 1950. Under the Old Civil Code, donations *propter nuptias* must be made in a public instrument in which the property donated must be specifically described. Article 1328 of the Old Civil Code provides that gifts *propter nuptias* are governed by the rules established in Title 2 of Book 3 of the same Code. Article 633 of that title provides that the gift of real property, in order to be valid, must appear in a public document. It is settled that a donation of real estate *propter nuptias* is void unless made by public instrument.

7. ID.; ID.; ID.; ID.; THE *PROPTER NUPTIAS* IN CASE AT BAR DID NOT BECOME VALID NEITHER DID IT CREATE ANY RIGHT BECAUSE IT WAS MADE IN A PUBLIC INSTRUMENT.— In the instant case, the donation *propter nuptias* did not become valid. Neither did it create any right because it was not made in a public instrument. Hence, it conveyed no title to the land in question to petitioners' predecessors. Logically, then, the cancellation of OCT No. 352 and the issuance of a new TCT No. 44481 in favor of petitioners' predecessors have no legal basis. The title to the subject property should, therefore, be restored to its original owners under OCT No. 352. Direct reconveyance to any of the parties is not possible as it has not yet been determined in a proper proceeding who among the heirs of spouses Simeon Doronio and Cornelia Gante is entitled to it. It is still unproven whether or not the parties are the only ones entitled to the properties of spouses Simeon Doronio and Cornelia Gante. As earlier intimated, there are still things to be done before the legal share of all the heirs can be properly adjudicated.

8. ID.; ID.; ID.; TITLED PROPERTY CANNOT BE ACQUIRED BY ANOTHER BY ADVERSE POSSESSION OR EXTINCTIVE PRESCRIPTION.— The claim of respondents that they became owners of the property by acquisitive prescription has no merit. Truth to tell, respondents cannot successfully invoke the argument of extinctive prescription. They cannot be deemed the owners by acquisitive prescription of the portion of the property they have been possessing. The reason is that the property was covered by OCT No. 352. A title once registered under the torrens system cannot be defeated even by adverse, open and notorious possession; neither can it be defeated by prescription. It is notice to the whole world and as such all persons are bound by it and no one can plead ignorance of the registration. The torrens system is intended to guarantee the integrity and conclusiveness of the certificate of registration, but it cannot be used for the perpetration of fraud against the real owner of the registered land. The system merely confirms ownership and does not create it. Certainly, it cannot be used to divest the lawful owner of his title for the purpose of transferring it to another who has not acquired it by any of the modes allowed or recognized by law. It cannot be used to protect a usurper from the true owner, nor can it be used as a shield for the commission of fraud; neither does

it permit one to enrich himself at the expense of another. Where such an illegal transfer is made, as in the case at bar, the law presumes that no registration has been made and so retains title in the real owner of the land.

9. **ID.; ID.; ID.; ISSUE OF OWNERSHIP WILL BE PROPERLY THRESHED OUT IN THE SETTLEMENT OF ESTATES OF THE REGISTERED OWNERS OF THE PROPERTY.—** Although We confirm here the invalidity of the deed of donation and of its resulting TCT No. 44481, the controversy between the parties is yet to be fully settled. The issues as to who truly are the present owners of the property and what is the extent of their ownership remain unresolved. The same may be properly threshed out in the settlement of the estates of the registered owners of the property, namely: spouses Simeon Doronio and Cornelia Gante.

APPEARANCES OF COUNSEL

De Guzman Marinas Soriano and *Uglay Law Offices* for petitioners.

Public Attorney's Office for respondents.

D E C I S I O N

REYES, R.T., *J.*:

For Our review on *certiorari* is the Decision[1] of the Court of Appeals (CA) reversing that[2] of the Regional Trial Court (RTC), Branch 45, Anonas, Urdaneta City, Pangasinan, in an action for reconveyance and damages. The CA declared respondents as rightful owners of one-half of the subject property and directed petitioners to execute a registerable document conveying the same to respondents.

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[1] *Rollo,* pp. 39-51. Dated January 26, 2005 in CA-G.R. CV No. 76200 entitled "*Heirs of Fortunato Doronio v. Heirs of Marcelino Doronio, et al.*" Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring.

[2] Records, pp. 344-356. Dated June 28, 2002 in Civil Case No. U-6498. Penned by Judge Joven F. Costales.

The Facts

Spouses Simeon Doronio and Cornelia Gante, now both deceased, were the registered owners of a parcel of land located at *Barangay* Cabalitaan, Asingan, Pangasinan covered by Original Certificate of Title (OCT) No. 352.[3] The courts below described it as follows:

Un terreno (Lote 1018), situada en el municipio de Asingan, Linda por el NE; con propriedad de Gabriel Bernardino; con el SE con propriedad de Zacarias Najorda y Alejandro Najorda; por el SO con propriedad de Geminiano Mendoza y por el NO con el camino para Villasis; midiendo una extension superficial mil ciento cincuenta y dos metros cuadrados.[4]

The spouses had children but the records fail to disclose their number. It is clear, however, that Marcelino Doronio and Fortunato Doronio, now both deceased, were among them and that the parties in this case are their heirs. Petitioners are the heirs of Marcelino Doronio, while respondents are the heirs of Fortunato Doronio.

On April 24, 1919, a private deed of donation *propter nuptias*[5] was executed by spouses Simeon Doronio and Cornelia Gante in favor of Marcelino Doronio and the latter's wife, Veronica Pico. One of the properties subject of said deed of donation is the one that it described as follows:

Fourth – A piece of residential land located in the barrio of Cabalitian but we did not measure it, the area is bounded on the north by Gabriel Bernardino; **on the east by Fortunato Doronio**; on the south by Geminiano Mendoza and on the west by a road to Villasis. Constructed on said land is a house of light materials – also a part of the dowry. Value …200.00.[6]

It appears that the property described in the deed of donation is the one covered by OCT No. 352. However, there is a

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[3] *Rollo,* pp. 43-44, 48-49.

[4] *Id*. at 48-49; Exhibits "A" & "7".

[5] *Id*. at 48; Exhibit "D".

[6] *Id*. at 49; Exhibits "D-4" & "6".

significant discrepancy with respect to the identity of the owner of adjacent property at the eastern side. Based on OCT No. 352, the adjacent owners are Zacarias Najorda and Alejandro Najorda, whereas based on the deed of donation, the owner of the adjacent property is Fortunato Doronio. Furthermore, said deed of donation remained a private document as it was never notarized.[7]

Both parties have been occupying the subject land for several decades[8] although they have different theories regarding its present ownership. According to petitioners, they are now the owners of the entire property in view of the private deed of donation *propter nuptias* in favor of their predecessors, Marcelino Doronio and Veronica Pico.

Respondents, on the other hand, claim that only half of the property was actually incorporated in the said deed of donation because it stated that Fortunato Doronio, instead of Zacarias Najorda and Alejandro Najorda, is the owner of the adjacent property at the eastern side. Respondents posit that the donors respected and segregated the possession of Fortunato Doronio of the eastern half of the land. They are the ones who have been possessing said land occupied by their predecessor, Fortunato Doronio.

Eager to obtain the entire property, the heirs of Marcelino Doronio and Veronica Pico filed, on January 11, 1993, before the RTC in Urdaneta, Pangasinan a petition "For the Registration of a Private Deed of Donation"[9] docketed as Petition Case No. U-920. No respondents were named in the said petition[10] although notices of hearing were posted on the bulletin boards of *Barangay* Cabalitaan, Municipalities of Asingan and Lingayen.[11]

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[7] *Id.*; CA *rollo,* pp. 37-38.

[8] *Id.* at 44.

[9] *Id.* at 42-43; Exhibit "5".

[10] *Id.* at 45.

[11] *Id.*

During the hearings, no one interposed an objection to the petition.[12] After the RTC ordered a general default,[13] the petition was eventually granted on September 22, 1993. This led to the registration of the deed of donation, cancellation of OCT No. 352 and issuance of a new Transfer Certificate of Title (TCT) No. 44481 in the names of Marcelino Doronio and Veronica Pico.[14] Thus, the entire property was titled in the names of petitioners' predecessors.

On April 28, 1994, the heirs of Fortunato Doronio filed a pleading before the RTC in the form of a petition in the same Petition Case No. U-920. The petition was for the reconsideration of the decision of the RTC that ordered the registration of the subject deed of donation. It was prayed in the petition that an order be issued declaring null and void the registration of the private deed of donation and that TCT No. 44481 be cancelled. However, the petition was dismissed on May 13, 1994 on the ground that the decision in Petition Case No. U-920 had already become final as it was not appealed.

Determined to remain in their possessed property, respondent heirs of Fortunato Doronio (as plaintiffs) filed an action for reconveyance and damages with prayer for preliminary injunction[15] against petitioner heirs of Marcelino Doronio (as defendants) before the RTC, Branch 45, Anonas, Urdaneta City, Pangasinan. Respondents contended, among others, that the subject land is different from what was donated as the descriptions of the property under OCT No. 352 and under the private deed of donation were different. They posited that spouses Simeon Doronio and Cornelia Gante intended to donate only one-half of the property.

During the pre-trial conference, the parties stipulated, among others, that the property was originally covered by OCT No. 352 which was cancelled by TCT No. 44481. They also agreed that

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[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] Civil Case No. U-6498.

the issues are: (1) whether or not there was a variation in the description of the property subject of the private deed of donation and OCT No. 352; (2) whether or not respondents had acquired one-half of the property covered by OCT No. 352 by acquisitive prescription; (3) whether or not the transfer of the whole property covered by OCT No. 352 on the basis of the registration of the private deed of donation notwithstanding the discrepancy in the description is valid; (4) whether or not respondents are entitled to damages; and (5) whether or not TCT No. 44481 is valid.[16]

RTC Decision

After due proceedings, the RTC ruled in favor of petitioner heirs of Marcelino Doronio (defendants). It concluded that the parties admitted the identity of the land which they all occupy;[17] that a title once registered under the torrens system cannot be defeated by adverse, open and notorious possession or by prescription;[18] that the deed of donation in consideration of the marriage of the parents of petitioners is valid, hence, it led to the eventual issuance of TCT No. 44481 in the names of said parents;[19] and that respondent heirs of Fortunato Doronio (plaintiffs) are not entitled to damages as they are not the rightful owners of the portion of the property they are claiming.[20]

The RTC disposed of the case, thus:

> WHEREFORE, premises considered, the Court hereby renders judgment DISMISSING the herein Complaint filed by plaintiffs against defendants.[21]

Disagreeing with the judgment of the RTC, respondents appealed to the CA. They argued that the trial court erred in

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[16] Records, pp. 134-135.

[17] CA *rollo,* p. 43; *id.* at 354.

[18] *Id.* at 44-45; *id.* at 354-356.

[19] *Id.* at 45; *id.* at 355-356.

[20] *Id.* at 46; *id.* at 356.

[21] *Id.*

not finding that respondents' predecessor-in-interest acquired one-half of the property covered by OCT No. 352 by tradition and/or intestate succession; that the deed of donation dated April 26, 1919 was null and void; that assuming that the deed of donation was valid, only one-half of the property was actually donated to Marcelino Doronio and Veronica Pico; and that respondents acquired ownership of the other half portion of the property by acquisitive prescription.[22]

CA Disposition

In a Decision dated January 26, 2005, the CA reversed the RTC decision with the following disposition:

> WHEREFORE, the assailed Decision dated June 28, 2002 is REVERSED and SET ASIDE. Declaring the appellants as rightful owners of one-half of the property now covered by TCT No. 44481, the appellees are hereby directed to execute a registerable document conveying the same to appellants.
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> SO ORDERED.[23]

The appellate court determined that "(t)he intention to donate half of the disputed property to appellees' predecessors can be gleaned from the disparity of technical descriptions appearing in the title (OCT No. 352) of spouses Simeon Doronio and Cornelia Gante and in the deed of donation *propter nuptias* executed on April 24, 1919 in favor of appellees' predecessors."[24]

The CA based its conclusion on the disparity of the following technical descriptions of the property under OCT No. 352 and the deed of donation, to wit:

> The court below described the property covered by OCT No. 352 as follows:
>
> "*Un terreno (Lote 1018), situada en el municipio de Asingan, Linda por el NE; con propriedad de Gabriel*

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[22] *Id.* at 46-47; CA *rollo,* pp. 19-20.

[23] *Id.* at 51.

[24] *Id.* at 48; CA *rollo,* p. 100.

> *Bernardino; con el SE con propriedad de Zacarias Najorda y Alejandro Najorda; por el SO con propriedad de Geminiano Mendoza y por el NO con el camino para Villasis; midiendo una extension superficial mil ciento cincuenta y dos metros cuadrados*."

On the other hand, the property donated to appellees' predecessors was described in the deed of donation as:

> "Fourth – A piece of residential land located in the barrio of Cabalitian but we did not measure it, the area is bounded on the north by Gabriel Bernardino; **on the east by Fortunato Doronio;** on the south by Geminiano Mendoza and on the west by a road to Villasis. Constructed on said land is a house of light materials – also a part of the dowry. Value …200.00."[25] (Emphasis ours)

Taking note "that the boundaries of the lot donated to Marcelino Doronio and Veronica Pico differ from the boundaries of the land owned by spouses Simeon Doronio and Cornelia Gante," the CA concluded that spouses Simeon Doronio and Cornelia Gante donated only half of the property covered by OCT No. 352.[26]

Regarding the allegation of petitioners that OCT No. 352 is inadmissible in evidence, the CA pointed out that, "while the OCT is written in the Spanish language, this document already forms part of the records of this case for failure of appellees to interpose a timely objection when it was offered as evidence in the proceedings *a quo*. It is a well-settled rule that any objection to the admissibility of such evidence not raised will be considered waived and said evidence will have to form part of the records of the case as competent and admitted evidence."[27]

The CA likewise ruled that the donation of the entire property in favor of petitioners' predecessors is invalid on the ground that it impairs the legitime of respondents' predecessor, Fortunato Doronio. On this aspect, the CA reasoned out:

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[25] *Id.* at 48-49; *id.* at 100-101.

[26] *Id.*

[27] *Id.* at 49-50; CA *rollo,* pp. 101-102.

Moreover, We find the donation of the entire property in favor of appellees' predecessors invalid as it impairs the legitime of appellants' predecessor. Article 961 of the Civil Code is explicit. "*In default of testamentary heirs, the law vests the inheritance, x x x, in the legitimate x x x relatives of the deceased, x x x*." As Spouses Simeon Doronio and Cornelia Gante died intestate, their property shall pass to their lawful heirs, namely: Fortunato and Marcelino Doronio. Donating the entire property to Marcelino Doronio and Veronica Pico and excluding another heir, Fortunato, tantamounts to divesting the latter of his rightful share in his parents' inheritance. Besides, a person's prerogative to make donations is subject to certain limitations, one of which is that he cannot give by donation more than what he can give by will (Article 752, Civil Code). If he does, so much of what is donated as exceeds what he can give by will is deemed inofficious and the donation is reducible to the extent of such excess.[28]

Petitioners were not pleased with the decision of the CA. Hence, this petition under Rule 45.

Issues

Petitioners now contend that the CA erred in:

1. DECLARING ADMISSIBILITY OF THE ORIGINAL CERTIFICATE OF TITLE NO. 352 DESPITE OF LACK OF TRANSLATION THEREOF.
2. (RULING THAT) ONLY HALF OF THE DISPUTED PROPERTY WAS DONATED TO THE PREDECESSORS-IN-INTEREST OF THE HEREIN APPELLANTS.
3. (ITS) DECLARATION THAT THE DONATION *PROPTER NUPTIAS* IS INNOFICIOUS, IS PREMATURE, AND THUS IT IS ILLEGAL AND UNPROCEDURAL.[29]

Our Ruling

OCT No. 352 in Spanish Although Not Translated into English or Filipino Is Admissible For Lack of Timely Objection

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[28] *Id*. at 50; *id*. at 102.

[29] *Id*. at 13.

Petitioners fault the CA for admitting OCT No. 352 in evidence on the ground that it is written in Spanish language. They posit that "(d)ocumentary evidence in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino."[30]

The argument is untenable. The requirement that documents written in an unofficial language must be accompanied with a translation in English or Filipino as a prerequisite for its admission in evidence must be insisted upon by the parties at the trial to enable the court, where a translation has been impugned as incorrect, to decide the issue.[31] Where such document, not so accompanied with a translation in English or Filipino, is offered in evidence and not objected to, either by the parties or the court, it must be presumed that the language in which the document is written is understood by all, and the document is admissible in evidence.[32]

Moreover, Section 36, Rule 132 of the Revised Rules of Evidence provides:

> SECTION 36. Objection. – Objection to evidence offered orally must be made immediately after the offer is made.
>
> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.
>
> **An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.**
>
> In any case, the grounds for the objections must be specified. (Emphasis ours)

Since petitioners did not object to the offer of said documentary evidence on time, it is now too late in the day for them to question its admissibility. The rule is that evidence not objected

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[30] *Id.* at 24.

[31] Francisco, V.J., *The Revised Rules of Court in the Philippines*, Vol. VII, Part II, 1991 ed., p. 389.

[32] *Id.*

may be deemed admitted and may be validly considered by the court in arriving at its judgment.[33] This is true even if by its nature, the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[34]

As a matter of fact, instead of objecting, petitioners admitted the contents of Exhibit "A", that is, OCT No. 352 in their comment[35] on respondents' formal offer of documentary evidence. In the said comment, petitioners alleged, among others, that "Exhibits A, B, C, D, E, F and G, are admitted but not for the purpose they are offered because **these exhibits being public and official documents are the best evidence of that they contain** and not for what a party would like it to prove."[36] Said evidence was admitted by the RTC.[37] Once admitted without objection, even though not admissible under an objection, We are not inclined now to reject it.[38] Consequently, the evidence that was not objected to became property of the case, and all parties to the case are considered amenable to any favorable or unfavorable effects resulting from the said evidence.[39]

Issues on Impairment of Legitime Should Be Threshed Out in a Special Proceeding, Not in Civil Action for Reconveyance and Damages

On the other hand, petitioners are correct in alleging that the issue regarding the impairment of legitime of Fortunato Doronio

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[33] *People v. Pansensoy,* G.R. No. 140634, September 12, 2002, 388 SCRA 669, 689; *People v. Barellano,* G.R. No. 121204, December 2, 1999, 319 SCRA 567, 590.

[34] *Interpacific Transit, Inc. v. Aviles,* G.R. No. 86062, June 6, 1990, 186 SCRA 385, 390.

[35] Records, p. 188.

[36] *Id.*

[37] *Id.* at 189.

[38] *Interpacific Transit, Inc. v. Aviles, supra.*

[39] *Quebral v. Court of Appeals,* G.R. No. 101941, January 25, 1996, 252 SCRA 353, 365.

must be resolved in an action for the settlement of estates of spouses Simeon Doronio and Cornelia Gante. It may not be passed upon in an action for reconveyance and damages. A probate court, in the exercise of its limited jurisdiction, is the best forum to ventilate and adjudge the issue of impairment of legitime as well as other related matters involving the settlement of estate.[40]

An action for reconveyance with damages is a civil action, whereas matters relating to settlement of the estate of a deceased person such as advancement of property made by the decedent, partake of the nature of a special proceeding. Special proceedings require the application of specific rules as provided for in the Rules of Court.[41]

As explained by the Court in *Natcher v. Court of Appeals*:[42]

> Section 3, Rule 1 of the 1997 Rules of Civil Procedure defines civil action and special proceedings, in this wise:
>
> > x x x a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.
> >
> > A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to specific rules prescribed for a special civil action.
> >
> > xxx xxx xxx
> >
> > c) A special proceeding is a remedy by which a party seeks to establish a status, a right or a particular fact.
>
> As could be gleaned from the foregoing, there lies a marked distinction between an action and a special proceeding. An action is a formal demand of one's right in a court of justice in the manner prescribed by the court or by the law. It is the method of applying legal remedies according to definite established rules. The term

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[40] *Natcher v. Court of Appeals,* G.R. No. 133000, October 2, 2001, 366 SCRA 385, 394.

[41] *Id.* at 392.

[42] *Supra* at 391-392.

"special proceeding" may be defined as an application or proceeding to establish the status or right of a party, or a particular fact. Usually, in special proceedings, no formal pleadings are required unless the statute expressly so provides. In special proceedings, the remedy is granted generally upon an application or motion.

Citing American Jurisprudence, a noted authority in Remedial Law expounds further:

> It may accordingly be stated generally that actions include those proceedings which are instituted and prosecuted according to the ordinary rules and provisions relating to actions at law or suits in equity, and that special proceedings include those proceedings which are not ordinary in this sense, but is instituted and prosecuted according to some special mode as in the case of proceedings commenced without summons and prosecuted without regular pleadings, which are characteristics of ordinary actions x x x. A special proceeding must therefore be in the nature of a distinct and independent proceeding for particular relief, such as may be instituted independently of a pending action, by petition or motion upon notice.

Applying these principles, an action for reconveyance and annulment of title with damages is a civil action, whereas matters relating to settlement of the estate of a deceased person such as advancement of property made by the decedent, partake of the nature of a special proceeding, which concomitantly requires the application of specific rules as provided for in the Rules of Court.

Clearly, matters which involve settlement and distribution of the estate of the decedent fall within the exclusive province of the probate court in the exercise of its limited jurisdiction.

Thus, under Section 2, Rule 90 of the Rules of Court, questions as to advancement made or alleged to have been made by the deceased to any heir may be heard and determined by the court having jurisdiction of the estate proceedings, and the final order of the court thereon shall be binding on the person raising the questions and on the heir.

While it may be true that the Rules used the word "may," it is nevertheless clear that the same provision contemplates a probate court when it speaks of the "court having jurisdiction of the estate proceedings."

Corollarily, the Regional Trial Court in the instant case, acting in its general jurisdiction, is devoid of authority to render an adjudication and resolve the issue of advancement of the real property in favor of herein petitioner Natcher, inasmuch as Civil Case No. 71075 for reconveyance and annulment of title with damages is not, to our mind, the proper vehicle to thresh out said question. Moreover, under the present circumstances, the RTC of Manila, Branch 55, was not properly constituted as a probate court so as to validly pass upon the question of advancement made by the decedent Graciano Del Rosario to his wife, herein petitioner Natcher.

We likewise find merit in petitioners' contention that before any conclusion about the legal share due to a compulsory heir may be reached, it is necessary that certain steps be taken first.[43] The net estate of the decedent must be ascertained, by deducting all payable obligations and charges from the value of the property owned by the deceased at the time of his death; then, all donations subject to collation would be added to it. With the partible estate thus determined, the legitime of the compulsory heir or heirs can be established; and only then can it be ascertained whether or not a donation had prejudiced the legitimes.[44]

Declaration of Validity of Donation Can Be Challenged by an Interested Party Not Impleaded in Petition for Quieting of Title or Declaratory Relief or Where There is No Res Judicata. Moreover, This Court Can Consider a Factual Matter or Unassigned Error in the Interest of Substantial Justice.

Nevertheless, petitioners cannot preclude the determination of validity of the deed of donation on the ground that (1) it has been impliedly admitted by respondents; (2) it has already been determined with finality by the RTC in Petition Case No. U-

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[43] *Natcher v. Court of Appeals, supra* note 40, at 394; *Pagkatipunan v. Intermediate Appellate Court,* G.R. No. 70722, July 3, 1991, 198 SCRA 719, 729.

[44] *Id.*; *Mateo v. Lagua,* G.R. No. L-26270, October 30, 1969, 29 SCRA 864, 870.

920; or (3) the only issue in an action for reconveyance is who has a better right over the land.[45]

The validity of the private deed of donation *propter nuptias* in favor of petitioners' predecessors was one of the issues in this case before the lower courts. The pre-trial order [46] of the RTC stated that one of the issues before it is "(w)hether or not the transfer of the whole property covered by OCT No. 352 on the basis of the private deed of donation notwithstanding the discrepancy in the description is valid." Before the CA, one of the errors assigned by respondents is that "THE TRIAL COURT ERRED IN NOT FINDING THAT THE PRIVATE DEED OF DONATION DATED APRIL 26, 1919 WAS NULL AND VOID."[47]

The issue of the validity of donation is likewise brought to Us by petitioners as they stated in their Memorandum [48] that one of the issues to be resolved is regarding the alleged fact that "THE HONORABLE COURT OF APPEALS ERRED IN FINDING THE DONATION INVALID." We are thus poised to inspect the deed of donation and to determine its validity.

We cannot agree with petitioners' contention that respondents may no longer question the validity of the deed of donation on the ground that they already impliedly admitted it. Under the provisions of the Civil Code, a void contract is inexistent from the beginning. The right to set up the defense of its illegality cannot be waived.[49] The right to set up the nullity of a void or non-existent contract is not limited to the parties as in the case of annullable or voidable contracts; it is extended to third persons who are directly affected by the contract.[50]

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[45] *Rollo,* p. 148.

[46] Records, pp. 134-135.

[47] *Rollo,* pp. 46-47.

[48] *Id.* at 144.

[49] Civil Code, Art. 1409.

[50] *Manotok Realty, Inc. v. Court of Appeals,* G.R. No. L-45038, April 30, 1987, 149 SCRA 372, 377, citing Tolentino, *Civil Code of the Philippines*, Vol. IV, 1973 ed., p. 604.

Consequently, although respondents are not parties in the deed of donation, they can set up its nullity because they are directly affected by the same.[51] The subject of the deed being the land they are occupying, its enforcement will definitely affect them.

Petitioners cannot also use the finality of the RTC decision in Petition Case No. U-920[52] as a shield against the verification of the validity of the deed of donation. According to petitioners, the said final decision is one for quieting of title.[53] In other words, it is a case for declaratory relief under Rule 64 (now Rule 63) of the Rules of Court, which provides:

SECTION 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, or ordinance, may, before breach or violation thereof, bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder.

An action for the reformation of an instrument, **to quiet title to real property or remove clouds therefrom**, or to consolidate ownership under Article 1607 of the Civil Code, **may be brought under this rule.**

SECTION 2. Parties. — **All persons shall be made parties who have or claim any interest which would be affected by the declaration; and no declaration shall, except as otherwise provided in these rules, prejudice the rights of persons not parties to the action.** (Emphasis ours)

However, respondents were not made parties in the said Petition Case No. U-920. Worse, instead of issuing summons to interested parties, the RTC merely allowed the posting of notices on the

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[51] *Arsenal v. Intermediate Appellate Court,* G.R. No. 66696, July 14, 1986, 143 SCRA 40, 49, citing Tolentino, Civil Code of the Philippines, Vol. IV, 1973 ed., p. 604.

[52] Records, p. 14; Exhibit "C". Entitled "For the Registration of a Private Deed of Donation " The Heirs of Veronica Pico."

[53] *Rollo,* p. 143.

bulletin boards of *Barangay* Cabalitaan, Municipalities of Asingan and Lingayen, Pangasinan. As pointed out by the CA, citing the ruling of the RTC:

> x x x In the said case or Petition No. U-920, notices were posted on the bulletin boards of *barangay* Cabalitaan, Municipalities of Asingan and Lingayen, Pangasinan, so that there was a notice to the whole world and during the initial hearing and/or hearings, no one interposed objection thereto.[54]

Suits to quiet title are not technically suits *in rem*, nor are they, strictly speaking, *in personam*, but being against the person in respect of the *res*, these proceedings are characterized as *quasi in rem*.[55] The judgment in such proceedings is conclusive only between the parties.[56] Thus, respondents are not bound by the decision in Petition Case No. U-920 as they were not made parties in the said case.

The rules on quieting of title[57] expressly provide that any declaration in a suit to quiet title shall not prejudice persons who are not parties to the action.

That respondents filed a subsequent pleading[58] in the same Petition Case No. U-920 after the decision there had become final did not change the fact that said decision became final without their being impleaded in the case. Said subsequent pleading was dismissed on the ground of finality of the decision.[59]

Thus, the RTC totally failed to give respondents their day in court. As a result, they cannot be bound by its orders. Generally accepted is the principle that no man shall be affected by any

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[54] *Id.* at 45; CA *rollo,* p. 97.

[55] *Realty Sales Enterprise, Inc. v. Intermediate Appellate Court,* G.R. No. 67451, September 28, 1987, 154 SCRA 328, 348, citing *McDaniel v. McElvy,* 108 So. 820 (1926).

[56] *Foster-Gallego v. Galang,* G.R. No. 130228, July 27, 2004, 435 SCRA 275, 293; *id.*; *Sandejas v. Robles,* 81 Phil. 421, 424 (1948).

[57] RULES OF COURT, Rule 64.

[58] *Rollo,* p. 45; records, pp. 111-113.

[59] *Id.*; CA *rollo,* p. 97.

proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court.[60]

Moreover, for the principle of *res judicata* to apply, the following must be present: (1) a decision on the merits; (2) by a court of competent jurisdiction; (3) the decision is final; and (4) the two actions involve identical parties, subject matter and causes of action.[61] The fourth element is not present in this case. The parties are not identical because respondents were not impleaded in Petition Case No. U-920. While the subject matter may be the same property covered by OCT No. 352, the causes of action are different. Petition Case No. U-920 is an action for declaratory relief while the case below is for recovery of property.

We are not persuaded by petitioners' posture that the only issue in this action for reconveyance is who has a better right over the land; and that the validity of the deed of donation is beside the point.[62] It is precisely the validity and enforceability of the deed of donation that is the determining factor in resolving the issue of who has a better right over the property. Moreover, notwithstanding procedural lapses as to the appropriateness of the remedies prayed for in the petition filed before Us, this Court can brush aside the technicalities in the interest of justice. In some instances, this Court even suspended its own rules and excepted a case from their operation whenever the higher interests of justice so demanded.[63]

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[60] *Domingo v. Scheer,* G.R. No. 154745, January 29, 2004, 421 SCRA 468, 483; *Matuguina Integrated Wood Products, Inc. v. Court of Appeals,* G.R. No. 98310, October 24, 1996, 263 SCRA 490, 505-506.

[61] *Alejandrino v. Court of Appeals,* G.R. No. 114151, September 17, 1998, 295 SCRA 536, 554; *Bernardo v. National Labor Relations Commission,* G.R. No. 105819, March 15, 1996, 255 SCRA 108, 118.

[62] *Rollo,* p. 148.

[63] *Government of the United States of America v. Purganan,* G.R. No. 148571, September 24, 2002, 389 SCRA 623, 651; *Fortich v. Corona,* G.R. No. 131457, April 24, 1998, 289 SCRA 624, 646; *Piczon v. Court of Appeals,* G.R. Nos. 76378-81, September 24, 1990, 190 SCRA 31, 38.

Moreover, although respondents did not directly raise the issue of validity of the deed of donation at the commencement of the case before the trial court, it was stipulated[64] by the parties during the pre-trial conference. In any event, this Court has authority to inquire into any question necessary in arriving at a just decision of a case before it.[65] Though not specifically questioned by the parties, additional issues may also be included, if deemed important for substantial justice to be rendered.[66]

Furthermore, this Court has held that although a factual issue is not squarely raised below, still in the interest of substantial justice, this Court is not prevented from considering a pivotal factual matter. The Supreme Court is clothed with ample authority to review palpable errors not assigned as such if it finds that their consideration is necessary in arriving at a just decision.[67]

A rudimentary doctrine on appealed cases is that this Court is clothed with ample authority to review matters, even if they are not assigned as errors on appeal, if it finds that their consideration is necessary at arriving at a just decision of the case.[68] Also, an unassigned error closely related to an error properly assigned or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as an error.[69]

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[64] Records, p. 134.

[65] *Serrano v. National Labor Relations Commission,* G.R. No. 117040, May 4, 2000, 331 SCRA 331, 338, citing *Korean Airlines Co., Ltd. v. Court of Appeals,* G.R. Nos. 114061 & 113842, August 3, 1994, 234 SCRA 717, 725; *Vda. de Javellana v. Court of Appeals,* G.R. No. L-60129, July 29, 1983, 123 SCRA 799, 805.

[66] *Velarde v. Social Justice Society,* G.R. No. 159357, April 28, 2004, 428 SCRA 283, 312.

[67] *Abra Valley College, Inc. v. Aquino,* G.R. No. L-39086, June 15, 1988, 162 SCRA 106, 116; *Perez v. Court of Appeals,* G.R. No. L-56101, February 20, 1984, 127 SCRA 636, 645.

[68] *Nordic Asia Limited v. Court of Appeals,* G.R. No. 111159, June 10, 2003, 403 SCRA 390, 396.

[69] *Id.*; *Sesbreño v. Central Board of Assessment Appeals,* G.R. No. 106588, March 24, 1997, 270 SCRA 360, 370; *Roman Catholic Archbishop*

Donation Propter Nuptias of Real Property Made in a Private Instrument Before the New Civil Code Took Effect on August 30, 1950 is Void

We now focus on the crux of the petition, which is the validity of the deed of donation. It is settled that only laws existing at the time of the execution of a contract are applicable to it and not the later statutes, unless the latter are specifically intended to have retroactive effect.[70] Accordingly, the Old Civil Code applies in this case as the donation *propter nuptias* was executed in 1919, while the New Civil Code took effect only on August 30, 1950.

Under the Old Civil Code, donations *propter nuptias* must be made in a public instrument in which the property donated must be specifically described.[71] Article 1328 of the Old Civil Code provides that gifts *propter nuptias* are governed by the rules established in Title 2 of Book 3 of the same Code. Article 633 of that title provides that the gift of real property, in order to be valid, must appear in a public document.[72] It is settled that a donation of real estate *propter nuptias* is void unless made by public instrument.[73]

In the instant case, the donation *propter nuptias* did not become valid. Neither did it create any right because it was not

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of Manila v. Court of Appeals, G.R. Nos. 77425 & 77450, June 19, 1991, 198 SCRA 300; *Soco v. Militante,* G.R. No. 58961, June 28, 1983, 123 SCRA 160, 183; *Ortigas, Jr. v. Lufthansa German Airlines,* G.R. No. L-28773, June 30, 1975, 64 SCRA 610, 633.

[70] *Valencia v. Locquiao,* G.R. No. 122134, October 3, 2003, 412 SCRA 600, 611; *Ortigas & Co., Ltd. v. Court of Appeals,* G.R. No. 126102, December 4, 2000, 346 SCRA 748, 755; *Philippine Virginia Tobacco Administration v. Gonzales,* G.R. No. L-34628, July 30, 1979, 92 SCRA 172, 185.

[71] *Valencia v. Locquiao, supra* at 610.

[72] *Id.*; *Velasquez v. Biala,* 18 Phil. 231, 234-235 (1911); *Camagay v. Lagera,* 7 Phil. 397 (1907).

[73] *Valencia v. Locquiao, supra*; *Solis v. Barroso,* 53 Phil. 912, 914 (1928); *Velasquez v. Biala, supra*; *Camagay v. Lagera, supra* at 398.

made in a public instrument.[74] Hence, it conveyed no title to the land in question to petitioners' predecessors.

Logically, then, the cancellation of OCT No. 352 and the issuance of a new TCT No. 44481 in favor of petitioners' predecessors have no legal basis. The title to the subject property should, therefore, be restored to its original owners under OCT No. 352.

Direct reconveyance to any of the parties is not possible as it has not yet been determined in a proper proceeding who among the heirs of spouses Simeon Doronio and Cornelia Gante is entitled to it. It is still unproven whether or not the parties are the only ones entitled to the properties of spouses Simeon Doronio and Cornelia Gante. As earlier intimated, there are still things to be done before the legal share of all the heirs can be properly adjudicated.[75]

Titled Property Cannot Be Acquired By Another By Adverse Possession or Extinctive Prescription

Likewise, the claim of respondents that they became owners of the property by acquisitive prescription has no merit. Truth to tell, respondents cannot successfully invoke the argument of extinctive prescription. They cannot be deemed the owners by acquisitive prescription of the portion of the property they have been possessing. The reason is that the property was covered by OCT No. 352. A title once registered under the torrens system cannot be defeated even by adverse, open and notorious possession; neither can it be defeated by prescription.[76] It is notice to the whole world and as such all persons are bound by it and no one can plead ignorance of the registration.[77]

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[74] *Solis v. Barroso, supra* note 73.

[75] *Pagkatipunan v. Intermediate Appellate Court, supra* note 43, at 732.

[76] *Ong v. Court of Appeals,* G.R. No. 142056, April 19, 2001, 356 SCRA 768, 771; *Brusas v. Court of Appeals,* G.R. No. 126875, August 26, 1999, 313 SCRA 176, 183; *Rosales v. Court of Appeals,* G.R. No. 137566, February 28, 2001, 353 SCRA 179.

[77] *Brusas v. Court of Appeals, supra*; *Jacob v. Court of Appeals,* G.R. No. 92159, July 1, 1993, 224 SCRA 189, 193-194.

The torrens system is intended to guarantee the integrity and conclusiveness of the certificate of registration, but it cannot be used for the perpetration of fraud against the real owner of the registered land.[78] The system merely confirms ownership and does not create it. Certainly, it cannot be used to divest the lawful owner of his title for the purpose of transferring it to another who has not acquired it by any of the modes allowed or recognized by law. It cannot be used to protect a usurper from the true owner, nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of another.[79] Where such an illegal transfer is made, as in the case at bar, the law presumes that no registration has been made and so retains title in the real owner of the land.[80]

Although We confirm here the invalidity of the deed of donation and of its resulting TCT No. 44481, the controversy between the parties is yet to be fully settled. The issues as to who truly are the present owners of the property and what is the extent of their ownership remain unresolved. The same may be properly threshed out in the settlement of the estates of the registered owners of the property, namely: spouses Simeon Doronio and Cornelia Gante.

WHEREFORE, the appealed Decision is *REVERSED AND SET ASIDE*. A new one is entered:

(1) Declaring the private deed of donation *propter nuptias* in favor of petitioners' predecessors *NULL AND VOID*; and

(2) Ordering the Register of Deeds of Pangasinan to:

(a) *CANCEL* Transfer Certificate of Title No. 44481 in the names of Marcelino Doronio and Veronica Pico; and

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[78] *Francisco v. Court of Appeals,* G.R. No. 130768, March 21, 2002, 379 SCRA 638, 646; *Bayoca v. Nogales,* G.R. No. 138210, September 12, 2000, 340 SCRA 154, 169.

[79] *Bayoca v. Nogales, supra*.

[80] *Balangcad v. Justices of the Court of Appeals,* G.R. No. 84888, February 12, 1992, 206 SCRA 169, 175.

(b) *RESTORE* Original Certificate of Title No. 352 in the names of its original owners, spouses Simeon Doronio and Cornelia Gante.

SO ORDERED.

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

EN BANC

[G.R. No. 172368. December 27, 2007]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FLORANTE ELA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—** This Court has ruled that in the review of rape cases, we are guided by the following precepts: (a) an accusation of rape can be made with facility, but more difficult for the accused, though innocent, to disprove it; (b) the complainant's testimony must be scrutinized with extreme caution since, by the very nature of the crime, only two (2) persons are normally involved; and (c) if the complainant's testimony is convincingly credible, the accused may be convicted of the crime.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; LONE TESTIMONY OF RAPE VICTIM, IF CREDIBLE AND FREE FROM FATAL AND MATERIAL INCONSISTENCIES AND CONTRADICTIONS, CAN BE THE SOLE BASIS OF CONVICTION.—** In prosecuting for rape, the single most important issue is the complainant's credibility. A medical examination and a medical certificate

are merely corroborative and are not indispensable to a prosecution for rape. The court may convict the accused based solely on the victim's credible, natural, and convincing testimony. In rape cases, the lone testimony of the victim, if credible and free from fatal and material inconsistencies and contradictions, can be the basis for the prosecution and conviction of the accused. The rule can no less be true than when a rape victim testifies against her own father; unquestionably, there would be reason to give it greater weight than usual.

3. ID.; ID.; ID.; THE ELOQUENT TESTIMONY OF THE VICTIM, COUPLED WITH THE MEDICAL FINDINGS ATTESTING TO HER NON-VIRGIN STATE, SHOULD BE ENOUGH TO CONFIRM THE TRUTH OF THE CHARGES.— In any event, matters affecting credibility are best left to the trial court with its peculiar opportunity to observe the deportment of a witness on the stand as against the reliance by an appellate court on the mute pages of the records of the case. The spontaneity with which the victim has detailed the incidence of rape, the tears she has shed at the stand while recounting her experience, and her consistency almost throughout her account dispel any insinuation of a rehearsed testimony. The eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of the charges.

4. ID.; ID.; ID.; TESTIMONIES OF VICTIMS OF TENDER AGE ARE CREDIBLE.— The trial court did not doubt AAA's credibility throughout the course of the trial, especially when she was called to the witness stand to narrate her ordeal. This crucial fact has been seconded by the detailed examination of the case made by the CA in its September 16, 2005 Decision. We see no cogent reason why the findings of the trial court should be altered. We have repeatedly ruled that, on the issue of credibility, the testimonies of victims who are of tender age are credible.

5. ID.; ID.; DEFENSE OF ALIBI; REJECTED; IT WAS NOT PHYSICALLY IMPOSSIBLE FOR ACCUSED-APPELLANT TO BE AT THE SCENE OF THE CRIME AT THE TIME OF THE ALLEGED RAPE.— One of the most convincing pieces of evidence that leaves no doubt as to the guilt of the accused-appellant is the testimony of his wife, CCC, who

incidentally testified in his favor. Accused-appellant claimed, as an alibi, that he was in Laguna at the time the rape occurred. It is clear that accused-appellant would like to make it appear that he was too far away from their residence in Tagaytay City to rape his daughter. However, CCC clearly stated in her testimony that when she found out about the rape incident, she went to Dasmariñas, Cavite where the accused-appellant worked in order to confront him. Dasmariñas, Cavite is merely a half-an-hour away from Tagaytay City via public transportation. In other words, it was not physically impossible.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

On July 8, 2003, the Cavite Regional Trial Court, Branch 18, Tagaytay City rendered its Decision[1] in Criminal Case No. TG-2774-97, finding accused-appellant Florante Ela guilty of Rape and imposing the penalty of Death with no accessory penalties.

On automatic review, this case was docketed in this Court as G.R. No. 160086. However, through this Court's April 12, 2005 Resolution, this case was transferred to the Court of Appeals (CA), and docketed as CA-G.R. C.R.-H.C. No. 01023, in accordance with the Court's ruling in *People v. Mateo*.[2]

This case originated in the April 21, 1997 complaint-affidavit executed by private complainant AAA[3] before the Office of the

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[1] *Rollo* (G.R. No. 160086), pp. 15-25. Penned by Presiding Judge Alfonso S. Garcia.

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

[3] The real name of the victim and any information that may compromise her privacy are withheld in accordance with our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

City Prosecutor of Tagaytay City, wherein she alleged that her father raped her in the early morning hours of April 14, 1997 at their own home at Tagaytay City. At the time of the commission of the felony, AAA was only 13 years old.

As established by the prosecution, on April 14, 1997, at around two o'clock in the morning, AAA was asleep at her residence, specifically on the lower portion of a double-decker bed, while her three younger sisters, aged 7, 5, and 3 years old, slept on the upper portion. Accused-appellant, the victim's biological father, entered the room, turned off the light, pressed a sharp object against her neck, and told her not to shout. Accused-appellant then proceeded to undress her and, after placing himself on top of her, inserted his penis into her vagina. She tried to resist but could not do so effectively because accused-appellant was choking her. She was able to scream and shout "*Ate!*" referring to her married step-sister BBB[4] who slept in the same house.

BBB was awakened by the scream, turned on the light and peeped into AAA's room through a hole in the wall to investigate. Accused-appellant and the victim were already dressed by the time BBB peeped into the room. She saw accused-appellant lying in bed with his arms around AAA. AAA had her back turned towards accused-appellant. Thinking that nothing was going on, BBB went back to sleep.

In the morning after the rape occurred, while AAA was fetching water, BBB approached her and asked why she screamed during the night. At first AAA didn't answer, but later in the afternoon, she told BBB that accused-appellant raped her.

After hearing AAA's story, BBB accompanied AAA to the police on April 15, 1997 and they both executed sworn testimonies.

The city prosecutor found probable cause and filed the proper information, as follows:

> The undersigned City Prosecutor of Tagaytay City upon sworn compliant filed by private complainant [AAA], a minor 13 years of

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[4] AAA is the eldest child of her mother and accused-appellant. BBB is a child of AAA's mother and another father.

age, accuses Florante Ela, father of complainant, of the crime of RAPE as defined and penalized under Art. 335 of the Revised Penal Code, committed as follows:

That on or about April 14, 1997 at Tagaytay City and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge with his daughter, [AAA], a minor 13 years of age, against the latter's will and consent.

Contrary to law.

Upon arraignment, the accused-appellant pleaded not guilty. Trial then proceeded.

During her testimony, the trial court noted that the victim began to weep when she testified that accused-appellant raped her. AAA stated that this was not the first time she was raped by accused-appellant. She alleged that she was raped at least 10 times previously and that the rapes occurred when her mother was not around. AAA further alleged that she never told her mother about the previous rape incidents for fear of being ridiculed.

Dr. Manuel Reyes, a medico-legal officer of the PNP, who conducted the physical examination of AAA testified that on April 18, 1997, he submitted Medico-Legal Report No. M-1430-97 embodying his findings, the pertinent portions of which state as follows:

Deep recently healed lacerations at 3, 6, 9 and 12 o'clock;

Shallow recently healed lacerations at 2, 5, 7 and 11 o'clock;

Subject is in non-virgin state physically.[5]

For his part, accused-appellant admitted that AAA is his eldest daughter but denied having raped her, claiming that he was in Laguna at the time of the alleged incident. He alleged that he went to Laguna to work as a carpenter on April 6, 1997 and went home only during the latter part of the month, implying that he was not home on April 14, 1997. He further alleged that

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[5] *Supra* note 1, at 20.

he did not know why AAA would accuse him of raping her; and the fact that AAA failed to immediately tell her mother of the rape right after it occurred cast serious doubt on the credibility of the victim.

Testifying on behalf of accused-appellant, CCC, accused-appellant's wife and AAA's mother, stated that she went to Camarines Sur to attend her mother's wake on April 12, 1997, and stayed there for about two days. Upon her return, BBB told her that accused-appellant raped AAA, prompting her to go to Dasmariñas, Cavite where accused-appellant was working to ascertain the truth from him. CCC claimed that accused-appellant displayed no reaction when questioned about the rape, as though the matter did not affect him at all. After denying the accusation against him, accused-appellant went home to confront AAA and BBB. CCC claimed that AAA and BBB did not say anything at all.

In essence, accused-appellant's defense consists of denial and alibi, and of casting doubt on AAA's credibility.

This Court has ruled that in the review of rape cases, we are guided by the following precepts: (a) an accusation of rape can be made with facility, but more difficult for the accused, though innocent, to disprove it; (b) the complainant's testimony must be scrutinized with extreme caution since, by the very nature of the crime, only two (2) persons are normally involved; and (c) if the complainant's testimony is convincingly credible, the accused may be convicted of the crime.[6]

In prosecuting for rape, the single most important issue is the complainant's credibility.[7] A medical examination and a medical certificate are merely corroborative and are not indispensable to a prosecution for rape. The court may convict the accused based solely on the victim's credible, natural, and convincing testimony.[8] In rape cases, the lone testimony of the

[6] *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 108.

[7] *Id*. at 109.

[8] *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 541.

victim, if credible and free from fatal and material inconsistencies and contradictions, can be the basis for the prosecution and conviction of the accused. The rule can no less be true than when a rape victim testifies against her own father; unquestionably, there would be reason to give it greater weight than usual.[9]

In any event, matters affecting credibility are best left to the trial court with its peculiar opportunity to observe the deportment of a witness on the stand as against the reliance by an appellate court on the mute pages of the records of the case.[10] The spontaneity with which the victim has detailed the incidence of rape, the tears she has shed at the stand while recounting her experience, and her consistency almost throughout her account dispel any insinuation of a rehearsed testimony. The eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of the charges.[11]

The trial court did not doubt AAA's credibility throughout the course of the trial, especially when she was called to the witness stand to narrate her ordeal. This crucial fact has been seconded by the detailed examination of the case made by the CA in its September 16, 2005 Decision.[12] We see no cogent reason why the findings of the trial court should be altered. We have repeatedly ruled that, on the issue of credibility, the testimonies of victims who are of tender age are credible.[13]

One of the most convincing pieces of evidence that leaves no doubt as to the guilt of the accused-appellant is the testimony

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[9] *People v. Oden*, G.R. Nos. 155511-22, April 14, 2004, 427 SCRA 634, 655.

[10] *Id*.

[11] *Id*.

[12] *Rollo*, pp. 3-16. Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr.

[13] *People v. Luceriano*, G. R. No. 145223, February 11, 2004, 422 SCRA 486, 495.

of his wife, CCC, who incidentally testified in his favor. Accused-appellant claimed, as an alibi, that he was in Laguna at the time the rape occurred. It is clear that accused-appellant would like to make it appear that he was too far away from their residence in Tagaytay City to rape his daughter. However, CCC clearly stated in her testimony that when she found out about the rape incident, she went to Dasmariñas, Cavite where the accused-appellant worked in order to confront him. Dasmariñas, Cavite is merely a half-an-hour away from Tagaytay City via public transportation. In other words, it was not physically impossible for accused-appellant to be in Tagaytay City at the time of the rape.

Establishing accused-appellant's guilt beyond reasonable doubt, we now examine the propriety of imposing the death penalty.

With the effectivity of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," the penalty of *reclusión perpetua* should be imposed, without eligibility for parole.

Regarding the civil penalties that should be imposed, in line with our Decision in *People v. Audine*, the civil indemnity should be PhP 75,000, and in addition, an award of PhP 75,000 as moral damages, and an award of PhP 25,000 as exemplary damages.[14]

WHEREFORE, the September 16, 2005 Decision in CA-G.R. C.R.-H.C. No. 01023 is *AFFIRMED* with *MODIFICATIONS* as follows: (1) the penalty of *RECLUSIÓN PERPETUA* without the eligibility of parole is hereby imposed in lieu of the death penalty; and (2) accused-appellant is hereby ordered to indemnify the victim in the amount of PhP 75,000 as civil indemnity, PhP 75,000 as moral damages, and PhP 25,000 as exemplary damages.

Costs against petitioner.

SO ORDERED.

[14] G.R. No. 168649, December 6, 2006, 510 SCRA 531, 533.

Puno, C.J. (Chairperson), Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

Quisumbing, J., on leave.

EN BANC

[G.R. No. 174058. December 27, 2007]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARMELITO LAURENTE CAPWA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; DISTINCTION BETWEEN THE DETERMINATION OF PROBABLE CAUSE TO HOLD A PERSON FOR TRIAL AND THE DETERMINATION OF PROBABLE CAUSE TO ISSUE A WARRANT OF ARREST.—** Accused-appellant is mistaken. He confused the determination of probable cause to hold a person for trial with the determination of probable cause to issue a warrant of arrest. The duty to determine the existence of probable cause in order to charge a person for committing a crime rests on the public prosecutor. It is an executive function, the correctness of the exercise of which is a matter that the trial court itself does not and may not be compelled to pass upon. On the other hand, the duty to determine whether probable cause exists to issue a warrant of arrest rests on the judge––a judicial function to decide whether there is a necessity for placing the accused under immediate custody in order not to frustrate the ends of justice.
2. **ID.; ID.; COURTS CAN NOT INTERFERE WITH THE DISCRETION OF THE PUBLIC PROSECUTOR IN**

EVALUATING THE OFFENSE CHARGED AND THEY CANNOT DISMISS THE INFORMATION ON THE GROUND THAT THE EVIDENCE UPON WHICH THE INFORMATION IS BASED IS INADEQUATE.— Courts can not interfere with the discretion of the public prosecutor in evaluating the offense charged. Thus, it cannot dismiss the information on the ground that the evidence upon which the information is based is inadequate. And unless it is shown that the finding of probable cause was made with manifest error, grave abuse of discretion, and prejudice on the part of the public prosecutor, the trial court should respect such determination.

3. ID.; ID.; ALLEGED DEFECTS IN THE INFORMATION WERE NOT SEASONABLY RAISED AND ARE ALREADY DEEMED WAIVED.— Accused-appellant could not raise his objections in the Amended Information for the first time on appeal. It is settled that objections to the amendment of an information should be raised at the time the amendment is made; otherwise, defects not seasonably raised are deemed waived. In this case, accused-appellant never questioned the amendment either before or during trial. It is only when he appealed his conviction that he raised his objection. Hence, appellant's objections are already deemed waived.

4. ID.; EVIDENCE; DISCREPANCIES BETWEEN THE VICTIM'S STATEMENT IN HER *SINUMPAANG SALAYSAY* AND HER TESTIMONY IN COURT MAY BE ATTRIBUTED TO THE INADEQUACY OF THE INVESTIGATOR'S LANGUAGE AND NOT ON THE VICTIM'S ALLEGED LACK OF HONESTY; AFFIDAVITS TAKEN *EX-PARTE* ARE INFERIOR TO TESTIMONY GIVEN IN OPEN COURT.— To sustain a conviction for rape, there must be proof of the penetration of the female organ. In this case, the conviction of accused-appellant was anchored mainly on the testimony of the minor victim, AAA. Accused-appellant, however, questions AAA's credibility, alleging that there was significant discrepancy between her *Sinumpaang Salaysay,* where she said that she was harassed; and her testimony in court, where she said that she was raped. We affirm the credibility of AAA. It is a settled doctrine that the trial court's finding of credibility is conclusive on the appellate court, unless it is shown that certain facts of substance and value have been plainly

overlooked, misunderstood, or misapplied. In this case, accused-appellant has not shown that the RTC and CA findings should be reversed. As correctly observed by the CA, the inaccuracy in AAA's *Sinumpaang Salaysay* may be attributed to the inadequacy of the investigator's language, and not on her alleged lack of honesty. Moreover, AAA's testimony in court clearly proved that accused-appellant had sexually abused her. It must be stressed that affidavits taken *ex parte* are inferior to testimony given in court, the affidavits being invariably incomplete and oftentimes inaccurate due to partial suggestions or want of specific inquiries.

5. **CRIMINAL LAW; RAPE; PROPER PENALTY IN CASE AT BAR; AMOUNT OF MORAL DAMAGES AWARDED, MODIFIED IN KEEPING WITH PREVAILING JURISPRUDENCE.—** As regards the imposition of the proper penalty, we find that the RTC and the CA correctly appreciated the qualifying circumstance of minority. Accused-appellant failed to controvert the proofs presented establishing AAA's minority at the time of the rape. However, in view of the effectivity of Republic Act No. 9346, "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," the death penalty is now reduced to *reclusión perpetua*, without eligibility for parole. Moreover, we note that the trial court awarded PhP 50,000 as moral damages. The award of moral damages is automatically granted without need of further proof because it is assumed that a rape victim has actually suffered moral damages entitling the victim to such award. However, in keeping with prevailing jurisprudence, the award of moral damages should be increased to PhP 75,000.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Ignacio P. Moleta for accused-appellant.

DECISION

VELASCO, JR., *J.*:

This is an automatic review of the May 10, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR. HC No. 00141 entitled *People of the Philippines v. Carmelito Laurente Capwa*, which affirmed the May 21, 2001 Judgment[2] of the Surigao City Regional Trial Court (RTC), Branch 32 in Criminal Case No. 5250. The RTC found accused-appellant Carmelito Capwa guilty of incestuous rape and imposed upon him the death penalty.

Accused-appellant, his wife, and six children lived in a small nipa hut in Sitio Maibay, Barangay Sapa, Claver, Surigao del Norte. On the evening of September 4, 1998, while everyone else was sleeping, appellant entered his children's room and came to where his eldest daughter, AAA,[3] was sleeping. He then started to touch the different parts of AAA's body and placed himself on top of her. He removed AAA's underwear, opened the zipper of his shorts, placed his penis inside her vagina, and repeatedly made pumping motions. AAA could not protest because accused-appellant was carrying a bladed weapon. AAA was only 15 years old then.[4]

On September 11, 1998, AAA left their house and did not return anymore. AAA went to her auntie BBB's house and told her that she was raped by accused-appellant. BBB then accompanied AAA to the Department of Social Welfare and Development Office in Claver, Surigao del Norte.[5]

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[1] *Rollo,* pp. 4-36. Penned by Associate Justice Teresita Dy-Liaco Flores and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Ramon R. Garcia.

[2] CA *rollo,* pp. 38-45. Penned by Judge Diomedes M. Eviota.

[3] Pursuant to RA 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 names of her immediate family members, is withheld, and fictitious initials instead are used to represent her, to protect her privacy.

[4] *Supra* note 1, at 5-6.

[5] *Rollo*, p. 7.

On September 29, 1998, AAA, assisted by a social worker, lodged a complaint against appellant before the police.[6] Thereafter, she was medically examined at the CARAGA Regional Hospital. The medical findings revealed the following: "[AAA's hymen] not intact but has no fresh or sign of recent lacerations; slightly contused minor lips at 4 and 8 o'clock positions."[7]

Consequently, an Information for attempted rape was filed.[8] However, before arraignment, the prosecution filed an Amended Information for consummated qualified rape.[9]

Accused-appellant's defense was denial. He claimed that AAA accused him of raping her only because he scolded and threatened to kill her for refusing to end her relationship with her boyfriend.[10]

On May 21, 2001, the RTC rendered a decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court finds the accused, Carmelito Laurente Capwa, guilty beyond reasonable doubt as a principal of the crime of incestuous rape under Article 266-A, paragraph 1 (a), of the Revised Penal Code, in relation to Article 266-B thereof, and taking into consideration the aggravating/qualifying circumstance that the victim is under eighteen (18) of age and the offender is her own father, hereby imposes upon him the mandatory penalty of death by lethal injection; and to pay the costs.
>
> The accused is ordered to pay to the victim x x x the following sums: [PhP] 75,000.00 as civil indemnity; [PhP] 50,000.00 as moral; damages; and [PhP] 25,000.00 as exemplary damages.
>
> SO ORDERED.[11]

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[6] *Id.*

[7] *Id.* at 9.

[8] *Id.* at 10.

[9] *Id.* at 11.

[10] *Id.* at 18.

[11] CA *rollo,* p. 21.

Due to the penalty imposed, the case was forwarded to this Court for automatic review and was originally docketed as G.R. No. 149709. However, in accordance with the ruling in *People v. Mateo,*[12] this Court, in its September 7, 2004 Resolution, transferred this case to the CA for intermediate review.

On May 10, 2006, the CA affirmed the May 21, 2001 RTC Decision. The appellate court observed that accused-appellant questioned the amendment of the information for the first time during his appeal. In dismissing accused-appellant's arguments, the CA ruled that he failed to seasonably raise his objection to the amendment. It held that his silence at the time the amendment was made is deemed a consent to such amendment.

Moreover, in affirming the guilt of accused-appellant, the CA gave credence to the victim's testimony. It disregarded the discrepancy between the victim's *Sinumpaang Salaysay* and testimony in court, and emphasized that statements made in court are preferred over affidavits made *ex parte.* Also, it found that the victim's allegation of rape was supported by the medical evidence.

On October 3, 2006, this Court required the parties to submit supplemental briefs within 30 days. On November 13, 2006, plaintiff-appellee manifested that it would no longer file a supplemental brief. On the other hand, accused-appellant, to this date, has not yet filed a supplemental brief. Thus, for failure to comply with the October 3, 2006 Resolution, the Court deems as waived the filing of accused-appellant's supplemental brief and considers this case submitted for resolution.

Accused-appellant, in his May 26, 2003 Brief,[13] raised three issues for the appellate court's consideration. These issues are now deemed adopted in this present appeal:

I

> The trial court erred in allowing the amendment of the information to charge [accused-appellant] with consummated rape.

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

[13] CA *rollo*, pp. 99-127.

II

> The trial court gravely erred in finding that the prosecution had proven beyond reasonable doubt [aaccused-appellant's] guilt for rape, whether attempted or consummated.

III

> The trial court gravely erred in imposing the death penalty on [accused-appellant] considering the prosecution's failure to prove the minority of the complainant.[14]

The appeal has no merit.

Accused-appellant questions the propriety of allowing the amendment of the Information from attempted to consummated rape. He claims that the complainant's *Sinumpaang Salaysay* failed to allege facts that justified the conclusion that the act allegedly committed by accused-appellant was consummated rape; thus, the trial judge gravely erred in accepting the Amended Information because no probable cause was shown. Plaintiff-appellee, on the other hand, claims that appellant is estopped from objecting to the amendment of the Information. It avers that objections to the amendment cannot be raised for the first time on appeal.

Accused-appellant is mistaken. He confused the determination of probable cause to hold a person for trial with the determination of probable cause to issue a warrant of arrest. The duty to determine the existence of probable cause in order to charge a person for committing a crime rests on the public prosecutor. It is an executive function, the correctness of the exercise of which is a matter that the trial court itself does not and may not be compelled to pass upon.[15] On the other hand, the duty to determine whether probable cause exists to issue a warrant of arrest rests on the judge––a judicial function to decide whether there is a necessity for placing the accused under immediate

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[14] *Id.* at 106-107. Original in boldface.

[15] *People v. Court of Appeals*, G.R. No. 126005, January 21, 1999, 301 SCRA 475, 483.

custody in order not to frustrate the ends of justice.[16]

Courts can not interfere with the discretion of the public prosecutor in evaluating the offense charged.[17] Thus, it cannot dismiss the information on the ground that the evidence upon which the information is based is inadequate. And unless it is shown that the finding of probable cause was made with manifest error, grave abuse of discretion, and prejudice on the part of the public prosecutor, the trial court should respect such determination.[18]

Moreover, as correctly held by the CA, accused-appellant could not raise his objections in the Amended Information for the first time on appeal. It is settled that objections to the amendment of an information should be raised at the time the amendment is made;[19] otherwise, defects not seasonably raised are deemed waived.[20] In this case, accused-appellant never questioned the amendment either before or during trial. It is only when he appealed his conviction that he raised his objection. Hence, appellant's objections are already deemed waived.

We now rule on the prosecution's sufficiency of evidence. To sustain a conviction for rape, there must be proof of the penetration of the female organ.[21] In this case, the conviction of accused-appellant was anchored mainly on the testimony of the minor victim, AAA. Accused-appellant, however, questions AAA's credibility, alleging that there was significant discrepancy between her *Sinumpaang Salaysay*, where she said that she was harassed; and her testimony in court, where she said that she was raped.

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[16] *Id*. at 487; citing *Ho v. People*, 345 Phil. 597 (1997).

[17] *Santos v. Go*, G.R. No. 156081, October 19, 2005, 473 SCRA 350, 362.

[18] *Supra* note 16, at 489.

[19] *People v. Degamo*, G.R. No. 121211, April 30, 2003, 402 SCRA 133, 142.

[20] *People v. Aparejado*, G.R. No. 139447, July 23, 2002, 385 SCRA 76, 84.

[21] *People v. Pandapatan*, G.R. No. 173050, April 13, 2007.

We affirm the credibility of AAA. It is a settled doctrine that the trial court's finding of credibility is conclusive on the appellate court, unless it is shown that certain facts of substance and value have been plainly overlooked, misunderstood, or misapplied.[22] In this case, accused-appellant has not shown that the RTC and CA findings should be reversed. As correctly observed by the CA, the inaccuracy in AAA's *Sinumpaang Salaysay* may be attributed to the inadequacy of the investigator's language, and not on her alleged lack of honesty. Moreover, AAA's testimony in court clearly proved that accused-appellant had sexually abused her. It must be stressed that affidavits taken *ex parte* are inferior to testimony given in court, the affidavits being invariably incomplete and oftentimes inaccurate due to partial suggestions or want of specific inquiries.[23]

As regards the imposition of the proper penalty, we find that the RTC and the CA correctly appreciated the qualifying circumstance of minority. Accused-appellant failed to controvert the proofs presented establishing AAA's minority at the time of the rape. However, in view of the effectivity of Republic Act No. 9346, "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," the death penalty is now reduced to *reclusión perpetua*, without eligibility for parole.

Moreover, we note that the trial court awarded PhP 50,000 as moral damages. The award of moral damages is automatically granted without need of further proof because it is assumed that a rape victim has actually suffered moral damages entitling the victim to such award.[24] However, in keeping with prevailing jurisprudence, the award of moral damages should be increased to PhP 75,000.[25]

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[22] *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 658.

[23] *People v. dela Cruz*, G.R. No. 131035, February 28, 2003, 398 SCRA 415, 431; citing *People v. Estorco*, G.R. No. 111941, April 27, 2000, 331 SCRA 38, 51.

[24] *People v. Cayabyab*, G.R. No. 167147, August 3, 2005, 465 SCRA 681, 693.

[25] *People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531.

WHEREFORE, we *AFFIRM* the May 10, 2006 Decision of the CA in CA-G.R. CR. HC No. 00141 with *MODIFICATIONS*, as follows:

WHEREFORE, the Court finds the accused, **Carmelito Laurente Capwa,** guilty beyond reasonable doubt as a principal of the crime of incestuous rape under Article 266-A, paragraph 1 (a), of the Revised Penal Code, in relation to Article 266-B thereof, and **is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole;** and to pay the costs.

The accused is ordered to pay to the victim the following sums: **Php 75,000 as civil indemnity**; **PhP 75,000 as moral damages**; and **Php 25,000 as exemplary damages.**

SO ORDERED.

Puno, C.J. (Chairperson), Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

Quisumbing, J., on leave.

SECOND DIVISION

[G.R. No. 174617. December 27, 2007]

ROMULO D. SAN JUAN, *petitioner, vs.* **RICARDO L. CASTRO, in his capacity as City Treasurer of Marikina City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; THE CONDITION THAT "THERE IS NO PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE

OF LAW" IS ABSENT IN CASE AT BAR.— For *mandamus* to lie, petitioner must comply with Section 3 of Rule 65 of the Rules of Court which provides: SEC. 3. *Petition for Mandamus.* — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. x x x In the case at bar, the condition that "there is no other plain, speedy and adequate remedy in the ordinary course of law" is absent.

2. **ID.; ID.; ID.; PETITIONER DID NOT OBSERVE THE REMEDIES AVAILABLE TO HIM AS PROVIDED IN SECTION 195 OF THE LOCAL GOVERNMENT CODE.—** Under Section 195 of the Local Government Code which is quoted immediately below, a taxpayer who disagrees with a tax assessment made by a local treasurer may file a written protest thereof. That petitioner protested in writing against the assessment of tax due and the basis thereof is on record as in fact it was on that account that respondent sent him the above-quoted July 15, 2005 letter which operated as a denial of petitioner's written protest. Petitioner should thus have, following the earlier above-quoted Section 195 of the Local Government Code, either appealed the assessment before the court of competent jurisdiction or paid the tax and then sought a refund. Petitioner did not observe any of these remedies available to him, however. He instead opted to file a petition for *mandamus* to compel respondent to accept payment of transfer tax as computed by him. *Mandamus* lies only to compel an officer to perform a ministerial duty (one which is so clear and specific as to leave no room for the exercise of discretion in its performance) but not a discretionary function (one which by its nature requires the exercise of judgment). Respondent's

argument that "[*m*]*andamus* cannot lie to compel the City Treasurer to accept as full compliance a tax payment which in his reasoning and assessment is deficient and incorrect" is thus persuasive.

APPEARANCES OF COUNSEL

Rodrigo Berenguer and *Guno* for petitioner.
City Legal Office of Marikina for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Romulo D. San Juan (petitioner), registered owner of real properties in Rancho Estate I, Concepcion II, Marikina City covered by Transfer Certificates of Title Nos. 160435, 236658, and 233877,[1] with the consent of his wife, conveyed on August 24, 2004, by Deed of Assignment,[2] the properties to the Saints and Angels Realty Corporation (SARC), then under the process of incorporation, in exchange for 258,434 shares of stock therein with a total par value of ₱2,584,340. Two hundred thousand (200,000) of the said shares of stock with a par value of ₱2,000,000 were placed in San Juan's name while the remaining 58,434 shares of stock with a par value of ₱584,340 were placed in the name of his wife.

On June 24, 2005, the Securities and Exchange Commission approved the Articles of Incorporation of SARC.[3]

Respondent's representative thereafter went to the Office of the Marikina City Treasurer to pay the transfer tax based on the consideration stated in the Deed of Assignment.[4] Ricardo L. Castro (respondent), the City Treasurer, informed him,

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[1] Records, pp. 57-59.

[2] *Id*. at 18-20.

[3] *Id*. at 24-39.

[4] *Id*. at 4.

however, that the tax due is based on the fair market value of the property.[5]

Petitioner in writing protested the basis of the tax due in reply to which respondent wrote:

In your letter, you asserted that there is no monetary consideration involved in the afore-mentioned transfer of the properties inasmuch as what you received as transferor thereof, are shares of stock of said realty company in exchange of the properties transferred.

In reply, we wish to inform you that in cases of transfer of real property not involving monetary consideration, it is certain that the fair market value or zonal value of the property is the basis of the tax rate. As provided for under the Local [G]overnment Code, fair market value is defined as the price at which a property may be sold by a seller who is not compelled to sell and bought by the buyer who is not compelled to buy. Hence, the preliminary computation based on the fair market value of the property made by the revenue collector is correct.[6] (Underscoring supplied)

Petitioner thus filed before the Regional Trial Court (RTC) of Marikina City a Petition[7] for *mandamus* and damages against respondent in his capacity as Marikina City Treasurer praying that respondent be compelled to "perform a ministerial duty, that is, to accept the payment of transfer tax based on the actual consideration of the transfer/assignment."[8]

Citing Section 135 of the Local Government Code which provides:

Sec. 135. Tax on Transfer of Real Property Ownership. (a) The province [*or the city pursuant to Section 151 of the Local Government Code*] may impose a tax on the sale, donation, barter, or on any other mode of transferring ownership or title of real property at the rate of not more than fifty percent (50%) of the one percent (1%) of the **total consideration involved** in the acquisition of the

[5] *Id*. at 4, 87, 97-104.

[6] *Id*. at 14.

[7] *Id*. at 1-13.

[8] *Id*. at 5.

property or the fair market value in case the monetary consideration involved in the transfer is not substantial, whichever is higher. The sale, transfer or other disposition of real property pursuant to R.A. 6657 shall be exempt from this tax. (Emphasis supplied),

petitioner contended:

It is beyond dispute that under the abovementioned provision of the law, transfer tax is computed on the total consideration involved. The intention of the law is not to automatically apply the "whichever is higher" rule. Clearly, from a reading of the above-quoted provision, **it is only when there is a monetary consideration involved and the monetary consideration is not substantial that the tax rate is based on the higher fair market value** . . .[9] (Emphasis, underscoring, and italics in original)

In his Comment on petitioner's petition before the RTC, respondent stated:

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"[M]onetary consideration" as used in Section 135 of R.A. 7160 does not only pertain to the price or money involved but likewise, as in the case of donations or barters, this refers to the value or monetary equivalent of what is received by the transferor.

In the case at hand, the monetary consideration involved is the par value of shares of stocks acquired by the petitioner in exchange for his real properties. As admitted by the petitioner himself, the fair market value of the properties transferred is more than seven million pesos. It is undeniable therefore that the actual consideration for the assignment in the amount of two million five hundred eighty four thousand and three hundred forty pesos (P2,584,340.00) is far less substantial than the aforesaid fair market value. Thus, the City Treasurer is constrained to assess the transfer tax on the higher base.[10]

xxx xxx xxx

The respondent did not refuse to accept payment, it is the petitioner that refuses to pay the correct amount of transfer tax.

xxx xxx xxx

[9] *Id.* at 6-7.

[10] *Id.* at 88.

The petitioner did not exhaust the available administrative remedies. Under the Local Government Code, the petitioner should have filed an appeal on the tax assessment and made a payment under protest pending the resolution thereof. The issues raised in the case therein, being matters of facts and law, the petitioner should have availed of the aforesaid relief before resorting to a court action. x x x

xxx xxx xxx

The subject of this Petition is the performance of a duty which is not ministerial in character. Assessment of tax liabilities or obligations and the corresponding duty to collect the same involves a degree of discretion. It is erroneous to assume that the City Treasurer is powerless to ascertain if the payment of the tax obligation is proper or correct.

xxx xxx xxx

Mandamus cannot lie to compel the City Treasurer to accept as full compliance a tax payment which in his reasoning and assessment is deficient and incorrect.[11] (Emphasis in the original)

Finding for respondent, Branch 272 of the Marikina City RTC dismissed the petition by Decision of August 22, 2006.

Hence, the present Petition for Review on *Certiorari*,[12] petitioner faulting the RTC with having committed serious errors of law in dismissing the petition for *mandamus* with damages.[13]

For *mandamus* to lie, petitioner must comply with Section 3 of Rule 65 of the Rules of Court which provides:

SEC. 3. *Petition for Mandamus.* — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, <u>and there is no other plain, speedy and adequate remedy in the ordinary course of law</u>, the person aggrieved thereby may file a verified petition

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[11] *Id.* at 89-90.

[12] *Rollo*, pp. 3-19.

[13] *Id.* at 8.

in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

xxx xxx xxx (Underscoring supplied)

In the case at bar, the condition that "there is no other plain, speedy and adequate remedy in the ordinary course of law" is absent.

Under Section 195 of the Local Government Code which is quoted immediately below, a taxpayer who disagrees with a tax assessment made by a local treasurer may file a written protest thereof:[14]

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[14] Vide Ernesto D. Acosta and Jose C. Vitug, *TAX LAW AND JURISPRUDENCE*, 2nd edition. Rex Book Store: Manila, Philippines, 2000, pp. 463-464:

When the correct tax, fee or charge is not paid, the local treasurer shall issue a notice of assessment within the applicable prescriptive period xxx stating the nature of the levy, the amount of deficiency, the surcharges, interests and penalties. The taxpayer may contest the assessment or pay the tax, fee or charge, either of which if done before the lapse of sixty (60) days from receipt of the assessment, would prevent such assessment from becoming final and executory thereby allow the herein-below described remedies to be pursued.

xxx xxx xxx

Within sixty (60) days, from receipt of the assessment, the taxpayer may file a *written protest* with the local treasurer contesting the assessment; if not thus done, the assessment becomes final and executory. x x x

xxx xxx xxx

The taxpayer may, instead of filing a written protest, opt to pay the tax, fee or charge and then to seek a refund thereof within the 2-year statute of limitation. The payment, if an assessment is therefore issued, must be made before the lapse of the 6-day period from receipt thereof; otherwise, the assessment becomes final and executory and it may no longer thus be disputed. The written claim for refund itself may be filed with the court of competent jurisdiction within two years from the payment of the tax, fee or charge, or from the date the taxpayer is entitled to a refund or credit. The case shall not, however, be *maintained* "until a written claim for refund or credit has been filed with the local treasurer." (Italics in the original)

SECTION 195. *Protest of Assessment.* – When the local treasurer or his duly authorized representative finds that the correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day (60) period prescribed herein within which to appeal with the court of competent jurisdiction, otherwise the assessment becomes conclusive and unappealable.** (Emphasis and underscoring supplied)

That petitioner protested in writing against the assessment of tax due and the basis thereof is on record as in fact it was on that account that respondent sent him the above-quoted July 15, 2005 letter which operated as a denial of petitioner's written protest.

Petitioner should thus have, following the earlier above-quoted Section 195 of the Local Government Code, either appealed the assessment before the court of competent jurisdiction[15] or paid the tax and then sought a refund.[16]

Petitioner did not observe any of these remedies available to him, however. He instead opted to file a petition for *mandamus* to compel respondent to accept payment of transfer tax as computed by him.

Mandamus lies only to compel an officer to perform a ministerial duty (one which is so clear and specific as to leave no room for

[15] *Vide Yamane v. BA Lepanto Condominium Corp.*, G.R. No. 154993, October 25, 2005, 474 SCRA 258, 267-269.

[16] *Vide* note 14.

the exercise of discretion in its performance) but not a discretionary function (one which by its nature requires the exercise of judgment).[17] Respondent's argument that "[*m*]*andamus* cannot lie to compel the City Treasurer to accept as full compliance a tax payment which in his reasoning and assessment is deficient and incorrect" is thus persuasive.

WHEREFORE, the petition is *DENIED*.

Costs against petitioner, Romulo D. San Juan.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. MTJ-03-1483. December 28, 2007]

RICHARD SI *y* TIAN, *complainant, vs.* **JUDGE ELPIDIO R. CALIS,** *respondent.*

SYLLABUS

JUDICIAL ETHICS; JUDGES; RESPONDENT JUDGE FAILED TO FULFILL HIS DUTY TO KEEP HIMSELF ABREAST OF THE LAW; IGNORANCE OF THE LAW ON THE PART OF THE JUDGES IS THE MAINSPRING OF INJUSTICE.— The Court agrees with the finding of the Court Administrator. Respondent Judge in fact admitted in his Comment that he "might have overlooked" the pertinent rule. The Code of Judicial Conduct provides: Rule 1.01 – A Judge should be the embodiment of competence, integrity and independence. Rule 3.01 – A Judge shall be faithful to the law

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[17] *Vide Cariño v. Capulong*, G.R. No. 97203, May 26, 1993, 222 SCRA 593, 602.

and maintain professional competence. It is the duty of judges to keep themselves abreast of the law and the rules of court and the latest jurisprudence, for ignorance of the law on their part is the mainspring of injustice. Respondent Judge failed to fulfill this duty. An oversight of a new provision of the law or the rules is not a valid excuse from performing this bounden duty.

D E C I S I O N

AZCUNA, *J.*:

This is an administrative complaint against a Municipal Trial Court Judge.

On July 26, 2002, Richard Si *y* Tian filed a Complaint against Judge Elpidio R. Calis, Municipal Trial Court Judge of Sta. Cruz, Laguna, for alleged ignorance of the law and manifest bias and partiality relative to Criminal Case No. 30851 entitled "*People of the Philippines v. Richard Si y Tian*," for Reckless Imprudence Resulting in Damage to Property.

Stating that he is the accused in the aforementioned criminal case, complainant alleged that on March 26, 2002 at around 3:45 p.m., an accident occurred in front of the Landbank of the Philippines Building in Sta. Cruz, Laguna, when the car he was driving, a Toyota Corolla Model 1992 with Plate No. TEM-216, bumped the back of a Nissan Sentra car Model 1998 with Plate No. PRX-231 being rented by the complaining witness Atty. Ceriaco A. Sumaya, a close friend of respondent Judge. Atty. Sumaya, complainant further alleged, jacked up the minimal damage to his car by adding a charge for the repair/replacement of the damaged front windshield.

Notwithstanding the fact that the offense charged carried only the penalty of a fine, respondent Judge issued a warrant for complainant's arrest and fixed the bail for his provisional liberty at ₱21,200. Complainant invokes Sec. 6 (c), Rule 112 of the Revised Rules of Criminal Procedure which states:

(c) *When warrant of arrest not necessary*. – A warrant of arrest shall not issue if the accused is already under detention pursuant to a warrant issued by the Municipal Trial Court in accordance with paragraph (b) of this section, or if the complaint or information was filed pursuant to Section 7 of this Rule or is for an offense penalized by fine only. The court then shall proceed in the exercise of its original jurisdiction.

Respondent Judge filed his Comment dated September 5, 2002, denying that Atty. Sumaya was his friend and stating that he knew him only as an old practitioner who used to appear in the courts of Sta. Cruz, Laguna. He cited a criminal case he decided against a relative of said lawyer.

On the issuance of the warrant of arrest, respondent Judge maintained that it was in accordance with law and jurisprudence. He added that the matter was merely an oversight on his part and complainant should have raised an objection through a motion to quash and having failed to do so is deemed to have waived the same.

The Court Administrator[1] found the complaint meritorious with respect to the issuance of the warrant of arrest for an offense that is punishable with a fine only, contrary to Sec. 6 (c), Rule 112 of the Revised Rules of Criminal Procedure.

The Court agrees with the finding of the Court Administrator. Respondent Judge in fact admitted in his Comment that he "might have overlooked" the pertinent rule.

The Code of Judicial Conduct provides:

Rule 1.01 – A Judge should be the embodiment of competence, integrity and independence.

Rule 3.01 – A Judge shall be faithful to the law and maintain professional competence.

It is the duty of judges to keep themselves abreast of the law and the rules of court and the latest jurisprudence, for ignorance

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[1] The Honorable Presbitero J. Velasco, Jr., now a Member of this Court. See Reports and Recommendations dated February 13, 2003 and July 5, 2004.

of the law on their part is the mainspring of injustice. Respondent Judge failed to fulfill this duty. An oversight of a new provision of the law or the rules is not a valid excuse from performing this bounden duty.

WHEREFORE, respondent Judge Elpidio R. Calis is hereby found *GUILTY* of ignorance of the law and meted a *FINE* of Five Thousand Pesos (₱5,000.00) with a *STERN WARNING* that a repetition thereof will be more severely dealt with.

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173231. December 28, 2007]

RUBEN L. ANDRADA, BERNALDO V. DELOS SANTOS, JOVEN M. PABUSTAN, FILAMER ALFONSO, VICENTE A. MANTALA, JR., HARVEY D. CAYETANO, and JOVENCIO L. POBLETE, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, SUBIC LEGEND RESORTS AND CASINO, INC., and/or MR. HWA PUAY, MS. FLORDELIZA MARIA REYES RAYEL, and its CORPORATE OFFICERS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; THE NATIONAL LABOR RELATIONS COMMISSION DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN

IT DECIDED THE CASE ON THE MERITS INSTEAD OF DISMISSING THE APPEAL; THE COMMISSION IS NOT BOUND BY THE STRICT TECHNICAL RULES OF PROCEDURE.— The CA correctly held in this case that Legend perfected its appeal, albeit, through a new counsel. It has long been settled that the NLRC is not bound by the strict technical rules of procedure of the Rules of Court. The CA had correctly held that as a general rule, our policy towards invocation of the right to appeal has been one of liberality, since it is an essential part of the judicial system. In line with this principle, courts have been advised to proceed with caution so as not to deprive a party of the right to appeal. Every party litigant should be given the amplest opportunity for the proper and just disposition of his/her cause freed from the constraints of technicalities. Thus, the NLRC did not commit grave abuse of discretion when it decided the case on the merits instead of dismissing the appeal on a mere technicality.

2. ID.; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; RETRENCHMENT AND REDUNDANCY; SUBJECT TO STRICT REQUIREMENTS UNDER ARTICLE 283 OF THE LABOR CODE.— A company's exercise of its management prerogatives is not absolute. It cannot exercise its prerogative in a cruel, repressive, or despotic manner. We held in *F.F. Marine Corp. v. NLRC*: This Court is not oblivious of the significant role played by the corporate sector in the country's economic and social progress. Implicit in turn in the success of the corporate form in doing business is the ethos of business autonomy which allows freedom of business determination with minimal governmental intrusion to ensure economic independence and development in terms defined by businessmen. Yet, this vast expanse of management choices cannot be an unbridled prerogative that can rise above the constitutional protection to labor. Employment is not merely a lifestyle choice to stave off boredom. Employment to the common man is his very life and blood, which must be protected against concocted causes to legitimize an otherwise irregular termination of employment. Imagined or undocumented business losses present the least propitious scenario to justify retrenchment. Under the Labor Code, retrenchment and redundancy are authorized causes for separation from service. However, to protect labor, dismissals due to retrenchment or

redundancy are subject to strict requirements under Article 283 of the Labor Code.

3. ID.; ID.; ID.; ID.; RETRENCHMENT HELD ILLEGAL FOR FAILURE TO ESTABLISH BASIS; CASE AT BAR.— Retrenchment is an exercise of management's prerogative to terminate the employment of its employees *-en masse*, to either minimize or prevent losses, or when the company is about to close or cease operations for causes not due to business losses. In *Lopez Sugar Corporation v. Federation of Free Workers*, this Court had the opportunity to lay down the following standards that a company must meet to justify retrenchment to prevent abuse by employers: *Firstly*, the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bona fide nature of retrenchment would appear to be seriously in question. *Secondly*, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, *thirdly*, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, *i.e.*, cut other costs other than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means – *e.g.*, reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, *etc.* – have been tried and found wanting. *Lastly*, but certainly not the least important, alleged losses if already realized, and the expected imminent

losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.In *Ariola v. Philex Mining Corporation*, the Court summarized the requirements for retrenchment, as follows: Thus, the requirements for retrenchment are: (1) it is undertaken to prevent losses, which are not merely *de minimis*, but substantial, serious, actual, and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) the employer serves written notice both to the employees and the DOLE at least one month prior to the intended date of retrenchment; and (3) the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher. The Court later added the requirements that the employer must use fair and reasonable criteria in ascertaining who would be dismissed and x x x retained among the employees and that the retrenchment must be undertaken in good faith. Except for the written notice to the affected employees and the DOLE, non-compliance with any of these requirements render[s] the retrenchment illegal. In the present case, Legend glaringly failed to show its financial condition prior to and at the time it enforced its retrenchment program. It failed to submit audited financial statements regarding its alleged financial losses. Though Legend complied with the notice requirements and the payment of separation benefits to the retrenched employees, its failure to establish the basis for the retrenchment of its employees constrains us to declare the retrenchment illegal.

4. ID.; ID.; ID.; ID.; RESPONDENT FAILED TO ESTABLISH REDUNDANCY; RETRENCHMENT AND REDUNDANCY ARE TWO DIFFERENT CONCEPTS AND ARE NOT SYNONYMOUS AND THEREFORE SHOULD NOT BE USED INTERCHANGEABLY.— We rule that Legend failed to establish redundancy. Retrenchment and redundancy are two different concepts; they are not synonymous and therefore should not be used interchangeably. This Court explained in detail the difference between the two concepts in *Sebuguero v. NLRC*: Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. A position is redundant where

it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as over hiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. Retrenchment, on the other hand, is used interchangeably with the term "lay-off." It is the termination of employment initiated by the employer through no fault of the employee's and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. Simply put, it is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court. Thus, simply put, redundancy exists when the number of employees is in excess of what is reasonably necessary to operate the business. The declaration of redundant positions is a management prerogative. The determination that the employee's services are no longer necessary or sustainable and therefore properly terminable is an exercise of business judgment by the employer. The wisdom or soundness of this judgment is not subject to the discretionary review of the Labor Arbiter and NLRC.

5. **ID.; ID.; ID.; ID.; IT IS NOT ENOUGH FOR A COMPANY TO MERELY DECLARE THAT POSITIONS BECOME REDUNDANT; IT MUST PRODUCE ADEQUATE PROOF OF SUCH REDUNDANCY TO JUSTIFY DISMISSAL OF ITS EMPLOYEES.—** It is however not enough for a company to merely declare that positions have become redundant. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees. In *Panlilio v. NLRC*, we said that the following evidence may be proffered to substantiate redundancy: "the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring." In another case, it was held that the company sufficiently established the fact of redundancy through "affidavits executed by the officers of the respondent PLDT,

explaining the reasons and necessities for the implementation of the redundancy program." According to the CA, Legend proved the existence of redundancy when it submitted a status review of its project division where it reported that the 78-man personnel exceeded the needs of the company. The report further stated that there was duplication of functions and positions, or an over supply of employees, especially among architects, engineers, draftsmen, and interior designers.

6. **ID.; ID.; ID.; ID.; BASIS FOR RETRENCHMENT AND PROOF OF REDUNDANCY WAS NOT ESTABLISHED BY SUBSTANTIAL EVIDENCE.—** The pieces of evidence submitted by Legend are mere allegations and conclusions not supported by other evidence. Legend did not even bother to illustrate or explain in detail how and why it considered petitioners' positions superfluous or unnecessary. The CA puts too much weight on petitioners' failure to refute Legend's allegations contained in the document it submitted. However, it must be remembered that the employer bears the burden of proving the cause or causes for termination. Its failure to do so would necessarily lead to a judgment of illegal dismissal. Again, it bears stressing that substantial evidence is the question of evidence required to establish a fact in cases before administrative and quasi-judicial bodies. Substantial evidence, as amply explained in numerous cases, is that amount of "relevant evidence which a reasonable mind might accept as adequate to support a conclusion." Thus, in the same way, we held that the basis for retrenchment was not established by substantial evidence, we also rule that Legend failed to establish by the same quantum of proof the fact of redundancy; hence, petitioners' termination from employment was illegal.

APPEARANCES OF COUNSEL

Estanislao L. Cesa, Jr. Marc Raymund S. Cesa and *Maria Rosario S. Cesa* for petitioners.

Espinosa Aldea-Espinosa & Associates for respondents.

DECISION

VELASCO, JR., *J.*:

To provide full protection to labor, the employers' prerogative to bring down labor costs through retrenchment must be exercised carefully and essentially as a measure of last resort. So should managements' prerogative to declare the employees' services redundant not be used a weapon to frustrate labor. This case brings to fore the continuing labor-management struggle for mutual survival.

Petitioners Ruben Andrada, Jovencio Poblete, Filamer Alfonso, Harvey Cayetano, Vicente Mantala, Jr., Bernaldo delos Santos, and Joven Pabustan were hired on various dates from 1995 up to 1997 and worked as architects, draftsmen, operators, engineers, and surveyors in the Subic Legend Resorts and Casino, Inc. (Legend) Project Development Division on various projects. Hwa Puay, Flordeliza Maria Reyes Rayel, and other corporate officers are impleaded in this case in their official capacities as officers of Legend.

On January 6, 1998, Legend sent notice to the Department of Labor and Employment of its intention to retrench and terminate the employment of thirty-four (34) of its employees, which include petitioners, in the Project Development Division. Legend explained that it would be retrenching its employees on a last-in-first-out basis on the strength of the updated status report of its Project Development Division, as follows: (1) shelving of the condotel project until economic conditions in the Philippines improve; (2) completion of the temporary casino in Cubi by mid-February 1998; (3) subcontracting the super structure work of Grand Legend to a third party; (4) completion of most of the rectification work at the Legenda Hotel; (5) completion of the temporary casino in Cubi; and (6) abolition of the Personnel and Administrative Department of the Project Development Division and transfer of its function back to Legend's Human Resources Department.

The following day, on January 7, 1998, Legend sent the 34 employees their respective notices of retrenchment, stating the same reasons for their retrenchment. It also offered the employees the following options, to wit:

> 1. Temporary retrenchment/lay-off for a period not to exceed six months within which we shall explore your possible reassignment to other departments or affiliates, after six months and redeployment and/or matching are unsuccessful, permanent retrenchment takes place and separation pay is released.
>
> 2. Permanent retrenchment and payment of separation pay and other benefits after the thirty (30) days notice has lapsed; or
>
> 3. Immediate retrenchment and payment of separation pay, benefits and one month's salary in lieu of notice to allow you to look for other employment opportunities.[1]

Legend gave said employees a period of one week or until January 14, 1998 to choose their option, with option number 2 (permanent retrenchment) as the default choice in case they failed to express their preferences. After the employees made their choices, they also expressed their reservation that their choice should not be deemed as waiver of their rights granted under the Labor Code or their right to question the validity of their retrenchment should their separation benefits not be settled by January 30, 1998.

Curiously, on the same day, the Labor and Employment Center of the Subic Bay Metropolitan Authority advertised that Legend International Resorts, Inc. was in need of employees for positions similar to those vacated by petitioners.[2]

Afterwards, on February 6, 1998, Legend informed the retrenched employees of their permanent retrenchment and/or their options. Legend paid the retrenched employees their salaries up to February 6, 1998, separation pay, pro-rated 13th-month

[1] *Rollo*, pp. 52-53.

[2] *Id*. at 67-69.

pay, *ex-gratia*, meal allowance, unused vacation leave credits, and tax refund. Petitioners, in turn, signed quitclaims but reserved their right to sue Legend.

Subsequently, on March 3, 1998, 14[3] of the 34 retrenched employees filed before the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) in San Fernando City, Pampanga, a complaint for illegal dismissal and money claims for the payment of their share in the service charges, unused leaves, and their salaries for the unexpired portion of their respective employment contracts, damages, and attorney's fees against Legend and its officials, Hwa Puay and Flordeliza Maria Reyes Rayel. The complaint was docketed as NLRC RAB III-03-9080-98.

Before the Labor Arbiter, complainants alleged that they were illegally dismissed because Legend, after giving retrenchment as the reason for their termination, created new positions similar to those they had just vacated. Legend, on the other hand, invoked management prerogative when it terminated the retrenched employees; and said that complainants voluntarily signed quitclaims so that they were already barred from suing Legend.

On February 7, 2000, the Labor Arbiter rendered a Decision, the *fallo* of which reads:

WHEREFORE, premises considered, respondents are hereby adjudged guilty of Illegal dismissal, and they are ordered to immediately reinstate the complainants without loss of seniority rights and to pay to them the following:

1. Ruben Andrada:

   a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱14,300.00 and the same amount every month thereafter until reinstated ---- ₱343,200.00

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[3] Ruben Andrada, Bernaldo delos Santos, Carlos R. Mananquil, Darryl Bautista, Jovencio Poblete, Renato Pangilinan, Dario Rapada, Marvin Samaniego, Joven Pabustan, Harvey Cayetano, Milton Maravilla, Adrian Camacho, Vicente Mantala, Jr., and Filamer Alfonso.

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ----- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ----- ₱28,600.00

d) 14th month pay for 2 years (1998 to 1999) ---- ₱28,600.00

e) Damages-- ₱100,000.00

T O T A L -------------------------- ₱519,600.00

2. Darryl Bautista:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱11,200.00 and the same amount every month thereafter until reinstated ----- ₱268,800.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ----- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ----- ₱22,400.00

d) 14th month pay for 2 years (1998 to 1999) ----- ₱22,400.00

T O T A L --------------------------- ₱332,800.00

3. Jovencio Poblete

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱12,000.00 and the same amount every month thereafter until reinstated ----- ₱288,000.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ----- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ------ ₱24,000.00

d) 14th month pay for 2 years (1998 to 1999) ------ ₱24,000.00

e) Damages -------------------------------------- ₱100,000.00

T O T A L --------------------------- ₱455,200.00

4) Renato Pangilinan:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of P17,000.00 and the same amount every month thereafter until reinstated -------- ₱408,000.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ---------- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ------ ₱34,000.00

d) 14th month pay for 2 years (1998 to 1999) ------ ₱34,000.00

T O T A L -------------------------- ₱495,200.00

5) Dario Rapada:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱10,000.00 and the same amount every month thereafter until reinstated -------- ₱240,000.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ---------- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ------ ₱20,000.00

d) 14th month pay for 2 years (1998 to 1999) ------ ₱20,000.00

T O T A L --------------------------- ₱299,200.00

6) Adrian Camacho:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱7,000.00 and the same amount every month thereafter until reinstated -------- ₱168,000.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ---------- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ------ ₱14,000.00

d) 14th month pay for 2 years (1998 to 1999) ------ ₱14,000.00

T O T A L -------------------------- ₱215,200.00

7) Marvin Samaniego:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱7,000.00 and the same amount every month thereafter until reinstated -------- ₱168,000.00

b) Meal allowance at P800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ---------- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ------ ₱14,000.00

d) 14th month pay for 2 years (1998 to 1999) ------ ₱14,000.00

T O T A L ------------------------------ ₱215,200.00

8) Filamer Alfonso:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱10,000.00 and the same amount every month thereafter until reinstated -------- ₱240,000.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ---------- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ------ ₱20,000.00

d) 14th month pay for 2 years (1998 to 1999) ------ ₱20,000.00

T O T A L ------------------------------ ₱299,200.00

9) Milton Maravilla:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱13,000.00 and the same amount every month thereafter until reinstated -------- ₱312,000.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ---------- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ------ ₱26,000.00

d) 14th month pay for 2 years (1998 to 1999) ------ ₱26,000.00

e) Damages -- ₱100,000.00

T O T A L ------------------------------ ₱483,200.00

10) Harvey Cayetano:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱8,000.00 and the same amount every month thereafter until reinstated -------- ₱192,000.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ---------- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999)------- ₱16,000.00

d) 14th month pay for 2 years (1998 to 1999) ------ ₱16,000.00

e) Damages -- ₱100,000.00

T O T A L ------------------------------ ₱343,200.00

11) Vicente Mantala, Jr.:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱5,500.00 and the same amount every month thereafter until reinstated -------- ₱132,000.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ---------- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ------ ₱11,000.00

d) 14th month pay for 2 years (1998 to 1999) ------ ₱11,000.00

e) Damages -- ₱100,000.00

T O T A L------------------------------ ₱273,200.00

12) Carlos Mananquil:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱30,000.00 and the same amount every month thereafter until reinstated -------- ₱720,000.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ---------- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ------ ₱60,000.00

d) 14th month pay for 2 years (1998 to 1999) -------₱60,000.00

e) Damages -- ₱100,000.00

T O T A L ------------------------------ ₱959,200.00

13) Bernaldo delos Santos:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱18,500.00 and the same amount every month thereafter until reinstated -------- ₱444,000.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ---------- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ------ ₱37,000.00

d) 14th month pay for 2 years (1998 to 1999) ------ ₱37,000.00

e) Damages -- ₱100,000.00

f) Service charge at P1,500.00 a month from May 15, 1996 to February 6, 2000 (44 months) and every month thereafter until reinstated ------------------------------------ ₱72,000.00

T O T A L ------------------------------- ₱709,200.00

14) Joven Pabustan:

a) Back salaries from February 6, 1998 to February 6, 2000 (24 months) in the sum of ₱10,000.00 and the same amount every month thereafter until reinstated -------- ₱240,000.00

b) Meal allowance at ₱800.00 a month from February 6, 1998 to February 6, 2000 (24 months) and the same amount every month thereafter until reinstated ---------- ₱19,200.00

c) 13th month pay for 2 years (1998 to 1999) ------ ₱20,000.00

d) 14th month pay for 2 years (1998 to 1999) ------ ₱20,000.00

e) Damages -- ₱100,000.00

T O T A L ------------------------------- ₱399,200.00

The respondents are further ordered to pay to the complainants attorney's fees equivalent to ten (10%) percent of the total award due the complainants. The payment of back salary, 13th month pay and 14th month pay, meal allowance and service charge shall be computed up to the date of the finality of this decision.

SO ORDERED.[4]

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[4] *Rollo*, pp. 87-94.

The Labor Arbiter stated that the documents submitted by Legend to justify the retrenchment of its personnel were insufficient because the documents failed to show that Legend was suffering from actual losses or that there was redundancy in the positions occupied by petitioners. The Labor Arbiter also attributed bad faith on the part of Legend when it advertised openings for positions similar to those occupied by the retrenched employees at the same time the retrenchment program was being implemented.

The Labor Arbiter gave no evidentiary weight to complainants' quitclaims because, according to the Labor Arbiter, these quitclaims were part of the clearance forms prepared and imposed by Legend on the retrenched employees before their clearances could be approved. The Labor Arbiter also found that in the conference held on January 28, 1998 between complainants and Legend's management, complainants inscribed their reservations at the bottom of their clearance forms, stating that they would accept Legend's offer on the condition that they reserved the option to later file their respective claims with the NLRC.

With regard to the issue of damages, the Labor Arbiter observed that complainants, who were licensed professionals, had sufficiently proven that they suffered social humiliation and mental trauma because their dismissal was clearly attended by bad faith and contrary to laws and public policy. On account of Legend's bad faith, the Labor Arbiter awarded attorney's fees equivalent to ten percent (10%) of the total amount awarded to complainants.

On April 7, 2000, Legend filed an appeal with the NLRC. Notably, its new counsel did not submit his formal substitution as counsel. Complainants consequently filed their Memorandum on Appeal with a prayer to declare the Labor Arbiter's decision final. They aver that since there was no formal substitution of counsel, Legend's new counsel had no personality to file an appeal; and because no appeal was perfected within the reglementary period, the Labor Arbiter's decision should be deemed final and executory.

After three years, the NLRC rendered its June 23, 2003 Decision which reversed the Labor Arbiter. The NLRC held that the Labor Arbiter erred when he failed to consider the numerous documents presented and submitted by Legend to prove that it was suffering from actual losses, and that there was redundancy in the work of the retrenched employees. The NLRC also gave credence to Legend's claim that it was Yap Yuen Khong, and not Legend, who asked for Subic Bay Metropolitan Authority's help in recruiting personnel for Gaehin International Inc. (Gaehin) as the sub-contractor for the construction of the Grand Legenda Hotel and Casino. The NLRC observed that Gaehin was an entity distinct and separate from Legend.

With regard to the Labor Arbiter's award of payment of service charges to Bernaldo delos Santos and Carlos Mananquil, the NLRC held that the award was improper since delos Santos and Mananquil's employment contracts did not provide for the payment of service charges. According to the NLRC, though they previously received this benefit, it was because of an error in the administrative system; and since the benefits were paid by mistake, these did not ripen into a company practice.

The NLRC likewise held that the Labor Arbiter erred when it awarded the retrenched employees 14th month pay, or *ex-gratia* payment. The NLRC explained that this was a one-time bonus for the year 1997 given for the employees' hard work and contribution for the year 1997. Further, no evidence suggested that this was done in the past or subsequent years.

The NLRC also held that Legend fully and properly complied with the 30-day notice requirements to the DOLE and to the retrenched employees.

The NLRC Decision's *fallo* reads:

WHEREFORE, premises considered, the assailed decision is hereby reversed and set aside. Respondents are adjudged not guilty of illegal dismissal. The order of reinstatement as well as all monetary awards are deleted from the decision.

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[5] *Id*. at 118.

SO ORDERED.[5]

Complainants moved for the reconsideration of the NLRC's Decision, but their motion was denied by the NLRC. Consequently, 10[6] out of the 14[7] original complainants filed a Petition for *Certiorari* with the Court of Appeals (CA), docketed as CA-G.R. SP No. 81701. This petition was, however, denied by the CA for lack of merit in its April 28, 2006 Decision.[8]

The CA held that the retrenched employees were validly dismissed from employment due to redundancy and not retrenchment. The CA ratiocinated that Legend had validly terminated the employment of its employees since it had proven that complainants' positions were superfluous and that there was an oversupply of employees; more than what its projects needed.

On the issue of Legend's recruitment of new personnel after terminating complainants' employment, the CA held that the NLRC had sufficiently explained that it was not Legend but Gaehin, through Mr. Khong, which was recruiting for personnel.

Aggrieved by the CA Decision, seven[9] out of the 14 original complainants filed the present petition. They raise the following issues:

1. Did Legend perfect its appeal before the NLRC, though it had not formally and properly substituted its counsel?
2. Were complainants illegally dismissed? Corrollarily, was there a valid retrenchment? Or, did Legend prove the existence of redundancy in its Project Development Division?

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[6] Ruben Andrada, Bernaldo delos Santos, Carlos Mananquil, Jovencio Poblete, Dario Rapada, Joven Pabustan, Harvey Cayetano, Milton Maravilla, Vicente Mantala, Jr., and Filamer Alfonso.

[7] Darryl Bautista, Renato Pangilinan, Marvin Samaniego, and Adrian Camacho were unavailable at the time the petition for *certiorari* was filed before the CA.

[8] *Rollo*, pp. 50-64. Penned by Presiding Justice Ruben T. Reyes (now a member of this Court) and concurred in by Associate Justices Rebecca de Guia-Salvador and Aurora Santiago-Lagman.

[9] Ruben Andrada, Bernaldo delos Santos, Jovencio Poblete, Joven Pabustan, Harvey Cayetano, Vicente Mantala, Jr., and Filamer Alfonso.

Petitioners argue that the Labor Arbiter's decision should be deemed final and executory since Legend failed to formally substitute its counsel, and, thus, failed to perfect its appeal.

Legend, on the other hand, relies heavily on the CA's ruling, which held that lack of proper substitution is not a sufficient ground to arrive at a finding of grave abuse of discretion. Even without substitution, private respondent's new lawyer could still be considered a collaborating counsel. A party may have two or more lawyers working in collaboration in a given litigation.

We rule for Legend.

The CA correctly held in this case that Legend perfected its appeal, albeit, through a new counsel. It has long been settled that the NLRC is not bound by the strict technical rules of procedure of the Rules of Court. The CA had correctly held that as a general rule, our policy towards invocation of the right to appeal has been one of liberality, since it is an essential part of the judicial system. In line with this principle, courts have been advised to proceed with caution so as not to deprive a party of the right to appeal. Every party litigant should be given the amplest opportunity for the proper and just disposition of his/her cause freed from the constraints of technicalities. Thus, the NLRC did not commit grave abuse of discretion when it decided the case on the merits instead of dismissing the appeal on a mere technicality.

With regard to the issue of the legality of the dismissals, petitioners argue that Legend failed to prove the legal and factual existence of the cause for dismissal, and that it failed to comply with the requirements for the implementation of retrenchment. Petitioners further argue that the CA abused its discretion in ruling that the employees were validly dismissed not because of retrenchment but for redundancy. Legend, in contrast, relies on its management prerogative to justify the termination of petitioners' employment. Legend also relies on the CA's ruling that Legend sufficiently proved the existence of redundancy that justified petitioners' dismissal from service.

On this issue, we rule for petitioners.

A company's exercise of its management prerogatives is not absolute. It cannot exercise its prerogative in a cruel, repressive, or despotic manner. We held in *F.F. Marine Corp. v. NLRC*:

This Court is not oblivious of the significant role played by the corporate sector in the country's economic and social progress. Implicit in turn in the success of the corporate form in doing business is the ethos of business autonomy which allows freedom of business determination with minimal governmental intrusion to ensure economic independence and development in terms defined by businessmen. Yet, this vast expanse of management choices cannot be an unbridled prerogative that can rise above the constitutional protection to labor. Employment is not merely a lifestyle choice to stave off boredom. Employment to the common man is his very life and blood, which must be protected against concocted causes to legitimize an otherwise irregular termination of employment. Imagined or undocumented business losses present the least propitious scenario to justify retrenchment.[10]

Under the Labor Code, retrenchment and redundancy are authorized causes for separation from service. However, to protect labor, dismissals due to retrenchment or redundancy are subject to strict requirements under Article 283 of the Labor Code, to wit:

ART. 283. *CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL.* The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to separation pay equivalent to at least his one (1) month pay or at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay

[10] G.R. No. 152039, April 8, 2005, 455 SCRA 154, 164.

shall be equivalent to one (1) month pay or at least one half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

Retrenchment is an exercise of management's prerogative to terminate the employment of its employees *en masse*, to either minimize or prevent losses, or when the company is about to close or cease operations for causes not due to business losses.

In *Lopez Sugar Corporation v. Federation of Free Workers*,[11] this Court had the opportunity to lay down the following standards that a company must meet to justify retrenchment to prevent abuse by employers:

> *Firstly*, the losses expected should be substantial and not merely *de minimis* in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bona fide nature of retrenchment would appear to be seriously in question. *Secondly*, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, *thirdly*, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, *i.e.*, cut other costs other than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means – *e.g.*, reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, *etc.* – have been tried and found wanting.

[11] G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179, 186-187; citations omitted.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.

In *Ariola v. Philex Mining Corporation*,[12] the Court summarized the requirements for retrenchment, as follows:

Thus, the requirements for retrenchment are: (1) it is undertaken to prevent losses, which are not merely *de minimis*, but substantial, serious, actual, and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) the employer serves written notice both to the employees and the DOLE at least one month prior to the intended date of retrenchment; and (3) the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher. The Court later added the requirements that the employer must use fair and reasonable criteria in ascertaining who would be dismissed and x x x retained among the employees and that the retrenchment must be undertaken in good faith. Except for the written notice to the affected employees and the DOLE, non-compliance with any of these requirements render[s] the retrenchment illegal.

In the present case, Legend glaringly failed to show its financial condition prior to and at the time it enforced its retrenchment program. It failed to submit audited financial statements regarding its alleged financial losses. Though Legend complied with the notice requirements and the payment of separation benefits to the retrenched employees, its failure to establish the basis for the retrenchment of its employees constrains us to declare the retrenchment illegal.

However, the CA in its decision ruled that the petitioners were validly dismissed not for retrenchment but for redundancy. The CA explained that Legend mistakenly used the term retrenchment when all its reasons and justifications for the dismissal of its employees point to redundancy.

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[12] G.R. No. 147756, August 9, 2005, 466 SCRA 152, 170-171.

Were petitioners' positions redundant? Had Legend sufficiently established the fact of redundancy?

Petitioners claim that the CA erred in concluding that Legend substantially established redundancy as the authorized cause underlying their dismissal from service. They aver that retrenchment and redundancy are not interchangeable, and both were not proven by Legend to justify their dismissal.

Legend, on the other hand, claims that petitioners never refuted the causes for termination contained in the notice of retrenchment. It further explains that it really had intended redundancy as the basis for the termination of the employees, as seen in its arguments before the Labor Arbiter, NLRC, and CA, where it claimed that before the retrenched employees were actually dismissed, the retrenched employees were not doing any work; that the work of the Project Development Division had already been completed and accomplished; and that the Engineering Services Division and the Project Development Division performed overlapping functions. Legend points out that it had really intended redundancy as the basis for the termination of the employees, that is why it had paid one month's pay instead of one-half month's pay for every year of service.

We rule that Legend failed to establish redundancy.

Retrenchment and redundancy are two different concepts; they are not synonymous and therefore should not be used interchangeably. This Court explained in detail the difference between the two concepts in *Sebuguero v. NLRC*:[13]

> Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. A position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as over hiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.

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[13] G.R. No. 115394, September 27, 1995, 248 SCRA 532, 542.

Retrenchment, on the other hand, is used interchangeably with the term "lay-off." It is the termination of employment initiated by the employer through no fault of the employee's and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. Simply put, it is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court.

Thus, simply put, redundancy exists when the number of employees is in excess of what is reasonably necessary to operate the business. The declaration of redundant positions is a management prerogative. The determination that the employee's services are no longer necessary or sustainable and therefore properly terminable is an exercise of business judgment by the employer. The wisdom or soundness of this judgment is not subject to the discretionary review of the Labor Arbiter and NLRC.[14]

It is however not enough for a company to merely declare that positions have become redundant. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees.[15] In *Panlilio v. NLRC*,[16] we said that the following evidence may be proffered to substantiate redundancy: "the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring." In another case, it was held that the company sufficiently established the fact of redundancy through "affidavits executed by the officers of the

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[14] *San Miguel Corporation v. Del Rosario*, G.R. Nos. 168194 & 168603, December 13, 2005, 477 SCRA 604, 614.

[15] *Id.* at 614-615.

[16] G.R. No. 117459, October 17, 1997, 281 SCRA 53, 56.

respondent PLDT, explaining the reasons and necessities for the implementation of the redundancy program."[17]

According to the CA, Legend proved the existence of redundancy when it submitted a status review of its project division where it reported that the 78-man personnel exceeded the needs of the company. The report further stated that there was duplication of functions and positions, or an over supply of employees, especially among architects, engineers, draftsmen, and interior designers.

We cannot agree with the conclusion of the CA.

The pieces of evidence submitted by Legend are mere allegations and conclusions not supported by other evidence. Legend did not even bother to illustrate or explain in detail how and why it considered petitioners' positions superfluous or unnecessary. The CA puts too much weight on petitioners' failure to refute Legend's allegations contained in the document it submitted. However, it must be remembered that the employer bears the burden of proving the cause or causes for termination. Its failure to do so would necessarily lead to a judgment of illegal dismissal.

Again, it bears stressing that substantial evidence is the question of evidence required to establish a fact in cases before administrative and quasi-judicial bodies. Substantial evidence, as amply explained in numerous cases, is that amount of "relevant evidence which a reasonable mind might accept as adequate to support a conclusion."[18]

Thus, in the same way, we held that the basis for retrenchment was not established by substantial evidence, we also rule that Legend failed to establish by the same quantum of proof the fact of redundancy; hence, petitioners' termination from employment was illegal.

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[17] *Soriano v. NLRC*, G.R. No. 165594, April 23, 2007.

[18] *Reno Foods, Inc. v. NLRC*, G.R. No. 116462, October 18, 1995, 249 SCRA 379, 385.

WHEREFORE, the petition is *GRANTED*. The April 28, 2006 Decision of the CA in CA-G.R. SP No. 81701 and the June 23, 2003 Decision of the NLRC in NLRC NCR CA No. 024306-2000 are hereby *REVERSED* and *SET ASIDE*. The February 7, 2000 Decision of Labor Arbiter Elias H. Salinas in NLRC RAB III-03-9080-98 is hereby *REINSTATED* with the *MODIFICATION* that the award for 14th-month pay or *ex-gratia* payment to all complainants in NLRC RAB III-03-9080-98 and the award for service charges to Bernaldo delos Santos and Carlos Mananquil are hereby *DELETED*.

SO ORDERED.

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

Carpio, J., on leave.

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— Where the issue of support of minor children was tried with the implied consent of the parties in the habeas corpus case, it should be treated in all respects as if it had been raised in the pleadings and the trial court may validly render judgment thereon even absent a motion or amendment of the pleadings. (*Id.*)

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Penalty — Imposition of late payment surcharges and interest, not proper. (Pilipinas Shell Petroleum Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 172598, Dec. 21, 2007) p. 613

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— A transferee in good faith and for value of the TCCs may not be prejudiced with a re-assessment of excise tax liabilities it has already settled when due with the use of the TCCs. (*Id.*)

— A transferee in good faith may not be legally required to pay again the tax covered by the TCCs which has been belatedly declared null and void. (*Id.*)

— Any fraud or breach of law relating to the issuance of the TCCs to the transferor or original grantee is the responsibility of the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center. (*Id.*)

— Effectivity and validity thereof cannot be made dependent on the outcome of a post-audit. (*Id.*)

— Fraudulent procurement thereof cannot prejudice the transferee's rights who has not participated in the perpetration of the fraudulent acts. (*Id.*)

— Governed by specific laws, rules, and regulations, not the general provisions of the Civil Code; Article 1181 of the Civil Code, not applicable. (*Id.*)

— If already applied as partial payment for the tax liability of the taxpayer, the same cannot be annulled and voided by a subsequent post-audit; rationale. (*Id.*)

— Immediately valid and effective after their issuance and is not subject to a suspensive condition. (*Id.*)

— May be subjected to post-audit relating to computational discrepancies that may have resulted from its transfer and utilization but not pertaining to their genuineness or validity. (*Id.*)

— May no longer be declared void, ineffective and canceled anew where the same has already been used up, debited and canceled after acceptance thereof as payment of the taxpayer's excise tax liabilities. (*Id.*)

— The TCC transferee is required only to be a Board of Investment–registered firm, not a capital equipment provider or supplier of materials and/or component supplier to the transferors. (*Id.*)

— The transferee in good faith and for value may not be unjustly prejudiced by the fraud committed by the claimant or transferor in the procurement or issuance of the TCCs from the Duty Drawback Center. (*Id.*)

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— Lone testimony of rape victim, if credible and free from fatal and material inconsistencies and contradictions, can be the sole basis of conviction. (People *vs.* Ela, G.R. No. 172368, Dec. 27, 2007) p. 793

— Not affected by alleged different reaction of witness to the crime situation. (People *vs.* Aviles, G.R. No. 172967, Dec. 19, 2007) p. 560

— Testimonies of victims of tender age are credible. (People *vs.* Ela, G.R. No. 172368, Dec. 27, 2007) p. 793

— The eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of the charges. (*Id.*)

— The testimony of a child rape victim is normally given full weight and credit in the absence of improper motive on the part of the victim to falsely testify against the accused; applied. (People *vs.* Aviles, G.R. No. 172967, Dec. 19, 2007) p. 560

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