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OF THE

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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 146972. January 29, 2008]

B & I REALTY CO., INC., *petitioner, vs.* **TEODORO CASPE and PURIFICACION AGUILAR CASPE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; ISSUE INVOLVED IS LIMITED TO QUESTIONS OF LAW; EXCEPTION.— It should be noted that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 is limited only to questions of law. This Court is not a trier of facts. The findings of fact of the CA are binding and conclusive on this Court. However, the application of this rule is not absolute and admits of certain exceptions. For instance, factual findings of the CA may be reviewed by this Court when the findings of fact of the RTC and the CA are conflicting. In this case, the RTC held that the action had already prescribed; the CA ruled otherwise. Thus, although the petition now before us involves a question of fact, that is, whether or not the action for judicial foreclosure of mortgage has already prescribed, we may still rule on the same.

2. ID.; RULES OF COURT; PROCEDURAL LAWS MAY BE GIVEN RETROACTIVE APPLICATION IN CASES OF ACTIONS PENDING AND UNDETERMINED AT THE TIME OF THEIR PASSAGE; APPLICATION IN CASE AT BAR.— Procedural

laws may be given retroactive application in cases of actions pending and undetermined at the time of their passage. In this case, the action was still pending in the RTC when the 1997 Rules of Court was promulgated on July 1, 1997. The RTC decided the case on August 26, 1997. Thus, retroactive application of the 1997 Rules was proper. Ultimately, the CA did not commit any error when it granted respondents' appeal. It correctly applied the 1997 Rules of Court and rightly ruled in favor of prescription as the same was supported by the evidence on record.

3. CIVIL LAW; PRESCRIPTIONS; PRESCRIPTION OF ACTIONS; THE PRESCRIPTIVE PERIOD OF ANY CAUSE OF ACTION STARTS FROM THE DATE WHEN THE CAUSE OF ACTION ACCRUES; PRESENT IN CASE AT BAR.— We have held in a number of cases that the computation of the prescriptive period of any cause of action (the same as prescription of actions) starts from the date when the cause of action accrues. Here, petitioner's cause of action accrued from the time respondents stopped paying the mortgage debt they assumed from Datuin, in accordance with Article 1151 of the Civil Code: Art. 1151. The time for the prescription of actions which have for their object the enforcement of obligations to pay principal with interest or annuity runs from the last payment of the annuity or of the interest. It was then that respondents committed a breach of duty to pay their remaining obligation to the former. Thus, the ten-year prescriptive period should be reckoned from January 14, 1980. Petitioner had until January 14, 1990 to file suit so that, when it sued on August 27, 1993, the action had already prescribed. x x x We agree with the CA's ruling that Civil Case No. 36852 did not have the effect of interrupting the prescription of the action for foreclosure of mortgage as it was not an action for foreclosure but one for annulment of title and nullification of the deed of mortgage and the deed of sale. It was not at all the action contemplated in Article 1155 of the Civil Code which explicitly provides that the prescription of an action is interrupted only when the action itself is filed in court.

APPEARANCES OF COUNSEL

Juan V. Maningat for petitioner.
Wilfredo M. Bolito for respondents.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari* seeks to set aside the February 7, 2001 decision[1] of the Court of Appeals (CA) in CA-G.R. C.V. No. 57273.

This case stems from two earlier complaints filed by Spouses Arsenio and Consorcia L. Venegas[2] against herein petitioner B & I Realty Co., Inc., respondent spouses Teodoro and Purificacion Aguilar Caspe, and a certain Arturo G. Datuin.[3]

Consorcia L. Venegas was the owner of a parcel of land located in Barrio Bagong-Ilog in Pasig, Rizal and covered by TCT No. 247434. She delivered said title to, and executed a simulated deed of sale in favor of, Datuin for purposes of obtaining a loan with the Rizal Commercial Banking Corporation (RCBC). Datuin claimed that he had connections with the management of RCBC and offered his assistance to Venegas in obtaining a loan from the bank. He issued a receipt to the Venegases, acknowledging that the lot was to be used as a collateral for bank financing and that the deed of sale (with a resolutory condition) was executed only as a device to obtain the loan.

However, Datuin prepared a deed of absolute sale and, through forgery, made it appear that the spouses Venegas executed the document in his favor. He was then able to have the TCT transferred to his name. Consequently, TCT No. 247434 was cancelled and a new title, TCT No. 377734, was issued to him by the register of deeds. Thereafter, he obtained a loan from petitioner in the amount of ₱75,000 using the title of the property as collateral for the loan. The mortgage was annotated at the back of the title.

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[1] Penned by Associate Justice Ma. Alicia Austria-Martinez (now a member of this Court) and concurred in by Associate Justices Hilarion L. Aquino (retired) and Jose L. Sabio, Jr. of the Fourth Division of the Court of Appeals. *Rollo,* pp. 23-31.

[2] Not a party to this case.

[3] Also not a party to this case.

Venegas learned of Datuin's fraudulent scheme when she sold the lot (subject of the mortgage) to herein respondents for ₱160,000 in a deed of conditional sale.[4] She, along with her husband, instituted a complaint against Datuin in the then Court of First Instance (CFI) of Rizal, Branch 11, docketed as Civil Case No. 188893, for recovery of property and nullification of TCT No. 377734, with damages. However, when the case was called for pre-trial, the Venegases' counsel failed to appear and the complaint was eventually dismissed without prejudice.

Thereafter, Venegas and her husband, respondents and Datuin entered into a compromise agreement whereby the Venegases agreed to sell and transfer the property to respondents with the condition that they (respondents) would assume and settle Datuin's mortgage debt to petitioner. The amount corresponding to the unpaid mortgage would be deducted from the consideration.

As provided for in the agreement, Datuin executed a deed of absolute sale over the property covered by TCT No. 377734 in favor of respondents. On February 12, 1976, the respondents started paying their assumed mortgage obligation to petitioner.

However, on August 27, 1980, Venegas brought a new action before the CFI of Pasig, Branch 6, docketed as Civil Case No. 36852, for annulment of the transfer of the property to Datuin and *the declaration of nullity of all transactions involving and annotated on TCT No. 377734, including the mortgage executed in favor of petitioner*, as well as the cancellation of the conditional deed of sale to respondents. On January 10, 1986, the trial court ruled in favor of respondents, to wit:

> WHEREFORE, judgment is hereby rendered in favor of the defendants spouses Teodoro Caspe and Purificacion A. Caspe on their counterclaims and ordering the complaint of plaintiffs [spouses Venegas] as well as the counterclaims of B & I Realty Co, Inc. dismissed. Arturo G. Datuin is ordered to pay the damages suffered by the defendants-Caspe[s] PhP10,000.00 as compensatory and consequential damages; PhP5,000.00 moral damages and PhP5,000.00 attorney's fees and to pay the costs.

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[4] Exhibit "H", *rollo*, pp. 31-39.

The sale between Consorcia Venegas and Arturo G. Datuin is declared void from the beginning. Consequently, the transfer of title No. 247434 from Venegas to Datuin is hereby ordered non-existent and Transfer Certificate of Title No. 377734 in the name of Arturo G. Datuin is hereby cancelled. The Conditional Deed of Sale between the Venegas and the Caspes is declared valid and approved. All payments of Caspes to Venegas or agents, to Datuin and to B & I Realty Co., Inc. are considered part of the PhP160,000.00 consideration or purchase price.

The mortgage between Datuin and the B & I Realty Co., Inc. is hereby declared cancelled and B & I Realty Co., Inc. is hereby ordered to deliver the title to the Caspes upon the latter paying said financing company the remaining balance of PhP15,132.00. The Register of Deeds of Rizal is hereby ordered to cancel Transfer Certificate of Title No. 377734 in the name of Arturo G. Datuin and in lieu to issue a new title in the name of Teodoro Caspe and Purificacion A. Caspe.

Petitioner interposed an appeal to the CA. On October 31, 1989, the CA held that all pronouncements in the aforesaid CFI decision pertaining to petitioner had no binding effect on it. It reasoned that the appealed decision adversely affected petitioner on the basis of evidence presented *ex-parte* by respondents without according the former the opportunity to controvert the same, in violation of the due process clause. However, the CA affirmed the rest of the judgment.[5]

Respondents filed a motion for reconsideration[6] which was denied on January 25, 1990.[7] It became final and executory as respondents did not appeal the denial thereof.

On May 12, 1993, petitioner sent a demand letter to respondents for the payment of their loan. The latter refused to pay.

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[5] Penned by Justice Jesus M. Elbinias (retired) and concurred in by Associate Justices Ricardo J. Francisco (who subsequently became a member of this Court; now deceased) and Antonio M. Martinez (who also subsequently became a member of this Court; also deceased). Exhibit "M", *id*., pp. 101-106.

[6] Dated December 11, 1989. Annex N of the Complaint, *id*., pp. 107-116.

[7] Exhibit "N", *id*., pp. 117-118.

On August 27, 1993, petitioner filed an action for judicial foreclosure of mortgage, the subject of the instant petition for review, against respondents before the Regional Trial Court (RTC), Branch 166, Pasig City. It was docketed as SCA 447. In their *answer*, respondents argued that the action had already prescribed.

On August 26, 1997, the RTC ruled in favor of petitioner. The trial court held that the defense of prescription could not prosper as it was not pleaded by respondents in their *motion to dismiss*.

Respondents appealed to the CA which reversed the RTC decision and dismissed petitioner's action for judicial foreclosure. It stated that, although the defense of prescription was not pleaded in the motion to dismiss,[8] the same was, however, pleaded in the answer[9] and in their motion to set case for hearing on the special affirmative defenses.[10] As such, respondents could not have waived the defense of prescription. The CA further held that the action had indeed prescribed. It cited Section 1, Rule 9 of the 1997 Rules of Court:

> Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by a prior judgment or **by statute of limitations, the court shall dismiss the claim.** (emphasis supplied by the CA)

Petitioner questioned the CA ruling that respondents did not waive the defense of prescription. It argued that, as its complaint for judicial foreclosure of mortgage was filed on August 27, 1993 before the effectivity of the 1997 Rules of Court, the provision did not apply to the instant case. It invoked the old

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[8] Dated November 3, 1993, RTC records, pp. 132-140.

[9] Dated January 29, 1996, *id.*, pp. 309-314.

[10] Dated February 8, 1996, *id.*, pp. 315-320.

rule in the 1964 Rules of Court as basis that its cause of action had not yet prescribed.

Petitioner's contention is untenable.

Before addressing the merits of the controversy, we shall first discuss a preliminary matter relating to the application of the mode of appeal under Rule 45 of the Rules of Court.

It should be noted that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 is limited only to questions of law. This Court is not a trier of facts. The findings of fact of the CA are binding and conclusive on this Court. However, the application of this rule is not absolute and admits of certain exceptions. For instance, factual findings of the CA may be reviewed by this Court when the findings of fact of the RTC and the CA are conflicting.[11] In this case, the RTC held that the action had already prescribed; the CA ruled otherwise. Thus, although the petition now before us involves a question of fact, that is, whether or not the action for judicial foreclosure of mortgage has already prescribed, we may still rule on the same.

We now proceed to the merits of this controversy.

On one hand, the CA erred when it held that there was no waiver of the defense of prescription even if it was invoked only in the answer and in the motion to set case for hearing on the affirmative defenses, and not in the motion to dismiss, because it should have been raised at the earliest possible time, in this case, in the motion to dismiss. Thus, it was deemed waived in accordance with the "omnibus motion rule."[12]

On the other hand, however, the CA was correct in applying the 1997 Rules of Court. Procedural laws may be given retroactive application in cases of actions pending and undetermined at the

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[11] *Baricuatro, Jr. v. CA*, 382 Phil. 15, 24 (2000).

[12] *Citibank, N.A. v. CA*, G.R. No. 61508, 17 March 1999, 304 SCRA 679, 693-694; *Manacop v. CA*, G.R. No. 104875, 13 November 1992, 215 SCRA 773, 778.

time of their passage. [13] In this case, the action was still pending in the RTC when the 1997 Rules of Court was promulgated on July 1, 1997. The RTC decided the case on August 26, 1997. Thus, retroactive application of the 1997 Rules was proper. Ultimately, the CA did not commit any error when it granted respondents' appeal. It correctly applied the 1997 Rules of Court and rightly ruled in favor of prescription as the same was supported by the evidence on record.

In fact, it was the evidence of the petitioner itself which proved that prescription had set in:

1. a duplicate original of the deed of real estate mortgage,[14] executed by Arturo G. Datuin, showing that the mortgage was executed on May 17, 1973. This deed of real estate mortgage expressly provided that the mortgage loan (was to) be repaid within one year from the date thereof, or on May 17, 1974.

2. a duplicate original of the promissory note,[15] executed by Datuin on May 17, 1973, showing that he was indebted to petitioner in the amount of ₱75,000 secured by a deed of real estate mortgage.

3. a machine copy of the compromise agreement,[16] dated June 11, 1975, executed by spouses Venegas, Datuin and respondents, showing that the mortgaged property was sold and transferred to respondents on the condition that they would assume and settle in full Datuin's mortgage loan to petitioner.

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[13] *Ruiz v. CA*, G.R. No. 116909, 25 February 1999, 303 SCRA 637, 644; *Municipal Government of Coron, Palawan v. Carino*, G. R. No. 65894, 24 September 1987, 154 SCRA 216, 222.

[14] Annex A of the Complaint, RTC records, pp. 17-18.

[15] Annex B of the Complaint, *id*., p. 19.

[16] Annex E of the Complaint, *id*., pp. 26-30. This machine copy was stipulated as a faithful reproduction of the original.

4. a machine copy of the deed of absolute sale,[17] dated October 30, 1975, showing the sale of the mortgaged property between Arturo G. Datuin and respondents. In this instrument, respondents acknowledged their assumption of Datuin's mortgage.

5. a statement of account of defendants[18] showing the computation of the interests and service fees on the loan. In the said statement of account, payments made by respondents to petitioner were duly reflected. The series of payments began on February 12, 1976 and ended on January 14, 1980.

6. the complaint for judicial foreclosure of real state mortgage was instituted on August 27, 1993.

Article 1142 of the Civil Code provides:

Art. 1142. A mortgage action prescribes after ten years.

Article 1155 also provides that the prescription of actions is interrupted in the following instance:

Art. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

Although the deed of real estate mortgage and the promissory note executed by Datuin expressly declared that the date of maturity of the loan was May 14, 1974 or one year after the real estate mortgage was entered into between Datuin and petitioner, the same could not be the reckoning point for purposes of counting the prescriptive period of the mortgage. This is because Datuin and respondents executed a deed of absolute sale on October 30, 1975 whereby the latter acknowledged and assumed the mortgage obligation of the former in favor of

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[17] Annex C of the Complaint, *id*., pp. 20-22. This machine copy was stipulated as a faithful reproduction of the original.

[18] Exhibit "O-4", Plaintiff's Offer of Evidence.

petitioner. Under Article 1155 of the Civil Code, the written acknowledgment and assumption of the mortgage obligation by respondents had the effect of interrupting the prescriptive period of the mortgage action.[19]

A perusal of *the evidence for the petitioner, as may be gleaned from the statement of account of respondents prepared by petitioner itself,* revealed that respondents made payments to the former beginning February 12, 1976 up to January 14, 1980. No other payments were made thereafter.

We have held in a number of cases that the computation of the prescriptive period of any cause of action (the same as prescription of actions) starts from the date when the cause of action accrues.[20] Here, petitioner's cause of action accrued from the time respondents stopped paying the mortgage debt they assumed from Datuin, in accordance with Article 1151 of the Civil Code:

> Art. 1151. The time for the prescription of actions which have for their object the enforcement of obligations to pay principal with interest or annuity runs from the last payment of the annuity or of the interest.

It was then that respondents committed a breach of duty to pay their remaining obligation to the former.[21] Thus, the ten-year prescriptive period should be reckoned from January 14, 1980. Petitioner had until January 14, 1990 to file suit so that, when it sued on August 27, 1993, the action had already prescribed.

However, even if we apply the 1964 Rules of Court as petitioner wants, its cause of action had prescribed just the same.

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[19] *Provident Savings Bank v. CA*, G.R. No. 97218, 17 May 1993, 222 SCRA 125, 132, citing *Osmena v. Rama*, 14 Phil. 99, 102 (1909) and 4 Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, 1991 ed., p. 50.

[20] *Elido, Sr. v. CA*, G.R. No. 95441, 16 December 1992, 216 SCRA 637, 644; *Nabus v. CA*, G.R. No. 91670, 7 February 1991, 193 SCRA 732, 747.

[21] *Young v. CA*, G.R. No. 83271, 8 May 1991, 196 SCRA 795, 801; *Nabus v. CA*, *supra* at note 20.

Section 8, Rule 15 of the 1964 Rules of Court provided:

> Sec. 8. *Omnibus motion*. — A motion attacking a pleading or a proceeding shall include all objections then available, and **all objections not so included shall be deemed waived**. (emphasis supplied)

Petitioner contends that the 1964 Rules unequivocally provided that a motion attacking a pleading should state all the objections available at the time of its filing. Otherwise, they were deemed waived. This was in stark contrast to the present rule which provides for instances when other objections may be made even after such an omnibus motion has already been filed.

Admittedly, respondents interposed the defense of prescription only in their answer after having filed their motion to dismiss without alleging the said defense. Hence, in accordance with the old rule, respondents' defense could not prosper as the same was deemed waived.

It should be pointed out that the difference between the two provisions is more apparent than real. A review of the pertinent jurisprudence under the old rule reveals the existence of exceptions to the general rule.

In *Philippine National Bank v. Perez, et al.*,[22] the Court held that:

> The rule does not obtain when **the evidence shows that the cause of action upon which plaintiff's complaint is based** is already barred by the statute of limitations. (emphasis supplied)

The Court made the same pronouncement in *Philippine National Bank v. Pacific Commission House*[23] when, despite defendant's having been declared in default for failure to answer after service of summons, it held that:

> xxx [T]he fact that the plaintiff's own allegation in the complaint or the evidence it presented shows clearly that the action had

[22] G.R. No. L-20412, 28 February 1966, 16 SCRA 270, 272.

[23] G.R. No. L-22675, 28 March 1969, 27 SCRA 766, 768.

prescribed removes this case from the rule regarding waiver of the defense by failure to plead the same.

In the case at bar, and as already explained, the evidence of the petitioner itself showed that prescription had in fact set in.

Petitioner, however, argues that the filing of Civil Case No. 36852 by the Venegases had the effect of interrupting the prescriptive period for the filing of the complaint for judicial foreclosure of mortgage. We disagree.

Petitioner is clutching at straws to justify its failure to institute the action within the required period. We agree with the CA's ruling that Civil Case No. 36852 did not have the effect of interrupting the prescription of the action for foreclosure of mortgage as it was not an action for foreclosure but one for annulment of title and nullification of the deed of mortgage and the deed of sale. It was not at all the action contemplated in Article 1155 of the Civil Code which explicitly provides that the prescription of an action is interrupted only when the action itself is filed in court.

Petitioner nevertheless claims that it had to wait for the decision in Civil Case No. 36852 before it could file a complaint for judicial foreclosure of mortgage as the same would have constituted forum shopping. Petitioner's argument is misplaced.

Petitioner could have protected its right over the property by filing a cross-claim[24] for judicial foreclosure of mortgage against

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[24] Section 7, Rule 6 of the 1964 Rules of Court provided:

Sec. 7. Cross-claim. — A cross-claim is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

See *Ligon v. CA*, G.R. No. 127683, 7 August 1998, 294 SCRA 73, 76. Although the issue therein did not touch on the prescriptive period of mortgages, it illustrates that a cross-claim may be filed by a mortgagee against the mortgagor in an action for annulment of mortgage, impleading the former, filed by a person not a party to the mortgage.

respondents in Civil Case No. 36852. The filing of a cross-claim would have been proper there. All the issues pertaining to the mortgage — validity of the mortgage and the propriety of foreclosure — would have been passed upon concurrently and not on a piecemeal basis. This should be the case as the issue of foreclosure of the subject mortgage was connected with, or dependent on, the subject of annulment of mortgage in Civil Case No. 36852.

The records indicate that petitioner even threatened to foreclose on the mortgage during the pendency of Civil Case No. 36852. This prompted respondents to ask the trial court to issue an order to restrain petitioner from proceeding with the institution of such an action pending the disposition of the case, to maintain the status quo.[25] Petitioner cannot now claim that it had to wait for the decision of the court in Civil Case No. 36852 before it could institute the foreclosure. Its actuations clearly manifested that it knew its rights under the law but chose to sleep on the same.

WHEREFORE, the petition is hereby *DENIED*. The February 7, 2001 decision of the Court of Appeals in CA-G.R. C.V. No. 57273 is *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairpeson), Sandoval-Gutierrez, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

In the aforementioned case, petitioner was the mortgagee in three deeds of mortgage covering two parcels of land executed by the Islamic Directorate of the Philippines (IDP). IDP sold the two parcels of land to Iglesia ni Cristo (INC). When IDP failed to comply with a condition stipulated in the deed of absolute sale executed by the parties, the INC filed a complaint for specific performance with damages against IDP with the RTC of Quezon City. The trial court ruled in favor of INC. Thereafter, INC filed with the same RTC a complaint for the annulment of the deeds of mortgage over the two lots, *impleading as defendants Ligon*, IDP and two other parties. *Ligon filed* an answer with counter-claim, *a cross-claim against IDP for the foreclosure of the mortgages* and a third-party complaint against several other parties.

[25] Exhibit "J", RTC records, p. 49.

FIRST DIVISION

[G.R. No. 152065. January 29, 2008]

BELEN REAL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA; ELEMENTS; PRESENT IN CASE AT BAR.— The elements of *estafa* under Art. 315, par. 1 (b) of the RPC are as follows: (1) that money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (2) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; and (3) that such misappropriation or conversion or denial is to the prejudice of another. Although the trial court only mentioned in passing that damage was caused to private complainant Uy, it cannot be denied that there exists a factual basis for holding that petitioner's refusal to account for or return the pieces of jewelry had prejudiced the rights and interests of Uy. Certainly, disturbance of property rights is equivalent to damage and is in itself sufficient to constitute injury within the meaning of Art. 315, par. 1 (b) of the RPC. In this case, Uy, who is a businessman, not only failed to recover his investment but also lost the opportunity to realize profits therefrom. Anxiety also set in as he ran the risk of being sued by the person who likewise entrusted him the same pieces of jewelry. To assert his legal recourse, Uy further incurred expenses in hiring a lawyer and in litigating the case.

2. ID.; ID.; INDETERMINATE SENTENCE LAW; RULE ON THE IMPOSITION OF PRISON SENTENCE FOR OFFENSES PUNISHABLE BY THE REVISED PENAL CODE; EXPLAINED.— Under the Indeterminate Sentence Law, in imposing a prison sentence for an offense punished by the RPC or its amendments, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall be that which, in view of the attending circumstances, could be

properly imposed under the rules of the RPC, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the RPC for the offense. The penalty next lower should be based on the penalty prescribed by the RPC for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

3. ID.; ID.; ID.; IMPOSABLE PENALTY.— The penalty prescribed by Art. 315 above-quoted is composed of two periods; hence, to get the maximum period of the indeterminate sentence, the total number of years included in the two periods should be divided into three. Article 65 of the RPC requires the division of the time included in the prescribed penalty into three equal periods of time included in the penalty imposed, forming one period for each of the three portions. Thus, the maximum, medium and minimum periods of the penalty prescribed for *estafa* under Art. 315, par. 1 (b) of the RPC are: Minimum – 4 years, 2 months, and 1 day to 5 years, 5 months, and 10 days Medium – 5 years, 5 months, and 11 days to 6 years, 8 months, and 20 days Maximum – 6 years, 8 months, and 21 days to 8 years. In the present case, as the amount involved is ₱371,500, which obviously exceeds ₱22,000, the penalty imposable should be the maximum period of 6 years, 8 months and 21 days to 8 years of *prision mayor*. However, Art. 315 further states that a period of one year shall be added to the penalty for every additional ₱10,000 defrauded in excess of ₱22,000 but in no case shall the total penalty which may be imposed exceed 20 years. The amount swindled from Uy exceeds the amount of ₱22,000 which, when translated to the additional penalty of one year for every ₱10,000 defrauded, goes beyond 20 years (close to additional 35 years to be exact). Hence, under the law, the maximum penalty to be imposed to petitioner should be 20 years of *reclusion temporal*. On the other hand, the minimum period of the indeterminate sentence should be within the range of the penalty next lower to that prescribed by Art. 315, par. 1(b) of the RPC. In this case, the penalty next

lower to *prision correccional* maximum to *prision mayor* minimum is *prision correccional* minimum (6 months and 1 day to 2 years and 4 months) to *prision correccional* medium (2 years, 4 months, and 1 day to 4 years and 2 months). Therefore, the minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months. Considering the attendant factual milieu as well as the position of the Office of the Solicitor General in the present case, this Court is convinced that the appropriate penalty to be imposed upon petitioner, which is in accordance with law to best serve the ends of justice, should range from four (4) years and two (2) months of *prisión correccional*, as minimum, to twenty (20) years of *reclusión temporal*, as maximum.

APPEARANCES OF COUNSEL

Inocentes Untalan & Untalan Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

AZCUNA, *J.*:

Assailed in this petition for review under Rule 125 of the Revised Rules of Court, in relation to Rule 45 thereof, is the August 3, 2000 Decision[1] of the Court of Appeals in CA-G.R. CR No. 13885, which affirmed the June 23, 1992 Decision[2] of the Regional Trial Court, Branch 2, Batangas City, in Criminal Case No. 4116 finding petitioner guilty of swindling (*estafa*) under Article 315, paragraph 1 (b) of the Revised Penal Code (RPC).

The facts appearing from the record are as follows:

Petitioner Belen Real was an agent of private complainant Benjamin Uy in his jewelry business. On several occasions, Uy

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[1] Penned by Associate Justice Demetrio G. Demetria, with Associate Justices Ramon Mabutas, Jr. and Jose L. Sabio, Jr., concurring.

[2] Penned by Judge Ireneo V. Mendoza.

entrusted to petitioner pieces of jewelry with the obligation on the part of the latter to remit the proceeds of the sale or to return the pieces of jewelry if unsold within a specific period of time.

On January 10, 1989, around 8:30 a.m., petitioner arrived at Uy's house at Nueva Villa Subdivision, *Barangay* Alangilan, Batangas City and requested Uy to lend her some pieces of jewelry as she had a buyer at that time. Because petitioner is his *"kumadre"*, since Uy was one of the sponsors in the wedding of petitioner's daughter, and because petitioner was his agent for quite a time, Uy agreed. He showed petitioner some pieces of jewelry and allowed the latter to select from them.

Petitioner selected seven (7) pieces of jewelry. Uy prepared a receipt for the items selected by petitioner and handed the same to the latter. After checking the receipt, petitioner wrote the name Benjamin Uy at the upper portion thereof and affixed her signature at the lower portion including her address. The receipt reads:

K A T I B A Y A N

PINATUNAYAN KO na aking tinanggap kay Benjamin Uy, ang mga sumusunod na alahas: *No. 1449*

Bilang	*Kalakal*	*Halaga*
1	Collar Emerald Cut Diamond	₱155,000.00
1	Pendant Solo *Diamante* 4 kts	55,000.00
1	Set Solo Marquez Lequids	50,000.00
1	Set 3 Stones *Diamante* Lequids	47,000.00
1	Domino 12 Stones Men's ring	35,000.00
1	Set Blue Pearl with Lequids	25,000.00
1	Set Corrales with broach	4,500.00
	KABUUANG HALAGA	₱371,500.00

nasa mabuting kalagayan upang ipagbili ng KALIWAAN lamang sa loob ng 10 araw mula ng aking paglagda; kung hindi ko maipagbili ay isasauli ko ang lahat ng alahas loob ng taning na panahong nakatala sa itaas; kung maipagbili ko naman ay dagli

kung [isusuli] at ibibigay ang buong pinagbilhan sa [may-ari] ng mga alahas. Ang aking gantimpala ay ang mapapahigit na halaga sa nakatakdang halaga sa itaas ng bawat alahas; HINDI AKO pinahihintulutang [ipautang] o ibigay na hulugan ang alin mang alahas; ilalagak, ipagkakatiwala, ipahihiram, isasangla o ipananagot kahit sa anong paraan ang alin mang alahas sa ibang tao.

NILAGDAAN ko ang kasunduang ito ngayon ika-10 ng January, 1989 sa Batangas City.

(Sgd) Belen Real *Aplaya, Bauan, Bats.*
LAGDA NG TAO NA TUMANGGAP *TINITIRAHAN*[3]
NG NASABING ALAHAS SA ITAAS NITO

Ten days thereafter, Uy went to petitioner's house at Aplaya, Bauan, Batangas and asked about their transaction. Petitioner informed Uy that the pieces of jewelry were already sold but the payment was in the form of check. Petitioner showed Uy five (5) pieces of checks all dated January 31, 1989 and requested the latter to collect on said date. Uy acceded, but when he returned on January 31, 1989, petitioner again requested him to return the following day as she had not encashed the checks yet. Uy again agreed but when he demanded the payment the following day, petitioner called him "*makulit*" and "could not sleep for that matter." Petitioner further remarked that the more she would not pay Uy.

Constrained, Uy brought the matter to his lawyer, Atty. Dimayacyac, who thereafter sent a demand letter to petitioner. Despite receipt thereof, petitioner failed to make good her obligation. Consequently, Uy lodged a criminal complaint against petitioner before the City Prosecutor of Batangas.

On April 13, 1989, an Information for *estafa* under Article 315, par. 1 (b) of the RPC was filed by Assistant City Prosecutor Amelia Perez-Panganiban against petitioner before the Regional Trial Court of Batangas City.

When arraigned, petitioner pleaded "Not Guilty."

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[3] *Records,* p. 74.

While admitting to have had several dealings with private complainant Uy, petitioner claimed that her last transaction with him was on December 22, 1988. She denied the truth of the *Katibayan*, alleging that there was a time, prior to January 10, 1989, when she got pieces of jewelry from Uy that she was required by him to sign in a blank piece of paper.

On June 23, 1992, the trial court rendered a Decision,[4] the decretal portion of which reads:

> WHEREFORE, in view of the foregoing, the Court finds accused Belen Real guilty beyond reasonable doubt of the crime of Estafa, defined and penalized under the provisions of Article 315, par. 1 (b) of the Revised Penal Code, and she is hereby sentenced to suffer the penalty of imprisonment of TWENTY (20) YEARS of *reclusion temporal*, to indemnify Benjamin Uy in the amount of ₱371,500.00, to pay the costs, and to suffer all the accessories of the law.
>
> SO ORDERED.[5]

The trial court ratiocinated:

> From the evidence adduced during the trial of this case, it has been clearly established that all the elements of the crime of estafa with abuse of confidence are present in the commission of the offense and that the guilt of the accused has been proven beyond reasonable doubt.
>
> Undoubtedly, accused had received the seven (7) pieces of jewelry from Benjamin Uy on January 10, 1989 at around 8:30 o'clock in the morning at Nueva Villa Subdivision, Alangilan, Batangas City in trust or on commission[,] with the obligation on her part to return the said pieces of jewelry if unsold, or to deliver the proceeds of the sale, if sold within ten (10) days from receipt. This agreement is clearly embodied in the receipt dated January 10, [1989] signed by the accused.
>
> That there was misappropriation or conversion of such money or property by the accused is very evident in this case. The fact that the accused had failed to deliver the proceeds of the sale of said jewelry items nor had she returned the same jewelry items when

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[4] *Records*, pp. 203-209.

[5] *Id.* at 209.

demanded to do so by the private complainant shows that accused had misappropriated or converted to her personal use the amount of ₱371,500.00. In fact, she even required the private complainant to return to her house for several times so that she could remit the proceeds of the sale to him. However, accused did not comply with her obligation.

In a litany of cases, the Supreme Court held that the failure to account upon demand, for funds or property held in trust is a circumstantial evidence of misappropriation. In an agency for the sale of jewelry, it [is] the agent's duty to return the jewelry upon demand by the owner and the failure to do so is evidence of that conversion of the property by the agent.

It was also established that there was a demand made by the private complainant from the accused, verbal and written[,] as shown by the letter of demand which was received by the accused.

Notably in the instant case[,] accused enjoyed the full trust and confidence of Benjamin Uy when the latter entrusted the pieces of jewelry to the accused, it being a fact that the latter is a "*kumadre*" of Benjamin Uy, the latter having been a sponsor in marriage of a daughter of the accused, aside from the fact that previous to January 10, 1989 there had been transaction between Benjamin Uy and accused involving a great amount of money.

Obviously, accused abused the trust and confidence reposed upon her by Benjamin Uy when she refused and failed to comply with her obligation. Her intention to defraud Benjamin Uy of ₱371,500.00 is[,] therefore, definitely clear.

The defense of the accused that she had not transacted with Benjamin Uy on January 10, 1989 and that her last transaction with the [latter] was on December 22, 1988 deserves not even a scant consideration in the face of the positive declaration made by Benjamin Uy and his witness and supported by the receipt, [Exhibit "A"], embodying their agreement.

On the allegation of the accused that she was required by Benjamin Uy to sign blank receipts [the same] is also unbelievable considering the fact that accused had reached third year in college and had been a sales agent of private complainant for quite a time before January 10, 1989.[6]

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[6] *Records,* pp. 207-208.

Petitioner elevated the case to the Court of Appeals, which, on August 3, 2000, affirmed the judgment of the trial court.[7] Petitioner's motion for reconsideration was also denied.[8]

Petitioner now raises the following points:

1. That one element of *estafa* under Article 315, par. 1 (b) of the RPC does not exist, hence, acquittal from the crime charged is proper; and
2. That the courts below erred in imposing a penalty that contravenes the imperative mandate of the Indeterminate Sentence Law.[9]

Petitioner argues that a reading of the trial court's decision reveals its total silence on the presence of damage or prejudice caused to private complainant Uy; *ergo*, she could not be held guilty of *estafa* under Art. 315, par. 1 (b) of the RPC. Moreover, petitioner advances that instead of imposing a straight penalty of twenty (20) years of *reclusion temporal*, the trial court should have imposed a penalty with minimum and maximum periods in accordance with the Indeterminate Sentence Law.

The petition is in part meritorious.

The elements of *estafa* under Art. 315, par. 1 (b) of the RPC[10] are as follows: (1) that money, goods or other personal

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[7] CA *rollo*, pp. 90-96.

[8] *Id.* at 130.

[9] See *Rollo*, p. 13.

[10] Art. 315, par. 1 (b) of the RPC provides:

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

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation

property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (2) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; and (3) that such misappropriation or conversion or denial is to the prejudice of another.[11]

Although the trial court only mentioned in passing that damage was caused to private complainant Uy, it cannot be denied that there exists a factual basis for holding that petitioner's refusal to account for or return the pieces of jewelry had prejudiced the rights and interests of Uy. Certainly, disturbance of property rights is equivalent to damage and is in itself sufficient to constitute injury within the meaning of Art. 315, par. 1 (b) of the RPC.[12] In this case, Uy, who is a businessman, not only failed to recover his investment but also lost the opportunity to realize profits therefrom. Anxiety also set in as he ran the risk of being sued by the person who likewise entrusted him the same pieces of jewelry. To assert his legal recourse, Uy further incurred expenses in hiring a lawyer and in litigating the case.

While sustaining the conviction of petitioner of the crime charged, this Court rules, however, that the penalty imposed by the trial court and affirmed by the Court of Appeals was improper.

Under the Indeterminate Sentence Law,[13] in imposing a prison sentence for an offense punished by the RPC or its amendments, the court shall sentence the accused to an indeterminate sentence,

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be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property;

x x x x x x x x x

[11] *Ceniza-Manantan v. People*, G.R. No. 156248, August 28, 2007, p. 10.

[12] *Batulanon v. People*, G.R. No. 139857, September 15, 2006, 502 SCRA 35, 57-58; *Ilagan v. Court of Appeals*, G.R. No. 110617, December 29, 1994, 239 SCRA 575, 587-588; and *Sy v. People*, G.R. No. 85785, April 24, 1989, 172 SCRA 685, 695.

[13] Act No. 4103, as amended by Act No. 4225.

the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the RPC, and the minimum term of which shall be within the range of the penalty next lower to that prescribed by the RPC for the offense. The penalty next lower should be based on the penalty prescribed by the RPC for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.[14]

Specifically, the penalty provided in the RPC for *estafa* is as follows:

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

The penalty prescribed by Art. 315 above-quoted is composed of two periods; hence, to get the maximum period of the indeterminate sentence, the total number of years included in the two periods should be divided into three. Article 65 of the

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[14] See *Perez v. People*, G.R. No. 150443, January 20, 2006, 479 SCRA 209, 222; *Sim, Jr. v. Court of Appeals*, G.R. No. 159280, May 18, 2004, 428 SCRA 459, 470; and *People v. Menil, Jr.*, 394 Phil. 433, 459-460 (2000).

RPC requires the division of the time included in the prescribed penalty into three equal periods of time included in the penalty imposed, forming one period for each of the three portions. Thus, the maximum, medium and minimum periods of the penalty prescribed for *estafa* under Art. 315, par. 1 (b) of the RPC are:

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

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

Maximum – 6 years, 8 months, and 21 days to 8 years[15]

In the present case, as the amount involved is ₱371,500, which obviously exceeds ₱22,000, the penalty imposable should be the maximum period of 6 years, 8 months and 21 days to 8 years of *prision mayor*. However, Art. 315 further states that a period of one year shall be added to the penalty for every additional ₱10,000 defrauded in excess of ₱22,000 but in no case shall the total penalty which may be imposed exceed 20 years. The amount swindled from Uy exceeds the amount of ₱22,000 which, when translated to the additional penalty of one year for every ₱10,000 defrauded, goes beyond 20 years (close to additional 35 years to be exact). Hence, under the law, the maximum penalty to be imposed to petitioner should be 20 years of *reclusion temporal*.

On the other hand, the minimum period of the indeterminate sentence should be within the range of the penalty next lower to that prescribed by Art. 315, par. 1(b) of the RPC. In this case, the penalty next lower to *prision correccional* maximum to *prision mayor* minimum is *prision correccional* minimum (6 months and 1 day to 2 years and 4 months) to *prision correccional* medium (2 years, 4 months, and 1 day to 4 years and 2 months). Therefore, the minimum term of the indeterminate

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[15] *Ceniza-Manantan v. People*, *supra* at 17; *Bonifacio v. People*, G.R. No. 153198, July 11, 2006, 494 SCRA 527, 533; and *Perez v. People*, *id.* at 223.

sentence should be anywhere from 6 months and 1 day to 4 years and 2 months.[16]

Considering the attendant factual milieu as well as the position of the Office of the Solicitor General in the present case, this Court is convinced that the appropriate penalty to be imposed upon petitioner, which is in accordance with law to best serve the ends of justice, should range from four (4) years and two (2) months of *prisión correccional*, as minimum, to twenty (20) years of *reclusión temporal*, as maximum.

WHEREFORE, the August 3, 2000 Decision of the Court of Appeals in CA-G.R. CR No. 13885, which affirmed the June 23, 1992 Decision of the Regional Trial Court, Branch 2, Batangas City, is *AFFIRMED WITH MODIFICATION* as to the penalty imposed. Petitioner is hereby sentenced to suffer an indeterminate sentence of four (4) years and two (2) months of *prisión correccional* as minimum to twenty (20) years of *reclusión temporal* as maximum.

Associate Justice Jose L. Sabio, Jr. of the Court of Appeals is hereby required to explain why he concurred in the decision aforementioned applying the wrong penalty, the explanation to be submitted in thirty (30) days from receipt of a copy of this Decision, which copy is hereby directed to be furnished upon him forthwith upon finality of this Decision.

No costs.

SO ORDERED.

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

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[16] *Ceniza-Manantan v. People*, *id.* at 18; *Bonifacio v. People*, *id.* at 534; *Perez v. People*, *id.* at 222; *Sim, Jr. v. Court of Appeals*, *supra* at 471; and *People v. Menil, Jr.*, *supra* at 460.

THIRD DIVISION

[G.R. No. 156225. January 29, 2008]

LETRAN CALAMBA FACULTY AND EMPLOYEES ASSOCIATION, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and COLEGIO DE SAN JUAN DE LETRAN CALAMBA, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; THE SUPREME COURT'S JURISDICTION IS LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTION.— Settled is the rule that the findings of the LA, when affirmed by the NLRC and the CA, are binding on the Supreme Court, unless patently erroneous. It is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below. In a petition for review on *certiorari*, this Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous. Firm is the doctrine that this Court is not a trier of facts, and this applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE RULINGS AND CIRCULARS; NATURE THEREOF, EXPLAINED.— The general rule is that administrative rulings and circulars shall not be given retroactive effect. **Nevertheless, it is a settled rule that when an administrative or executive agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law and the**

administrative interpretation is at best advisory for it is the courts that finally determine what the law means.

3. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; CONDITIONS OF EMPLOYMENT; WAGES; 13TH MONTH PAY; OVERLOAD PAY MAY NOT BE INCLUDED AS BASIS FOR DETERMINING A TEACHER'S 13TH MONTH PAY; RATIONALE.— In resolving the issue of the inclusion or exclusion of overload pay in the computation of a teacher's 13th-month pay, it is decisive to determine what "basic salary" includes and excludes. In this respect, the Court's disquisition in *San Miguel Corporation v. Inciong* is instructive, to wit: Under the Rules and Regulations Implementing Presidential Decree 851, the following compensations are deemed not part of the basic salary: a) Cost-of-living allowances granted pursuant to Presidential Decree 525 and Letter of Instruction No. 174; b) Profit sharing payments; c) All allowances and monetary benefits which are not considered or integrated as part of the regular basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975. Under a later set of Supplementary Rules and Regulations Implementing Presidential Decree 851 issued by the then Labor Secretary Blas Ople, *overtime pay, earnings and other remunerations* are excluded as part of the basic salary and in the computation of the 13th-month pay. The exclusion of cost-of-living allowances under Presidential Decree 525 and Letter of Instruction No. 174 and profit sharing payments indicate the intention to strip basic salary of other payments which are properly considered as "fringe" benefits. Likewise, the catch-all exclusionary phrase "all allowances and monetary benefits which are not considered or integrated as part of the basic salary" shows also the intention to strip basic salary of any and all additions which may be in the form of allowances or "fringe" benefits. Moreover, the Supplementary Rules and Regulations Implementing Presidential Decree 851 is even more emphatic in declaring that earnings and other remunerations which are not part of the basic salary shall not be included in the computation of the 13th-month pay. While doubt may have been created by the prior Rules and Regulations Implementing Presidential Decree 851 which defines basic salary to include *all remunerations or earnings* paid by an employer to an employee, this cloud is dissipated in the later

and more controlling Supplementary Rules and Regulations which categorically, exclude from the definition of basic salary earnings and other remunerations paid by employer to an employee. A cursory perusal of the two sets of Rules indicates that what has hitherto been the subject of a broad inclusion is now a subject of broad exclusion. The Supplementary Rules and Regulations cure the seeming tendency of the former rules to include all remunerations and earnings within the definition of basic salary. The all-embracing phrase "earnings and other remunerations" which are deemed not part of the basic salary includes within its meaning payments for sick, vacation, or maternity leaves, premium for works performed on rest days and special holidays, pay for regular holidays and night differentials. As such they are deemed not part of the basic salary and shall not be considered in the computation of the 13th-month pay. If they were not so excluded, it is hard to find any "earnings and other remunerations" expressly excluded in the computation of the 13th-month pay. Then the exclusionary provision would prove to be idle and with no purpose. This conclusion finds strong support under the Labor Code of the Philippines. To cite a few provisions: "Art. 87 – *Overtime work.* Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work, additional compensation equivalent to his regular wage plus at least twenty-five (25%) percent thereof." It is clear that overtime pay is an *additional compensation* other than and added to the regular wage or basic salary, for reason of which such is categorically excluded from the definition of basic salary under the Supplementary Rules and Regulations Implementing Presidential Decree 851. In Article 93 of the same Code, paragraph "c.) work performed on any special holiday shall be paid an additional compensation of at least thirty percent (30%) of the regular wage of the employee." It is likewise clear that premium for special holiday which is at least 30% of the regular wage is an *additional compensation* other than and added to the regular wage or basic salary. For similar reason it shall not be considered in the computation of the 13th -month pay. In the same manner that payment for overtime work and work performed during special holidays is considered as additional compensation apart and distinct from an employee's regular wage or basic salary, an overload pay, owing to its very nature and definition, may not be considered as part of a teacher's

regular or basic salary, because it is being paid for additional work performed in excess of the regular teaching load. The peculiarity of an overload lies in the fact that it may be performed within the normal eight-hour working day. This is the only reason why the DOLE, in its explanatory bulletin, finds it proper to include a teacher's overload pay in the determination of his or her 13th month pay. However, the DOLE loses sight of the fact that even if it is performed within the normal eight-hour working day, an overload is still an additional or extra teaching work which is performed after the regular teaching load has been completed. Hence, any pay given as compensation for such additional work should be considered as extra and not deemed as part of the regular or basic salary. Moreover, petitioner failed to refute private respondent's contention that excess teaching load is paid by the hour, while the regular teaching load is being paid on a monthly basis; and that the assignment of overload is subject to the availability of teaching loads. This only goes to show that overload pay is not integrated with a teacher's basic salary for his or her regular teaching load. In addition, overload varies from one semester to another, as it is dependent upon the availability of extra teaching loads. As such, it is not legally feasible to consider payments for such overload as part of a teacher's regular or basic salary. Verily, overload pay may not be included as basis for determining a teacher's 13th month pay.

APPEARANCES OF COUNSEL

Samson S. Alcantara for petitioner.
Padilla Law Office for private respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Assailed in the present Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the

[1] Penned by Justice Romeo A. Brawner (now COMELEC Commissioner) with the concurrence of Justices Mario L. Guariña III and Danilo B. Pine; *rollo*, pp. 849-854.

Court of Appeals (CA) promulgated on May 14, 2002 in CA-G.R. SP No. 61552 dismissing the special civil action for *certiorari* filed before it; and the Resolution[2] dated November 28, 2002, denying petitioner's Motion for Reconsideration.

The facts of the case are as follows:

On October 8, 1992, the Letran Calamba Faculty and Employees Association (petitioner) filed with Regional Arbitration Branch No. IV of the National Labor Relations Commission (NLRC) a Complaint[3] against Colegio de San Juan de Letran, Calamba, Inc. (respondent) for collection of various monetary claims due its members. Petitioner alleged in its Position Paper that:

x x x x x x x x x

2) [It] has filed this complaint in behalf of its members whose names and positions appear in the list hereto attached as Annex "A".

3) In the computation of the thirteenth month pay of its academic personnel, respondent does not include as basis therefor their compensation for overloads. It only takes into account the pay the faculty members receive for their teaching loads not exceeding eighteen (18) units. The teaching overloads are rendered within eight (8) hours a day.

4) Respondent has not paid the wage increases required by Wage Order No. 5 to its employees who qualify thereunder.

5) Respondent has not followed the formula prescribed by DECS Memorandum Circular No. 2 dated March 10, 1989 in the computation of the compensation per unit of excess load or overload of faculty members. This has resulted in the diminution of the compensation of faculty members.

6) The salary increases due the non-academic personnel as a result of job grading has not been given. Job grading has been an annual practice of the school since 1980; the same is done for the purpose of increasing the salaries of non-academic personnel and as the counterpart of the ranking systems of faculty members.

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[2] *Id*. at 860-863.

[3] *Rollo*, p. 41.

7) Respondent has not paid to its employees the balances of seventy (70%) percent of the tuition fee increases for the years 1990, 1991 and 1992.

8) Respondent has not also paid its employees the holiday pay for the ten (10) regular holidays as provided for in Article 94 of the Labor Code.

9) Respondent has refused without justifiable reasons and despite repeated demands to pay its obligations mentioned in paragraphs 3 to 7 hereof.

x x x x x x x x x[4]

The complaint was docketed as NLRC Case No. RAB-IV-10-4560-92-L.

On January 29, 1993, respondent filed its Position Paper denying all the allegations of petitioner.

On March 10, 1993, petitioner filed its Reply.

Prior to the filing of the above-mentioned complaint, petitioner filed a separate complaint against the respondent for money claims with Regional Office No. IV of the Department of Labor and Employment (DOLE).

On the other hand, pending resolution of NLRC Case No. RAB-IV-10-4560-92-L, respondent filed with Regional Arbitration Branch No. IV of the NLRC a petition to declare as illegal a strike staged by petitioner in January 1994.

Subsequently, these three cases were consolidated. The case for money claims originally filed by petitioner with the DOLE was later docketed as NLRC Case No. RAB-IV-11-4624-92-L, while the petition to declare the subject strike illegal filed by respondent was docketed as NLRC Case No. RAB-IV-3-6555-94-L.

On September 28, 1998, the Labor Arbiter (LA) handling the consolidated cases rendered a Decision with the following dispositive portion:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

[4] *Id*. at 42-43.

1. The money claims cases (RAB-IV-10-4560-92-L and RAB-IV-11-4624-92-L) are hereby dismissed for lack of merit;

2. The petition to declare strike illegal (NLRC Case No. RAB-IV-3-6555-94-L) is hereby dismissed, but the officers of the Union, particularly its President, Mr. Edmundo F. Marifosque, Sr., are hereby reprimanded and sternly warned that future conduct similar to what was displayed in this case will warrant a more severe sanction from this Office.

SO ORDERED.[5]

Both parties appealed to the NLRC.

On July 28, 1999, the NLRC promulgated its Decision[6] dismissing both appeals. Petitioner filed a Motion for Reconsideration[7] but the same was denied by the NLRC in its Resolution[8] dated June 21, 2000.

Petitioner then filed a special civil action for *certiorari* with the CA assailing the above-mentioned NLRC Decision and Resolution.

On May 14, 2002, the CA rendered the presently assailed judgment dismissing the petition.

Petitioner filed a Motion for Reconsideration but the CA denied it in its Resolution promulgated on November 28, 2002.

Hence, herein petition for review based on the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION CANNOT BE REVIEWED IN *CERTIORARI* PROCEEDINGS.

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[5] *Rollo*, p. 803.

[6] *Id.* at 817.

[7] *Id.* at 831.

[8] *Id.* at 834.

II

THE COURT OF APPEALS GRAVELY ERRED IN REFUSING TO RULE SQUARELY ON THE ISSUE OF WHETHER OR NOT THE PAY OF FACULTY MEMBERS FOR TEACHING OVERLOADS SHOULD BE INCLUDED AS BASIS IN THE COMPUTATION OF THEIR THIRTEENTH MONTH PAY.

III

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND IN NOT GRANTING PETITIONER'S MONETARY CLAIMS.[9]

Citing *Agustilo v. Court of Appeals*,[10] petitioner contends that in a special civil action for *certiorari* brought before the CA, the appellate court can review the factual findings and the legal conclusions of the NLRC.

As to the inclusion of the overloads of respondent's faculty members in the computation of their 13th-month pay, petitioner argues that under the Revised Guidelines on the Implementation of the 13th-Month Pay Law, promulgated by the Secretary of Labor on November 16, 1987, the basic pay of an employee includes remunerations or earnings paid by his employer for services rendered, and that excluded therefrom are the cash equivalents of unused vacation and sick leave credits, overtime, premium, night differential, holiday pay and cost-of-living allowances. Petitioner claims that since the pay for excess loads or overloads does not fall under any of the enumerated exclusions and considering that the said overloads are being performed within the normal working period of eight hours a day, it only follows that the overloads should be included in the computation of the faculty members' 13th-month pay.

To support its argument, petitioner cites the opinion of the Bureau of Working Conditions of the DOLE that payment of

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[9] *Rollo,* pp. 15-19.

[10] 417 Phil. 218 (2001).

teaching overload performed within eight hours of work a day shall be considered in the computation of the 13th-month pay.[11]

Petitioner further contends that DOLE-DECS-CHED-TESDA Order No. 02, Series of 1996 (DOLE Order) which was relied upon by the LA and the NLRC in their respective Decisions cannot be applied to the instant case because the DOLE Order was issued long after the commencement of petitioner's complaints for monetary claims; that the prevailing rule at the time of the commencement of petitioner's complaints was to include compensations for overloads in determining a faculty member's 13th-month pay; that to give retroactive application to the DOLE Order issued in 1996 is to deprive workers of benefits which have become vested and is a clear violation of the constitutional mandate on protection of labor; and that, in any case, all doubts in the implementation and interpretation of labor laws, including implementing rules and regulations, should be resolved in favor of labor.

Lastly, petitioner avers that the CA, in concluding that the NLRC Decision was supported by substantial evidence, failed to specify what constituted said evidence. Thus, petitioner asserts that the CA acted arbitrarily in affirming the Decision of the NLRC.

In its Comment, respondent contends that the ruling in *Agustilo* is an exception rather than the general rule; that the general rule is that in a petition for *certiorari*, judicial review by this Court or by the CA in labor cases does not go so far as to evaluate the sufficiency of the evidence upon which the proper labor officer or office based his or its determination but is limited only to issues of jurisdiction or grave abuse of discretion amounting to lack of jurisdiction; that before a party may ask that the CA or this Court review the factual findings of the NLRC, there must first be a convincing argument that the NLRC acted in a capricious, whimsical, arbitrary or despotic manner; and that in its petition for *certiorari* filed with the CA, herein petitioner failed to prove that the NLRC acted without or in excess of jurisdiction or with grave abuse of discretion.

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[11] See Annexes "III", "JJJ", and "KKK", *rollo*, pp. 168-174.

Respondent argues that *Agustilo* is not applicable to the present case because in the former case, the findings of fact of the LA and the NLRC are at variance with each other; while in the present case, the findings of fact and conclusions of law of the LA and the NLRC are the same.

Respondent also avers that in a special civil action for *certiorari,* the discretionary power to review factual findings of the NLRC rests upon the CA; and that absent any findings by the CA of the need to resolve any unclear or ambiguous factual findings of the NLRC, the grant of the writ of *certiorari* is not warranted.

Further, respondent contends that even granting that the factual findings of the CA, NLRC and the LA may be reviewed in the present case, petitioner failed to present valid arguments to warrant the reversal of the assailed decision.

Respondent avers that the DOLE Order is an administrative regulation which interprets the 13th-Month Pay Law (P.D. No. 851) and, as such, it is mandatory for the LA to apply the same to the present case.

Moreover, respondent contends that the Legal Services Office of the DOLE issued an opinion dated March 4, 1992,[12] that remunerations for teaching in excess of the regular load, which includes overload pay for work performed within an eight-hour work day, may not be included as part of the basic salary in the computation of the 13th-month pay unless this has been included by company practice or policy; that petitioner intentionally omitted any reference to the above-mentioned opinion of the Legal Services Office of the DOLE because it is fatal to its cause; and that the DOLE Order is an affirmation of the opinion rendered by the said Office of the DOLE.

Furthermore, respondent claims that, contrary to the asseveration of petitioner, prior to the issuance of the DOLE Order, the prevailing rule is to exclude excess teaching load, which is akin to overtime, in the computation of a teacher's basic salary and, ultimately, in the computation of his 13th-month pay.

[12] See Annex "4" to Comment on Petition, *rollo*, p. 919.

As to respondent's alleged non-payment of petitioner's consolidated money claims, respondent contends that the findings of the LA regarding these matters, which were affirmed by the NLRC and the CA, have clear and convincing factual and legal bases to stand on.

The Court's Ruling

The Court finds the petition bereft of merit.

As to the first and third assigned errors, petitioner would have this Court review the factual findings of the LA as affirmed by the NLRC and the CA, to wit.

> With respect to the alleged non-payment of benefits under Wage Order No. 5, this Office is convinced that after the lapse of the one-year period of exemption from compliance with Wage Order No. 5 (Exhibit "1-B"), which exemption was granted by then Labor Minister Blas Ople, the School settled its obligations to its employees, conformably with the agreement reached during the management-employees meeting of June 26, 1985 (Exhibits "4-B" up to "4-D", also Exhibit "6-x-1"). The Union has presented no evidence that the settlement reached during the June 26, 1985 meeting was the result of coercion. Indeed, what is significant is that the agreement of June 26, 1985 was signed by Mr. Porferio Ferrer, then Faculty President and an officer of the complaining Union. Moreover, the samples from the payroll journal of the School, identified and offered in evidence in these cases (Exhibits "1-C" and 1-D"), shows that the School paid its employees the benefits under Wage Order No. 5 (and even Wage Order No. 6) beginning June 16, 1985.
>
> Under the circumstances, therefore, the claim of the Union on this point must likewise fail.
>
> The claim of the Union for salary differentials due to the improper computation of compensation per unit of excess load cannot hold water for the simple reason that during the Schoolyears in point there were no classes from June 1-14 and October 17-31. This fact was not refuted by the Union. Since extra load should be paid only when actually performed by the employees, no salary differentials are due the Union members.
>
> The non-academic members of the Union cannot legally insist on wage increases due to "Job Grading." From the records it appears

that "Job Grading" is a system adopted by the School by which positions are classified and evaluated according to the prescribed qualifications therefor. It is akin to a merit system whereby salary increases are made dependent upon the classification, evaluation and grading of the position held by an employee.

The system of Job Grading was initiated by the School in Schoolyear 1989-1990. In 1992, just before the first of the two money claims was filed, a new Job Grading process was initiated by the School.

Under the circumstances obtaining, it cannot be argued that there were repeated grants of salary increases due to Job Grading to warrant the conclusion that some benefit was granted in favor of the non-academic personnel that could no longer be eliminated or banished under Article 100 of the Labor Code. Since the Job Grading exercises of the School were neither consistent nor for a considerable period of time, the monetary claims attendant to an increase in job grade are non-existent.

The claim of the Union that its members were not given their full share in the tuition fee increases for the Schoolyears 1989-1990, 1990-1991 and 1991-1992 is belied by the evidence presented by the School which consists of the unrefuted testimony of its Accounting Coordinator, Ms. Rosario Manlapaz, and the reports extrapolated from the journals and general ledgers of the School (Exhibits "2", "2-A" up to "2-G"). The evidence indubitably shows that in Schoolyear 1989-1990, the School incurred a deficit of ₱445,942.25, while in Schoolyears 1990-1991 and 1991-1992, the School paid out, 91% and 77%, respectively, of the increments in the tuition fees collected.

As regards the issue of non-payment of holiday pay, the individual pay records of the School's employees, a sample of which was identified and explained by Ms. Rosario Manlapaz (Exhibit "3"), shows that said School employees are paid for all days worked in the year. Stated differently, the factor used in computing the salaries of the employees is 365, which indicates that their regular monthly salary includes payment of wages during all legal holidays.[13]

This Court held in *Odango v. National Labor Relations Commission*[14] that:

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[13] Decision of the Labor Arbiter, *rollo*, pp. 896-898.

[14] G.R. No.147420, June 10, 2004, 431 SCRA 633.

The appellate court's jurisdiction to review a decision of the NLRC in a petition for *certiorari* is confined to issues of jurisdiction or grave abuse of discretion. An extraordinary remedy, a petition for *certiorari* is available only and restrictively in truly exceptional cases. The sole office of the writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of the NLRC's evaluation of the evidence or of its factual findings. Such findings are generally accorded not only respect but also finality. A party assailing such findings bears the burden of showing that the tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy, in order that the extraordinary writ of *certiorari* will lie.[15]

In the instant case, the Court finds no error in the ruling of the CA that since nowhere in the petition is there any acceptable demonstration that the LA or the NLRC acted either with grave abuse of discretion or without or in excess of its jurisdiction, the appellate court has no reason to look into the correctness of the evaluation of evidence which supports the labor tribunals' findings of fact.

Settled is the rule that the findings of the LA, when affirmed by the NLRC and the CA, are binding on the Supreme Court, unless patently erroneous.[16] It is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below.[17] In a petition for review on *certiorari*, this Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous.[18] Firm is the doctrine that this Court is not a trier of facts, and this applies with greater force in labor

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[15] *Id.* at 639-640.

[16] *German Machineries Corporation v. Endaya*, G.R. No. 156810, November 25, 2004, 444 SCRA 329, 340.

[17] *Id.*

[18] *Retuya v. Dumarpa*, G.R. No. 148848, August 5, 2003, 408 SCRA 315, 326.

cases.[19] Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality.[20] They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record.[21] We find none of these exceptions in the present case.

In petitions for review on *certiorari* like the instant case, the Court invariably sustains the unanimous factual findings of the LA, the NLRC and the CA, specially when such findings are supported by substantial evidence and there is no cogent basis to reverse the same, as in this case.[22]

The second assigned error properly raises a question of law as it involves the determination of whether or not a teacher's overload pay should be considered in the computation of his or her 13th-month pay. In resolving this issue, the Court is confronted with conflicting interpretations by different government agencies.

On one hand is the opinion of the Bureau of Working Conditions of the DOLE dated December 9, 1991, February 28, 1992 and November 19, 1992 to the effect that if overload is performed within a teacher's normal eight-hour work per day, the remuneration that the teacher will get from the additional teaching load will form part of the basic wage.[23]

This opinion is affirmed by the Explanatory Bulletin on the Inclusion of Teachers' Overload Pay in the 13th-Month Pay Determination issued by the DOLE on December 3, 1993 under

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[19] *Gerlach v. Reuters Limited, Phils.*, G.R. No. 148542, January 17, 2005, 448 SCRA 535, 545.

[20] *Colegio de San Juan de Letran-Calamba v. Villas*, 447 Phil. 692, 700 (2003).

[21] *Id.*

[22] *Pandiman Philippines, Inc. v. Marine Manning Management Corporation*, G.R. No. 143313, June 21, 2005, 460 SCRA 418, 424.

[23] See note 11.

then Acting DOLE Secretary Cresenciano B. Trajano. Pertinent portions of the said Bulletin read as follows:

1. Basis of the 13th-month pay computation

The Revised Implementing Guidelines of the 13th-Month Pay Law (P.D. 851, as amended) provides that an employee shall be entitled to not less than 1/12 of the total basic salary earned within a calendar year for the purpose of computing such entitlement. The basic wage of an employee shall include:

"x x x all remunerations or earnings paid by his employer for services rendered but do not include allowances or monetary benefits which are not considered or integrated as part of the regular or **basic salary**, such as the cash equivalent of unused vacation and sick leave credits, overtime, premium, night differential and holiday pay, and cost-of-living allowances. However, these salary-related benefits should be included as part of the **basic** salary in the computation of the 13th month pay if by individual or collective agreement, company practice or policy, the same are treated as part of the basic salary of the employees."

Basic wage is defined by the Implementing Rules of RA 6727 as follows:

"Basic Wage" means all remuneration or earnings paid by an employer to a worker for services rendered on normal working days and hours but does not include cost of living allowances, 13th-month pay or other monetary benefits which are not considered as part of or integrated into the regular salary of the workers xxx.

The foregoing definition was based on Article 83 of the Labor Code which provides that "the normal hours of work of any employee shall not exceed eight (8) hours a day." This means that the basic salary of an employee for the purpose of computing the 13th-month pay shall include all remunerations or earnings paid by an employer for services rendered during normal working hours.

2. Overload work/pay

Overload on the other hand means "the load in excess of the normal load of private school teachers as prescribed by the Department of Education, Culture and Sports (DECS) or the policies, rules and standards of particular private schools." In recognition of the peculiarities of the teaching profession, existing DECS and School

Policies and Regulations for different levels of instructions prescribe a regular teaching load, the total actual teaching or classroom hours of which a teacher can generally perform in less than eight (8) hours per working day. This is because teaching may also require the teacher to do additional work such as handling an advisory class, preparation of lesson plans and teaching aids, evaluation of students and other related activities. Where, however a teacher is engaged to undertake actual additional teaching work after completing his/her regular teaching load, such additional work is generally referred to as overload. In short, additional work in excess of the regular teaching load is overload work. **Regular teaching load and overload work, if any, may constitute a teacher's working day**.

Where a teacher is required to perform such overload within the eight (8) hours normal working day, such overload compensation shall be considered part of the basic pay for the purpose of computing the teacher's 13th-month pay. "Overload work" is sometimes misunderstood as synonymous to "overtime work" as this term is used and understood in the Labor Code. These two terms are not the same because overtime work is work rendered in excess of normal working hours of eight in a day (Art. 87, Labor Code). Considering that overload work may be performed either within or outside eight hours in a day, overload work may or may not be overtime work.

3. Concluding Statement

In the light of the foregoing discussions, it is the position of this Department that all basic salary/wage representing payments earned for actual work performed during or within the eight hours in a day, including payments for overload work within eight hours, form part of basic wage and therefore are to be included in the computation of 13th-month pay mandated by PD 851, as amended.[24] (Underscoring supplied)

On the other hand, the Legal Services Department of the DOLE holds in its opinion of March 4, 1992 that remunerations for teaching in excess of the regular load shall be excluded in the computation of the 13th-month pay unless, by school policy, the same are considered as part of the basic salary of the qualified teachers.[25]

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[24] *THE LABOR CODE OF THE PHILIPPINES*, 1998 edition, Vicente Foz, pp. 490-491.

[25] See note 12.

This opinion is later affirmed by the DOLE Order, pertinent portions of which are quoted below:

x x x x x x x x x

2. In accordance with Article 83 of the Labor Code of the Philippines, as amended, the normal hours of work of school academic personnel shall not exceed eight (8) hours a day. **Any work done in addition to the eight (8) hours daily work shall constitute overtime work**.

3. The normal hours of work of teaching or academic personnel shall be based on their normal or regular teaching loads. Such normal or regular teaching loads shall be in accordance with the policies, rules and standards prescribed by the Department of Education, Culture and Sports, the Commission on Higher Education and the Technical Education and Skills Development Authority. **Any teaching load in excess of the normal or regular teaching load shall be considered as overload**. Overload partakes of the nature of temporary extra assignment and compensation therefore shall be considered as an overload honorarium if performed within the 8-hour work period **and does not form part of the regular or basic pay**. Overload performed beyond the eight-hour daily work is overtime work.[26] (Emphasis supplied)

It was the above-quoted DOLE Order which was used by the LA as basis for ruling against herein petitioner.

The petitioner's claim that the DOLE Order should not be made to apply to the present case because said Order was issued only in 1996, approximately four years after the present case was initiated before the Regional Arbitration Branch of the NLRC, is not without basis. The general rule is that administrative rulings and circulars shall not be given retroactive effect.[27]

Nevertheless, it is a settled rule that when an administrative or executive agency renders an opinion or issues a statement

[26] CA *rollo*, p. 782.

[27] *Co v. Court of Appeals*, G.R. No. 100776, October 28, 1993, 227 SCRA 444, 449, citing *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals*, 195 Phil. 34, 41 (1981); *Sanchez v. Commission on Elections*, G.R. Nos. 94459-60, January 24, 1991, 193 SCRA 317; and *Romualdez III v. Civil Service Commission*, 274 Phil. 445 (1991).

of policy, it merely interprets a pre-existing law and the administrative interpretation is at best advisory for it is the courts that finally determine what the law means.[28]

In the present case, while the DOLE Order may not be applicable, the Court finds that overload pay should be excluded from the computation of the 13th-month pay of petitioner's members.

In resolving the issue of the inclusion or exclusion of overload pay in the computation of a teacher's 13th-month pay, it is decisive to determine what "basic salary" includes and excludes.

In this respect, the Court's disquisition in *San Miguel Corporation v. Inciong*[29] is instructive, to wit:

> Under Presidential Decree 851 and its implementing rules, the *basic salary* of an employee is used as the basis in the determination of his 13th month pay. Any compensations or remunerations which are deemed not part of the basic pay is excluded as basis in the computation of the mandatory bonus.
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> Under the Rules and Regulations Implementing Presidential Decree 851, the following compensations are deemed not part of the basic salary:
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> a) Cost-of-living allowances granted pursuant to Presidential Decree 525 and Letter of Instruction No. 174;
>
> b) Profit sharing payments;
>
> c) All allowances and monetary benefits which are not considered or integrated as part of the regular basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.
>
> Under a later set of Supplementary Rules and Regulations Implementing Presidential Decree 851 issued by the then Labor Secretary Blas Ople, *overtime pay, earnings and other remunerations* are excluded as part of the basic salary and in the computation of the 13th-month pay.

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[28] *Energy Regulatory Board v. Court of Appeals*, 409 Phil. 36, 48 (2001); *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos*, 465 Phil. 860, 950 (2004).

[29] G.R. No. L-49774, February 24, 1981, 103 SCRA 139.

The exclusion of cost-of-living allowances under Presidential Decree 525 and Letter of Instruction No. 174 and profit sharing payments indicate the intention to strip basic salary of other payments which are properly considered as "fringe" benefits. Likewise, the catch-all exclusionary phrase "all allowances and monetary benefits which are not considered or integrated as part of the basic salary" shows also the intention to strip basic salary of any and all additions which may be in the form of allowances or "fringe" benefits.

Moreover, the Supplementary Rules and Regulations Implementing Presidential Decree 851 is even more emphatic in declaring that earnings and other remunerations which are not part of the basic salary shall not be included in the computation of the 13th-month pay.

While doubt may have been created by the prior Rules and Regulations Implementing Presidential Decree 851 which defines basic salary to include *all remunerations or earnings* paid by an employer to an employee, this cloud is dissipated in the later and more controlling Supplementary Rules and Regulations which categorically, exclude from the definition of basic salary earnings and other remunerations paid by employer to an employee. A cursory perusal of the two sets of Rules indicates that what has hitherto been the subject of a broad inclusion is now a subject of broad exclusion. The Supplementary Rules and Regulations cure the seeming tendency of the former rules to include all remunerations and earnings within the definition of basic salary.

The all-embracing phrase "earnings and other remunerations" which are deemed not part of the basic salary includes within its meaning payments for sick, vacation, or maternity leaves, premium for works performed on rest days and special holidays, pay for regular holidays and night differentials. As such they are deemed not part of the basic salary and shall not be considered in the computation of the 13th-month pay. If they were not so excluded, it is hard to find any "earnings and other remunerations" expressly excluded in the computation of the 13th-month pay. Then the exclusionary provision would prove to be idle and with no purpose.

This conclusion finds strong support under the Labor Code of the Philippines. To cite a few provisions:

"Art. 87 — *Overtime work*. Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime

work, additional compensation equivalent to his regular wage plus at least twenty-five (25%) percent thereof."

It is clear that overtime pay is an *additional compensation* other than and added to the regular wage or basic salary, for reason of which such is categorically excluded from the definition of basic salary under the Supplementary Rules and Regulations Implementing Presidential Decree 851.

In Article 93 of the same Code, paragraph

"c.) work performed on any special holiday shall be paid an additional compensation of at least thirty percent (30%) of the regular wage of the employee."

It is likewise clear that premium for special holiday which is at least 30% of the regular wage is an *additional compensation* other than and added to the regular wage or basic salary. For similar reason it shall not be considered in the computation of the 13th -month pay.[30]

In the same manner that payment for overtime work and work performed during special holidays is considered as additional compensation apart and distinct from an employee's regular wage or basic salary, an overload pay, owing to its very nature and definition, may not be considered as part of a teacher's regular or basic salary, because it is being paid for additional work performed in excess of the regular teaching load.

The peculiarity of an overload lies in the fact that it may be performed within the normal eight-hour working day. This is the only reason why the DOLE, in its explanatory bulletin, finds it proper to include a teacher's overload pay in the determination of his or her 13th-month pay. However, the DOLE loses sight of the fact that even if it is performed within the normal eight-hour working day, an overload is still an additional or extra teaching work which is performed after the regular teaching load has been completed. Hence, any pay given as compensation

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[30] *Id.* at 143-145.

for such additional work should be considered as extra and not deemed as part of the regular or basic salary.

Moreover, petitioner failed to refute private respondent's contention that excess teaching load is paid by the hour, while the regular teaching load is being paid on a monthly basis; and that the assignment of overload is subject to the availability of teaching loads. This only goes to show that overload pay is not integrated with a teacher's basic salary for his or her regular teaching load. In addition, overload varies from one semester to another, as it is dependent upon the availability of extra teaching loads. As such, it is not legally feasible to consider payments for such overload as part of a teacher's regular or basic salary. Verily, overload pay may not be included as basis for determining a teacher's 13th-month pay.

WHEREFORE, the instant petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168309. January 29, 2008]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **MARIAN D. TORRES and MARICAR D. TORRES,** *respondents.*

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* In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 484 dated January 11, 2008.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; FALSIFICATION OF OFFICIAL DOCUMENT, AS AN ADMINISTRATIVE OFFENSE; EXEMPLIFIED.— Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity." Falsification of an official document, as an administrative offense, is knowingly making false statements in official or public documents. Both are grave offenses under the Uniform Rules on Administrative Cases in the Civil Service, which carry with it the penalty of dismissal on the first offense. Falsification of DTRs amounts to dishonesty. The evident purpose of requiring government employees to keep a time record is to show their attendance in office to work and to be paid accordingly. Closely adhering to the policy of no work-no pay, a DTR is primarily, if not solely, intended to prevent damage or loss to the government as would result in instances where it pays an employee for no work done.

2. ID.; ID.; ID.; GOOD FAITH, DEFINED; NOT A DEFENSE IN CASE AT BAR.— Respondents' claim of good faith, which implies a sincere intent not to do any falsehood or to seek any undue advantage, cannot be believed. This Court pronounced – Good faith, here understood, is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an **honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone.** It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another. x x x In this case, respondents knew fully well that the entries they made in their respective DTRs were false considering that it was physically impossible for them to have reported for full work days when during those times they were actually attending their regular classes, which undoubtedly would take up most of the daytime hours of the weekdays. With this knowledge, respondents did not bother to correct the DTR

entries to honestly reflect their attendance at their workplace and the actual work they performed. Worse, they repeatedly did this for a long period of time, consequently allowing them to collect their full salaries for the entire duration of their public employment as staff members of their father.

3. ID.; ID.; ID.; EXISTENCE OF MALICE OR CRIMINAL INTENT IS NOT A PREREQUISITE.— When respondents collected their salaries on the basis of falsified DTRs, they caused injury to the government. The falsification of one's DTR to cover up one's absences or tardiness automatically results in financial losses to the government because it enables the employee concerned to be paid salaries and to earn leave credits for services which were never rendered. Undeniably, the falsification of a DTR foists a fraud involving government funds. Likewise, the existence of malice or criminal intent is not a prerequisite to declare the respondents administratively culpable. What is merely required is a showing that they made entries in their respective DTRs knowing fully well that they were false. This was evident in the many documents viewed and reviewed by petitioner through GIO Generoso.

4. ID.; ID.; ID.; PRESCRIPTION; OFFICE OF THE OMBUDSMAN IS GIVEN A WIDE RANGE OF DISCRETION TO PROCEED WITH THE INVESTIGATION.— On the issue of prescription, we agree with petitioner's contention that the Office of the Ombudsman is given by R.A. No. 6770 a wide range of discretion whether or not to proceed with an investigation of administrative offenses even beyond the expiration of one (1) year from the commission of the offense.

5. ID.; ID.; ID.; THE DISMISSAL OF CRIMINAL CASE CANNOT BENEFIT RESPONDENTS TO CAUSE THE DISMISSAL OF THE ADMINISTRATIVE CHARGES AGAINST THEM; RATIONALE.— Likewise, the dismissal of the criminal case involving the same set of facts cannot benefit respondents to cause the dismissal of the administrative charges against them. As we held in *Tecson v. Sandiganbayan* — [I]t is a basic principle of the law on public officers that a public official or employee is under a three-fold responsibility for violation of a duty or for a wrongful act or omission. This simply means that a public officer may be held civilly, criminally, and

administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held *civilly* liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may be punished *criminally*. Finally, such violation may also lead to suspension, removal from office, or other *administrative* sanctions. This administrative liability is separate and distinct from the penal and civil liabilities. x x x

6. ID.; ID.; ID.; IMPOSABLE PENALTY.— As mentioned above, falsification of a DTR (an official document) amounts to dishonesty. Thus, respondents should be held administratively liable. While dismissal was originally recommended for imposition on respondents, the penalty was eventually tempered to suspension of one (1) year without pay. We agree with the imposition of the lower penalty considering that respondents' public employment with the then *Sangguniang Bayan* of Malabon, even while they were regular college students, was of a confidential character, and the arrangement was with the full knowledge and consent of their father who appointed them to their positions. While this Court recognizes the relative laxity given to confidential employees in terms of adjusted or flexible working hours, substantial non-attendance at work as blatant and glaring as in the case of respondents cannot be countenanced. Collecting full salaries for work practically not rendered is simply, downright reprehensible. Inevitably, this leads to the erosion of the public's faith in and respect for the government.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Esguerra Baluyut Benitez & Mariano Law Offices for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Office of the Ombudsman

[1] *Rollo,* pp. 10-37.

seeking the reversal of the Decision[2] dated January 6, 2004 and the Resolution[3] dated May 27, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 69749.

The case arose from an administrative complaint for Dishonesty, Grave Misconduct, and Falsification of Official Document filed before the Office of the Ombudsman (docketed as OMB-ADM-0-00-0926) by then *Barangay* Chairman Romancito L. Santos of Concepcion, Malabon, against Edilberto Torres (Edilberto), Maricar D. Torres (Maricar), and Marian D. Torres (Marian), then Municipal Councilor, Legislative Staff Assistant, and Messenger, respectively, of the *Sangguniang Bayan* of Malabon. Maricar and Marian are daughters of Edilberto.

Maricar was appointed as Legislative Staff Assistant on February 16, 1995, while Marian was appointed as Messenger on May 24, 1996. At the time of their public employment, they were both enrolled as full-time regular college students – Maricar, as a full-time student at the University of Santo Tomas (UST) and Marian as a dentistry-proper student at the College of Dentistry of Centro Escolar University. During the period subject of this case, they were able to collect their respective salaries by submitting Daily Time Records (DTR) indicating that they reported for work every working day, from 8:00 a.m. to 5:00 p.m.

After due proceedings held in the Office of the Ombudsman, Graft Investigation Officer (GIO) Moreno F. Generoso, in the Decision[4] dated November 9, 2001, found Maricar and Marian administratively guilty of Dishonesty and Falsification of Official Document and recommended the imposition of the penalty of dismissal from the service. The charge against Edilberto was dismissed, having become moot and academic in view of his re-election on May 14, 2001 in accordance with the ruling in *Aguinaldo v. Santos*[5] that "a public official cannot be removed

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[2] *Id.* at 39-45.

[3] *Id.* at 48-52.

[4] *Id.* at 219-232.

[5] G.R. No. 94115, August 21, 1992, 212 SCRA 768, 773.

for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor." Upon recommendation of Deputy Special Prosecutor Robert E. Kallos, Ombudsman Aniano A. Desierto affirmed the findings of GIO Generoso but tempered the penalty to one (1) year suspension from service without pay.

Aggrieved, Maricar and Marian went to the CA via a petition[6] for *certiorari* under Rule 65 of the Rules of Court.

In a Decision dated January 6, 2004, the CA granted the petition. While affirming the findings of fact of the Office of the Ombudsman, the CA set aside the finding of administrative guilt against Maricar and Marian ratiocinating in this wise:

> It is undisputed that petitioners are confidential employees of their father. As such, the task they were required to perform, is upon the instance of their father, and the time they were required to report may be intermittent. To our mind, the false entries they made in their daily time records on the specific dates contained therein, had been made with no malice or deliberate intent so as to constitute falsification. The entries made may not be absolutely false, they may even be considered as having been made with a color of truth, not a downright and willful falsehood which taken singly constitutes falsification of public documents. As Cuello Calon stated: *"La mera inexactud no es bastante para integrar este delito."* In the present case, the daily time records have already served their purpose. They have not caused any damage to the government or third person because under the facts obtaining, petitioners may be said to have rendered service in the interest of the public, with proper permission from their superior.
>
> It may be true that a daily time record is an official document. It is not falsified if it does not pervert its avowed purpose as when it does not cause damage to the government. It may be different in the case of a public document with continuing interest affecting the public welfare, which is naturally damaged if that document is falsified when the truth is necessary for the safeguard and protection of that

[6] *Rollo*, pp. 181-197.

general interest. The keeping and submission of daily time records within the context of petitioners' employment, should be taken only for the sake of administrative procedural convenience or as a matter of practice, but not for reason of strict legal obligation.

Assuming that petitioners are under strict legal obligation to keep and submit daily time records, still we are disposed to the view that the alleged false entries do not constitute falsification for having been made with no malice or deliberate intent.

The following pronouncement in the case of ***Lecaroz vs. Sandiganbayan*** may serve as a guidepost, to wit: "[I]f what is proven is mere judgmental error on the part of the person committing the act, no malice or criminal intent can be rightfully imputed to him. x x x. Ordinarily, evil intent must unite with an unlawful act for a crime to exist. *Actus non facit reum, nisi mens sit rea.* There can be no crime when the criminal mind is wanting. As a general rule, ignorance or mistake as to particular facts, honest and real, will exempt the doer from felonious responsibility. The exception of course is neglect in the discharge of duty or indifference to consequences, which is equivalent to criminal intent, for in this instance, the element of malicious intent is supplied by the element of negligence and imprudence. In the instant case, there are clear manifestations of good faith and lack of criminal intent on the part of petitioners."

As a final note, there may be some suspicions as to the real intention of private complainant in instituting the action before public respondent, caution should be taken to prevent the development of circumstances that might inevitably impair the image of the public office. Private complainant is a government official himself, as such he should avoid so far as reasonably possible, a situation which would normally tend to arouse any reasonable suspicion that he is utilizing his official position for personal gain or advantage to the prejudice of party litigants or the public in general. For "there may be occasion then where the needs of the collectivity that is the government may collide with his private interest as an individual."

In closing, it must be borne in mind that the evident purpose of requiring government employees to keep a daily time record is to show their attendance in office to work and to be paid accordingly. Closely adhering to the policy of no work no pay, a daily time record is primarily, if not solely, intended to prevent damage or loss to the government as would result in instances where it pays an employee

for no work done. The integrity of the daily time record as an official document, however, remains untarnished if the damage sought to be prevented has not been produced. The obligation to make entries in the daily time records of employees in the government service is a matter of administrative procedural convenience in the computation of salary for a given period, characteristically, not an outright and strict measure of professional discipline, efficiency, dedication, honesty and competence. The insignificant transgression by petitioners, if ever it is one, would not tilt the scales of justice against them, for courts must always be, as they are, the repositories of fairness and justice.[7]

Petitioner moved to reconsider the reversal of its Decision by the CA, but the motion was denied in the CA Resolution dated May 27, 2005. Hence, this petition based on the following grounds:

I

THE FILLING-UP OF ENTRIES IN THE OFFICIAL DAILY TIME RECORDS (DTRs) IS NOT A MATTER OF ADMINISTRATIVE PROCEDURAL CONVENIENCE, BUT RATHER REQUIRED BY CIVIL SERVICE LAW TO ENSURE THAT THE PROPER LENGTH OF WORK-TIME IS OBSERVED BY PUBLIC OFFICIALS AND EMPLOYEES, INCLUDING CONFIDENTIAL EMPLOYEES LIKE HEREIN PRIVATE RESPONDENTS. THE FALSIFICATION OF DTRs WOULD RENDER THE AUTHORS THEREOF ADMINISTRATIVELY LIABLE FOR DISHONESTY AND GRAVE MISCONDUCT FOR THE DAMAGING FALSE NARRATION AND THE COLLECTION OF FULL COMPENSATION FOR INEXISTENT WORK.

II

THE ELEMENT OF DAMAGE TO THE GOVERNMENT IS NOT A REQUISITE FOR ONE TO BE HELD ADMINISTRATIVELY LIABLE FOR DISHONESTY AND MISCONDUCT. ASSUMING IT IS FOR ARGUMENT'S SAKE, DAMAGE WAS CAUSED THE GOVERNMENT WHEN PRIVATE RESPONDENTS FALSIFIED THEIR DAILY TIME RECORDS IN ORDER TO COLLECT THEIR SALARIES.

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[7] *Id*. at 42-44.

III

THE ELEMENT OF INTENT OR MALICE APPLIES TO CRIMINAL PROSECUTION, NOT TO AN OFFENSE OF DISHONESTY AND MISCONDUCT.[8]

Petitioner's first submission is that the filling-up of entries in the official DTR is not a matter of administrative procedural convenience but is a requirement by Civil Service Law to ensure that the proper length of work-time is observed by all public officials and employees, including confidential employees such as respondents. It argues that DTRs, being representations of the compensable working hours rendered by a public servant, ensure that the taxpaying public is not shortchanged. To bolster this position, petitioner cited Rule XVII on Government Office Hours of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, to wit:

SECTION 1. It shall be the duty of each head of department or agency to require all officers and employees under him to strictly observe the prescribed office hours. When the head of office, in the exercise of discretion allows government officials and employees to leave the office during the office hours and not for official business, but to attend socials/events/functions and/or wakes/interments, the same shall be reflected in their time cards and charged to their leave credits.

SEC. 2. Each head of department or agency shall require a daily time record of attendance of all the officers and employees under him including those serving in the field or on the water, to be kept in the proper form and, whenever possible, registered in the bundy clock.

Service "in the field" shall refer to service rendered outside the office proper and service "on the water" shall refer to service rendered on board a vessel which is the usual place of work.

SEC. 3. Chiefs and Assistant Chiefs of agencies who are appointed by the President, officers who rank higher than these chiefs and assistant chiefs in the three branches of government, and other presidential appointees need not punch in the bundy clock, but attendance and all absences of such officers must be recorded.

[8] *Id*. at 17-18.

SEC. 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable without prejudice to criminal prosecution as the circumstances warrant.

SEC. 5. Officers and employees of all departments and agencies except those covered by special laws shall render not less than eight hours of work a day for five days a week or a total of forty hours a week, exclusive of time for lunch. As a general rule, such hours shall be from eight o'clock in the morning to twelve o'clock noon and from one o'clock to five o'clock in the afternoon on all days except Saturdays, Sundays and Holidays.

SEC. 6. Flexible working hours may be allowed subject to the discretion of the head of department or agency. In no case shall the weekly working hours be reduced in the event the department or agency adopts the flexi-time schedule in reporting for work.

SEC. 7. In the exigency of the service, or when necessary by the nature of the work of a particular agency and upon representations with the Commission by the department heads concerned, requests for the rescheduling or shifting of work schedule of a particular agency for a number of working days less than the required five days may be allowed provided that government officials and employees render a total of forty hours a week and provided further that the public is assured of core working hours of eight in the morning to five in the afternoon continuously for the duration of the entire workweek.

SEC. 8. Officers and employees who have incurred tardiness and undertime regardless of minutes per day exceeding [at least] ten times a month for two (2) consecutive months or for 2 months in a semester shall be subject to disciplinary action.[9]

Petitioner posits that, by reason of the above provisions, making false entries in the DTRs should not be treated in a cavalier fashion, but rather with a modicum of sacredness because the DTR mirrors the fundamental maxim of transparency, good governance, public accountability, and integrity in the public service pursuant to the constitutional precept that "public office is a public trust." Consequently, the officer or employee who falsifies time records should incur administrative liability.

[9] *Id.* at 22-23.

On its second and third submissions, petitioner assailed the position of the CA that respondents cannot be held guilty of falsification because they did not cause any damage to the government and there was no intent or malice on their part when they made the false entries in their respective DTRs during the questioned period of service. According to petitioner, respondents were not criminally prosecuted for falsification under the Revised Penal Code, but were being held administratively accountable for dishonesty, grave misconduct, and falsification of official documents; thus, the elements of damage and intent or malice are not prerequisites. It further claimed that for this purpose, only substantial evidence is required, and this had been strongly established. Petitioner also argued that, even if the element of damage is mandatory, respondents had caused damage to the government when they received their full salaries for work not actually rendered.

In their Comment,[10] respondents claimed that the CA correctly dismissed the administrative charges against them as the integrity of their DTRs had remained untarnished and that they acted in good faith in making the entries in their DTRs. They said that the CA clearly elaborated the legal basis for its ruling in their favor. They even argued that the administrative charges lodged by Romancito Santos were based on mere conjectures and conclusions of fact, such that it was not impossible for college students to work eight (8) hours a day and attend classes. They further claimed that petitioner failed to prove that they actually attended their classes which they were enrolled in.

Respondents also argued that petitioner erred in not having dismissed outright the administrative charges against them because, at the time the complaint was filed, the charges had already prescribed under Section 20 (5) of Republic Act No. 6770 (The Ombudsman Act of 1989), to wit:

(5) The complaint was filed after one year from the occurrence of the act or omission complained of.

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[10] *Id.* at 169-180.

They said that the acts complained of occurred in 1996 to 1997, while the case was filed only on February 2000, or after the lapse of more or less three (3) years.

Respondent Maricar also asseverated that the doctrine laid down in *Aguinaldo v. Santos*[11] should also apply to her considering that she was elected as City Councilor of Malabon City in the 2004 elections. She also claimed that the instant case adversely affected their lives, particularly in her case, for while she graduated from the University of the East College of Law in 2004, she was only able to take the bar examinations in 2005 due to the pendency of the administrative case against her. She also cited the fact that the criminal case involving the same set of facts was dismissed, insinuating that, as a result of this, the administrative case should have likewise been dismissed.

The petition is impressed with merit.

At the outset, it must be stressed that this is an administrative case for dishonesty, grave misconduct, and falsification of official document. To sustain a finding of administrative culpability only substantial evidence is required, not overwhelming or preponderant, and very much less than proof beyond reasonable doubt as required in criminal cases.[12] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

The following facts are borne out by the records: (1) Maricar was appointed as Legislative Staff Assistant in the Office of then Councilor of Malabon, Edilberto Torres, on February 16, 1995;[13] (2) Marian was appointed as Messenger in the same office on May 24, 1996;[14] (3) at the time of Maricar's appointment

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[11] *Supra* note 5.

[12] A*polinario v. Flores*, G.R. No. 152780, January 22, 2007, 512 SCRA 113, 119; *Resngit-Marquez v. Judge Llamas, Jr.*, 434 Phil. 184, 203 (2002), *Mariano v. Roxas*, 434 Phil. 742, 749 (2002), and *Liguid v. Camano, Jr.*, 435 Phil. 695, 706 (2002).

[13] Finding of fact of petitioner and not denied (therefore, admitted) by respondents.

[14] *Id*.

to and employment in her position (1995-1997), she was a full-time regular college student at UST;[15] (4) at the time of Marian's appointment and employment as messenger in her father's office (1996-2000), she was a full-time regular dentistry-proper student at the College of Dentistry of Centro Escolar University;[16] (5) during the employment of respondents in government service, they submitted DTRs indicating that they religiously reported for work from 8:00 a.m. to 5:00 p.m. during work days;[17] (6) by reason thereof, respondents collected their full salaries during the entire time of their employment in their respective positions;[18] and, (7) these all occurred with the full knowledge and consent of their father.[19]

It is also worthy to note that the factual finding made by petitioner, *i.e.*, that respondents made false entries in their respective DTRs for the period subject of this case, was affirmed by the CA in the assailed Decision dated January 6, 2004.[20]

On the basis of these established facts, petitioner was correct in holding respondents administratively guilty of dishonesty and falsification of official document. Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity."[21] Falsification of an official document, as an administrative offense, is knowingly making false statements in official or public documents. Both are grave offenses under the Uniform Rules on Administrative Cases in the Civil Service, which carry with it the penalty of dismissal on the first offense.[22]

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[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] The Court of Appeals stated, "**We may agree with the findings of fact made by public respondent,** but the inference made in relation to the offense committed that will merit suspension from service is manifestly mistaken." *Rollo*, pp. 41-42. (Emphasis supplied)

[21] Black's *Law Dictionary*, 6th Ed. (1990).

[22] CSC Resolution No. 991936 (1999), Rule IV, Section 52 (A) (1) & (6).

Falsification of DTRs amounts to dishonesty.[23] The evident purpose of requiring government employees to keep a time record is to show their attendance in office to work and to be paid accordingly. Closely adhering to the policy of no work-no pay, a DTR is primarily, if not solely, intended to prevent damage or loss to the government as would result in instances where it pays an employee for no work done.[24]

Respondents' claim of good faith, which implies a sincere intent not to do any falsehood or to seek any undue advantage, cannot be believed. This Court pronounced –

> Good faith, here understood, is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an **honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone.** It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another. x x x[25]

In this case, respondents knew fully well that the entries they made in their respective DTRs were false considering that it was physically impossible for them to have reported for full work days when during those times they were actually attending their regular classes, which undoubtedly would take up most of

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[23] *Re: Falsification of Daily Time Records of Maria Fe P. Brooks*, A.M. No. P-05-2086, October 20, 2005, 473 SCRA 483, 488; Administrative Circular No. 2-99 (Re: Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness), item II, 15 January 1999, *viz.*:

> Absenteeism and tardiness, even if such do not qualify as "habitual" or "frequent" under Civil Service Commission Memorandum Circular No. 04, Series of 1991, shall be dealt with severely, and **any falsification of time records to cover up for such absenteeism and/or tardiness shall constitute gross dishonesty or serious misconduct**. (Emphasis supplied)

[24] *Beradio v. Court of Appeals*, 191 Phil. 153, 168 (1981).

[25] *PNB v. De Jesus*, 458 Phil. 454, 459-460 (2003).

the daytime hours of the weekdays. With this knowledge, respondents did not bother to correct the DTR entries to honestly reflect their attendance at their workplace and the actual work they performed. Worse, they repeatedly did this for a long period of time, consequently allowing them to collect their full salaries for the entire duration of their public employment as staff members of their father.

Respondents' protestations that petitioner failed to prove their actual attendance in their regular classes and thus, suggest that they may not have been attending their classes, is preposterous and incredible, simply because this is not in accord with the natural course of things. The voluminous documentary evidence subpoenaed by petitioner from UST and Centro Escolar University showing the schedule of classes of respondents during the questioned period, along with the certificates of matriculation painstakingly perused by GIO Generoso, strongly militates against this claim. It would be the height of absurdity on the part of respondents to voluntarily enroll in their respective courses, pay school fees, and not attend classes but instead report for work. Even if this was remotely possible, such a situation would be irreconcilable with the respondents having graduated from their respective courses.

Without doubt, the scrutiny of the numerous school documents, the DTRs submitted, and the payrolls from the office of the then Municipal Accountant of Malabon overwhelmingly revealed that the classes in which respondents enrolled for several school years were in stark conflict with the time entries in the DTRs, and several payroll sheets showed that respondents collected their full salaries corresponding to the DTR entries. These findings of fact made by petitioner, being supported by substantial evidence, are conclusive;[26] more so that the finding of false entries in the DTRs was affirmed by the CA.

Thus, the CA gravely erred when it exonerated respondents from administrative guilt based on the findings of fact of petitioner

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[26] R.A. No. 6770, Section 27, 5th paragraph.

which it even affirmed. The jurisprudence[27] adopted by the appellate court in laying the legal basis for its ruling does not apply to the instant case because said cases pertain to criminal liability for Falsification of Public Document under the Revised Penal Code. The element of damage need not be proved to hold respondents administratively liable.

But it cannot even be said that no damage was suffered by the government. When respondents collected their salaries on the basis of falsified DTRs, they caused injury to the government. The falsification of one's DTR to cover up one's absences or tardiness automatically results in financial losses to the government because it enables the employee concerned to be paid salaries and to earn leave credits for services which were never rendered. Undeniably, the falsification of a DTR foists a fraud involving government funds.[28]

Likewise, the existence of malice or criminal intent is not a prerequisite to declare the respondents administratively culpable. What is merely required is a showing that they made entries in their respective DTRs knowing fully well that they were false. This was evident in the many documents viewed and reviewed by petitioner through GIO Generoso.

On the issue of prescription, we agree with petitioner's contention that the Office of the Ombudsman is given by R.A. No. 6770 a wide range of discretion whether or not to proceed with an investigation of administrative offenses even beyond the expiration of one (1) year from the commission of the offense.[29]

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[27] *Beradio v. Court of Appeals, supra* note 24; *Lecaroz v. Sandiganbayan*, 364 Phil. 890 (1999).

[28] *Flores v. Layosa*, G.R. No. 154714, August 12, 2004, 436 SCRA 337, 353.

[29] **Section 20.** ***Exceptions.*** — The Office of the Ombudsman **MAY** not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

x x x x x x x x x

(5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of. (Emphasis supplied)

Likewise, the dismissal of the criminal case involving the same set of facts cannot benefit respondents to cause the dismissal of the administrative charges against them. As we held in *Tecson v. Sandiganbayan*[30] —

> [I]t is a basic principle of the law on public officers that a public official or employee is under a three-fold responsibility for violation of a duty or for a wrongful act or omission. This simply means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held *civilly* liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may be punished *criminally*. Finally, such violation may also lead to suspension, removal from office, or other *administrative* sanctions. This administrative liability is separate and distinct from the penal and civil liabilities. x x x

Hence, there was no impropriety committed by petitioner when it conducted the administrative investigation which led to the finding of guilt against respondents.

As regards the applicability of *Aguinaldo*, our pronouncement therein is clear that condonation of an administrative offense takes place only when the public official is re-elected despite the pendency of an administrative case against him. In the case of Maricar, prior to her election as Councilor of now Malabon City, she held an appointive, not an elective, position, *i.e.*, Legislative Staff Assistant, appointed by her very own father, then Councilor Edilberto Torres.

As mentioned above, falsification of a DTR (an official document) amounts to dishonesty. Thus, respondents should be held administratively liable. While dismissal was originally recommended for imposition on respondents, the penalty was eventually tempered to suspension of one (1) year without pay.

We agree with the imposition of the lower penalty considering that respondents' public employment with the then *Sangguniang Bayan* of Malabon, even while they were regular college students, was of a confidential character, and the arrangement was with

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[30] 376 Phil. 191, 198-199 (1999).

the full knowledge and consent of their father who appointed them to their positions.

While this Court recognizes the relative laxity given to confidential employees in terms of adjusted or flexible working hours, substantial non-attendance at work as blatant and glaring as in the case of respondents cannot be countenanced. Collecting full salaries for work practically not rendered is simply, downright reprehensible. Inevitably, this leads to the erosion of the public's faith in and respect for the government.

WHEREFORE, the Decision dated January 6, 2004 and the Resolution dated May 27, 2005 of the Court of Appeals are *REVERSED* and *SET ASIDE*, and the Decision of the Office of the Ombudsman dated November 9, 2001 is *REINSTATED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169482. January 29, 2008]

IN THE MATTER OF THE PETITION OF *HABEAS CORPUS* OF EUFEMIA E. RODRIGUEZ, filed by EDGARDO E. VELUZ, *petitioner, vs.* **LUISA R. VILLANUEVA and TERESITA R. PABELLO,** *respondents.*

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* In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 484 dated January 11, 2008.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; WRIT OF *HABEAS CORPUS*; DEFINED AND CONSTRUED.— The writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty or by which the rightful custody of a person is being withheld from the one entitled thereto. It is issued when one is either deprived of liberty or is wrongfully being prevented from exercising legal custody over another person. Thus, it contemplates two instances: (1) deprivation of a person's liberty either through illegal confinement or through detention and (2) withholding of the custody of any person from someone entitled to such custody.

2. ID.; ID.; ID.; ID.; WHEN GRANT OF THE WRIT JUSTIFIED.— Fundamentally, in order to justify the grant of the writ of *habeas corpus,* the restraint of liberty must be in the nature of an illegal and involuntary deprivation of freedom of action. In general, *the purpose of the writ of habeas corpus is to determine whether or not a particular person is legally held.* A prime specification of an application for a writ of *habeas corpus,* in fact, is an actual and effective, and not merely nominal or moral, illegal restraint of liberty. "The writ of *habeas corpus* was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. A prime specification of an application for a writ of *habeas corpus* is restraint of liberty. The essential object and purpose of the writ of *habeas corpus* is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient." In passing upon a petition for *habeas corpus*, a court or judge must first inquire into whether the petitioner is being restrained of his liberty. If he is not, the writ will be refused. Inquiry into the cause of detention will proceed only where such restraint exists. If the alleged cause is thereafter found to be unlawful, then the writ should be granted and the petitioner discharged. Needless to state, if otherwise, again the writ will be refused. While *habeas corpus* is a writ of right, it will not issue as a matter of course or as a mere perfunctory operation on the filing of the petition.

> Judicial discretion is called for in its issuance and it must be clear to the judge to whom the petition is presented that, *prima facie,* the petitioner is entitled to the writ. It is only if the court is satisfied that a person is being unlawfully restrained of his liberty will the petition for *habeas corpus* be granted. *If the respondents are not detaining or restraining the applicant or the person in whose behalf the petition is filed, the petition should be dismissed.*

APPEARANCES OF COUNSEL

Eduardo D. Esquivias for petitioner.
Arrojado Serrano & Calizo Law Firm for respondents.

D E C I S I O N

CORONA, *J.*:

This is a petition for review[1] of the resolutions[2] dated February 2, 2005 and September 2, 2005 of the Court of Appeals[3] in CA-G.R. SP No. 88180 denying the petition for *habeas corpus* of Eufemia E. Rodriguez, filed by petitioner Edgardo Veluz, as well as his motion for reconsideration, respectively.

Eufemia E. Rodriguez was a 94-year old widow, allegedly suffering from a poor state of mental health and deteriorating cognitive abilities.[4] She was living with petitioner, her nephew, since 2000. He acted as her guardian.

In the morning of January 11, 2005, respondents Luisa R. Villanueva and Teresita R. Pabello took Eufemia from petitioner Veluz' house. He made repeated demands for the return of Eufemia but these proved futile. Claiming that respondents were

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

[2] Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Roberto A. Barrios (deceased) and Amelita G. Tolentino concurring. *Rollo*, pp. 24-27 and 36-39, respectively.

[3] Tenth Division.

[4] She was allegedly diagnosed with probable vascular dementia.

restraining Eufemia of her liberty, he filed a petition for *habeas corpus*[5] in the Court of Appeals on January 13, 2005.

The Court of Appeals ruled that petitioner failed to present any convincing proof that respondents (the legally adopted children of Eufemia) were unlawfully restraining their mother of her liberty. He also failed to establish his legal right to the custody of Eufemia as he was not her legal guardian. Thus, in a resolution dated February 2, 2005,[6] the Court of Appeals denied his petition.

Petitioner moved for reconsideration but it was also denied.[7] Hence, this petition.

Petitioner claims that, in determining whether or not a writ of *habeas corpus* should issue, a court should limit itself to determining whether or not a person is unlawfully being deprived of liberty. There is no need to consider legal custody or custodial rights. The writ of *habeas corpus* is available not only if the rightful custody of a person is being withheld from the person entitled thereto but also if the person who disappears or is illegally being detained is of legal age and is not under guardianship. Thus, a writ of *habeas corpus* can cover persons who are not under the legal custody of another. According to petitioner, as long as it is alleged that a person is being illegally deprived of liberty, the writ of *habeas corpus* may issue so that his physical body may be brought before the court that will determine whether or not there is in fact an unlawful deprivation of liberty.

In their comment, respondents state that they are the legally adopted daughters of Eufemia and her deceased spouse, Maximo Rodriguez. Prior to their adoption, respondent Luisa was Eufemia's half-sister[8] while respondent Teresita was Eufemia's niece and petitioner's sister.[9]

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[5] It was docketed as CA-G.R. SP No. 88180.

[6] *Supra* note 2, pp. 24-27.

[7] *Id*., pp. 36-39.

[8] Eufemia and respondent Luisa have the same father.

[9] Petitioner and respondent Teresita are the children of the spouses Justo Veluz and Socorro Eleazar, Eufemia's sister.

Respondents point out that it was petitioner and his family who were staying with Eufemia, not the other way around as petitioner claimed. Eufemia paid for the rent of the house, the utilities and other household needs.

Sometime in the 1980s, petitioner was appointed as the "*encargado*" or administrator of the properties of Eufemia as well as those left by the deceased Maximo. As such, he took charge of collecting payments from tenants and transacted business with third persons for and in behalf of Eufemia and the respondents who were the only compulsory heirs of the late Maximo.

In the latter part of 2002, Eufemia and the respondents demanded an inventory and return of the properties entrusted to petitioner. These demands were unheeded. Hence, Eufemia and the respondents were compelled to file a complaint for estafa against petitioner in the Regional Trial Court of Quezon City. Consequently, and by reason of their mother's deteriorating health, respondents decided to take custody of Eufemia on January 11, 2005. The latter willingly went with them. In view of all this, petitioner failed to prove either his right to the custody of Eufemia or the illegality of respondents' action.

We rule for the respondents.

The writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty or by which the rightful custody of a person is being withheld from the one entitled thereto.[10] It is issued when one is either deprived of liberty or is wrongfully being prevented from exercising legal custody over another person.[11] Thus, it contemplates two instances: (1) deprivation of a person's liberty either through illegal confinement or through detention and (2) withholding of the custody of any person from someone entitled to such custody.

In this case, the issue is not whether the custody of Eufemia is being rightfully withheld from petitioner but whether Eufemia

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[10] Section 1, Rule 102 (*Habeas Corpus*), Rules of Court.

[11] *Ilusorio v. Bildner*, 387 Phil. 915 (2000).

is being restrained of her liberty. Significantly, although petitioner admits that he did not have legal custody of Eufemia, he nonetheless insists that respondents themselves have no right to her custody. Thus, for him, the issue of legal custody is irrelevant. What is important is Eufemia's personal freedom.

Fundamentally, in order to justify the grant of the writ of *habeas corpus*, the restraint of liberty must be in the nature of an illegal and involuntary deprivation of freedom of action.[12]

> In general, **the purpose of the writ of *habeas corpus* is to determine whether or not a particular person is legally held**. A prime specification of an application for a writ of *habeas corpus*, in fact, is an actual and effective, and not merely nominal or moral, illegal restraint of liberty. "The writ of *habeas corpus* was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. A prime specification of an application for a writ of *habeas corpus* is restraint of liberty. The essential object and purpose of the writ of *habeas corpus* is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient."[13] (emphasis supplied)

In passing upon a petition for *habeas corpus*, a court or judge must first inquire into whether the petitioner is being restrained of his liberty.[14] If he is not, the writ will be refused. Inquiry into the cause of detention will proceed only where such restraint exists.[15] If the alleged cause is thereafter found to be unlawful, then the writ should be granted and the petitioner discharged.[16] Needless to state, if otherwise, again the writ will be refused.

While *habeas corpus* is a writ of right, it will not issue as a matter of course or as a mere perfunctory operation on the

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[12] *Sombong v. Court of Appeals*, 322 Phil. 737 (1996).

[13] *Id*., citing *Villavicencio v. Lukban*, 39 Phil. 778 (1919).

[14] *Gonzales v. Viola*, 61 Phil. 824 (1925).

[15] *Id*.

[16] *Id*.

filing of the petition.[17] Judicial discretion is called for in its issuance and it must be clear to the judge to whom the petition is presented that, *prima facie,* the petitioner is entitled to the writ.[18] It is only if the court is satisfied that a person is being unlawfully restrained of his liberty will the petition for *habeas corpus* be granted.[19] *If the respondents are not detaining or restraining the applicant or the person in whose behalf the petition is filed, the petition should be dismissed.*[20]

In this case, the Court of Appeals made an inquiry into whether Eufemia was being restrained of her liberty. It found that she was not:

There is no proof that Eufemia is being detained and restrained of her liberty by respondents. Nothing on record reveals that she was forcibly taken by respondents. On the contrary, respondents, being Eufemia's adopted children, are taking care of her.[21] (emphasis supplied)

The Court finds no cogent or compelling reason to disturb this finding.[22]

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioner.

SO ORDERED.

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

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[17] *Eugenio, Sr. v. Velez,* G.R. Nos. 85140/86470, 17 May 1980, 185 SCRA 468.

[18] *Id*.

[19] *Gonzales v. Viola, supra.*

[20] *Ngaya-an v. Balweg,* G.R. No. 80591, 05 August 1991, 200 SCRA 149.

[21] *Supra* note 2, pp. 36-39.

[22] Moreover, respondents are not unjustified in keeping their mother Eufemia in their company. The Constitution provides that the family has the duty to take care of its elderly members. (Section 4, Article XV) Moreover, it is also a declared State policy to encourage families to reaffirm the valued Filipino tradition of caring for senior citizens. [See Section 1(b), RA 7432 (Senior Citizens Act), as amended.]

SECOND DIVISION

[G.R. No. 175057. January 29, 2008]

MA. ROSARIO SANTOS-CONCIO, MA. SOCORRO V. VIDANES, MARILOU ALMADEN, CIPRIANO LUSPO, MORLY STEWART NUEVA, HAROLD JAMES NUEVA, NORBERT VIDANES, FRANCISCO RIVERA, MEL FELICIANO, and JEAN OWEN ERCIA, *petitioners, vs.* **DEPARTMENT OF JUSTICE, HON. RAUL M. GONZALEZ, as Secretary of the Department of Justice, NATIONAL CAPITAL REGION — NATIONAL BUREAU OF INVESTIGATION, PANEL OF INVESTIGATING PROSECUTORS created under Department of Justice Department Order No. 165 dated 08 March 2006, LEO B. DACERA III, as Chairman of the Panel of Investigating Prosecutors, and DEANA P. PEREZ, MA. EMILIA L. VICTORIO, EDEN S. WAKAY-VALDES and PETER L. ONG, as Members of the Panel of Investigating Prosecutors, the EVALUATING PANEL created under Department of Justice Department Order No. 90 dated 08 February 2006, JOSELITA C. MENDOZA as Chairman of the Evaluating Panel, and MERBA WAGA, RUEL LASALA and ARNOLD ROSALES, as Members of the Evaluating Panel,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; AS A RULE, THE LAW ENFORCER WHO CONDUCTED THE CRIMINAL INVESTIGATION AND THEREAFTER FILED THE COMPLAINT CANNOT BE ALLOWED TO CONDUCT THE PRELIMINARY INVESTIGATION OF ITS OWN COMPLAINT; RATIONALE.— In *Cojuangco,* this Court prohibited the Presidential Commission on Good Government (PCGG) from conducting a preliminary investigation of the complaints for graft and corruption since it had earlier found a *prima facie*

case — basis of its issuance of sequestration/freeze orders and the filing of an ill-gotten wealth case involving the same transactions. The Court therein stated that it is "difficult to imagine how in the conduct of such preliminary investigation the PCGG could even make a turn about and take a position contradictory to its earlier findings of a *prima facie* case," and so held that "the law enforcer who conducted the criminal investigation, gathered the evidence and thereafter filed the complaint for the purpose of preliminary investigation cannot be allowed to conduct the preliminary investigation of his own complaint."

2. ID.; ID.; PROSECUTION OF OFFENSES; COMPLAINT FOR PURPOSES OF CONDUCTING A PRELIMINARY INVESTIGATION DISTINGUISHED FROM COMPLAINT FOR PURPOSES OF INSTITUTING A CRIMINAL PROSECUTION.— A complaint for purposes of conducting a preliminary investigation differs from a complaint for purposes of instituting a criminal prosecution. Confusion apparently springs because two complementary procedures adopt the usage of the same word, for lack of a better or alternative term, to refer essentially to a written charge. There should be no confusion about the objectives, however, since, as intimated during the hearing before the appellate court, preliminary investigation is conducted precisely to elicit further facts or evidence. Being generally inquisitorial, the preliminary investigation stage is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the preparation of a complaint or information. Consider the following pertinent provision of Rule 112 of the Revised Rules on Criminal Procedure: SEC. 3. *Procedure.* – The preliminary investigation shall be conducted in the following manner: (a) The **complaint** shall state the address of the respondent *and* shall be **accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause.** They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The **affidavits** shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily

executed and understood their affidavits. As clearly worded, the complaint is not entirely the affidavit of the complainant, for the affidavit is treated as a component of the complaint. The phraseology of the above-quoted rule recognizes that all necessary allegations need not be contained in a single document. It is unlike a criminal "complaint or information" where the averments must be contained in one document charging only one offense, non-compliance with which renders it vulnerable to a motion to quash. The Court is not unaware of the practice of incorporating all allegations in one document denominated as "complaint-affidavit." It does not pronounce strict adherence to only one approach, however, for there are cases where the extent of one's personal knowledge may not cover the entire gamut of details material to the alleged offense. The private offended party or relative of the deceased may not even have witnessed the fatality, in which case the peace officer or law enforcer has to rely chiefly on affidavits of witnesses. The Rules do not in fact preclude the attachment of a referral or transmittal letter similar to that of the NBI-NCR. x x x A preliminary investigation can thus validly proceed on the basis of an affidavit of any competent person, without the referral document, like the NBI-NCR Report, having been sworn to by the law enforcer as the nominal complainant. To require otherwise is a needless exercise. The cited case of *Oporto, Jr. v. Judge Monserate* does not appear to dent this proposition. After all, what is required is to **reduce the evidence into affidavits,** for while reports and even raw information may justify the initiation of an investigation, the preliminary investigation stage can be held only after sufficient evidence has been gathered and evaluated which may warrant the eventual prosecution of the case in court. x x x A complaint for purposes of conducting preliminary investigation is not required to exhibit the attending structure of a "complaint or information" laid down in Rule 110 (Prosecution of Offenses) which already speaks of the "*People of the Philippines*" as a party, an "accused" rather than a respondent, and a "court" that shall pronounce judgment. If a "complaint or information" filed in court does not comply with a set of constitutive averments, it is vulnerable to a motion to quash. The filing of a motion to dismiss in lieu of a counter-affidavit is proscribed by the rule on preliminary investigation, however. The investigating officer is allowed to dismiss outright the complaint only if it is not

sufficient in form and substance or "no ground to continue with the investigation" is appreciated.

3. ID.; EVIDENCE; DISPUTABLE PRESUMPTIONS; OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED; PROOF REQUIRED TO OVERTURN PRESUMPTION THEREOF, NOT PRESENT IN CASE AT BAR.— Speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be instantly attributed to an injudicious performance of functions. For one's prompt dispatch may be another's undue haste. The orderly administration of justice remains as the paramount and constant consideration, with particular regard of the circumstances peculiar to each case. The presumption of regularity includes the public officer's official actuations in all phases of work. Consistent with such presumption, it was incumbent upon petitioners to present contradictory evidence other than a mere tallying of days or numerical calculation. This, petitioners failed to discharge. The swift completion of the Investigating Panel's initial task cannot be relegated as shoddy or shady without discounting the presumably regular performance of not just one but five state prosecutors. As for petitioners' claim of undue haste indicating bias, proof thereof is wanting. The pace of the proceedings is anything but a matter of acceleration. Without any objection from the parties, respondents even accorded petitioners a preliminary investigation even when it was not required since the case involves an alleged offense where the penalty prescribed by law is below Four Years, Two Months and One Day.

APPEARANCES OF COUNSEL

Puno and Puno for petitioners.
*The Solicitor Gene*ral for public respondents.
Verano Law Firm for R. Cayabyab.

D E C I S I O N

CARPIO MORALES, *J.*:

On challenge via petition for review on *certiorari* are the Court of Appeals May 24, 2006 Decision and October 10, 2006

Resolution[1] in CA-G.R. SP No. 93763 dismissing herein petitioners' petition for *certiorari* and prohibition that sought to (i) annul respondent Department of Justice (DOJ) Department Order Nos. 90[2] and 165[3] dated February 8, 2006 and March 8, 2006, respectively, and all orders, proceedings and issuances emanating therefrom, and (ii) prohibit the DOJ from further conducting a preliminary investigation in what has been dubbed as the "Ultra Stampede" case.

In the days leading to February 4, 2006, people started to gather in throngs at the Philsports Arena (formerly Ultra) in Pasig City, the publicized site of the first anniversary episode of "Wowowee," a noontime game show aired by ABS-CBN Broadcasting Corporation (ABS-CBN). With high hopes of winning the bonanza, hundreds queued for days and nights near the venue to assure themselves of securing tickets for the show. Little did they know that in taking a shot at instant fortune, a number of them would pay the ultimate wager and place their lives at stake, all in the name of bagging the prizes in store.

Came the early morning of February 4, 2006 with thousands more swarming to the venue. Hours before the show and minutes after the people were allowed entry through two entry points at six o'clock in the morning, the obstinate crowd along Capt. Javier Street jostled even more just to get close to the lower rate pedestrian gate. The mad rush of the unruly mob generated much force, triggering the horde to surge forward with such momentum that led others to stumble and get trampled upon by the approaching waves of people right after the gate opened. This fatal stampede claimed 71 lives, 69 of whom were women, and left hundreds wounded[4] which necessitated emergency medical support and prompted the cancellation of the show's episode.

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[1] [Former] Special Thirteenth Division composed of Justice Lucas P. Bersamin, acting chairman; Justice Lucenito N. Tagle, acting senior member; and Justice Arturo G. Tayag, junior member and *ponente*.

[2] *Rollo*, p. 137.

[3] *Id*. at 243.

[4] *Id*. at 181-200.

The Department of Interior and Local Government (DILG), through then Secretary Angelo Reyes, immediately created an inter-agency fact-finding team[5] to investigate the circumstances surrounding the stampede. The team submitted its report[6] to the DOJ on February 7, 2006.

By Department Order No. 90 of February 8, 2006, respondent DOJ Secretary Raul Gonzalez (Gonzalez) constituted a Panel (Evaluating Panel)[7] to evaluate the DILG Report and "determine whether there is sufficient basis to proceed with the conduct of a preliminary investigation on the basis of the documents submitted."

The Evaluating Panel later submitted to Gonzalez a February 20, 2006 Report[8] concurring with the DILG Report but concluding that there was no sufficient basis to proceed with the conduct of a preliminary investigation in view of the following considerations:

a) No formal complaint/s had been filed by any of the victims and/or their relatives, or any law enforcement agency authorized to file a complaint, pursuant to Rule 110 of the Revised Rules of Criminal Procedure;

b) While it was mentioned in the Fact-Finding Report that there were 74 deaths and 687 injuries, no documents were submitted to prove the same, *e.g.* death certificates, autopsy reports, medical certificates, *etc*.;

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[5] Headed by DILG Undersecretary Marius Corpus, the team had the authority to summon and interview any person who can shed light on the incident, require the submission of any and all relevant documents, and to enlist the assistance of any other government agencies. CA *rollo*, p. 64.

[6] *Rollo*, pp. 132-135.

[7] Composed of respondents Senior State Prosecutor Joselita De Claro-Mendoza as chairperson, and State Prosecutor Merba Waga, NBI-NCR Regional Director Atty. Ruel Lasala and NBI Investigating Agent Atty. Arnold Rosales as members.

[8] *Rollo*, pp. 136, 138-174. The Evaluating Panel concurred with the DILG's findings as regards the venue, security arrangements, crowd control management and coordination, and contingency/emergency plans and medical response.

c) The Fact-Finding Report did not indicate the names of the persons involved and their specific participation in the "Ultra Incident";

d) Most of the victims did not mention, in their sworn statements, the names of the persons whom they alleged to be responsible for the "Ultra Incident".[9]

Respondent National Bureau of Investigation-National Capital Region (NBI-NCR), acting on the Evaluating Panel's referral of the case to it for further investigation, in turn submitted to the DOJ an investigation report, by a March 8, 2006 transmittal letter (NBI-NCR Report[10]), with supporting documents recommending the conduct of preliminary investigation for Reckless Imprudence resulting in Multiple Homicide and Multiple Physical Injuries[11] against petitioners and seven others[12] as respondents.

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[9] *Rollo*, p. 170.

[10] *Id.* at 175-242.

[11] REVISED PENAL CODE, Art. 365 in relation to Arts. 249, 263, 265 & 266, as amended.

[12] **[Ma. Rosario] "Charo" Santos-Concio** (Executive Vice President of ABS-CBN Broadcasting Corp. and Head of ABS-CBN's Entertainment Group); **Maria Socorro V. Vidanes** (Senior Vice President of the Television Production Department of ABS-CBN's Entertainment Group); **Marilou Almaden** (Business Unit Head and Executive Producer of ABS-CBN in charge of supervision of entertainment shows); **Cipriano "Rene" Luspo** (Assistant Vice President and Head of Security of ABS-CBN); **Morly Stewart [Nueva]** (Executive Producer and Manager of the Wowowee show); **Harold James Nueva** (Associate Producer for Sets & Technicals of the Wowowee show); **Norbert Vidanes** (Director of the Wowowee show); **Fran[c]isco B. Rivera** (Location Manager of ABS-CBN); **Mel Feliciano** (Assistant Director of the Wowowee show); **Jean Owen [Ercia]** (Floor Director of the Wowowee show); together with **Wilfredo "Willy" B. Revillame** (Host of the Wowowee show); **Rey Cayabyab** (Assistant Location Manager and Security Coordinator); **Jess Velardo** (Building Administrator of the Philsports Complex); **Erlinda S. Reis** (Booking and Events Coordinator of the Philsports Complex); **Rosenbar O. Viloria** (Staff Director for Operations of Goldlink Security and Allied Services, Inc.); **Wilfron Onanad** (Security-in-Charge of Goldlink Security and Allied Services, Inc.); and **Chito Payumo** (Security-in-Charge of Goldlink Security and Allied Services, Inc.), *id.* at 175.

Acting on the recommendation of the NBI-NCR, Gonzalez, by Department Order No. 165 of March 8, 2006, designated a panel of state prosecutors[13] (Investigating Panel) to conduct the preliminary investigation of the case, docketed as I.S. No. 2006-291, "*NCR-NBI v. Santos-Concio, et al.,*" and if warranted by the evidence, to file the appropriate information and prosecute the same before the appropriate court. The following day or on March 9, 2006, the Investigating Panel issued subpoenas[14] directing the therein respondents to appear at the preliminary investigation set on March 20 and 27, 2006.

At the initial preliminary investigation, petitioners sought clarification and orally moved for the inhibition, disqualification or desistance of the Investigating Panel from conducting the investigation.[15] The Investigating Panel did not formally resolve the motion, however, as petitioners manifested their reservation to file an appropriate motion on the next hearing scheduled on March 27, 2006, without prejudice to other remedies.[16]

On March 23, 2006, petitioners filed a petition for *certiorari* and prohibition with the Court of Appeals which issued on March 27, 2006 a Resolution[17] granting the issuance of a temporary restraining order,[18] conducted on April 24, 2006 a hearing on the application for a writ of preliminary injunction, and subsequently promulgated the assailed two issuances.

In the meantime, the Investigating Panel, by Resolution[19] of October 9, 2006, found probable cause to indict the respondents—

[13] Composed of respondents Senior State Prosecutor Leo B. Dacera III as chairperson, and Senior State Prosecutor Deana P. Perez, State Prosecutors Ma. Emilia L. Victorio, Eden S. Wakay-Valdes and Peter L. Ong as members.

[14] *Rollo*, pp. 615-624.

[15] *Id*. at 257-260, 266 *et seq.*

[16] *Id*. at 278, 289-291.

[17] *Id*. at 367-370. Per Justice Arturo G. Tayag, with Justice Jose L. Sabio, Jr. and Justice Noel G. Tijam (vice Justice Jose C. Mendoza) concurring.

[18] *Id*. at 371-372.

[19] *Id*. at 753-822. With a lone dissent by Investigating Panel Member State Prosecutor Peter Ong, the Resolution bears the recommending approval

herein petitioners for Reckless Imprudence resulting in Multiple Homicide and Physical Injuries, and recommended the conduct of a separate preliminary investigation against certain public officials.[20] Petitioners' Motion for Reconsideration[21] of the said October 9, 2006 Resolution, filed on October 30, 2006 "with abundance of caution," is pending resolution, and in the present petition they additionally pray for its annulment.

In asserting their right to due process, specifically to a fair and impartial preliminary investigation, petitioners impute reversible errors in the assailed issuances, arguing that:

> Respondents have already prejudged the case, as shown by the public declarations of Respondent Secretary and the Chief Executive, and have, therefore, lost their impartiality to conduct preliminary investigation.
>
> Respondents have already prejudged the case as shown by the indecent haste by which the proceedings were conducted.
>
> The alleged complaint-affidavits filed against Petitioners were not under oath.
>
> The supposed complaint-affidavits filed against Petitioners failed to state the acts or omissions constituting the crime.
>
> Although Respondents may have the power to conduct criminal investigation or preliminary investigation, Respondents do **not** have the power to conduct **both** in the same case.[22] (Emphasis and underscoring supplied)

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of Assistant Chief State Prosecutor Richard Anthony Fadullon and approval of Assistant Chief State Prosecutor Miguel Gudio, Jr. for the Chief State Prosecutor.

[20] Pasig City Mayor Vicente Eusebio; Pasig City Police Chief P/S Supt. Raul Z. Medina; Pasig City PCP 15 Station Commander P/S Insp. Henry N. Asuela; Pasig City Traffic and Parking Management Office Chief P/Insp. Khaddafy Bitor; Philsports Complex Chief Security Officer Arnulfo Awa; Philsports Complex Security Coordinator Eugenio Cabigas; and Oranbo Barangay Chairman Richard Pua.

[21] *Rollo*, pp. 823-905. Petitioners allege that they also filed an "Urgent Motion to Reopen Case and/or Reinvestigation with Motion for Issuance of Subpoenae."

[22] *Id*. at 55-56.

The issues shall, for logical reasons, be resolved in reverse sequence.

On the Investigatory Power of the DOJ

In the assailed Decision, the appellate court ruled that the Department Orders were issued within the scope of authority of the DOJ Secretary pursuant to the Administrative Code of 1987[23] bestowing general investigatory powers upon the DOJ.

Petitioners concede that the DOJ has the power to conduct both criminal investigation and preliminary investigation but not in their case,[24] they invoking *Cojuangco, Jr. v. PCGG*.[25] They posit that in *Cojuangco*, the reshuffling of personnel was not considered by this Court which ruled that the entity which conducted the criminal investigation is disqualified from conducting a preliminary investigation in the same case. They add that the DOJ cannot circumvent the prohibition by simply creating a panel to conduct the first, and another to conduct the second.

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[23] EXECUTIVE ORDER No. 292, Book IV, Title III, Chapter 1 reads:

SECTION 1. *Declaration of Policy*.– It is the declared policy of the State to provide the government with a principal law agency which shall be both its legal counsel and prosecution arm; administer the criminal justice system in accordance with the accepted processes thereof consisting in the **investigation of the crimes**, prosecution of offenders and administration of the correctional system; implement the laws on the admission and stay of aliens, citizenship, land titling system, and settlement of land problems involving small landowners and members of indigenous cultural minorities; and provide free legal services to indigent members of society.

SEC. 2. *Mandate*.– The Department shall carry out the policy declared in the preceding section.

SEC. 3. *Powers and Functions*.– To accomplish its mandate, the Department shall have the following powers and functions:

x x x x x x x x x

(2) **Investigate the commission of crimes**, prosecute offenders and administer the probation and correction system;

x x x. (Emphasis and underscoring supplied)

[24] *Rollo*, p. 84.

[25] G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226.

In insisting on the arbitrariness of the two Department Orders which, so they claim, paved the way for the DOJ's dual role, petitioners trace the basis for the formation of the five-prosecutor Investigating Panel to the NBI-NCR Report which was spawned by the supposed criminal investigation[26] of the Evaluating Panel the members of which included two, albeit different, prosecutors. While petitioners do not assail the constitution of the Evaluating Panel,[27] they claim that it did not just evaluate the DILG Report but went further and conducted its own criminal investigation by interviewing witnesses, conducting an ocular inspection, and perusing the evidence.

Petitioners' position does not lie. *Cojuangco* was borne out of a different factual milieu.

In *Cojuangco*, this Court prohibited the Presidential Commission on Good Government (PCGG) from conducting a preliminary investigation of the complaints for graft and corruption since it had earlier found a *prima facie* case – basis of its issuance of sequestration/freeze orders and the filing of an ill-gotten wealth case involving the same transactions. The Court therein stated that it is "difficult to imagine how in the conduct of such preliminary investigation the PCGG could even make a turn about and take a position contradictory to its earlier findings of a *prima facie* case," and so held that "the law enforcer who conducted the criminal investigation, gathered the evidence and thereafter filed the complaint for the purpose of preliminary investigation cannot be allowed to conduct the preliminary investigation of his own complaint."[28] The present case deviates from *Cojuangco*.

The measures taken by the Evaluating Panel do not partake of a criminal investigation, they having been done in aid of

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[26] Petitioners classify this as the "second" criminal investigation, followed by the one conducted by the NBI-NCR and preceded by that of the DILG. The latter two, petitioners do not question. *Rollo*, pp. 85-86, 411.

[27] Petitioners stated that "if [the Evaluating Panel] had just done that, evaluated the report, look[ed] at the four corners, there would have not been no [sic] problem." *Id.* at 414.

[28] *Cojuangco, Jr. v. PCGG*, *supra* at 254.

evaluation in order to relate the incidents to their proper context. Petitioners' own video footage of the ocular inspection discloses this purpose. Evaluation for purposes of determining whether there is sufficient basis to proceed with the conduct of a preliminary investigation entails not only reading the report or documents in isolation, but also deems to include resorting to reasonably necessary means such as ocular inspection and physical evidence examination. For, ultimately, any conclusion on such sufficiency or insufficiency needs to rest on some basis or justification.

Had the Evaluating Panel carried out measures partaking of a criminal investigation, it would have gathered the documents that it enumerated as lacking. *Notatu dignum* is the fact that the Evaluating Panel was dissolved *functus officio* upon rendering its report. It was the NBI, a constituent unit[29] of the DOJ, which conducted the criminal investigation. It is thus foolhardy to inhibit the entire DOJ from conducting a preliminary investigation on the sheer ground that the DOJ's constituent unit conducted the criminal investigation.

Moreover, the improbability of the DOJ contradicting its prior finding is hardly appreciable. It bears recalling that the Evaluating Panel found no sufficient basis to proceed with the conduct of a preliminary investigation. Since the Evaluating Panel's report was not adverse to petitioners, prejudgment may not be attributed "vicariously," so to speak, to the rest of the state prosecutors. Partiality, if any obtains in this case, in fact weighs heavily in favor of petitioners.

On the Alleged Defects of the Complaint

On the two succeeding issues, petitioners fault the appellate court's dismissal of their petition despite, so they claim, respondents' commission of grave abuse of discretion in proceeding with the preliminary investigation given the fatal defects in the supposed complaint.

Petitioners point out that they cannot be compelled to submit their counter-affidavits because the NBI-NCR Report, which

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[29] EXECUTIVE ORDER No. 292, Book IV, Title III, Chapter 1, Sec. 4.

they advert to as the complaint-affidavit, was not under oath. While they admit that there were affidavits attached to the NBI-NCR Report, the same, they claim, were not executed by the NBI-NCR as the purported complainant, leaving them as "orphaned" supporting affidavits without a sworn complaint-affidavit to support.

These affidavits, petitioners further point out, nonetheless do not qualify as a complaint[30] within the scope of Rule 110 of the Rules of Court as the allegations therein are insufficient to initiate a preliminary investigation, there being no statement of specific and individual acts or omissions constituting reckless imprudence. They bewail the assumptions or conclusions of law in the NBI-NCR Report as well as the bare narrations in the affidavits that lack any imputation relating to them as the persons allegedly responsible.

IN FINE, petitioners contend that absent any act or omission ascribed to them, it is unreasonable to expect them to confirm, deny or explain their side.

A complaint for purposes of conducting a preliminary investigation differs from a complaint for purposes of instituting a criminal prosecution. Confusion apparently springs because two complementary procedures adopt the usage of the same word, for lack of a better or alternative term, to refer essentially to a written charge. There should be no confusion about the objectives, however, since, as intimated during the hearing before the appellate court, preliminary investigation is conducted precisely to elicit further facts or evidence.[31] Being generally inquisitorial, the preliminary investigation stage is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the preparation of a complaint or information.[32]

Consider the following pertinent provision of Rule 112 of the Revised Rules on Criminal Procedure:

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[30] *Vide rollo*, pp. 546-547.

[31] *Rollo*, p. 541.

[32] *Paderanga v. Drilon*, G.R. No. 96080, April 19, 1991, 196 SCRA 86, 90.

SEC. 3. *Procedure.* – The preliminary investigation shall be conducted in the following manner:

(a) The **complaint** shall state the address of the respondent *and* shall be **accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause**. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The **affidavits** shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.[33] (Emphasis and underscoring supplied)

As clearly worded, the complaint is not entirely the affidavit of the complainant, for the affidavit is treated as a component of the complaint. The phraseology of the above-quoted rule recognizes that all necessary allegations need not be contained in a single document. It is unlike a criminal "complaint or information" where the averments must be contained in one document charging only one offense, non-compliance with which renders it vulnerable to a motion to quash.[34]

The Court is not unaware of the practice of incorporating all allegations in one document denominated as "complaint-affidavit." It does not pronounce strict adherence to only one approach, however, for there are cases where the extent of one's personal knowledge may not cover the entire gamut of details material to the alleged offense. The private offended party or relative of the deceased may not even have witnessed the fatality,[35] in which case the peace officer or law enforcer has to rely chiefly on affidavits of witnesses. The Rules do not in fact preclude the attachment of a referral or transmittal letter similar to that of the NBI-NCR. Thus, in *Soriano v. Casanova*,[36] the Court held:

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[33] RULES OF COURT, Rule 112, Sec. 3, par. (a).

[34] RULES OF COURT, Rule 117, Sec. 3 (f) in relation to Rule 110, Sec. 13.

[35] As the appellate court pointed out, for obvious reasons the victims who died could no longer sign the complaint; *rollo*, pp. 549-550.

[36] G.R. No. 163400, March 31, 2006, 486 SCRA 431.

A close scrutiny of the letters transmitted by the BSP and PDIC to the DOJ shows that these were **not** intended to be **the** complaint envisioned under the Rules. It may be clearly inferred from the tenor of the letters that the officers merely intended to transmit the affidavits of the bank employees to the DOJ. Nowhere in the transmittal letters is there any averment on the part of the BSP and PDIC officers of personal knowledge of the events and transactions constitutive of the criminal violations alleged to have been made by the accused. In fact, the letters clearly stated that what the OSI of the BSP and the LIS of the PDIC did was to respectfully transmit to the DOJ for preliminary investigation the affidavits and personal knowledge of the acts of the petitioner. These affidavits were subscribed under oath by the witnesses who executed them before a notary public. Since the **affidavits**, not the letters transmitting them, were intended to **initiate** the preliminary investigation, we hold that Section 3(a), Rule 112 of the Rules of Court was substantially complied with.

Citing the ruling of this Court in *Ebarle v. Sucaldito*, the Court of Appeals correctly held that a complaint for purposes of preliminary investigation by the fiscal need not be filed by the offended party. The rule has been that, **unless the offense subject thereof is one that cannot be prosecuted *de oficio*,** the same may be filed, for preliminary investigation purposes, by **any competent person**. The crime of estafa is a public crime which can be initiated by "any competent person." The witnesses who executed the affidavits based on their personal knowledge of the acts committed by the petitioner fall within the purview of "any competent person" who may institute the complaint for a public crime. x x x[37] (Emphasis and underscoring supplied)

A preliminary investigation can thus validly proceed on the basis of an affidavit of any competent person, without the referral document, like the NBI-NCR Report, having been sworn to by the law enforcer as the nominal complainant. To require otherwise is a needless exercise. The cited case of *Oporto, Jr. v. Judge*

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[37] *Id*. at 438-439; *Tayaban v. People*, G.R. No. 150194, March 6, 2007, 517 SCRA 488, 502-503; RULES OF COURT, Rule 110, Sec. 3, where it is unlike a "complaint" which is "x x x subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated."

Monserate[38] does not appear to dent this proposition. After all, what is required is to **reduce the evidence into affidavits**, for while reports and even raw information may justify the initiation of an investigation, the preliminary investigation stage can be held only after sufficient evidence has been gathered and evaluated which may warrant the eventual prosecution of the case in court.[39]

In the present case, there is no doubt about the existence of affidavits. The appellate court found that "certain complaint-affidavits were already filed by some of the victims,"[40] a factual finding to which this Court, by rule, generally defers.

A complaint for purposes of conducting preliminary investigation is not required to exhibit the attending structure of a "complaint or information" laid down in Rule 110 (Prosecution of Offenses) which already speaks of the "*People of the Philippines*" as a party,[41] an "accused" rather than a respondent,[42] and a "court" that shall pronounce judgment.[43] If a "complaint or information" filed in court does not comply with a set of constitutive averments, it is vulnerable to a motion to quash.[44] The filing of a motion

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[38] 408 Phil. 561 (2001). Both *Oporto* and the prior *en banc* case of *People v. Historillo* (389 Phil. 141 [2000]) rely on *U.S. v. Bibal* (4 Phil. 369 [1905]) in holding that the lack of oath (even) in a criminal complaint does not invalidate the judgment of conviction since the want of an oath is a mere defect in form which does not affect the substantial rights of the defendant on the merits. *Oporto*, however, involved an administrative case concerning the proper issuance of a warrant of arrest in a criminal case not requiring a preliminary investigation, in which case the judge needs to personally examine in writing and under oath the complainant and witnesses, which could not have been done absent any sworn statement.

[39] Vide *Olivas v. Office of the Ombudsman*, G.R. No. 102420, December 20, 1994, 239 SCRA 283, 294-295.

[40] *Rollo*, p. 121, citing TSN taken during the proceedings at the Court of Appeals on April 24, 2006, at 95-98, 108-119 (*rollo*, pp. 467-470, 480-491).

[41] Vide RULES OF COURT, Rule 110, Sec. 2.

[42] *Id*. at Secs. 6-7.

[43] *Id*. at Sec. 9.

[44] Vide RULES OF COURT, Rule 117, Sec. 3 (a) in relation to Rule 110, Secs. 6-11.

to dismiss in lieu of a counter-affidavit is proscribed by the rule on preliminary investigation, however.[45] The investigating officer is allowed to dismiss outright the complaint only if it is not sufficient in form and substance or "no ground to continue with the investigation"[46] is appreciated.

> The investigating fiscal, to be sure, has discretion to determine the specificity and adequacy of averments of the offense charged. He may dismiss the complaint forthwith if he finds it to be insufficient in form or substance or if he otherwise finds no ground to continue with the inquiry, or proceed with the investigation if the complaint is, in his view, in due and proper form. It certainly is not his duty to require a more particular statement of the allegations of the complaint merely upon the respondents' motion, and specially where after an analysis of the complaint and its supporting statements he finds it sufficiently definite to apprise the respondents of the offenses which they are charged. Moreover, the procedural device of a bill of particulars, as the Solicitor General points out, appears to have reference to informations or criminal complaints filed in a competent court upon which the accused are arraigned and required to plead, and strictly speaking has no application to complaints initiating a preliminary investigation which cannot result in any finding of guilt, but only of probable cause.[47] (Italics and ellipses in the original omitted; underscoring supplied)

Petitioners' claims of vague allegations or insufficient imputations are thus matters that can be properly raised in their counter-affidavits to negate or belie the existence of probable cause.

On the Claim of Bias and Prejudgment

On the remaining issues, petitioners charge respondents to have lost the impartiality to conduct the preliminary investigation since they had prejudged the case, in support of which they

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[45] *Id*., Rule 112, Sec. 3, par. (c).

[46] *Id.* at par. (b).

[47] *Cinco v. Sandiganbayan*, G.R. Nos. 92362-67, October 15, 1991, 202 SCRA 726, 734; *vide Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176.

cite the "indecent" haste in the conduct of the proceedings. Thus, they mention the conduct of the criminal investigation within 24 working days[48] and the issuance of subpoenas immediately following the creation of the Investigating Panel.

Petitioners likewise cite the following public declarations made by Gonzalez as expressing his conclusions that a crime had been committed, that the show was the proximate cause, and that the show's organizers are guilty thereof:

> February 6, 2006: "[ ] should have anticipated it because one week *na iyan e*. The crowds started gathering since one week before. This is simply **negligence** x x x **on the part of the organizers**."
>
> February 14, 2006: "I think **ABS-CBN is trying to minimize its own responsibility** and it's discernible from the way by which talk shows *nila* being conducted on people who talk about liabilities of others."
>
> "**The reason for this incident was the program.** If there was no program, there would have been no stampede. There would have been no people. There would have been no attempt by people to queue there for days and rush for the nearest entry point."
>
> March 20, 2006: "**I'll bet everything I have that they are responsible** at least on the civil aspect."[49] (Emphasis in the original)

Continuing, petitioners point out that long before the conclusion of any investigation, Gonzalez already ruled out the possibility that some other cause or causes led to the tragedy or that someone else or perhaps none should be made criminally liable; and that Gonzalez had left the preliminary investigation to a mere determination of who within ABS-CBN are the program's organizers who should be criminally prosecuted.

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[48] Inclusive of February 4, 2006 (Saturday) when the DILG's fact-finding team was created up to the submission of the NBI-NCR Report on March 8, 2006.

[49] *Vide rollo*, p. 36.

Petitioners even cite President Arroyo's declaration in a radio interview on February 14, 2006 that "[*y*]*ang* stampede *na iyan, Jo, ay isang trahedya na pinapakita yung kakulangan at pagkapabaya… nagpabaya ng organisasyon na nag*-organize *nito*."

To petitioners, the declarations admittedly[50] made by Gonzalez tainted the entire DOJ, including the Evaluating and Investigating Panels, since the Department is subject to the direct control and supervision of Gonzalez in his capacity as DOJ Secretary who, in turn, is an alter ego of the President.

Petitioners thus fault the appellate court in not finding grave abuse of discretion on the part of the Investigating Panel members who "refused to inhibit themselves from conducting the preliminary investigation despite the undeniable bias and partiality publicly displayed by their superiors."[51]

Pursuing, petitioners posit that the bias of the DOJ Secretary is the bias of the entire DOJ.[52] They thus conclude that the DOJ, as an institution, publicly adjudged their guilt based on a pre-determined notion of supposed facts, and urge that the Investigating Panel and the entire DOJ for that matter should inhibit from presiding and deciding over such preliminary investigation because they, as quasi-judicial officers, do not possess the "cold neutrality of an impartial judge."[53]

Responding to the claim of prejudgment, respondents maintain that the above-cited statements of Gonzalez and the President merely indicate that the incident is of such nature and magnitude as to warrant a natural inference that it would not have happened in the ordinary course of things and that any reasonable mind would conclude that there is a causal connection between the show's preparations and the resultant deaths and injuries.

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[50] *Vide id*. at 495-496, but declining to interpret the context under which the statements were made.

[51] *Rollo*, p. 69.

[52] *Id*. at 38.

[53] *Id*. at 57 citing *Cruz v. People*, G.R. No. 108738, June 27, 1994, 233 SCRA 439, 449-450.

Petitioners' fears are speculatory.

Speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be instantly attributed to an injudicious performance of functions.[54] For one's prompt dispatch may be another's undue haste. The orderly administration of justice remains as the paramount and constant consideration,[55] with particular regard of the circumstances peculiar to each case.

The presumption of regularity[56] includes the public officer's official actuations in all phases of work.[57] Consistent with such presumption, it was incumbent upon petitioners to present contradictory evidence other than a mere tallying of days or numerical calculation.[58] This, petitioners failed to discharge. The swift completion of the Investigating Panel's initial task cannot be relegated as shoddy or shady without discounting the presumably regular performance of not just one but five state prosecutors.

As for petitioners' claim of undue haste indicating bias, proof thereof is wanting. The pace of the proceedings is anything but a matter of acceleration. Without any objection from the parties, respondents even accorded petitioners a preliminary investigation even when it was not required since the case involves an alleged offense where the penalty prescribed by law is below Four Years, Two Months and One Day.[59]

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[54] Vide *Gala v. Ellice Agro-Industrial Corporation*, 463 Phil. 846, 858-859 (2003) citing *People v. Mercado*, 400 Phil. 37 (2000).

[55] Vide *id*.

[56] RULES OF COURT, Rule 131, Sec. 3 (m).

[57] *De Chavez v. Office of the Ombudsman*, G.R. Nos. 168830-31, February 6, 2007, 514 SCRA 638, 652. *Cf. Ribaya v. Binamira-Parcia*, A.M. No. MTJ-04-1547, April 15, 2005, 456 SCRA 107, 119 where the judge issued a warrant of arrest on the same day the complaint was filed.

[58] *Cf. Ribaya v. Binamira-Parcia*, A.M. No. MTJ-04-1547, April 15, 2005, 456 SCRA 107, 119 where the judge issued a warrant of arrest on the same day the complaint was filed.

[59] *Rollo*, p. 937; RULES OF COURT, Rule 112, Sec. 1 in relation to REVISED PENAL CODE, Art. 365. Vide *People v. De Los Santos*, G.R. No. 131588, March 27, 2004, 355 SCRA 415.

Neither is there proof showing that Gonzalez exerted undue pressure on his subordinates to tailor their decision with his public declarations and adhere to a pre-determined result. The Evaluating Panel in fact even found no sufficient basis, it bears emphatic reiteration, to proceed with the conduct of a preliminary investigation, and one member of the Investigating Panel even dissented to its October 9, 2006 Resolution.

To follow petitioner's theory of institutional bias would logically mean that even the NBI had prejudged the case in conducting a criminal investigation since it is a constituent agency of the DOJ. And if the theory is extended to the President's declaration, there would be no more arm of the government credible enough to conduct a criminal investigation and a preliminary investigation.

On petitioners citation of *Ladlad v. Velasco*[60] where a public declaration by Gonzalez was found to evince a "determination to file the Information even in the absence of probable cause,"[61] their attention is drawn to the following ruling of this Court in *Roberts, Jr. v. Court of Appeals*:[62]

> Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecution may not be restrained or stayed by injunction, preliminary or final. There are, however, **exceptions** to this rule x x x enumerated in *Brocka vs. Enrile* (192 SCRA 183, 188-189 [1990]) x x x. In these exceptional cases, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation x x x.[63] (Emphasis and underscoring supplied)

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[60] G.R. Nos. 172070-72, June 1, 2007, 523 SCRA 318.

[61] *Id*. In that case, Gonzalez categorically stated, "We [the DOJ] will just declare probable cause, then it's up to the [C]ourt to decide . . ."

[62] 324 Phil. 568 (1996).

[63] *Id*. at 615-616.

Even assuming *arguendo* that petitioners' case falls under the exceptions enumerated in *Brocka*, any resolution on the existence or lack of probable cause or, specifically, any conclusion on the issue of prejudgment as elucidated in *Ladlad*, is made to depend on the records of the preliminary investigation. There have been, as the appellate court points out, no finding to speak of when the petition was filed, much less one that is subject to judicial review due to grave abuse.[64] At that incipient stage, records were wanting if not nil since the Investigating Panel had not yet resolved any matter brought before it, save for the issuance of subpoenas. The Court thus finds no reversible error on the part of the appellate court in dismissing petitioners' petition for *certiorari* and prohibition and in refraining from reviewing the merits of the case until a ripe and appropriate case is presented. Otherwise, court intervention would have been only pre-emptive and piecemeal.

Oddly enough, petitioners eventually concede that they are "not asking for a reversal of a ruling on probable cause."[65]

A word on the utilization by petitioners of the video footages provided by ABS-CBN. While petitioners deny wishing or causing respondents to be biased and impartial,[66] they admit[67] that the media, ABS-CBN included, interviewed Gonzalez in order to elicit his opinion on a matter that ABS-CBN knew was pending investigation and involving a number of its own staff. Gonzalez's actuations may leave much to be desired; petitioners' are not, however, totally spotless as circumstances tend to show that they were asking for or fishing from him something that could later be used against him to favor their cause.

A FINAL WORD. The Court takes this occasion to echo its disposition in *Cruz v. Salva*[68] where it censured a fiscal for

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[64] *Id.* at 30.

[65] *Rollo*, p. 965.

[66] *Id.* at 97.

[67] *Id.* at 63-64.

[68] 105 Phil. 1151 (1959).

inexcusably allowing undue publicity in the conduct of preliminary investigation and appreciated the press for wisely declining an unusual probing privilege. Agents of the law ought to recognize the buoys and bounds of prudence in discharging what they may deem as an earnest effort to herald the government's endeavor in solving a case.

WHEREFORE, the petition is *DENIED*.

Costs against petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175833. January 29, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EDWIN MALICSI,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; TESTIMONY OF THE RAPE VICTIM IS ENTITLED TO GREATER WEIGHT THAN THE ACCUSED'S BARE DENIALS; RATIONALE.— AAA's testimony is entitled to great weight in contrast to appellant's bare denials. "Denial is a negative, self-serving evidence which cannot be given greater weight than the testimony of credible witnesses who testified on affirmative matters. Between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence." Besides, neither AAA nor her family had any ill-motive to falsely testify and impute a serious crime against the appellant who is a close relative.

2. ID.; ID.; "SWEETHEART DEFENSE" SHOULD BE SUBSTANTIATED BY SOME DOCUMENTARY OR OTHER EVIDENCE OF THE RELATIONSHIP.— Appellant's allegation that they were sweethearts is barren of factual support because he failed to substantiate his claim by some documentary or other evidence of the relationship. The "sweetheart defense" appears to be a fabrication to exculpate himself from the rape he committed. Although appellant admitted having carnal knowledge with AAA in three separate occasions, he failed to discharge the burden of proving the affirmative defense by clear and convincing evidence.

3. ID.; ID.; WHEN RAPE IS COMMITTED THROUGH INTIMIDATION; PRESENT IN CASE AT BAR.— This Court is not persuaded by appellant's contention that the lack of outcry, lack of tenacious resistance, and delay in reporting the incidents signify that the sexual encounters were consensual. First, appellant exercised moral ascendancy over AAA, being AAA's uncle. Second, appellant had instilled fear upon AAA's young mind during the sexual assaults by using a knife and threatening to kill her. These circumstances have led AAA to keep her ordeals in secret until her mother learned of the incidents from AAA's cousin. This Court declared in *People v. Garcia*: [R]ape is committed when intimidation is used on the victim and this includes the moral kind of intimidation or coercion. Intimidation is a relative term, depending on the age, size and strength of the parties, and their relationship with each other. It can be addressed to the mind as well. Moreover, the intimidation must be viewed in the light of the victim's perception and judgment at the time of rape and not by any hard and fast rule. It is therefore enough that it produces fear – fear that if the victim does not yield to the lustful demands of the accused, something would happen to her at the moment or thereafter.

4. ID.; ALTERNATIVE CIRCUMSTANCES; RELATIONSHIP MUST BE ALLEGED IN THE INFORMATION.— The appellate court was correct in finding appellant guilty of four counts of simple rape. We have ruled that the special circumstance of relationship, that is, appellant is the victim's uncle and they are related within the third civil degree of affinity, must be alleged in the Information. The fact that such relationship was proved will not justify the imposition of the death penalty and appellant cannot be convicted of qualified rape.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CARPIO, *J.*:

This is an appeal from the 18 August 2006 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01368. The Court of Appeals affirmed with modification the decision of the Regional Trial Court, Branch 42, Pinamalayan, Oriental Mindoro, finding appellant Edwin Malicsi guilty beyond reasonable doubt of four counts of rape.

In four separate Informations dated 28 May 1998, the prosecution charged appellant with raping AAA, who was then alleged to be 13 years old when she was raped for the first time and 15 years old during the succeeding rape incidents.

Appellant pleaded not guilty upon arraignment.

During the trial, the prosecution presented three witnesses namely, AAA, AAA's mother, and Dr. Marlon dela Rosa (Dr. dela Rosa), the examining physician.

AAA testified that sometime in December 1996 at 7 o'clock in the evening, her father asked her to buy wine from a store 10 meters away from their house. AAA was only 13 years old then. The house of AAA's family is some 20 meters away from appellant's house. On her way home, AAA chanced upon appellant who is her uncle, her father being the brother of appellant's wife. Appellant placed AAA on his lap. Appellant switched off AAA's flashlight and embraced her. Appellant ordered AAA to bend over. AAA acceded because appellant threatened to kill her. Appellant removed AAA's shorts and underwear. Appellant, while poking a knife at AAA's breast, succeeded in inserting

[1] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Bienvenido L. Reyes and Enrico A. Lanzanas, concurring.

his penis inside her vagina. AAA felt pain. Appellant warned AAA not to say anything to her parents.

AAA further testified that sometime in March 1998, her mother asked her to gather coconuts that have fallen off from the tree at the bamboo grove. Appellant followed her and grabbed one of the coconuts she was holding. AAA tried to retrieve the coconut but appellant forced her to lie on her back. Appellant removed her underwear and inserted his penis inside her vagina. AAA struggled to no avail. Appellant again threatened to kill her if she informed her parents about the incident.

AAA added that on 1 April 1998, appellant ordered AAA to meet him at a banana grove. Out of fear, AAA went there because she knew appellant always carried a knife. Again, appellant forced her to lie on the ground and inserted his penis inside her vagina.

AAA alleged that three days later, appellant caught up with her while she was gathering firewood. AAA was again forced to lie on the ground and appellant inserted his penis inside her vagina. AAA's cousin witnessed the incident and informed AAA's mother. When AAA confirmed to her mother that appellant raped her, they went to the police headquarters to file a complaint against appellant. AAA testified that she was thereafter brought to the doctor for physical examination.

AAA's mother testified that appellant is her brother-in-law. Sometime in April 1998, her nephew informed her that he saw appellant rape AAA. Thereafter, AAA confirmed to her mother that appellant raped her on different occasions. AAA's mother discussed the matter with her husband and they decided to report the rape incidents to the police authorities. AAA's mother alleged that appellant's wife offered to settle the case for ₱10,000 but she refused the offer because of the dishonor to her daughter.

Dr. dela Rosa testified that he examined AAA and executed a Medical Certificate with the following findings:

"P.E.

Vagina: nulliparous introitus with old hymenal lacerations at 1°, 7° and 5° positions."[2]

Dr. dela Rosa added that based on his findings, AAA had lost her virginity. On cross-examination, Dr. dela Rosa stated that the hymenal lacerations were inflicted possibly by the insertion of a hard object.[3]

The defense presented appellant as its only witness. Appellant denied the accusations of rape and alleged that he and AAA were sweethearts and they mutually agreed to engage in sexual intercourse. Appellant claimed that AAA visits their house about thrice a week when his wife is not at home. Appellant then recounted the incidents of his sexual intercourse with AAA.

Appellant claimed that sometime in December 1996, he arrived home from Manila and he told his wife to go to the market. After she left, he slept. Then, he sensed someone entering his house. Upon seeing that it was AAA, appellant asked her if she needed something but she replied negatively. Appellant then stood up, held her hands and kissed her. AAA told him that they might be seen by her mother as the door was not closed. Appellant and AAA then entered the room and he embraced and kissed her. AAA also embraced and kissed him. Then, he told her, "*maghubo ka ng panty* (take off your underwear)." While taking off her underwear, appellant also removed his briefs. While AAA was lying in bed face upward, she had no violent reaction but merely closed her eyes when he inserted his penis inside her vagina. After the sexual intercourse, AAA went home.[4]

Appellant contended that the second time they had sexual intercourse was in 1998 before AAA's graduation. It happened at the banana grove. He was urinating at the creek when he called her by a whistle. AAA approached him. He held her

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[2] Records IV, p. 6.

[3] TSN, 8 September 1998, p. 5.

[4] TSN, 15 November 1999, pp. 5-8.

hands and they embraced each other. Then, they removed their undergarments. AAA lay on the banana leaves while he placed himself on top of her. He inserted his penis inside her vagina and while doing so, AAA was embracing him. Afterwards, she went home.[5]

Appellant alleged that the third sexual intercourse happened on 4 April 1998 at the banana plantation where they agreed to meet. AAA arrived while appellant was gathering "*puso ng saging.*" When she approached him, they embraced each other and removed their undergarments. AAA lay on the banana leaves while he placed himself on top of her and inserted his penis inside her vagina. AAA was merely looking at him while he was doing it. After the sexual act, she went home.[6]

Appellant also alleged that in these three occasions, AAA gave her consent since they were sweethearts. Appellant attested that after he learned about the rape charges, he did not have the opportunity to talk to AAA anymore.

The trial court gave credence to the testimonies of the prosecution witnesses. The trial court took note of the fact that AAA was barely 13 years old when the first rape took place while appellant was in his early 30's.[7] The trial court also noted that appellant was AAA's uncle, thus he exercised some sort of moral ascendancy over AAA.[8] The trial court was not persuaded by appellant's defense that AAA was his girlfriend and that the sexual encounters were done with her consent due to the lack of outcry, lack of tenacious resistance, and delay in reporting the rape charges to the authorities. The trial court disbelieved appellant's testimony that they were sweethearts because there was no sufficient proof to substantiate the alleged love relationship. Appellant merely relied on his own uncorroborated testimony. The trial court added that a love affair is not a license for sexual intercourse.[9]

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[5] *Id*. at 8-10.

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

[7] CA *rollo,* p. 21.

[8] *Id*.

[9] *Id*. at 23.

The trial court ruled that the lack of outcry and tenacious resistance did not make the sexual congress voluntary because being of tender age, AAA did not possess discernment and was incapable of giving an intelligent consent to the sexual act. Moreover, there is no standard form of human behavioral response to a startling or frightful experience such as rape being perpetrated by the victim's uncle. Furthermore, the resistance on the part of the victim need not be carried out to the point of inviting death or physical injuries, it being sufficient that the coitus takes place against her will or that she yields to a genuine apprehension of great harm.[10]

The trial court acknowledged that there was delay in reporting the rape incidents. However, the trial court believed that the delay was due to the death threats made by appellant coupled with the victim's immaturity. The fact that appellant was holding a knife is suggestive of the force or intimidation that would cause the victim to conceal for sometime the violation on her honor.[11]

On 8 October 2001, the trial court rendered its decision, finding appellant guilty of four counts of qualified rape. The trial court sentenced appellant to suffer the penalty of death for each count of rape, and to pay AAA ₱300,000 as civil indemnity (₱75,000 for each count), and ₱200,000 as moral damages (₱50,000 for each count).[12]

On appeal, appellant contended that the trial court erred in giving weight and credence to the incredulous testimonies of the prosecution witnesses especially AAA's testimony. Appellant alleged that the prosecution failed to prove his guilt beyond reasonable doubt. Appellant also questioned the imposition of death penalty considering the attendant circumstances of the case.

In its 18 August 2006 Decision, the Court of Appeals affirmed the trial court's decision with modification, finding appellant

[10] *Id*. at 21-22.

[11] *Id*. at 22-23.

[12] *Id*. at 24.

guilty of four counts of simple rape instead of qualified rape and reducing the penalty imposed to *reclusion perpetua*. The Court of Appeals stated that AAA was a minor at the time of the commission of the crime and appellant was a family relative by affinity. The Court of Appeals believed that the family relationship made AAA subject to appellant's moral ascendancy. Moreover, it was clearly established during the trial that AAA exerted efforts to free herself from appellant. AAA acceded to appellant's sexual urges because appellant threatened to kill her and appellant actually poked a knife on her breast during the incidents. The appellate court added that these circumstances belie appellant's claim that AAA did not offer tenacious resistance. AAA's fear for her life and safety made her conceal the fact that she was being molested by appellant.[13]

The Court of Appeals did not believe appellant's "sweetheart" defense because it was not supported by some documentary or other evidence of the relationship other than his bare assertions. Such claim obviously deserves scant consideration. Assuming *arguendo* that appellant and AAA were sweethearts, this relationship still does not, by itself, make their sexual intercourse voluntary because even a lover can be forced to engage in a sexual act against her will and consent.[14]

The Court of Appeals noted that from the time of the first rape incident, there was a lapse of almost two years before AAA reported the rape incidents to the police authorities. The appellate court explained that this delay is not an indication of a false accusation. The fact of AAA's failure to disclose for two years that appellant molested her was not unexplained. AAA had repeatedly testified during the trial that appellant warned her not to say anything to her parents and appellant threatened to kill her if she would tell them. The appellate court stated that it is even common for young girls to conceal for some time the assault against their virtue because of threats on their lives. The Court of Appeals upheld the finding of the trial court on

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[13] *Rollo*, pp. 16-17.

[14] *Id*. at 18-19.

AAA's credibility on the face of appellant's bare denials, more especially that appellant had not adduced any evidence that AAA or her family had any ill-motive to testify against him.[15]

However, the Court of Appeals agreed with appellant that the trial court erred in sentencing him to suffer the death penalty on four counts of qualified rape and that he should only be convicted of simple rape. The minority of the victim and the offender's relationship to the victim, which constitute only one special qualifying circumstance, must be alleged in the Information and proved with certainty. In this case, the Informations filed against appellant merely stated that he is the "uncle" of AAA. This is not the sufficient allegation required by law because the Information must allege that he is a relative by consanguinity or affinity within the third civil degree and the same should be proven during the trial. The Court of Appeals further held that since Republic Act No. 9346[16] now prohibits the imposition of the death penalty, the penalty of *reclusion perpetua* should be imposed. This new law must be given retroactive application because it is favorable to the accused.

Hence, this appeal.

We find the appeal without merit. The Court of Appeals was correct in affirming with modification the ruling of the trial court that four counts of rape were clearly established by the prosecution witnesses. The findings and observations of the trial court on the credibility of the prosecution witnesses are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted,[17] which is not true in the present case. Moreover, AAA's testimony is worthy of belief because she categorically pointed to appellant as the person who sexually abused her.

AAA's testimony is entitled to great weight in contrast to appellant's bare denials. "Denial is a negative, self-serving evidence

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[15] *Id*. at 17-19.

[16] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[17] *People v. Alarcon*, G.R. No. 174199, 7 March 2007, 517 SCRA 778, 784.

which cannot be given greater weight than the testimony of credible witnesses who testified on affirmative matters. Between the positive declarations of the prosecution witnesses and the negative statements of the accused, the former deserve more credence."[18] Besides, neither AAA nor her family had any ill-motive to falsely testify and impute a serious crime against the appellant who is a close relative.

Appellant's allegation that they were sweethearts is barren of factual support because he failed to substantiate his claim by some documentary or other evidence of the relationship. The "sweetheart defense" appears to be a fabrication to exculpate himself from the rape he committed. Although appellant admitted having carnal knowledge with AAA in three separate occasions,[19] he failed to discharge the burden of proving the affirmative defense by clear and convincing evidence.

This Court is not persuaded by appellant's contention that the lack of outcry, lack of tenacious resistance, and delay in reporting the incidents signify that the sexual encounters were consensual.[20] First, appellant exercised moral ascendancy over AAA, being AAA's uncle. Second, appellant had instilled fear upon AAA's young mind during the sexual assaults by using a knife and threatening to kill her. These circumstances have led AAA to keep her ordeals in secret until her mother learned of the incidents from AAA's cousin. This Court declared in *People v. Garcia*:[21]

> [R]ape is committed when intimidation is used on the victim and this includes the moral kind of intimidation or coercion. Intimidation is a relative term, depending on the age, size and strength of the parties, and their relationship with each other. It can be addressed to the mind as well. Moreover, the intimidation must be viewed in the light of the victim's perception and judgment at the time of rape and not by any hard and fast rule. It is therefore enough that it produces

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[18] *People v. Fraga*, 386 Phil. 884, 906 (2000).

[19] TSN, 15 November 1999, pp. 4-11.

[20] CA *rollo*, pp. 21-22.

[21] 346 Phil. 475, 493-494 (1997).

fear – fear that if the victim does not yield to the lustful demands of the accused, something would happen to her at the moment or thereafter.

AAA's tender age and appellant's moral ascendancy made AAA subservient to appellant's sexual desires. This psychological predicament explains why AAA did not give any outcry or offer any resistance when appellant was raping her. Moreover, the physical differences between appellant, who was a man in his early 30's then, and AAA, a 13 and 15-year-old girl during the rape incidents, afforded appellant the greater advantage such that no amount of resistance from AAA could have overcome the coercive physical force of appellant.

The appellate court was correct in finding appellant guilty of four counts of simple rape. We have ruled that the special circumstance of relationship, that is, appellant is the victim's uncle and they are related within the third civil degree of affinity, must be alleged in the Information.[22] The fact that such relationship was proved will not justify the imposition of the death penalty and appellant cannot be convicted of qualified rape.[23]

We find that the Court of Appeals correctly imposed the penalty of *reclusion perpetua* on appellant. The appellate court also correctly affirmed the award by the trial court of ₱200,000 in moral damages. Moral damages are automatically granted to the rape victim without presentation of further proof other than the commission of the crime.[24]

However, we reduce the award of civil indemnity from ₱300,000 to ₱200,000 in accordance with prevailing jurisprudence.[25] Civil indemnity in the amount of ₱50,000 for each count of simple rape is automatically granted once the fact of rape is established.[26]

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[22] *People v. Sabredo*, 387 Phil. 682, 692 (2000).

[23] *People v. Abala*, 434 Phil. 241, 262-263 (2002).

[24] *People v. Dizon*, 463 Phil. 581, 605 (2003).

[25] *People v. Biong*, 450 Phil. 432 (2003).

[26] *People v. Molleda*, 462 Phil. 461, 471 (2003).

WHEREFORE, we *AFFIRM* the 18 August 2006 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01368 finding appellant Edwin Malicsi guilty beyond reasonable doubt of four counts of simple rape with the *MODIFICATION* that the award of civil indemnity is reduced to ₱200,000.

SO ORDERED.

Quisumbing (Chairpeson), Carpio Morales, Tinga, and *Velasco, Jr., JJ.* concur.

EN BANC

[A.M. No. MTJ-05-1572. January 30, 2008]
(Formerly A.M. No. 04-8-208-MTCC)

IN RE: PARTIAL REPORT ON THE RESULTS OF THE JUDICIAL AUDIT CONDUCTED IN THE MTCC, BRANCH 1, CEBU CITY.

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425); CONFINEMENT, TREATMENT AND REHABILITATION IN A CENTER OF A MINOR DRUG DEPENDENT WOULD BE UPON ORDER AFTER DUE HEARING BY THE REGIONAL TRIAL COURT (RTC) OF THE PROVINCE OR CITY WHERE THE MINOR RESIDES.— Under Section 30 of Republic Act (R.A.) No. 6425, otherwise known as the Dangerous Drugs Act of 1972 (the law in force at the time most of the subject cases were filed), the matter of voluntary submission to confinement, treatment and rehabilitation in a center of a drug dependent was subject to the approval of the Dangerous Drugs Board. However, if the drug dependent was a minor, his confinement, treatment and rehabilitation in a center would be upon order,

after due hearing, by the Regional Trial Court (RTC) of the province or city where the minor resides. Similarly, pursuant to Section 54 in relation to Section 90 of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (the law now in force), the RTC has jurisdiction over drug-related cases.

2. JUDICIAL ETHICS; DISCIPLINE OF JUDGES; A JUDGE OWES IT TO HIS OFFICE TO KNOW THE LAW AND TO SIMPLY APPLY IT; APPLICATION IN CASE AT BAR.— When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it. Anything less would be constitutive of gross ignorance of the law. Even newly-appointed judges are required to have a working knowledge of the law on jurisdiction before they assume their judicial function. As is natural and in the course of accumulated experience spanning several years, judges become more conversant with it, which they frequently apply in court. Thus, it is completely inexcusable for an experienced judge, such as Judge Coliflores, to ignore basic law, already well-ingrained through constant usage. x x x His taking cognizance of cases not assigned to his court by raffle, as required under Circular No. 7, and over which his court has no jurisdiction, does not only demonstrate his professional incompetence, but also casts serious doubt on his motives. It bears stressing that a disregard of Court directives constitutes grave or serious misconduct. As a magistrate of long standing, he is expected to be conversant with such fundamental and basic legal principles as jurisdiction and the Indeterminate Sentence Law. His behavior and conduct must also reaffirm the people's faith in the integrity of the judiciary. He failed, however, to live up to these standards. Judges owe it to the public to be knowledgeable. Hence, they should have more than just a modicum of acquaintance with the statutes and procedural rules. When the law is so elementary, not to know it constitutes gross ignorance of the law, the mainspring of injustice.

3. ID.; ID.; WHEN GUILTY OF SERIOUS CHARGES; PENALTIES.— Judge Coliflores should be held liable for gross ignorance of the law or procedure and grave or gross misconduct, which under Section 8, Rule 140, as amended, of the Rules of Court, are considered serious charges. For these, any of the following penalties may be imposed: (a) 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 forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

4. ID.; ID.; JUDGES ARE MANDATED TO DIRECTLY PREPARE A JUDGMENT OR FINAL ORDER DETERMINING THE MERITS OF THE CASE; VIOLATION IN CASE AT BAR.— Under Section 1, Rule 36 of the Rules of Court, judges are mandated to directly prepare a judgment or final order determining the merits of the case, stating clearly and distinctly the facts and law on which it is based. This requirement is an assurance to the parties that, in reaching judgment, judges do so through the process of legal reasoning. The Court beseeches judges to take pains in crafting their orders, stating clearly and comprehensively the reasons for their issuances, which are necessary for the full understanding of the action taken. Judge Necessario obviously failed to strictly follow the foregoing mandate when he signed the questioned orders in Special Proceedings Nos. 16 and 18, which were crafted by Mr. Legazpi, the clerk of court of Branch 1. He merely relied on the representation of Mr. Legazpi and did not even bother to read the case records before signing the questioned orders. He should have known that first level courts have no jurisdiction over petitions for voluntary rehabilitation of drug dependents. He should have refrained from signing said orders. Instead, he relied on the false assurance made by Mr. Legaspi that the petitions were merely ancillary to cases pending in Branch 1, and blamed the latter afterwards for the blunder. That Mr. Legazpi subsequently executed an affidavit taking responsibility for the issuance of the questioned orders in an attempt to absolve him is of no moment. As a judge, who holds a position of responsibility, he cannot hide behind the irresponsibility of Mr. Legaspi because the latter is not the guardian of his responsibilities.

5. ID.; ID.; WHEN GUILTY OF A LESS SERIOUS CHARGE; PENALTY.— Verily, Judge Necessario is guilty of violating

a Supreme Court rule, which is classified as a less serious charge, the imposable penalty for which ranges from a fine of more than ₱10,000.00 but not exceeding ₱20,000.00 to suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months. The OCA recommended that a fine of ₱11,000.00 be imposed. The Court, however, finds that ₱20,000.00 is a more appropriate amount, with the warning that a repetition of the same or similar act will be dealt with more severely.

6. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; CLERK OF COURT; THE POSITION OF CLERK OF COURT IS NOT THAT OF A JUDICIAL OFFICER NOR IS IT SYNONYMOUS WITH THE COURT; VIOLATION IN CASE AT BAR.— Clerks of court are essential judicial officers who perform delicate administrative functions vital to the prompt and proper administration of justice. However, while an officer of the court, a public officer and an "officer of the law," the position of clerk of court is not that of a judicial officer, nor is it synonymous with the court. The office is essentially a ministerial one. The results of the judicial audit show that Mr. Legazpi went beyond the ministerial duties of the office of the clerk of court, as he exercised functions that belong to a judge. While he attributes the practice of granting petitions for rehabilitation of drug dependents to Judge Coliflores' concern for the welfare of drug dependents, as well as for the safety of their parents, it is obvious that Mr. Legazpi principally contrived the practice. x x x Mr. Legazpi's lame excuse that he could not have caused the raffle of the petitions for voluntary rehabilitation of drug dependents because he was not in charge of the raffle of cases is an admission that he indeed received and acted on said petitions in violation of Supreme Court Circular No. 7 dated September 23, 1974. The Circular mandates, among others, that "(a)ll cases filed in stations or groupings where there are two or more branches shall be assigned or distributed to the different branches by raffle," And "(n)o case may be assigned to any branch without being raffled." The importance of the raffle of cases cannot be overemphasized. It is intended to ensure the impartial adjudication of cases by protecting the integrity of the process of distributing or assigning cases to judges. The acts of Mr. Legazpi – from personally receiving the petitions for voluntary

rehabilitation of drug dependents directly from petitioners, to their resolution and disposition, with judges merely affixing their signatures on the orders or resolutions – grossly disregarded established rules. x x x By "subscribing," the Court takes it to mean that he allowed the accused to sign (and swear) before him. This is normally done by the investigating or trial prosecutor. Verily, by preparing and "subscribing" the counter-affidavit of the accused in a case pending in a sala, of which he is the clerk of court, Mr. Legazpi seriously compromised the integrity of the court as he invited suspicion of the court's bias for the accused. x x x As clerk of court, Mr. Legazpi cannot be said to be unaware of the requirement of raffle for the distribution of cases in mulit-sala court stations and the jurisdiction of the court to which he is assigned. By purposely hiding from the judicial audit team the records of cases which were directly filed with Branch 1 by petitioners, Mr. Legazpi had shown his willful intention to disregard said requirement and limit of jurisdiction. He also cannot feign innocence of the unsavory consequence of a court employee preparing a counter-affidavit for an accused.

7. ID.; ID.; ID.; ID.; WHEN GUILTY OF GRAVE MISCONDUCT; PENALTY.— In sum, Mr. Legazpi should be held liable for grave misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence of a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. Under the Civil Service Law and its implementing rules, grave misconduct is punishable by dismissal from the service with forfeiture of all benefits, excluding leave credits, if any, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.

8. ID.; ID.; ID.; THE OBJECT SOUGHT IN DISCIPLINING PUBLIC OFFICER OR EMPLOYEE IS NOT PUNISHMENT BUT THE IMPROVEMENT OF PUBLIC SERVICE AND PRESERVATION OF PUBLIC FAITH AND CONFIDENCE IN THE GOVERNMENT; CASE AT BAR.— The principle is that when an officer or employee is disciplined, the object sought is not the punishment of such officer or

employee but the improvement of the public service and the preservation of the public's faith and confidence in the government. Hence, good faith is no defense and violation of a Supreme Court Circular holds the offender administratively liable. Hence, while the OCA recommends that Ms. Fernan-Rota and Mr. Artes be exonerated from any administrative liability, with a mere admonition to be more circumspect in the performance of their duties in the future, We find it befitting that they, at the very least, be reprimanded and warned that repetition of the same or similar acts will be dealt with more severely. This Court has always valued high standards in judicial service. Time and time again, We have said that the behavior of all officials and employees involved in the administration of justice is circumscribed with a heavy burden of responsibility. Their conduct should, at all times, embody propriety, prudence, courtesy and dignity in order to maintain public respect and confidence in the judicial service. The Supreme Court cannot countenance, tolerate or condone any conduct, act or omission that would violate the norm of public accountability or that would diminish or tend to diminish the faith of the people in the Judiciary.

D E C I S I O N

***PER CURIAM*:**

EXPOSED in this administrative case are several instances of anomalous conduct that had been occurring in the Municipal Trial Court in Cities (MTCC), Cebu City. The irregularities uncovered were perpetrated and made possible by members and personnel of the judiciary of varying ranks.

This provides a reminder that everyone in the judiciary, from the presiding judge to the lowliest clerk, bears a heavy responsibility in the proper discharge of one's duty. It behooves each one to steer clear of any situation in which the slightest suspicion might be cast on his conduct.[1]

Professionalism, respect for the rights of others, good manners and right conduct are expected of all judicial officers and employees,

[1] *Racasa v. Collado-Calizo*, A.M. No. P-02-1574, April 17, 2002, 381 SCRA 151.

because the image of the judiciary is necessarily mirrored in their actions.[2]

In mid-June of 2004, an audit was conducted in the MTCC, Branch 1, Cebu City. To enable the Court to immediately address the anomalies found, the judicial audit team[3] submitted a partial report on July 23, 2004 to the Office of the Court Administrator (OCA), recommending that:

1. **Judge Mamerto Y. Coliflores** (Retired), former Presiding Judge, MTCC, Br. 1, Cebu City, be DIRECTED to submit a written explanation to the Court within fifteen (15) days from notice of his acts in:

   (a) imposing a penalty beyond the jurisdiction of his court upon accused Jimmy Pepito Digawan in Crim. Case No. 118324-R;

   (b) promulgating two (2) decisions on the same day, *i.e.* December 4, 2002, in Crim. Case No. 117409-R, in which he imposed two conflicting penalties upon accused Dennis Bugwat Guerrero;

   (c) deciding Crim. Case No. 108731-R, entitled *People v. Capin*, on March 18, 2003 despite the absence of [1] the records in the court, and [2] scheduled hearing on said date;

   (d) either granting the petitions for bail or in ordering the confinement and rehabilitation of drug dependents or in ordering the release of drug dependents from the drug rehabilitation center in the following cases even if said petitions were not raffled and assigned to Branch 1 as required under Circular No. 7, dated September 23, 1974, and over which his court has no jurisdiction;

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[2] *In re: Ms. Edna S. Cesar, RTC, Br. 171, Valenzuela City*, A.M. No. 00-11-526-RTC, September 16, 2002, 388 SCRA 703.

[3] Composed of Atty. Rullyn S. Garcia, Judicial Supervisor, as team leader, with Eric S. Fortaliza, Ester Melody E. Masangcay, Liberty A. Runez, Ma. Teresa P. Olipas and May Jingle M. Villocero, as members.

Docket No.	Title/Nature	Date Decided
Sp. Proc. No. 01-99	*People v. Rico Caja, et al.*	Feb. 12, 1999
Sp. Proc. No. 18	Urgent Petition to Post Bail	Sep. 30, 1999
Sp. Proc. No. 04	Petition for Voluntary Submission of Drug Dependent Aljoe Mari Loquinario	Dec. 22, 1999
Sp. Proc. No. 5	Petition for Voluntary Submission of Drug Dependent Ernesto Palanca	Dec. 21, 2000
Sp. Proc. No. 9	Petition for Voluntary Rehabilitation of Mary Annelynne Dungog Abella	June 29, 2001
Sp. Proc. No. 06	Petition for Voluntary Rehabilitation of Drug Dependent Jimmy Escalante Duarte	July 4, 2001
Sp. Proc. No. 10	Petition for Voluntary Rehabilitation of Leo Nick Del Mar	July 5, 2001
Sp. Proc. No. 11	Petition for Voluntary Rehabilitation of Jose Cecil Lim Ormoc	July 6, 2001
Crim. Case 117249	*People v. Villaceran*	July 10, 2002
Sp. Proc No. 6 (*sic*)	Petition for Voluntary Rehabilitation of Drug Dependent Roderick Pakson	March 1, 2003

2. **Judge Anastacio S. Necesario** of the Municipal Trial Court in Cities, Branch 2, Cebu City be DIRECTED to submit a written explanation to the Court within fifteen (15) days from notice of his acts in granting the petition for voluntary rehabilitation of drug dependent Eduardo T. Sia in Sp. Proc. No. 18 (*sic*) and in ordering the release of drug dependent Froilan W. Sentones in Sp. Proc. No. 16, which cases were taken cognizance of by Branch 1 in violation of Circular No. 7, dated September 23, 1974, and over which Branch 1 has no jurisdiction;

3. **Mr. Jose A. Legazpi**, Branch Clerk of Court, MTCC, Br. 1, Cebu City, be DIRECTED to SHOW CAUSE within fifteen (15) days from notice why no disciplinary sanction should be taken against him for his:

   (a) willful disregard of Circular No. 7, dated September 23, 1974, requiring all cases filed with the court in multi-sala stations to be assigned or distributed to the different branches by raffle, and which provides that no case may be assigned to any branch without being raffled, when he received and docketed the following cases:

Docket No.	Title/Nature	Date Filed
Sp. Proc. No. 18	Urgent Petition to Post Bail	Sep. 30, 1999
Sp. Proc. No. 04	Petition for Voluntary Submission of Drug Dependent Aljoe Mari Loquinario	Dec. 22, 1999
Sp. Proc. No. 5	Petition for Voluntary Submission of Drug Dependent Ernesto Palanca	Dec. 21, 2000
Sp. Proc. No. 9	Petition for Voluntary Rehabilitation of Mary Annelynne Dungog Abella	June 29, 2001
Sp. Proc. No. 06	Petition for Voluntary Rehabilitation of Drug Dependent Jimmy Escalante Duarte	July 4, 2001
Sp. Proc. No. 10	Petition for Voluntary Rehabilitation of Leo Nick Del Mar	July 5, 2001
Crim Case 117249	*People v. Villaceran*	July 10, 2002
Sp. Proc. No. 6 (*sic*)	Petition for Voluntary Rehabilitation of Drug Dependent Roderick Pakson	March 1, 2003
Sp. Proc. No. 18	Petition for Voluntary Rehabilitation of Drug Dependent Eduardo T. Sia	
Sp. Proc. No. 16	Petition for Voluntary Rehabilitation of Drug Dependent Froilan W. Sentones	

(b) his acts in preparing and subscribing the counter-affidavit of accused Perla Rivera in Crim. Case Nos. 125530-R to 125545-R, despite his knowledge that said cases were at the time pending in Branch 1;

(c) his failure to present to the judicial audit team the cases mentioned in No. 1(d) in the course of the judicial audit on March 21 to 26, 2003;

4. **Ms. Romnie Fernan-Rota**, Clerk II, and **Mr. Roldan Artes**, Court Sheriff III, both of MTCC, Br. 1, Cebu City, be DIRECTED to SHOW CAUSE why no disciplinary action should be taken against them within fifteen (15) days from notice for their acts in receiving the petitions in Sp. Proc. No. 01-99, entitled *People v. Caja, et al.* on February 12, 1999 and Sp. Proc. No. 11, entitled *Petition for Voluntary Rehabilitation of Jose Cecil Lim Ormoc* on July 6, 2001, respectively, in violation of Circular No. 7, dated September 23, 1974, requiring all cases filed with the court in multi-sala stations to be assigned or distributed to the different branches by raffle, and which provides that no case may be assigned to any branch without being raffled;

5. this matter be treated as an administrative complaint against former Judge Mamerto Y. Coliflores, Judge Anastacio S. Necesario, Mr. Jose A. Legazpi, Ms. Romnie Fernan-Rota and Mr. Roldan A. Artes; and

6. the detail of **Mr. Jose A. Legazpi** at the Library of the Regional Trial Court, Cebu City be extended until further orders from this Court.[4]

In its November 24, 2004 Resolution, the Court resolved to take the recommended course of action, directing those implicated to show cause why no disciplinary action should be taken against them. Respondents Judge Mamerto V. Coliflores (now retired), Judge Anastacio S. Necessario, Mr. Jose A. Legazpi, Ms. Romnie Fernan-Rota and Mr. Roldan A. Artes, all submitted their respective comments.

On March 28, 2005, the Court referred the administrative matter to the OCA for evaluation. Under date of March 27, 2007, the OCA submitted its report. In said report, the OCA found that the evidence did, indeed, point to the existence of the alleged irregularities and that respondents were responsible for them. It thus recommended the following courses of action:

1. **Judge Mamerto Coliflores**, former presiding judge, Municipal Trial Court in Cities, Branch 1, Cebu City, (a) be FOUND GUILTY of gross ignorance of the law and grave misconduct, and (b) that his retirement benefits be FORFEITED, except his accrued leave credits;

2. **Judge Anatalio S. Necessario,** Municipal Trial Court in Cities, Branch 2, Cebu City, (a) be FOUND GUILTY of violating a Supreme Court rule, and (b) be FINED in the amount of ₱11,000.00 with WARNING that a repetition of the same or similar act will be dealt with more severely;

3. **Mr. Jose A. Legazpi,** clerk of court, Municipal Trial Court in Cities, Branch 1, Cebu City, (a) be FOUND GUILTY of grave misconduct, and (b) be DISMISSED from the service with forfeiture of all benefits, excluding leave credits, and

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[4] Partial Report on Judicial Audit Conducted in the MTCC, Br. 1, Cebu City, July 23, 2004, pp. 11-13.

with prejudice to re-employment in any branch or agency of the government including government-owned or controlled corporations;

4. **Ms. Romnie Fernan-Rota**, clerk II, and **Mr. Roldan A. Artes,** Court Sheriff, both of the Municipal Trial Court in Cities, Branch 1, Cebu City are EXONERATED from any administrative liability. They are, however, ADMONISHED to be more circumspect in the performance of their duties to avoid committing acts that are inconsistent with existing laws and procedures as well as with good records management; and

5. (a) The request of **Judge Monalila S. Tecson,** Municipal Trial Court in Cities, Branch 1, Cebu City, to recall the detail of Mr. Jose A. Legazpi at the RTC Library be DENIED; and (b) Judge Tecson be ADVISED to cause the recall of the detail of Ms. Romnie Fernan-Rota at the Office of the Clerk of Court, MTCC, Cebu City, and to designate an acting branch clerk of court from among her staff members.[5]

Except for some modifications on sanctions to be imposed, We are in accord with the OCA findings. We shall extrapolate from these findings in the discussion below.

Judge Mamerto Coliflores

Now retired Judge Coliflores has been alleged to have committed the following acts:

1.) Imposing a penalty beyond the jurisdiction of his court;

2.) Promulgating two decisions for the same case on the same day with two conflicting penalties;

3.) Deciding a case in the absence of the records and hearing;

4.) Granting several petitions for the confinement and rehabilitation or the release of drug dependents even when their cases had not been raffled to his court, hence, without jurisdiction.

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[5] Report and Recommendation, pp. 23-24.

Imposing penalty beyond jurisdiction

Under Section 32(2) of Batas Pambansa Blg. 129, as amended, first level courts have exclusive jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years. Judge Coliflores promulgated a sentence in Criminal Case No. 118324-R imposing a penalty of six (6) months and one (1) day of *prision correccional* to six (6) years and one (1) day imprisonment upon the accused. This is a clear violation of the law.

In his letter of June 11, 2004, Judge Coliflores admitted that it was patent error for his court to impose such a penalty beyond its jurisdiction. Further, when required by the Court to comment, he said it was "patent error of judgment duly corrected," adding that then Acting Presiding Judge Econg had already amended his erroneous sentence.

That such an error was subsequently put to right is no defense whatsoever. When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it. Anything less would be constitutive of gross ignorance of the law.[6]

Even newly-appointed judges are required to have a working knowledge of the law on jurisdiction before they assume their judicial function. As is natural and in the course of accumulated experience spanning several years, judges become more conversant with it, which they frequently apply in court. Thus, it is completely inexcusable for an experienced judge, such as Judge Coliflores, to ignore basic law, already well-ingrained through constant usage.

Promulgating two decisions with two conflicting penalties in same case

Further demonstrating his incompetence, Judge Coliflores issued two (2) decisions in Criminal Case No. 117409-R on the same day, imposing conflicting penalties upon the accused. In one decision, he imposed a straight penalty of "THREE (3) YEARS of *pricion* (*sic*) *correccional*" upon the accused. In another,

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[6] *Creer v. Fabillar*, A.M. No. MTJ-99-1218, August 14, 2000, 337 SCRA 632.

he imposed an indeterminate penalty upon the same accused, thus:

> WHEREFORE, applying the Indeterminate Sentence Law, the accused is hereby meted the penalty of 6 months and 1 day as MINIMUM to 3 years, 6 months and 20 days as MAXIMUM Indeterminate Penalty.[7]

He failed to deny these divergent actions. Instead, when required by the Court to comment, he merely stated that "the open court sentence should prevail, and the Indeterminate Sentence Law will not apply." He made it worse. It should be the written decision, not the one dictated in open court, that should prevail. Besides, a straight penalty is imposable only if it does not exceed one year of imprisonment.

Deciding case in absence of records and hearing

Not only did Judge Coliflores display gross ignorance of the law and procedure, he was also less than candid in explaining the circumstances surrounding the promulgation of his decision in Criminal Case No. 108731-R. The judicial audit team found that he decided the case on March 18, 2003 despite the absence of its records and a scheduled hearing on that date.

It was established that the records were inadvertently attached to the records of Criminal Case No. 108730-R, which was decided by Judge Coliflores on September 12, 2000. On February 6, 2003, the case folder of Criminal Case No. 108730-R was brought for safekeeping, without knowing that the records of Criminal Case No. 108731-R were attached to it. It was only on May 27, 2004 that the records of Criminal Case No. 108731-R were retrieved from the Office of the Clerk of Court after a futile search in the premises of Branch 1.

In his June 11, 2004 letter, Judge Coliflores admitted that he decided Criminal Case No. 108731-R even though the case "was not included in the calendar for that date, March 18, 2003, by the Interpreter due to the fact that the calendar of the court

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[7] OCA Report and Recommendation, p. 11.

was prepared three (3) days ahead of schedule, but on the said date the record was discovered."

However, in his comment dated January 6, 2005, he stated that he decided the case "with the duplicate copy of the original records as certified by the affidavit of REBECCA L. ALESNA, Court Interpreter of MTCC, Br. 1, Cebu City x x x." A close examination of said affidavit reveals that Alesna merely attested to the circumstances surrounding the promulgation of judgment in Criminal Case No. 108731-R without categorically stating that the proceeding was undertaken with the duplicate copy of the original records at hand. Moreover, the fact that there was no scheduled hearing on March 18, 2003 and the absence of the minutes of the supposed proceeding render the decision highly questionable.

Taking cognizance of petitions without jurisdiction

Judge Coliflores likewise failed to satisfactorily explain his acts of (a) granting petitions for bail; (b) ordering the confinement and rehabilitation of drug dependents; and (c) ordering the release of drug dependents from the drug rehabilitation center, although these cases had not been assigned by raffle to his court, as required under Circular No. 7 dated September 23, 1974. Hence, he again acted without jurisdiction.

Under Section 30 of Republic Act (R.A.) No. 6425, otherwise known as the Dangerous Drugs Act of 1972 (the law in force at the time most of the subject cases were filed), the matter of voluntary submission to confinement, treatment and rehabilitation in a center of a drug dependent was subject to the approval of the Dangerous Drugs Board. However, if the drug dependent was a minor, his confinement, treatment and rehabilitation in a center would be upon order, after due hearing, by the Regional Trial Court (RTC) of the province or city where the minor resides. Similarly, pursuant to Section 54 in relation to Section 90 of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (the law now in force), the RTC has jurisdiction over drug-related cases.

Judge Coliflores' explanation neither confirmed nor denied the judicial findings. At best, it was evasive, as he declared that:

> x x x where petition for bail release granted by this Court, it should be noted, that all persons in custody shall be entitled to bail, before or after conviction by the Metropolitan Trial Court; x x x with respect to the rehabilitation of drug dependents if they have pending case in court, they may asked (*sic*) for suspension of hearing and be rehabilitated before hearing x x x with respect to non-raffled cases, it was the voluntary petition of the parents, even if no cases are filed.[8]

Summary of Judge Coliflores' violations

The actions of Judge Coliflores on Criminal Cases Nos. 118324-R and 17409-R, as well as on the cases involving drug dependents and a person seeking approval of bail, undoubtedly betray his gross ignorance of law and procedure. His admission of imposing a penalty beyond the jurisdiction of his court demonstrates his lack of professional competence. The same can be said as regards his inability to satisfactorily explain his conflicting decisions in one case.

His taking cognizance of cases not assigned to his court by raffle, as required under Circular No. 7, and over which his court has no jurisdiction, does not only demonstrate his professional incompetence, but also casts serious doubt on his motives. It bears stressing that a disregard of Court directives constitutes grave or serious misconduct.[9]

As a magistrate of long standing, he is expected to be conversant with such fundamental and basic legal principles as jurisdiction and the Indeterminate Sentence Law. His behavior and conduct must also reaffirm the people's faith in the integrity of the judiciary. He failed, however, to live up to these standards. Judges owe

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[8] Explanation dated January 6, 2005.

[9] *Tugot v. Coliflores*, A.M. No. MTJ-00-1332, February 16, 2004, 423 SCRA 1.

it to the public to be knowledgeable. Hence, they should have more than just a modicum of acquaintance with the statutes and procedural rules. When the law is so elementary, not to know it constitutes gross ignorance of the law, the mainspring of injustice.[10]

In sum, Judge Coliflores should be held liable for gross ignorance of the law or procedure and grave or gross misconduct, which under Section 8, Rule 140, as amended, of the Rules of Court, are considered serious charges. For these, any of the following penalties may be imposed: (a) 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 forfeiture of benefits shall in no case include accrued leave credits; (b) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[11]

Previous offenses

Notably, Judge Coliflores had already been penalized by the Court on four (4) past occasions. In *Harayo v. Coliflores*,[12] he was found to have gratuitously signed marriage contracts in utter disregard of their legal effects. Hence, he was ordered suspended for one (1) month and to pay a fine equivalent to two (2) months salary.

In *Tudtud v. Coliflores*,[13] he was fined ₱1,000.00 for gross inefficiency resulting from his act of tolerating the neglect of his process server, who, for one (1) year, failed to serve a court order upon the defendants directing the latter to submit their position paper.

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[10] *Genil v. Rivera*, A.M. No. MTJ-06-1619, January 23, 2006, 479 SCRA 363.

[11] Rules of Court, Rule 140, Sec. 1(a), as amended.

[12] A.M. No. MTJ-92-710, June 19, 2003, 404 SCRA 381.

[13] A.M. No. MTJ-01-1347, September 18, 2003, 411 SCRA 221.

In *Tugot v. Coliflores*,[14] he was fined ₱20,000.00 for negligence and violation of a Supreme Court Rule and directive when he failed to demonstrate the required competence in administering an ejectment case. He had, in this instance, erroneously applied the provision on pre-trial (Rule 18) under the Rules of Court instead of the provisions under the Rule on Summary Procedure, thereby causing undue delay in the disposition of the case.

In *Betoy, Sr. v. Coliflores*,[15] he was fined ₱20,000.00 for gross ignorance of the law resulting from his failure to make a probing and exhaustive examination of the applicant for search warrant and his (the applicant's) witnesses. He also failed to conduct a judicial inquiry as to the whereabouts of the seized firearms and ammunitions.

As Judge Coliflores had compulsorily retired from the service on August 17, 2003, the penalty of dismissal or suspension can no longer be applied. Nevertheless, considering his past infractions of similar nature and the gravity of his infractions as established by the judicial audit team, he deserves another penalty of fine in the maximum amount allowed by the Rules.

Judge Anatalio S. Necessario

It appears that Judge Necessario of Branch 2 also took cognizance of, and granted, a petition for voluntary rehabilitation of a drug dependent, which was filed directly with Branch 1 without raffle. He likewise issued an order in another case directing the release of a drug dependent from the rehabilitation center.

Respondent branch clerk of court Mr. Jose A. Legazpi tried to absolve Judge Necessario from administrative liability. In his affidavit of June 15, 2004, he admitted that he continued the practice of Judge Coliflores in the issuance of orders concerning drug dependents and that it was he who penned the questioned orders. Judge Necessario merely signed said orders upon his request. Mr. Legazpi, in his affidavit, declared that Necessario

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[14] *Supra* note 9.

[15] A.M. No. MTJ-05-1608, February 28, 2006, 483 SCRA 435.

had no knowledge of the irregularity of said orders. These statements do not serve to absolve Judge Necessario's liability.

Under Section 1, Rule 36 of the Rules of Court, judges are mandated to directly prepare a judgment or final order determining the merits of the case, stating clearly and distinctly the facts and law on which it is based. This requirement is an assurance to the parties that, in reaching judgment, judges do so through the process of legal reasoning. The Court beseeches judges to take pains in crafting their orders, stating clearly and comprehensively the reasons for their issuances, which are necessary for the full understanding of the action taken.[16]

Judge Necessario obviously failed to strictly follow the foregoing mandate when he signed the questioned orders in Special Proceedings Nos. 16 and 18, which were crafted by Mr. Legazpi, the clerk of court of Branch 1. He merely relied on the representation of Mr. Legazpi and did not even bother to read the case records before signing the questioned orders.

He should have known that first level courts have no jurisdiction over petitions for voluntary rehabilitation of drug dependents. He should have refrained from signing said orders. Instead, he relied on the false assurance made by Mr. Legazpi that the petitions were merely ancillary to cases pending in Branch 1, and blamed the latter afterwards for the blunder. That Mr. Legazpi subsequently executed an affidavit taking responsibility for the issuance of the questioned orders in an attempt to absolve him is of no moment. As a judge, who holds a position of responsibility, he cannot hide behind the irresponsibility of Mr. Legazpi because the latter is not the guardian of his responsibilities.

Verily, Judge Necessario is guilty of violating a Supreme Court rule, which is classified as a less serious charge,[17] the imposable penalty for which ranges from a fine of more than ₱10,000.00 but not exceeding ₱20,000.00 to suspension from office without salary and other benefits for not less than one (1) month nor

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[16] *Lu Ym v. Nabua,* G.R. No. 161309, February 23, 2005, 452 SCRA 298.

[17] Rules of Court, Rule 140, Sec. 9(4), as amended.

more than three (3) months.[18] The OCA recommended that a fine of ₱11,000.00 be imposed. The Court, however, finds that ₱20,000.00 is a more appropriate amount, with the warning that a repetition of the same or similar act will be dealt with more severely.

Mr. Jose A. Legazpi

Mr. Legazpi, branch clerk of court of MTCC, Branch 1, Cebu City, is charged with grave misconduct for the commission of the following acts:

1.) Willful disregard of Circular No. 7 when he received and docketed several cases without their being raffled, and even acted upon said cases, exercising functions of a judge;

2.) Preparing and subscribing a counter-affidavit of an accused despite his knowledge that the cases were pending at his branch; and

3.) Failure to present to the judicial audit team the records of the cases involved in the judicial audit.

Exercise of judicial functions and willful disregard of Circular No. 7

Clerks of court are essential judicial officers who perform delicate administrative functions vital to the prompt and proper administration of justice.[19] However, while an officer of the court, a public officer and an "officer of the law," the position of clerk of court is not that of a judicial officer, nor is it synonymous with the court. The office is essentially a ministerial one.[20]

The results of the judicial audit show that Mr. Legazpi went beyond the ministerial duties of the office of the clerk of court, as he exercised functions that belong to a judge.

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[18] *Id.,* Sec. 11(b).

[19] *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 8, Cebu City*, A.M. No. 05-2-101-RTC, April 26, 2005, 457 SCRA 1.

[20] Revised Manual for Clerk of Court (2002), Vol. I, p. 4.

While he attributes the practice of granting petitions for rehabilitation of drug dependents to Judge Coliflores' concern for the welfare of drug dependents, as well as for the safety of their parents, it is obvious that Mr. Legazpi principally contrived the practice.

After personally accepting petitions for voluntary rehabilitation of drug dependents from the petitioners, he would prepare the orders and would have them signed by Judge Coliflores. After the latter's compulsory retirement, he continued the practice of accepting such petitions, and had the orders signed by Judge Necessario of Branch 2, the pairing judge of Branch 1.

The petitions were directly filed with Branch 1, and knowing that, being initiatory pleadings, these should have been filed with the MTCC, Cebu City, through the Office of the Clerk of Court, for raffle or distribution among its different branches, Mr. Legazpi accepted them just the same.

Judge Econg, who also served as acting presiding judge of Branch 1, confirmed the illegal activities. In her Affidavit dated January 18, 2005, Judge Econg declared that sometime in March 2004, Mr. Legazpi approached and asked her to sign a prepared order in a petition entitled "In re: Petition for Voluntary Rehabilitation of Drug Dependent, Jerome Bonita." She did not, however, sign the order since she was aware that the Municipal Trial Court (MTC) has no jurisdiction over petitions of such nature. Further, the petition was not even docketed in Branch 1.

That Mr. Legazpi illegally exercised the function properly belonging to a judge was likewise proven when he admitted before the judicial audit team that he prepared one of Judge Coliflores' decision in Criminal Case No. 117409-R. Mr. Legazpi had penned the version which applied the Indeterminate Sentence Law, claiming that the first decision, which was given in open court by Judge Coliflores was erroneous, as it did not take the Indeterminate Sentence Law into consideration despite the fact that the penalty imposed was imprisonment for more than one (1) year. He even boasted that Judge Coliflores could have

been charged with ignorance of the law had he proceeded with the imposition of a straight penalty.

Mr. Legazpi's lame excuse that he could not have caused the raffle of the petitions for voluntary rehabilitation of drug dependents because he was not in charge of the raffle of cases is an admission that he indeed received and acted on said petitions in violation of Supreme Court Circular No. 7 dated September 23, 1974. The Circular mandates, among others, that "(a)ll cases filed in stations or groupings where there are two or more branches shall be assigned or distributed to the different branches by raffle," and "(n)o case may be assigned to any branch without being raffled."

The importance of the raffle of cases cannot be overemphasized. It is intended to ensure the impartial adjudication of cases by protecting the integrity of the process of distributing or assigning cases to judges.

The acts of Mr. Legazpi – from personally receiving the petitions for voluntary rehabilitation of drug dependents directly from petitioners, to their resolution and disposition, with judges merely affixing their signatures on the orders or resolutions – grossly disregarded established rules.

Preparing & subscribing a counter-affidavit of an accused despite his knowledge that the cases were pending at his branch

Mr. Legazpi's explanation for his act in preparing and subscribing to the counter-affidavit of accused Perla Rivera in Criminal Case Nos. 125530-R to 125545-R does not satisfy the Court. Mr. Legazpi claims that he merely typed the counter-affidavit after the Public Attorney's Office refused to assist Rivera in its preparation. He, however, admitted to the judicial audit team that he prepared and "subscribed" the counter-affidavit. And at the hearing of the cases on April 29, 2004, then Acting Presiding Judge Econg confronted Mr. Legazpi about it. He admitted preparing and "subscribing" the same.

By "subscribing," the Court takes it to mean that he allowed the accused to sign (and swear) before him. This is normally done by the investigating or trial prosecutor. Verily, by preparing and "subscribing" the counter-affidavit of the accused in a case pending in a sala, of which he is the clerk of court, Mr. Legazpi seriously compromised the integrity of the court as he invited suspicion of the court's bias for the accused.

Failure to present records of cases for judicial audit

Moreover, Mr. Legazpi was less than candid in his explanation of his failure to present to the judicial audit team the records of the petitions for voluntary rehabilitations of drug dependents,[21] a petition for bail[22] and Criminal Case No. 117249. He tried to evade the issue by falsely asserting that he had already mailed said records to the OCA prior to the retirement of Judge Coliflores. He could not, however, present the photocopy of the transmittal as the same was allegedly lost when then Acting Presiding Judge Econg conducted a "clean up operation" on his office table and cabinet where the copy of the transmittal was kept.

Mr. Legazpi was never required to submit to the OCA the records of the subject cases, which were already pending during the first judicial audit conducted in Branch 1. It is unbelievable why he would send them to OCA. It was only during the second judicial audit that these records were discovered, necessitating an explanation from him. Thus, failure to give a satisfactory explanation shows that he purposely hid the records from the judicial audit team.

Summary of Mr. Legazpi's misconduct

As clerk of court, Mr. Legazpi cannot be said to be unaware of the requirement of raffle for the distribution of cases in multi-sala court stations and the jurisdiction of the court to which he is assigned. By purposely hiding from the judicial audit team the records of cases which were directly filed with Branch 1 by petitioners, Mr. Legazpi had shown his willful intention to

[21] Special Proceedings Nos. 1-99, 4, 5, 6, 9, 10, 11 and 16.

[22] Special Proceedings No. 18.

disregard said requirement and limit of jurisdiction. He also cannot feign innocence of the unsavory consequence of a court employee preparing a counter-affidavit for an accused.

In sum, Mr. Legazpi should be held liable for grave misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence of a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence.[23]

Under the Civil Service Law and its implementing rules,[24] grave misconduct is punishable by dismissal from the service with forfeiture of all benefits, excluding leave credits, if any, and with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.[25]

Parenthetically, Mr. Legazpi was meted on January 20, 1995 the penalty of fine equivalent to his salary for three (3) months in *Tan v. Coliflores*[26] for negligence resulting from his failure to transmit the original records of a criminal case to the RTC within the prescribed period after the notice of appeal from the judgment of the court was given due course. He was likewise admonished on November 7, 2005 in Administrative Matter No. P-04-1827 entitled *Oral v. Legazpi* for dereliction of duty in the custody of court records and documents.

Taken together with his past infractions, the degree of the offenses committed by Mr. Legazpi, as established by the judicial audit team, warrants his dismissal from the service.

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[23] *Civil Service Commission v. Ledesma,* G.R. No. 154521, September 30, 2005, 471 SCRA 589.

[24] Civil Service Law, Subtitle A, Title I, Book V of E.O. 292, otherwise known as the Administrative Code of 1987, Omnibus Civil Service Rules and Regulations dated December 27, 1991, amended by the Uniform Rules on Administrative Cases in the Civil Service dated August 31, 1999.

[25] *Baquerfo v. Sanchez,* A.M. No. P-05-1974, April 6, 2005, 455 SCRA 13.

[26] Adm. Matter No. MTJ-94-972, January 20, 1995, 240 SCRA 303.

Ms. Romnie Fernan-Rota and Mr. Roldan A. Artes

Ms. Romnie Fernan-Rota, Clerk II, and Mr. Roldan A. Artes, court sheriff, both of Branch 1, played their part in the rampant violation of Circular No. 7, when they received petitions directly filed with their branch, without raffle. Their defense that they were merely following the orders and that it was the usual practice in their branch, while deserving some consideration, do not fully absolve them of liability.

The principle is that when an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[27] Hence, good faith is no defense and violation of a Supreme Court Circular holds the offender administratively liable.

Hence, while the OCA recommends that Ms. Fernan-Rota and Mr. Artes be exonerated from any administrative liability, with a mere admonition to be more circumspect in the performance of their duties in the future, We find it befitting that they, at the very least, be reprimanded and warned that repetition of the same or similar acts will be dealt with more severely.

This Court has always valued high standards in judicial service. Time and time again, We have said that the behavior of all officials and employees involved in the administration of justice is circumscribed with a heavy burden of responsibility. Their conduct should, at all times, embody propriety, prudence, courtesy and dignity in order to maintain public respect and confidence in the judicial service.[28]

The Supreme Court cannot countenance, tolerate or condone any conduct, act or omission that would violate the norm of

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[27] *Remolona v. Civil Service Commission*, G.R. No. 137473, August 2, 2001, 362 SCRA 304.

[28] See note 2.

[29] *Sarmiento v. Salamat,* AM-P No. 01-1501, September 4, 2001, 364 SCRA 301; *Re: Absence Without Official Leave (AWOL) of Ms. Lilian B. Bantog, Court Stenographer III, RTC, Br. 168, Pasig City,* A.M. No. 00-11-521-RTC, June 20, 2001, 359 SCRA 20.

public accountability or that would diminish or tend to diminish the faith of the people in the Judiciary.[29]

Other relevant matters

In a letter dated January 2, 2007, Judge Monalila S. Tecson, incumbent presiding judge of the MTCC, Branch 1, Cebu City, requests the recall of the detail of Mr. Legazpi at the RTC Library, as ordered by the Court in its Resolution of November 24, 2004, and to resume his functions as branch clerk of court of Branch 1.

Judge Tecson stated that her court is currently undermanned as Carmel M. Bautista, the branch clerk of court detailed at Branch 1, is presently on leave and had signified her intention to resign soon. Moreover, another staff member of Branch 1, Ms. Romnie F. Rota, Clerk II, is presently detailed at the Office of the Clerk of Court of MTCC, Cebu City, while one of its stenographers, Ursulina Legaspi, had transferred to MTC, Minglanilla, Cebu. Hence, the request.

In light of the sanctions We are imposing now, particularly the dismissal of Mr. Legazpi with prejudice to re-employment in the government, We must necessarily deny Judge Tecson's request. Instead, she should cause the recall of the detail of Ms. Rota at the Office of the Clerk of Court, MTCC, Cebu City, and to designate an acting branch clerk of court from among her able staff members.

WHEREFORE, premises considered, the Court finds and orders as follows:

1. **Judge Mamerto Coliflores**, retired presiding judge, MTCC, Branch 1, Cebu City is hereby found *GUILTY* of gross ignorance of the law and grave misconduct and is ordered to pay a *FINE* of ₱40,000.00 to be deducted from his retirement benefits;

2. **Judge Anatalio S. Necessario,** MTCC, Branch 2, Cebu City is found *GUILTY* of violating SC Circular No. 7 (September 23, 1974) and is ordered to pay a *FINE* in the amount of ₱20,000.00 with a *WARNING* that a repetition of the same or similar act will be dealt with more severely;

3. **Mr. Jose A. Legazpi,** clerk of court, MTCC, Branch 1, Cebu City is found *GUILTY* of grave misconduct and is hereby *DISMISSED* from the service with forfeiture of all benefits, excluding leave credits, with prejudice to re-employment in any branch or agency of the government including government-owned or controlled corporations;

4. **Ms. Romnie Fernan-Rota** and **Mr. Roldan A. Artes,** Clerk II and court sheriff, respectively, at the MTCC, Branch 1, Cebu City are *REPRIMANDED* with a *WARNING* that a repetition of the same or similar act will be dealt with more severely; and

5. The request of **Judge Monalila S. Tecson,** MTCC, Branch 1, Cebu City, to recall the detail of Mr. Jose A. Legazpi at the RTC Library is *DENIED*. Judge Tecson is *ORDERED* to cause the recall of the detail of Ms. Romnie Fernan-Rota at the Office of the Clerk of Court, MTCC, Cebu City, and to designate an acting branch clerk of court from among her able staff members.

SO ORDERED.

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

Chico-Nazario, J., no part. Justice Nazario is on official leave per Special Order No. 484 dated January 11, 2008.

Velasco, Jr., J., no part. Justice Velasco was the Court Administrator who investigated the instant case.

EN BANC

[A.M. No. RTJ-06-2010. January 30, 2008]

MARISSA R. MONDALA, Legal Researcher, Regional Trial Court, Branch 136, Makati City, *complainant*, *vs*. **PRESIDING JUDGE REBECCA R. MARIANO, Regional Trial Court, Branch 136, Makati City,** *respondent*.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; UNDUE DELAY IN RENDERING DECISIONS AND ORDERS; IMPOSABLE PENALTY.— It appears from the records that the infractions mentioned in the Resolution of July 3, 2007 and for which a fine of ₱20,000.00 is being imposed, were the same infractions for which respondent judge was previously fined ₱40,000.00, pursuant to the Decision dated January 25, 2007. Accordingly, the July 3, 2007 Resolution is hereby set aside. Anent the fine of ₱40,000.00 earlier imposed upon respondent judge, records show that a motion for reconsideration was filed but it was denied with finality on February 27, 2007. In fact, respondent judge has paid the amount of ₱40,000.00 to the Court's Cash Collection and Disbursement Division on April 11, 2007 per O.R. No. 7402054. **ACCORDINGLY**, the Motion for Reconsideration of Judge Rebecca R. Mariano, Regional Trial Court, Makati City, Branch 136, is *PARTLY GRANTED*. The Resolution dated July 3, 2007 implosing on her a fine of ₱20,000.00 is *REVERSED and SET ASIDE*.

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

In the Decision dated January 25, 2007, respondent Judge Rebecca R. Mariano of the Regional Trial Court (RTC) of Makati City, Branch 136, was found guilty of misrepresenting that she had decided the case of "*Amanet, Inc. v. Eastern Telecommunication*" as of January 2005 and of making inaccurate

entries in the monthly reports. Respondent judge was meted the penalty of fine of ₱40,000.00, with warning that commission of the same or similar offense will be dealt with more severely. Respondent judge moved for reconsideration but was denied with finality on February 27, 2007.

In the meantime, or on January 31, 2007, the Office of the Court Administrator (OCA) submitted a Memorandum for the Court's consideration which contained the report of the team which conducted the judicial audit and physical inventory of pending cases at the RTC, Branch 136, Makati City, presided by respondent judge. The OCA recommended that respondent judge be directed to:

A. TAKE APPROPRIATE ACTION on the following cases:

A.1. Cases without initial action since the time of filing:

CASE NUMBER	TITLE	NATURE OF CASE
SP M-6253	*In the Matter of Guardianship of Minor Kenneth Frank A. Tumanar, et al.*	Petition for Guardianship

A.2. Cases which have not been set for hearing for a considerable length of time:

CASE NUMBER	TITLE	NATURE OF CASE
1. 04-606	*M. Mitra vs. B. Mitra*	Declaration of Nullity of Marriage
2. 05-1080	*C. Arinto vs. M. Arinto*	Declaration of Nullity of Marriage

A.3. Cases without further action for a considerable length of time due to the non-compliance by public prosecutors/parties concerned with the Court's directive:

CASE NUMBER	TITLE	NATURE OF CASE
1. 04-764	*N. Galisim vs. G. Galisim*	Declaration of Nullity of Marriage
2. 04-815	*R. Villanueva vs. C. Villanueva*	Declaration of Nullity of Marriage

3. 04-844	*P. Salem vs. V. Reyes-Alonzo*	Declaration of Nullity of Marriage
4. 04-910	*M. Medina vs. R. Medina*	Declaration of Nullity of Marriage
5. 04-1145	*R. Perez vs. E. Mendoza*	Declaration of Nullity of Marriage
6. 04-1159	*V. Beltran vs. J. Beltran*	Declaration of Nullity of Marriage
7. 04-1240	*D. dela Cruz vs. J. dela Cruz*	Declaration of Nullity of Marriage
8. 03-702	*E. Cayco vs. A. Cayco*	Declaration of Nullity of Marriage
9. 03-385	*J. Garcia vs. J. Garcia*	Declaration of Nullity of Marriage
10. 05-1080	*C. Arinto vs. M. Arinto*	Declaration of Nullity of Marriage
11. 01-665	*Equitable PCI Bank vs. Phil. Wireless, Inc.*	Collection of Sum of Money with Prelim. Attachment
12. 06-047	*F. Dumlao vs. J. Dumlao*	Declaration of Nullity of Marriage
13. 06-212	*E. Ferrer vs. R. Ferrer*	Declaration of Nullity of Marriage
14. 06-468	*M. Macatubal vs. S. Macatubal*	Declaration of Nullity of Marriage
15. 06-371	*V. Alap vs. Z. Alap*	Declaration of Nullity of Marriage
16. 05-976	*D. Felix vs. P. Felix, Jr.*	Declaration of Nullity of Marriage
17. 06-1094	*G. Wessels vs. H. Wessels*	Declaration of Nullity of Marriage
18. 04-050	*A. Ramirez vs. N. Ramirez*	Declaration of Nullity of Marriage
19. SP-M-6127	H. Bayudan, DSWD-Petitioner	Petition for Involuntary Commitment to DSWD of Stephanie H. Rapeda
20. SP-M-6158	Sps. C. and E. Payumo-Petitioner	In the Matter of Adoption of Minor Von Alvaro Payumo

B. RESOLVE the pending motions/incidents submitted for resolution in these cases and FURNISH this Office copy of the resolution/order within ten (10) days from their resolution:

CRIMINAL CASES

CASE NUMBER	TITLE	NATURE OF CASE
1. 06-1140 2. 06-1141 3. 06-1142	E. Gipan, *et al.*	Violation of R.A. 8049

CIVIL CASES

CASE NUMBER	TITLE	NATURE OF CASE
1. 99-1463	*Lucena Industrial Corp. vs. Phil. Banking Corp., et al.*	Annulment of Mortgage and Foreclosure
2. 00-318	*Iba Finance vs. Wijds Food Manufacturing, et al.*	Collection of Sum of Money
3. 01-071	*Actron Industries vs. B. Perez*	Damages
4. 01-1506	*Sun Life Canada vs. Ma. D. Sibya*	Rescission of Contract
5. 01-1656	*Shorr Marketing vs. Manila Mining*	Collection of Sum of Money
6. 01-1665	*ATR Professional Life vs. Loyola Life Plans*	Declaration of Nullity of Individual Insurance Coverage
7. 04-1031	*E. Ariola vs. E. Azucena*	Declaration of Nullity of Marriage
8. 03-660	*V. Cruz vs. C. Cruz*	Declaration of Nullity of Marriage
9. 97-3020	*D. Padilla vs. China Banking*	Collection of Sum of Money
10. M-5413	*PDIC vs. DCB*	Judicial Liquidation of Davao Cooperative Bank
11. 97-1035	*Union Bank vs. Terra Marine Multi Ventures*	Collection of Sum of Money

C. DECIDE with DISPATCH the criminal and civil cases below and FURNISH this Office copy of the decisions/orders within ten (10) days from their promulgation/rendition:

CRIMINAL CASES

CASE NUMBER	TITLE	NATURE OF CASE
1. 02-1877	J. Beltran, *et al.*	Estafa
2. 04-2319	M. Nicos, *et al.*	Grave Coercion
3. 05-1113	J. Payaon, *et al.*	Theft

CIVIL CASES

CASE NUMBER	TITLE	NATURE OF CASE
1. 98-2433	*Rotary Textiles vs. Sps. F. Ty*	Collection of Sum of Money
2. 99-1276	*Allied Banking vs. MBL Factors and Traders, Inc., et al.*	Collection of Sum of Money
3. 02-1524	*Subic Bay Distribution vs. Western Guaranty Corp.*	Collection of Sum of Money
4. 03-264	*Protemps, Inc. vs. Ram Leasing*	Collection of Sum of Money
5. 05-835	*H. Herrera vs. G. Herrera*	Declaration of Nullity of Marriage
6. 03-298	*R. Gonzales vs. M. Devett*	Declaration of Nullity of Marriage
7. 01-1546	*Metrobank vs. Ma. Batenga*	Collection of Sum of Money
8. 06-160	*R. Vicente vs. R. Vicente*	Declaration of Nullity of Marriage
9. 02-102	*BPI vs. Sps. B. Ong*	Collection of Sum of Money
10. 02-1018	*Tokio Marine vs. KLM Royal Dutch Airlines*	Collection of Sum of Money
11. 97-2840	*M. Reyes vs. Bank of Southeast Asia*	Damages
12. 99-284	*J. Sanatayana vs. Motivation Motors*	Collection of Sum of Money
13. 97-084	*Prudential Guarantee and Assurance vs. Unknown Owner of Vessels M/V Hanjin*	Collection of Sum of Money

14. 92-2012	*R. Tandoc vs. Pepsi-Cola*	Collection of Sum of Money
15. 95-1516	*A. Capitan vs. Pepsi Cola*	Collection of Sum of Money
16. 02-057	*N. Construction vs. Sps. H. Rivera, et al.*	Collection of Sum of Money
17. 95-408	*Masaganang Sakahan vs. L. Po*	Collection of Sum of Money
18. 94-1292	*Sps. E. Cruzado vs. Sps. B. Biluan*	Specific Performance
19. Spec. Pro. M-60-51	Sps. M. Konishi, petitioners	Petition for Adoption of Minor and Change of Name
20. Spec. Pro. M-5987	I.G. Barona, petitioner	Petition for Adoption

D. EXPLAIN within fifteen (15) days from receipt why she should not be held administratively liable for not resolving/deciding the following criminal and civil cases submitted for resolution/decision, within the reglementary period, to wit:

D.1. Cases Submitted for Resolution which are already beyond the reglementary period to resolve:

CRIMINAL CASES

CASE NUMBER	TITLE	NATURE OF CASE
1. 01-071	*Actron Industries vs. B. Perez*	Damages
2. 01-1506	*Sun Life Canada vs. Ma. D. Sibya*	Rescission
3. 01-1665	*ATR Professional Life vs. Loyola Life Plans*	Nullity of Individual Insurance Coverage
4. 04-1031	*E. Ariola vs. E. Azucena*	Declaration of Nullity of Marriage
5. 03-660	*V. Cruz vs. C. Cruz*	Declaration of Nullity of Marriage
6. 97-3020	*D. Padilla vs. China Banking*	Collection of Sum of Money
7. 97-1035	*Union Bank v. Terra Marine Multi Ventures*	Collection of Sum of Money

D.2. Cases submitted for decision which are already beyond the reglementary period to decide:

CRIMINAL CASES

CASE NUMBER	TITLE	NATURE OF CASE
1. 02-1877	J. Beltran, *et al.*	Estafa

CIVIL CASES

CASE NUMBER	TITLE	NATURE OF CASE
1. 98-2433	*Rotary Textiles vs. Sps. F. Ty*	Collection of Sum of Money
2. 99-1276	*Allied Banking vs. MBL Factors and Traders, Inc., et al.*	Collection of Sum of Money
3. 02-1524	*Subic Bay Distribution vs. Western Guaranty Corp.*	Collection of Sum of Money
4. 01-1546	*Metrobank vs. Ma. Batenga*	Collection of Sum of Money
5. 02-102	*BPI vs. Sps. B. Ong*	Collection of Sum of Money
6. 97-2840	*M. Reyes vs. Bank of Southeast Asia*	Damages
7. 97-084	*Prudential Guarantee and Assurance vs. Unknown Owner of Vessels M/V Hanjin*	Collection of Sum of Money
8. 92-2012	*R. Tandoc vs. Pepsi-Cola*	Collection of Sum of Money
9. 95-1516	*A. Capitan vs. Pepsi Cola*	Collection of Sum of Money
10. 02-057	*N. Construction vs. Sps. H. Rivera, et al.*	Collection of Sum of Money
11. 95-408	*Masaganang Sakahan vs. L. Po*	Collection of Sum of Money
12. 94-1292	*Sps. E. Cruzado vs. Sps. B. Biluan*	Specific Performance

On February 20, 2007, the Court noted OCA's Memorandum and adopted its recommendations. On March 15, 2007, respondent judge submitted her Compliance with the February 20, 2007 Resolution which was referred by the Court to the OCA for evaluation, report and recommendation.

In a Memorandum dated June 8, 2007, the OCA recommended that: a) respondent judge be adjudged administratively liable for undue delay in rendering decisions and be fined in the amount of ₱20,000.00; and b) she be directed to decide with dispatch the cases covered by this administrative matter and furnish the OCA with copies of the decision within 10 days from its rendition.

In the herein assailed Resolution dated July 3, 2007, the Court adopted the OCA's recommendations and resolved to:

(a) ADJUDGE Judge Rebecca B. Mariano administratively liable for undue delay in rendering decisions and orders;

(b) FINE Judge Mariano in the amount of Twenty Thousand Pesos (₱20,000);

(c) DIRECT Judge Mariano to DECIDE WITH DISPATCH the cases covered by this administrative matter;

(d) FURNISH the Office of the Court Administrator with copies of the decision within ten (10) days from their rendition; and

(e) NOTE the Letter dated June 19, 2007 of respondent Judge Rebecca R. Mariano, in compliance with the resolution of February 20, 2007 furnishing the Court with copy of the decision in SP Proc. Case No. M-6158, Civil Case No. 00-318 and Civil Case No. 03-264.

On November 14, 2007, respondent judge filed the instant Motion for Reconsideration with Motion for Leave to Admit Motion for Reconsideration. Respondent judge alleges that the infractions for which she was being fined in the amount of ₱20,000.00 were the same infractions for which she was previously fined ₱40,000.00. She thus prays that the Resolution dated July 3, 2007 imposing a fine of ₱20,000.00 be reversed and set aside.

Moreover, she prays that the Decision dated July 25, 2007 imposing on her a fine of ₱40,000.00 be reconsidered in light of her admission of her oversight *vis-à-vis* the case of *Amanet, Inc. v. Eastern Telecommunications, Inc.* and her lack of malicious intent to deliberately misrepresent the status of said case and other undecided cases. She also prays that her 43 years of public service; the fact that this is her first infraction; her failing health and her impending compulsory retirement in October 2008; be considered as mitigating circumstances.

The motion for reconsideration is partly granted.

It appears from the records that the infractions mentioned in the Resolution of July 3, 2007 and for which a fine of ₱20,000.00 is being imposed, were the same infractions for which respondent judge was previously fined ₱40,000.00, pursuant to the Decision dated January 25, 2007. Accordingly, the July 3, 2007 Resolution is hereby set aside.

Anent the fine of ₱40,000.00 earlier imposed upon respondent judge, records show that a motion for reconsideration was filed but it was denied with finality on February 27, 2007. In fact, respondent judge has paid the amount of ₱40,000.00 to the Court's Cash Collection and Disbursement Division on April 11, 2007 per O.R. No. 7402054.

ACCORDINGLY, the Motion for Reconsideration of Judge Rebecca R. Mariano, Regional Trial Court, Makati City, Branch 136, is *PARTLY GRANTED*. The Resolution dated July 3, 2007 imposing on her a fine of ₱20,000.00 is *REVERSED and SET ASIDE*.

SO ORDERED.

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

Chico-Nazario, J., on official leave.

EN BANC

[G.R. No. 172069. January 30, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARIO S. MARTIN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN RESOLVING RAPE CASES.— In resolving rape cases, we have been guided by the following principles: x x x (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense; and (d) the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying.

2. ID.; ID.; WHEN QUALIFIED; CASE AT BAR.— The qualifying circumstances of relationship (father and daughter) and minority (the victim was 10 years old when the rape was committed) were duly alleged in the information, proved during the trial and even admitted by appellant. While this Court affirms the finding of guilt of respondent, it can no longer impose the penalty of death in view of RA 9346. Section 2 of RA 9346 mandates that, in lieu of the death penalty, *reclusion perpetua* without eligibility for parole should instead be imposed.

3. ID.; ID.; AWARD OF DAMAGES; WHEN PROPER.— With regard to the award of damages, the victim was correctly awarded ₱75,000 as civil indemnity *ex delicto*. However, the amount of moral damages should be increased from ₱50,000 to ₱75,000 in line with prevailing jurisprudence. Exemplary damages in the amount of ₱25,000 should also be granted due

to the presence of the qualifying circumstances of minority and relationship.

4. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESS; GROUND FOR OBJECTION MUST BE SPECIFIED WHETHER ORALLY OR IN WRITING.— The Rules of Court requires that grounds for objection must be specified, whether orally or in writing. The result of violating this rule has been spelled out by this Court in a number of cases. In *Krohn v. Court of Appeals*, the counsel for the petitioner objected to the testimony of private respondent on the ground that it was privileged but did not question the testimony as hearsay. We held that "in failing to object to the testimony on the ground that it was hearsay, counsel waived his right to make such objection and, consequently, the evidence offered may be admitted." In *Tan Machan v. De la Trinidad*, the defendant assailed as error the admission of plaintiff's book of account. We rejected the contention and ruled that an appellate court will not consider any other ground of objection not made at the time the books were admitted in evidence. In the case at bar, the respondent did not assail in the trial court the hearsay character of the documents in question. It is too late in the day to raise the question on appeal.

5. ID.; ID.; ID.; LONE TESTIMONY OF THE RAPE VICTIM IS ENOUGH TO SUSTAIN A CONVICTION; RATIONALE.— Well-settled is the rule that the lone testimony of the victim in the crime of rape, if credible, is enough to sustain a conviction. This is because, by the very nature of the offense, the only evidence that can often be relied upon is the victim's own declaration.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CORONA, *J.*:

Before us for review is the January 27, 2006 decision[1] of the Court of Appeals (CA) in C.A.-G.R. CR-H.C. No. 00105 which affirmed in turn the August 13, 2003 decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 156 in Criminal Case No. 115477-H. The RTC found appellant Mario Sanggoyo Martin guilty of rape under Article 335 in relation to Article 266-A and B of the Revised Penal Code (RPC), as amended by Republic Act (RA) 8353,[3] committed against his then ten-year- old mentally retarded daughter AAA.[4] It imposed on him the penalty of death.

The information against appellant read:

> On or about or prior to January 5, 1999, in San Juan, Metro Manila, and within the jurisdiction of this Honorable Court, the accused, with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have [sexual intercourse] five (5) times with his daughter, [AAA], a minor (10 years old), who is suffering from a mental disability, against her will and consent.
>
> Contrary to law.[5]

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[1] Penned by Associate Justice Santiago Javier Ranada (retired) and concurred in by Associate Justices Roberto A. Barrios (deceased) and Mario L. Guariña III of the Fifth Division of the Court of Appeals; CA *rollo*, pp. 97-105.

[2] Penned by Judge Alex L. Quiroz, *id*., pp. 17-24.

[3] Entitled "An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as Crime Against Persons, Amending for the Purpose Act No. 3815, Otherwise Known as the Revised Penal Code, and for Other Purposes." Also known as "The Anti-Rape Law of 1997."

[4] In line with our decision in *People v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426), the real name of the rape victim in this case is withheld. Instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed in this decision.

[5] CA *rollo*, p. 9.

On arraignment, appellant, with the assistance of counsel, pleaded not guilty to the charge.

The prosecution presented the victim AAA and Dr. James M. Belgira, the medico-legal officer who examined AAA,[6] as witnesses.

As established during the trial, AAA was born on March 19, 1988. She is the legitimate daughter of appellant and ABC. The couple separated in 1997 and AAA remained in the custody of her mother. In the morning of January 5, 1999, AAA (then ten years old)[7] was brought to appellant's house. When ABC found out in the afternoon that AAA was with her father, she had her fetched. Three times that night, she noticed AAA scratching her private parts. She took a look at it and immediately became suspicious. She asked AAA if appellant had something to do with the redness of her vagina. AAA narrated to her that he had indeed inserted his penis in her vagina and that he was touching her vagina as he inserted his penis in her mouth. She also told her that he taped her mouth so she would not make any sound and instructed her not to tell anyone what happened otherwise he would beat her. He also washed her vagina.[8]

At the trial, AAA testified thus:

Q: [AAA], would you tell the Judge what your Papa [did] to you?
A: *Hawak dede*.

Q: What else aside from holding your breast?

COURT:
[AAA], where is your "*dede*"?

INTERPRETER:
Witness pointing to her breast.

A: *Tanggal* panty.

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[6] Philippine National Police Crime Laboratory, Camp Crame; *id*., p. 18.

[7] The parties stipulated that this was the age of AAA; CA *rollo*, p. 100.

[8] *Id*., p. 18.

Q: After removing your panty, what else did your Papa do?

COURT:
[AAA], after your Papa removed your panty, what else did he do?

A: *Hinulog ang damit*.

ATTY. AMBROSIO:
Whose dress was dropped?

A: [AAA].

Q: After that, what did he do to you?
A: *Hinawak dede ni Papa*.

x x x x x x x x x

Q: Did he touch your vagina?
A: *Opo*.

Q: Aside from touching your vagina, did he also insert something in your vagina?
A: Yes, [ma'am].

Q: What did he put inside your vagina?
A: *Tete*.

Q: Could you tell the Court, how many times he did this to you?
A: Five times.

Q: Can you show to the Honorable Court the no. 5?

Interpreter:
Witness raised her left hand and showed her five fingers.

Q: Where were you when your father did this to you?
A: In my father's house.

Q: Do you know what time of the day when this happened to you?
A: *Gabi po*.

Q: [AAA], you know that it is good to tell the truth?
A: *Opo*.

Q: Can you tell the Honorable Judge what you felt when your father did this to you?

COURT:

You specify whether touching of the breast or inserting of the penis. Where you hurt when your father inserted his penis [in] you?

A: *Opo*.

On cross examination:

Q: Do you love your Papa?
A: *Hindi [na po]*.

Q: Why?
A: *Galit na Papa*.

Q: Why were you angry with your Papa?
A: *Hawak dede ko*.

Q: Can you tell the first time when your Papa touched your breast?
A: Five.

INTERPRETER:

Witness raising her left hand and showing her five fingers.

x x x x x x x x x

COURT:

[AAA], can you show the Court what part of your body when your Papa inserted his penis [in] you?

INTERPRETER:

Witness pointing to her vagina.

x x x x x x x x x

Q: Can you please point to the Court who inserted his penis in your vagina?

INTERPRETER:

Witness pointing to the accused.

x x x x x x x x x

Q: Did you see any blood in your panty?
A: *Opo*.

COURT:

Where did you see the blood?

INTERPRETER:
Witness pointing at her vagina.

COURT:
What did you feel at that time?

A: *Masakit dibdib ko.*

x x x x x x x x x

Q: Your Papa did not touch your private parts?
A: *Hawak po.*

Q: How many hands?
A: Five hands.[9]

Dr. James Belgira assessed the mental condition of AAA and concluded that she was mentally deficient. Thereafter, he conducted a physical examination and found a deep, healed laceration at the 6 o'clock position of her hymen. This, he explained, could have been caused by a hard blunt object. His report stated that she was in a non-virgin state physically.[10]

On the direction of the RTC,[11] a psychological examination of AAA was conducted by Felicitas M. Aguilar, the in-house psychiatrist of the Department of Social Welfare and Development (DSWD).[12] AAA was diagnosed as being afflicted with Down Syndrome.[13] She had moderate mental retardation, with an intelligence quotient (IQ) of 41.8, mental age of 4.6 years and social age of 7 years.

For the defense, the appellant and his son Martin, Jr. took the witness stand.

Appellant denied the allegations against him and asserted that he could not have committed the rape because he slept in the

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[9] *Id.*, pp. 21-23; citations omitted.

[10] *Id.*

[11] In an order dated May 5, 1999; *id.*, p. 19.

[12] Marillac Hills, Muntinlupa; *id.*, p. 99.

[13] Commonly referred to as mongoloid; *id.*, p. 23.

downstairs "sala" in full view of everyone passing by. He said that 18 people lived in their house. He admitted that AAA is his legitimate daughter. He stated that the complaint was instigated by his wife because of anger and extreme jealousy. In response to the question why his daughter would concoct a rape charge against him, he said that AAA was mentally deficient and incapable of telling a (coherent) story.[14]

Martin, Jr. corroborated his father's testimony and stated that the latter could not have raped AAA because they did not have their own room, just a bed where they both slept.[15]

In a decision dated August 13, 2003, the RTC found respondent guilty of qualified rape under Article 335 in relation to Article 266-A and B of the RPC as amended by RA 8353:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused MARIO MARTIN *y* SANGGOYO "GUILTY" beyond reasonable doubt of the crime of Rape as defined and penalized under Article 335 of the [RPC] in relation to Article 266-A and Article 266-B under [RA] 8353 and hereby imposes upon him the penalty of DEATH.
>
> Accused Martin is further ordered to pay the offended party [AAA], the sum of ₱75,000 as civil indemnity and ₱50,000.00 as moral damages.
>
> SO ORDERED.[16]

Although the information charged him with five counts of rape, the RTC found him guilty of only one count since the prosecution failed to prove the other four counts.[17]

The case was forwarded to this Court on automatic review but we referred it to the CA in accordance with *People v. Mateo.*[18] The CA affirmed the RTC decision:

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[14] *Id.*, pp. 19-20.

[15] *Id.*, p. 20.

[16] Citation omitted; *id.*, p. 24.

[17] *Id.*, p. 104.

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

WHEREFORE, the appeal is hereby DISMISSED for lack of sufficient merit. The decision rendered by the [RTC], Branch 156, Pasig in Criminal Case No. 115477-H on 13 August 2003 is AFFIRMED.

SO ORDERED.[19]

In this appeal, appellant argues that his guilt was not proven beyond reasonable doubt.

We disagree.

RELEVANT DOCUMENTS WERE CORRECTLY ADMITTED AS EVIDENCE

In resolving rape cases, we have been guided by the following principles:

xxx (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense; and (d) the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying.[20]

Appellant asserts that the sworn statements of AAA and ABC, AAA's birth certificate, marriage contract submitted by ABC and the psychological evaluation report of the DSWD psychiatrist should not have been considered by the RTC. He claimed these were all hearsay evidence since they were never identified or testified to by witnesses.[21]

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[19] CA *rollo*, p. 105.

[20] *People v. Marcelo*, 421 Phil. 566, 577 (2001), citing *People v. Maglente*, G.R. Nos. 124559-66, 306 SCRA 546, 558 (1999).

[21] CA *rollo*, p. 50.

Again, we disagree.

While it is true that these documents could have been considered hearsay if the affiants had not been called to the witness stand to testify on the truth of the contents thereof, [22] this rule is not applicable here for the following reasons.

First, AAA took the witness stand and narrated the abuse she experienced. Hence, her sworn statement was merely additional evidence.

Second, ABC and the local civil registrar of San Juan testified on the authenticity and due execution of the marriage contract.[23]

Third, during the trial, the defense admitted the existence of these documents.[24] Appellant merely contested the sworn statements for being self-serving but did not raise any objection on the ground of hearsay. Therefore, he was deemed to have waived this ground and cannot raise them for the first time on appeal:

> The Rules of Court requires that grounds for objection must be specified, whether orally or in writing. The result of violating this rule has been spelled out by this Court in a number of cases. In *Krohn v. Court of Appeals*, the counsel for the petitioner objected to the testimony of private respondent on the ground that it was privileged but did not question the testimony as hearsay. We held that "in failing to object to the testimony on the ground that it was hearsay, counsel waived his right to make such objection and, consequently, the evidence offered may be admitted." In *Tan Machan v. De la Trinidad*, the defendant assailed as error the admission of plaintiff's book of account. We rejected the contention and ruled that an appellate court will not consider any other ground of objection not made at the time the books were admitted in evidence. In the case at bar, the respondent did not assail in the trial court the hearsay character of the documents in question. It is too late in the day to raise the question on appeal.[25]

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[22] *People v. Mosquerra*, 414 Phil. 740, 749 (2001).

[23] CA *rollo*, p. 19.

[24] *Id*., pp. 101-102.

[25] *Cabugao v. People*, G.R. No. 158033, 30 July 2004, 435 SCRA 624, 633-634, citations omitted; *see* also *People v. Chua*, 384 Phil. 70, 92-93 (2000).

AAA'S TESTIMONY WAS CREDIBLE AND SUFFICIENTLY ESTABLISHED APPELLANT'S GUILT

Appellant questions the credibility of AAA's testimony, contending that it was ambiguous and insufficient to sustain his conviction.

Well-settled is the rule that the lone testimony of the victim in the crime of rape, if credible, is enough to sustain a conviction. This is because, by the very nature of the offense, the only evidence that can often be relied upon is the victim's own declaration.[26]

It is undisputed that AAA is a mental retardate. This was shown in the psychological evaluation report wherein she was found to have an IQ of 41.8.[27] Even appellant admitted his daughter's "handicap" in his testimony.[28] However, despite her age and retardation, she was still able to communicate her experience in a sufficiently coherent and detailed manner. She clearly stated that appellant touched her breasts, removed her

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[26] *People v. Bulaybulay*, G.R. No. 104275, 28 September 1995, 248 SCRA 601, 607, citing *People v. Antonio*, *infra*.

[27] In *People v. Antonio* (G.R. No. 107950, 17 June 1994, 233 SCRA 283), we stated:

> Intelligence has been classified as follows:
>
> | CLASSIFICATION | I.Q. Range |
> |---|---|
> | Very Superior | 128 and over |
> | Superior | 120 — 127 |
> | Bright Normal | 111 — 119 |
> | Average | 91 — 110 |
> | Dull Normal | 80 — 90 |
> | Borderline | 66 — 79 |
> | Defective | 65 and below. |
>
> [*Id*., p. 296, citing Weschler's Classification of Intelligence, found in WALTER J. COVILLE, *ET AL*., *ABNORMAL PSYCHOLOGY* 210 (1960 Ed.)]

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

clothes and underwear, touched her vagina and inserted his penis in her vagina. Her narration was as natural and straightforward as could be, considering her mental deficiency.[29] If there were instances when her answers were inaccurate or unresponsive, these did not make her testimony any less credible. Even children of normal intelligence cannot be expected to give a precise account of events considering their naiveté and still undeveloped vocabulary and command of language.[30] Yet, despite her limitations, AAA never wavered in her testimony.

Both the RTC and CA correctly gave credence to her testimony. They found it enough to support the conviction of appellant.

> Time and again, we have held that the trial court's assessment as to the credibility of witnesses is to be accorded great weight. This is so because it had the better opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grueling examination.[31]

Furthermore, the testimony of an innocent child like AAA should be given full weight and credit. Being young and guileless, she had no ill-motive to falsely testify and impute such a serious crime against her own father.

Appellant's assertion that ABC induced their daughter to file this rape charge against him without, however, substantiating his claim, is self-serving and deserves scant consideration.

Finally, appellant avers that Dr. Belgira did not indicate in his testimony that AAA's hymenal laceration was due to penile penetration since he merely stated that it was caused by the insertion of a "hard blunt object." Again, appellant is grasping at straws. Obviously, an erect penis is one such "hard blunt object." This medical finding supported AAA's testimony that appellant inserted his penis in her vagina.

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[29] *Supra* note 26.

[30] See *People v. Sambrano*, 446 Phil. 145, 156 (2003).

[31] *People v. Omar*, G.R. No. 120656, 3 March 2000, 327 SCRA 221, 228, citing *People v. Suba*, G.R. Nos. 119350-51, 29 November 1999, 319 SCRA 374.

APPELLANT IS GUILTY OF QUALIFIED RAPE

The pertinent provisions of the RPC, as amended by RA 8353, state:

Art. 266-A. Rape; When and How Committed. — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

x x x x x x x x x

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

x x x x x x x x x

Art. 266-B. Penalties.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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 x x x x x x

The qualifying circumstances of relationship (father and daughter) and minority (the victim was 10 years old when the rape was committed) were duly alleged in the information, proved during the trial and even admitted by appellant.[32]

While this Court affirms the finding of guilt of respondent, it can no longer impose the penalty of death in view of RA 9346.[33] Section 2 of RA 9346 mandates that, in lieu of the

[32] CA *rollo*, p. 100.

[33] Entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines."

death penalty, *reclusion perpetua* without eligibility for parole should instead be imposed.

With regard to the award of damages, the victim was correctly awarded ₱75,000 as civil indemnity *ex delicto*. However, the amount of moral damages should be increased from ₱50,000 to ₱75,000 in line with prevailing jurisprudence.[34] Exemplary damages in the amount of ₱25,000 should also be granted due to the presence of the qualifying circumstances of minority and relationship.[35]

WHEREFORE, the decision of the Court of Appeals in C.A.-G.R. CR-H.C. No. 00105 is hereby *AFFIRMED WITH MODIFICATIONS*. Mario S. Martin is sentenced to *reclusion perpetua* with no possibility of parole for one count of qualified rape committed against AAA. He is *ORDERED* to indemnify AAA in the amount of ₱75,000 as civil indemnity, ₱75,000 as moral damages and ₱25,000 as exemplary damages.

Costs against appellant.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Reyes, and *Leonardo-de Castro, JJ.*, concur.

Nachura, J., no part. Signed pleading as Solicitor General.

Chico-Nazario and *Velasco, Jr., JJ.,* on official leave.

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[34] *People v. Buban*, G.R. No. 166895, 24 January 2007, 512 SCRA 500, 523-524.

[35] *Id.*; *People v. Guillermo*, G.R. No. 173787, 23 April 2007.

EN BANC

[G.R. No. 178456. January 30, 2008]

RANDY C. CAMBE, *petitioner, vs.* **THE COMMISSION ON ELECTIONS; THE MUNICIPAL BOARD OF CANVASSERS OF LASAM, CAGAYAN; and DOMINADOR M. GO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; COMMISSION ON ELECTIONS (COMELEC); THE COMMISSION *EN BANC* DOES NOT HAVE JURISDICTION IN THE FIRST INSTANCE OVER ELECTION CASES, PRE-PROCLAMATION CONTROVERSIES, AND INCIDENTS THEREOF; CLARIFIED.— The consistent ruling of the Court is that, the Commission *en banc* does not have jurisdiction in the first instance, whether original or appellate, over election cases, pre-proclamation controversies, and incidents thereof. When such disputes are filed before or elevated to the Commission, they should be heard and adjudicated first at the division level. This doctrine is anchored on Section 3, Article IX-C of the Constitution which established the two-tiered organizational and functional structure of the COMELEC. The provision requires that election cases, including pre-proclamation controversies, should be heard and decided first at the division level. It reads, thus: SEC. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*. It is important to clarify, however, that not all cases relating to election laws filed before the COMELEC are required to be first heard by a division. Under the Constitution, the COMELEC exercises both administrative and quasi-judicial powers. The COMELEC *en banc* can act directly on matters falling within its administrative powers. It is only when the exercise of quasi-judicial powers is involved that the COMELEC is mandated to

decide cases first in division, and then, upon motion for reconsideration, *en banc*.

2. ID.; ID.; WHEN PROCLAMATION IS INVALID FOR NON-COMPLIANCE WITH THE MANDATORY REQUIREMENTS OF SECTION 20 OF R.A. NO. 7166; RATIONALE.— We rule that Go's proclamation is invalid for non-compliance with the mandatory requirements of Section 20 of R.A. No. 7166, which provides: (f) After all the uncontested returns have been canvassed and **the contested returns ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter, an appeal may be taken to the Commission**. (g) Immediately upon receipt of the notice of appeal, the board shall make an appropriate report to the Commission, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report. (h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of the said records and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed. The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party. (i) **The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void *ab initio*, unless the contested returns will not adversely affect the results of the election.** It is clear from the foregoing that after the board has ruled on the petition for exclusion, it is duty bound to suspend the proclamation to give the other party an opportunity to question the ruling by filing a notice of appeal with the board within 48 hours from the suspension of the proceedings, and of an appeal with the COMELEC, within five days from the same suspension. Failure to comply with these requirements renders the proclamation void *ab initio*.

3. ID.; ID.; PRE-PROCLAMATION CASES; IDENTIFIED.— Pre-proclamation cases refer to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of election returns.

4. ID.; ID.; ID.; GENERALLY, A PRE-PROCLAMATION CASE IS NO LONGER VIABLE AFTER A PROCLAMATION HAS BEEN MADE; EXCEPTIONS.— The general rule is that a pre-proclamation case before the COMELEC is, logically, no longer viable after a proclamation has been made. However, this rule admits of exceptions, as when the proclamation is null and void. The proclamation of petitioner in this case is void for three (3) reasons: (1) it was based on a canvass that should have been suspended with respect to the contested election returns; (2) it was done without prior COMELEC authorization which is required in view of the unresolved objections of Talib to the inclusion of certain returns in the canvass; and (3) it was predicated on a canvass that included unsigned election returns involving such number of votes as will affect the outcome of the election. In this regard, it has long been recognized that among the reliefs that the COMELEC may grant is to nullify a proclamation or suspend the effects of one.

5. ID.; ID.; AS A RULE, THE BOARD OF CANVASSERS CANNOT LOOK BEYOND THE FACE OF ELECTION RETURNS IN ORDER TO VERIFY ALLEGATIONS OF IRREGULARITIES IN CASTING OR COUNTING OF VOTES; EXCEPTION.— As a rule, as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify the allegations of irregularities in the casting or the counting of the votes. Corollarily, technical examination of voting paraphernalia involving analysis and comparison of voters' signatures and thumbprints thereon is prohibited in pre-proclamation cases which are mandated by law to be expeditiously resolved without involving evidence *aliunde* and examination of voluminous documents which take up much time and cause delay, defeating the public policy underlying

the summary nature of pre-proclamation controversies. However, in *Lee v. Commission on Elections*, involving a petition of a candidate for mayor seeking the exclusion of an election return on the ground that the same bears no entries for the position of congressman, the Court explained that the aforestated restrictive doctrine on the examination of election returns presupposes that said returns appear to be authentic and duly accomplished on their face. But when there is a *prima facie* showing that the return is not genuine, as where several entries were omitted in the questioned election return, the doctrine does not apply. The COMELEC is thus not powerless to determine if there is basis for the exclusion of the controverted election return. In *Balindong v. Commission on Elections*, the Court interpreted Sections 235 and 236 of the Omnibus Election Code (OEC) to mean that "in cases where the election returns appear to have been tampered with, altered or falsified, the prescribed modality is for the COMELEC to examine the other copies of the questioned returns and if the other copies are likewise tampered with, altered, falsified, or otherwise spurious, after having given notice to all candidates and satisfied itself that the integrity of the ballot box and of the ballots therein have been duly preserved, to order a recount of the votes cast, prepare a new return which shall be used by the board of canvassers as basis for the canvass, and direct the proclamation of the winner accordingly." If the integrity of the ballot box had been violated, there would be no need to open it. If not, and upon opening there is evidence that the integrity of the ballots had been violated, there would be no recounting thereof, and the COMELEC would then seal the box and order its safekeeping.

APPEARANCES OF COUNSEL

Haxley M. Galano for petitioner.
The Solicitor General for public respondents.
Ferrer & Associates Law Offices for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

The instant petition for *certiorari* under Rule 65 of the Rules of Court assails Resolution No. 8212[1] of the Commission on Elections (COMELEC) sitting *en banc*, dated June 28, 2007, insofar as SPC Case No. 07-212 is concerned. Petitioner Randy C. Cambe contends that the COMELEC *en banc* gravely abused its discretion in dismissing petitioner's appeal from the May 22, 2007 Ruling[2] of public respondent Municipal Board of Canvassers (MBC) of Lasam, Cagayan, which granted herein private respondent Dominador M. Go's petition to exclude from the canvass Election Return No. 9601666 (for clustered precinct numbers 66A and 68, Barangay Nabannagan East), resulting in the proclamation on even date of Go as the duly elected eighth (8th) Member of the Sangguniang Bayan of Lasam, Cagayan.

Petitioner and Go were candidates during the May 14, 2007 elections for Sangguniang Bayan members of the municipality of Lasam, Cagayan, where eight seats were at stake. On May 15, 2007, when Election Return No. 9601666 for clustered precinct numbers 66A and 68 was presented for canvassing, Go orally moved for its exclusion on the ground that said return was allegedly manufactured. He alleged that the integrity of said return is questionable as the total number of votes cast for the vice-mayoralty candidates exceeded the number of registered voters.[3] This was followed by the written petition/opposition[4] filed by Go on May 17, 2007, stating that the canvass of the contested return will affect the 8th position in the Municipal Councilor race.

Should the alleged manufactured election return be included in the canvassing, petitioner would land on the 8th seat in the

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[1] *Rollo*, p. 30.

[2] *Id.* at 48.

[3] Minutes, *rollo*, pp. 77-78.

[4] *Rollo*, p. 86.

Sangguniang Bayan leading by 21 votes over Go who would occupy the 9th slot. On the other hand, if the said return will be excluded, Go would advance to the 8th place with a six-vote lead over petitioner.[5]

In the meantime, the MBC proclaimed the winners for the position of mayor, vice-mayor, and 7 Sangguniang Bayan Members, leaving the canvassing of the questioned return for the 8th slot, pending.[6]

On May 21, 2007, the MBC issued a notice directing petitioner to file his comment/opposition to the petition within 24 hours from receipt of said notice.[7]

At 9:00 in the morning of May 22, 2007, the MBC issued a ruling excluding Election Return No. 9601666 on the ground of "fraud, material defect, tamper[ing], and statistical improbability."[8] On the same day, the MBC proclaimed Go as the 8th duly elected member of the Sangguniang Bayan of the Municipality of Lasam, Cagayan.[9]

At 1:35 in the afternoon of May 22, 2007, petitioner filed his written opposition to the petition for exclusion.[10] At 4:30 p.m. of May 25, 2007, a Friday, petitioner received a copy of the ruling of the MBC.[11] On May 28, 2007, a Monday, he filed a notice of appeal with the MBC,[12] and thereafter an appeal memorandum[13] with the COMELEC on May 30, 2007.

On June 28, 2007, the COMELEC *en banc* issued the assailed Resolution with an annex of the list of cases that shall continue

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[5] *Id*. at 6.

[6] *Id*. at 78 and 91.

[7] *Id*. at 90.

[8] *Id*. at 48.

[9] *Id*. at 92.

[10] *Id*. at 93.

[11] *Id*. at 48.

[12] *Id*. at 71.

[13] *Id*. at 49, docketed as SPC Case No. 07-212.

to be heard by the Commission. SPC Case No. 07-212 was not included in the list hence, it was deemed dismissed and terminated. The full text of the Resolution, reads:

WHEREAS, in connection with the May 14, 2007 National and Local Election various petitions docketed as Special Action, Special Cases and Special Proceeding Cases and other contentious cases were filed with the Office of the Clerk of the Commission;

WHEREAS, the second paragraph of Sec. 16, Republic Act No. 7166 provides:

"*All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceeding may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issue an order for the proceeding to continue or when appropriate order has been issued by the Supreme Court in a petition for certiorari.*"

WHEREAS, the Commission has disposed of the pre-proclamation and other cases brought before it for adjudication, except those whose disposition requires proceeding extending beyond 30 June 2007;

NOW, THEREFORE, by virtue of its powers under the Constitution, the Omnibus Election Code, Batas Pambansa Blg. 881, Republic Act. (sic) Nos. 6646 and 7166, and other election laws, the Commission RESOLVES:

1. All cases which were filed by private parties without timely payment of the proper filing fee are hereby dismissed;

2. All cases which were filed beyond the reglementary period or not in the form prescribed under appropriate provisions of the Omnibus Election Code, Republic Act Nos. 6646 and 7166 are hereby likewise dismissed;

3. All other pre-proclamation cases which do not fall within the class of cases specified under paragraphs (1) and (2) immediately preceding shall be deemed terminated pursuant to Section 16, R.A. 7166 except those mentioned in paragraph (4). Hence, all the ruling of the boards of canvassers

concerned are deemed affirmed. Such boards of canvassers are directed to reconvene forthwith, continue their respective canvass and proclaim the winning candidates accordingly, if the proceedings were suspended by virtue of pending pre-proclamation case;

4. All remaining pre-proclamation cases, which on the basis of the evidence thus far presented, appear meritorious and/or are subject of orders by the Supreme Court or this Commission in petitions for *certiorari* brought respectively to them shall likewise remain active cases, thereby requiring the proceedings therein to continue beyond 30 June 2007, until they are finally resolved; and

5. All petitions for disqualification, failure of elections or analogous cases, not being pre-proclamation controversies and, therefore, not governed by Section 17, 18, 19, 20, 21, and particularly, by the second paragraph of Sec. 6, Republic Act No. 7166, shall remain active cases, the proceedings to continue beyond June 30, 2007, until the issues therein are finally resolved by the Commission;

ACCORDINGLY, it is hereby ordered that the proceedings in this (sic) cases appearing on the list annexed and made an integral part thereof, be continued to be heard and disposed of by the Commission.

This resolution shall take effect immediately.

Let the Clerk of the Commission implement this resolution by appropriate notices to the parties concerned and the Department of Interior and Local Government. The Education and Information Department shall cause the immediate publication of this resolution in two (2) newspapers of general circulation.

SO ORDERED.[14]

Hence, the instant petition.

Petitioner contends that the COMELEC gravely abused its discretion in excluding Election Return No. 9601666 in the canvas of votes which led to the proclamation of Go as the 8th elected member of the Sangguniang Bayan. He prays for the annulment of Go's proclamation as well as Resolution No. 8212 of the

[14] *Id*. at 30-32.

COMELEC insofar as it upheld the ruling of the MBC. On the other hand, the Office of the Solicitor General argues that the MBC correctly excluded the subject election return because the same was tampered and statistically improbable. It further claims that the Court, not being a trier of facts, is without jurisdiction to review the factual findings of the MBC as affirmed by the COMELEC.

The issues for resolution are the following:

1) Whether the COMELEC *en banc* had jurisdiction over pre-proclamation controversies in the first instance;

2) Whether the proclamation of Go is valid.

3) Whether the COMELEC acted properly in sustaining the ruling of the MBC which outrightly excluded the questioned election return.

Although not raised as an issue, the Court is empowered to address the first issue which is both constitutional and jurisdictional.[15] The consistent ruling of the Court is that, the Commission *en banc* does not have jurisdiction in the first instance, whether original or appellate, over election cases, pre-proclamation controversies, and incidents thereof. When such disputes are filed before or elevated to the Commission, they should be heard and adjudicated first at the division level.[16] This doctrine is anchored on Section 3, Article IX-C of the Constitution which established the two-tiered organizational and functional structure of the COMELEC. The provision requires that election cases, including pre-proclamation controversies, should be heard and decided first at the division level. It reads, thus:

SEC. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation

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[15] *Municipal Board of Canvassers of Glan v. Commission on Elections*, G.R. No. 150496, October 23, 2003, 414 SCRA 273, 275.

[16] *Id*., citing *Sarmiento v. Commission on Elections*, G.R. No. 105628, August 6, 1992, 212 SCRA 307 and *Balindong v. Commission on Elections*, G.R. Nos. 153991-92, October 16, 2003, 413 SCRA 583.

controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.

It is important to clarify, however, that not all cases relating to election laws filed before the COMELEC are required to be first heard by a division. Under the Constitution, the COMELEC exercises both administrative and quasi-judicial powers. The COMELEC *en banc* can act directly on matters falling within its administrative powers. It is only when the exercise of quasi-judicial powers is involved that the COMELEC is mandated to decide cases first in division, and then, upon motion for reconsideration, *en banc*.[17]

In the instant controversy, the case filed by petitioner involving Election Return No. 9601666 which the MBC found to be fraudulent, tampered, and statistically improbable, is a pre-proclamation case[18] requiring the COMELEC's exercise of quasi-judicial powers.[19] The same should have been decided at

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[17] *Municipal Board of Canvassers of Glan v. Commission on Elections*, *supra* at 276.

[18] A pre-proclamation controversy is defined as referring "to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns." Issues that may be raised in a pre-proclamation controversy are as follows:

(a) Illegal composition or proceedings of the board of canvassers;

(b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in another authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;

(c) The election returns were prepared under duress, threats, coercion or intimidation, or they are obviously manufactured or not authentic; and

(d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates. (*Espidol v. Commission on Elections*, G.R. No. 164922, October 11, 2005, 472 SCRA 380, 402-403.)

[19] *Municipal Board of Canvassers of Glan v. Commission on Elections*, *supra* at 276.

the first instance by a division of the COMELEC, especially so that petitioner filed his appeal not with the *en banc* but with a division of the COMELEC.[20] Failing to comply with the constitutional and jurisprudential requirements, Resolution No. 8212 must therefore be declared void insofar as the instant case is concerned.

Anent the second issue, we rule that Go's proclamation is invalid for non-compliance with the mandatory requirements of Section 20 of R.A. No. 7166,[21] which provides:

(f) After all the uncontested returns have been canvassed and **the contested returns ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter, an appeal may be taken to the Commission.**

(g) Immediately upon receipt of the notice of appeal, the board shall make an appropriate report to the Commission, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report.

(h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of the said records and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed.

The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party.

(i) **The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void**

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[20] *Rollo*, p. 49.

[21] "AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES."

***ab initio*, unless the contested returns will not adversely affect the results of the election**. (Emphasis supplied)

It is clear from the foregoing that after the board has ruled on the petition for exclusion, it is duty bound to suspend the proclamation to give the other party an opportunity to question the ruling by filing a notice of appeal with the board within 48 hours from the suspension of the proceedings, and of an appeal with the COMELEC, within five days from the same suspension. Failure to comply with these requirements renders the proclamation void *ab initio*.

In *Jainal v. Commission on Elections*,[22] a pre-proclamation case filed by mayoralty candidate Julhatab Talib, the Court affirmed the order of the COMELEC annulling the proclamation of his rival, Salip Aloy Jainal, for having been made immediately after the board ruled on the objection of Talib. Thus:

> [I]t was the MBC who did not comply with its duties under Sec. 20 of R.A. No. 7166. When Talib made his objections to the inclusion of the contested election returns, there was no other recourse for the MBC except to rule on the objections, suspend the canvass of the contested election returns, **and suspend the proclamation** of petitioner, in that sequence. **Instead of doing so, the MBC, after ruling on the objections, included the contested returns in the canvass and immediately proclaimed petitioner.** (Emphasis supplied)

These actions of the MBC rendered it impossible for Talib to comply with Sec. 20 of R.A. No. 7166 any further. It should be noted that the forty-eight (48)-hour period for filing a verified notice of appeal with the MBC is reckoned from suspension of the canvass. The appeal to the COMELEC is also reckoned five (5) days from suspension of the canvass. Understandably, Talib had no other recourse but to go directly to the COMELEC.

It is worthy of note that what was filed with and resolved by the poll body is a pre-proclamation case. Pre-proclamation cases refer to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any

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[22] G.R. No. 174551, March 7, 2007, 517 SCRA 799, 813-815.

registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of election returns.

The general rule is that a pre-proclamation case before the COMELEC is, logically, no longer viable after a proclamation has been made. However, this rule admits of exceptions, as when the proclamation is null and void. The proclamation of petitioner in this case is void for three (3) reasons: (1) it was based on a canvass that should have been suspended with respect to the contested election returns; (2) it was done without prior COMELEC authorization which is required in view of the unresolved objections of Talib to the inclusion of certain returns in the canvass; and (3) it was predicated on a canvass that included unsigned election returns involving such number of votes as will affect the outcome of the election. In this regard, it has long been recognized that among the reliefs that the COMELEC may grant is to nullify a proclamation or suspend the effects of one.

In this case, the proclamation of Go is void because it was based on a canvass that outrightly excluded an election return, which as admitted by both petitioner[23] and Go,[24] would determine who between them would advance to the 8th position as member of the Sangguniang Bayan. Moreover, said proclamation was done immediately after the MBC issued its ruling on the petition for exclusion. As held in *Espidol v. Commission on Elections*,[25] the action of the MBC constituted a deprivation of the right to appeal the ruling to the COMELEC, violating Section 20 (i) of R.A. No. 7166.

The rationale for declaring void such hasty proclamation is elucidated thus:

A pattern of conduct observed in past elections has been the "pernicious grab-the-proclamation-prolong-the-protest-slogan" f some candidates or parties." Really, were a victim of a proclamation be precluded

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[23] *Rollo*, p. 6.

[24] *Id*. at 86.

[25] *Supra* note 18 at 406.

from challenging the validity thereof after that proclamation and the assumption of office thereunder, baneful effects may easily supervene. It may not be out of place to state that in the long history of election contests in this country, as served in *Lagumbay v. Climaco*, successful contestant in an election protest often wins but "a mere pyrrhic victory, *i.e.*, a vindication when the term of office is about to expire or has expired." Protests, counter-protests, revisions of ballots, appeals, dilatory tactics, may well frustrate the will of the electorate. And what if the protestant may not have the resources and an unwavering determination with which to sustain a long drawn-out election contest? In this context therefore all efforts should be strained – as far as is humanly possible – to take election returns out of the reach of the unscrupulous; and to prevent illegal or fraudulent proclamation from ripening into illegal assumption of office.[26]

The last issue relates to the proper treatment which should have been accorded to the questioned return at the COMELEC division level and the appropriate course of action which should have been taken at the canvassing board level.

As a rule, as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify the allegations of irregularities in the casting or the counting of the votes. Corollarily, technical examination of voting paraphernalia involving analysis and comparison of voters' signatures and thumbprints thereon is prohibited in pre-proclamation cases which are mandated by law to be expeditiously resolved without involving evidence *aliunde* and examination of voluminous documents which take up much time and cause delay, defeating the public policy underlying the summary nature of pre-proclamation controversies.

However, in *Lee v. Commission on Elections*,[27] involving a petition of a candidate for mayor seeking the exclusion of an election return on the ground that the same bears no entries for the position of congressman, the Court explained that the aforestated restrictive doctrine on the examination of election

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[26] *Id.* at 410.

[27] G.R. No. 157004, July 4, 2003, 405 SCRA 363, 368.

returns presupposes that said returns appear to be authentic and duly accomplished on their face. But when there is a *prima facie* showing that the return is not genuine, as where several entries were omitted in the questioned election return, the doctrine does not apply. The COMELEC is thus not powerless to determine if there is basis for the exclusion of the controverted election return.

In the instant case, Election Return No. 9601666 cannot be considered as regular or authentic on its face inasmuch as the total votes cast for the vice-mayoralty position, which is 288, exceeded the total number of the voters who actually voted (230)[28] and the total number of registered voters (285).[29] The COMELEC therefore is clothed with ample authority to ascertain under the procedure outlined in the Omnibus Election Code (OEC) the merits of the petition to exclude Election Return No. 9601666.

Sections 235 and 236 of the OEC read:

Sec. 235. When election returns appear to be tampered with or falsified.—If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated,

[28] *Rollo*, p. 77.

[29] *Id*. at 91.

order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass.

SEC. 236. Discrepancies in election returns. – In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.

In *Balindong v. Commission on Elections*,[30] the Court interpreted the foregoing provisions to mean that "in cases where the election returns appear to have been tampered with, altered or falsified, the prescribed modality is for the COMELEC to examine the other copies of the questioned returns and if the other copies are likewise tampered with, altered, falsified, or otherwise spurious, after having given notice to all candidates and satisfied itself that the integrity of the ballot box and of the ballots therein have been duly preserved, to order a recount of the votes cast, prepare a new return which shall be used by the board of canvassers as basis for the canvass, and direct the proclamation of the winner accordingly."

If the integrity of the ballot box had been violated, there would be no need to open it. If not, and upon opening there is evidence that the integrity of the ballots had been violated, there would be no recounting thereof, and the COMELEC would then seal the box and order its safekeeping.[31] Thus, Section 237 of the OEC provides:

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[30] *Supra* note 16 at 595.

[31] *Lee v. Commission on Elections, supra* at 375.

Sec. 237. *When integrity of ballots is violated*. — If upon the opening of the ballot box as ordered by the Commission under Sections 234, 235 and 236, hereof, it should appear that there are evidence or signs of replacement, tampering or violation of the integrity of the ballots, the Commission shall not recount the ballots but shall forthwith seal the ballot box and order its safekeeping.

The same procedure was emphasized by the Court in *Jainal v. Commission on Elections* [32] in upholding the course of action taken by the COMELEC. Pertinent portion thereof explained that –

Indeed, the COMELEC did not instantaneously nullify the questioned election returns as claimed by petitioner. Utilizing the first procedure contained in the first sentence of Sec. 235, the COMELEC used other copies of said suspect election returns, namely the election returns submitted by Talib. When this was not enough, it even resorted to an examination of the COMELEC copies. And when it was evident that the election returns for the nine (9) precincts were manufactured or fabricated because the printed names and signatures of the members of the BEI were absent, it was only then that the COMELEC annulled the said election returns and petitioner's proclamation.

With the finding that the election returns were manufactured, the COMELEC further ordered the Election Officer in *Jainal* to:

[C]onvene the Board of Election Inspectors in the abovementioned precincts, after notifying the parties concerned and after ensuring that the integrity of the ballot boxes and the ballots are not compromised, in order to recount the ballots cast in the abovementioned precincts. After the recount, the new results will be canvassed and the mayoralty winner proclaimed. If a recount is deemed not possible, he is to make a report to the Commission so that a special election may be immediately scheduled in the affected precincts.[33]

In the instant case, the MBC, without complying with Section 235 of the OEC, outrightly excluded Election Return

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[32] *Supra* note 22 at 818-819.

[33] *Id*. at 806.

No. 9601666. Worse, the COMELEC found nothing irregular in the procedure taken by the MBC. The precipitate exclusion from the canvass of the return for Precincts 66A and 68 resulted in the unjustified disenfranchisement of the voters thereof.

WHEREFORE, the petition is *GRANTED*. Resolution No. 8212 of the Commission on Elections en banc dated June 28, 2007 is *SET ASIDE* insofar as SPC Case No. 07-212 is concerned. The Commission is ordered to raffle said case to one of its divisions, which is hereby directed to resolve the same with deliberate dispatch. In the meantime, the position for the eighth (8th) Member of the Sangguniang Bayan of Lasam, Cagayan is *DECLARED VACANT*.

SO ORDERED.

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

Chico-Nazario, J., on official leave.

EN BANC

[G.R. No. 178767. January 30, 2008]

NORMA PATALINGHUG, EUGENE ESPEDIDO, REYNALDO BERDIN, NORMAN CODILLA, BOBIE CUENCA, EFREN HERRERA, LORENZO IGOT, JR., ALBERTINO MATA, JR., MICHAEL CZAR OUANO, RAMON PATALINGHUG, FRANCISCO SENERPIDA and CHARLES VAILOCES, *petitioners, vs.* **COMMISSION ON ELECTIONS, ARTURO RADAZA, MARIO AMORES, QUEENIE AMMANN, JUNARD CHAN, EDUARDO CUIZON, ALEXANDER GESTOPA, JR., DAMIAN GOMEZ, JR., CORNELIO PAHAYAG, RODOLFO POTOT, FLORITO POZON, MELISSA VIDAL, MARCIAL YCONG, ATTY. ANN JANETTE CHUA-HU LAMBAN, CITY ELECTION OFFICER, LEONILO OLIVA, ATTY. EVANGELINE GICALE, and THE OTHER MEMBERS OF THE CITY BOARD OF CANVASSERS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; COMMISSION ON ELECTIONS (COMELEC); PRE-PROCLAMATION CASE; THE DETERMINATION BY THE COMELEC OF THE MERITS THEREOF IS AN EXERCISE OF ADJUDICATORY POWER; CLARIFIED.— The determination by the COMELEC of the merits of a pre-proclamation case definitely involves the exercise of adjudicatory powers. The COMELEC examines and weighs the parties' pieces of evidence *vis-à-vis* their respective arguments, and considers whether, on the basis of the evidence thus far presented, the case appears to have merit. Where a power rests in judgment or discretion, so that it is of judicial nature or character, but does not involve the exercise of functions of a judge, or is conferred upon an officer other than a judicial officer, it is deemed quasi-judicial.

2. ID.; ID.; ID.; ID.; GUIDELINES ON THE APPROPRIATE RECOURSE TO ASSAIL COMELEC RESOLUTIONS ISSUED PURSUANT TO SEC. 16 OF R.A. NO. 7166;

EXPLAINED.— To avoid similar instances of confusion and for the guidance of the bench and the bar, the Court takes this opportunity to lay down the following guidelines on the appropriate recourse to assail COMELEC resolutions issued pursuant to Section 16 of R.A. No. 7166. First, **if a pre-proclamation case is excluded from the list of those** (annexed to the *Omnibus Resolution on Pending Cases*) **that shall continue after the beginning of the term of the office involved,** the remedy of the aggrieved party is to timely file a *certiorari* petition assailing the Omnibus Resolution before the Court under Rules 64 and 65, regardless of whether a COMELEC division is yet to issue a definitive ruling in the main case or the COMELEC *en banc* is yet to act on a motion for reconsideration filed if there is any. It follows that if the resolution on the motion for reconsideration by the *banc* precedes the exclusion of the said case from the list, what should be brought before the Court on *certiorari* is the decision resolving the motion. Second, **if a pre-proclamation case is dismissed by a COMELEC division and, on the same date of dismissal or within the period to file a motion for reconsideration, the COMELEC *en banc* excluded the said case from the list annexed to the Omnibus Resolution,** the remedy of the aggrieved party is also to timely file a *certiorari* petition assailing the Omnibus Resolution before the Court under Rules 64 and 65. The aggrieved party need no longer file a motion for reconsideration of the division ruling. The rationale for this is that the exclusion by the COMELEC *en banc* of a pre-proclamation case from the list of those that shall continue is already deemed a final dismissal of that case not only by the division but also by the COMELEC *en banc*. As already explained earlier, the aggrieved party can no longer expect any favorable ruling from the COMELEC. And third, **if a pre-proclamation case is dismissed by a COMELEC division but, on the same date of dismissal or within the period to file a motion for reconsideration, the COMELEC *en banc* included the case in the list annexed to the Omnibus Resolution**, the remedy of the aggrieved party is to timely file a motion for reconsideration with the COMELEC *en banc*. The reason for this is that the challenge to the ruling of the COMELEC division will have to be resolved definitively by the entire body. In laying down the said guidelines, the Court is not unaware of its ruling in *Santos v. Commission on Elections*, that the filing of a motion for reconsideration with

the COMELEC *en banc* of a division's dismissal of a pre-proclamation case, and the **simultaneous** filing of a *certiorari* petition before this Court questioning the Omnibus Resolution/list constitutes forum shopping. The *Santos* doctrine shall continue to apply to every case with a similar or parallel factual setting.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION OF THE COMELEC AS A GROUND; JUSTIFIED.— For an action for *certiorari* to prosper, there must be a showing that the COMELEC acted with "grave abuse of discretion," which means such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction or excess thereof. The abuse of discretion must be patent and gross as to amount 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 is exercised in an arbitrary and despotic manner by reason of passion and hostility.

APPEARANCES OF COUNSEL

Romeo B. Igot for petitioners.
The Solicitor General for public respondent.
Richard W. Sison and Associates for private respondents.

R E S O L U T I O N

NACHURA, *J.*:

For the resolution of the Court is a petition for *certiorari* under Rule 65 assailing (a) the May 25, 2007 Order[1] of the Commission on Elections (COMELEC) First Division in Ref. No. 07-028; (b) the June 4, 2007 Resolution[2] of the COMELEC First Division in SPC No. 07-011; and (c) the June 28, 2007 Resolution No. 8212[3] or the Omnibus Resolution on Pending Cases issued by the COMELEC *en banc*.

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[1] *Rollo*, pp. 40-42.

[2] *Id.* at 34-39.

[3] *Id.* at 43-60.

The factual antecedents of the case follow.

In the May 14, 2007 national and local elections, petitioners ran for the local positions (mayor, vice-mayor and councilor) in Lapu-Lapu City. At the start of and during the canvassing, petitioners questioned the composition of the Board of Canvassers (BOC), and objected to the inclusion of several election returns (ERs). As the BOC ruled against them, petitioners filed their notices of appeal,[4] and consequently, initiated with the COMELEC a Pre-Proclamation Petition[5] docketed as **SPC No. 07-011**, seeking the declaration of the composition and the proceedings of the BOC as illegal.[6]

Petitioners also filed an Appeal[7] docketed as **SPC No. 07-180** with the COMELEC, praying for the non-inclusion in the canvass of 182 ERs on alleged grounds under Sections 243 (b), (c) and (d), and 214 of the Omnibus Election Code (OEC) or *Batas Pambansa (B.P.) Blg.* 881.[8]

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[4] *Id*. at 8-10.

[5] *Id*. at 61-64.

[6] *Id*. at 34-36. In their petition, they averred, among others, that the BOC chair, respondent Lamban, was biased and partial in favor of the other mayoralty candidate—Lamban unilaterally denied the petition to declare the composition and the proceedings of the board illegal; she was seen having lunch with the department heads of the incumbent, the other candidate for mayor; she drove out petitioners' watchers from the COMELEC field office where the uncanvassed ERs were stored; she attempted to carry out documents from the canvassing area; she used a cutter rather than the keys to forcibly open the padlocks of the ballot boxes containing the uncanvassed ERs; she allowed the detail of armed policemen in the vicinity of the canvassing area; and she did not issue summons to the concerned Board of Election Inspectors (BEI) to produce the missing returns; instead, she ordered the canvassing of the COMELEC copy of the missing returns.

Petitioners later amended the said petition to additionally assail the inclusion in the canvass of ERs that were allegedly incomplete, tampered with, falsified, manufactured, fraudulent and not authentic, and contained material discrepancies.

[7] *Id*. at 75-104.

[8] *Id*. at 80-89.

On May 25, 2007, the COMELEC First Division issued in Ref. No. 07-028 the first assailed Order[9] directing the BOC to proclaim the winning candidates in the official canvass.[10] (As alleged in the petition, the petitioners received a copy of this Order on May 27, 2007.)[11]

On the following day, May 26, 2007, the BOC proclaimed private respondents as the duly elected officials of Lapu-Lapu City.[12] Dissatisfied, petitioners moved, in SPC No. 07-180, for the recall and/or nullification of the said proclamation on May 29, 2007.[13]

On June 4, 2007, the COMELEC First Division in **SPC No. 07-011** rendered the second assailed Resolution[14] dismissing the said case. (Again, as alleged in the petition, petitioners received a copy of this resolution on June 15, 2007.)[15]

Aggrieved, petitioners on June 26, 2007 **moved for the reconsideration** of the said Resolution in SPC No. 07-011.

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[9] *Id*. at 40-42.

[10] *Id*. at 41-42. The COMELEC found that petitioners failed to perfect their appeals, thus, it ordered the proclamation of the winning candidates.

[11] *Id*. at 5.

[12] *Id*. at 107.

[13] *Id*. at 108-120.

[14] *Id*. at 34-39. Invoking our ruling in *Navarro v. Commission on Elections*, 444 Phil. 710 (2003), the COMELEC ruled that the non-compliance by the board with the prescribed canvassing procedure was not an illegal proceeding. Neither was there an illegal composition of the board. The pre-proclamation petition was bereft of any allegation that the board was not constituted in accordance with law, or that it was not composed of those enumerated by the law, or that one of its members was disqualified. The COMELEC also found that petitioners committed a fatal procedural error when they amended their petition to include their objection to the inclusion of several ERs. They raised their concerns on the preparation, transmission, receipt, custody and appreciation of the ERs only for the first time before the Commission, not as an appeal from the rulings of the BOC.

[15] *Id*. at 5.

Consequently, on June 28, 2007, the COMELEC *en banc* issued the third assailed **Resolution No. 8212** or the Omnibus Resolution on Pending Cases.[16] (Petitioners allege that they received a copy of this Resolution on **July 12, 2007**.)[17] In the said Resolution, petitioners' cases—SPC Nos. 07-11 and 07-180—were not included in the list of pre-proclamation cases that shall remain active after June 30, 2007 pursuant to Section 16 of Republic Act (R.A.) No. 7166.[18]

Discontented with the said COMELEC issuances, petitioners, on **July 26, 2007**,[19] instituted the instant petition for *certiorari* under Rule 65.[20]

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[16] *Id*. at 43-60.

[17] *Id*. at 5.

[18] Section 16 of R.A. No. 7166 reads:

SECTION 16. Pre-proclamation Cases Involving Provincial, City and Municipal Offices. — Pre-proclamation cases involving provincial, city and municipal offices shall be allowed and shall be governed by Sections 17, 18, 19, 20, 21 and 22 hereof.

All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari. (Italics supplied)

[19] *Rollo*, pp. 1, 3.

[20] The petitioners are raising the following grounds to support their *certiorari* petition:

I.

THE RESPONDENT COMELEC COMMITTED SERIOUS AND REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING FOR LACK OF MERIT THE APPEAL OF HEREIN PETITIONERS IN A PRE-PROCLAMATION CONTROVERSY AGAINST PRIVATE RESPONDENTS IN SPECIAL CASE NO. 07-011.

Respondents in their Comment[21] countered, among others,[22] that COMELEC Resolution No. 8212 could not be questioned

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II.

THE RESPONDENT COMELEC COMMITTED SERIOUS AND REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ORDER DATED MAY 25, 2007 RULING THAT NORMA PATALINGHUG FAILED TO PERFECT HER TWO (2) APPEALS IN REF. 07-028.

III.

THE RESPONDENT COMELEC COMMITTED SERIOUS AND REVERSIBLE ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING RESOLUTION NO. 8212 (Omnibus dismissal of pending case for being arbitrary and for want of factual and legal basis in dismissing all pre-proclamation cases, including Petitioners' two (2) appeals, bearing SPC No. 07-180, Motion to Nullify Proclamation of private respondents in Ref. No. 07-028 and Appeal under SPC 07-011 respectively. Annex "C" hereof). (*Id*. at 15-16.)

[21] *Rollo*, pp. 170-185.

[22] Respondents also contended that the COMELEC correctly dismissed SPC No. 07-011 for the BOC was properly composed of the City Election Registrar, the City Prosecutor and the City Superintendent of Schools. Not one of them was related within the fourth civil degree of consanguinity or affinity to any of the candidates. As regards petitioners' allegation of illegal proceedings, respondents contended that no ground was ever advanced to show any irregularity or illegality in the proceedings. The cited seven instances allegedly showing the illegality of the proceedings were not raised in the first instance before the BOC. They were brought up for the first time before the COMELEC.

Furthermore, the alleged luncheon of the BOC Chair and the city's department heads was preposterous. At that time, respondent Radaza was under preventive suspension and the sitting mayor was petitioner Patalinghug. It follows therefore that it was petitioners' department heads who had lunch with the BOC Chair. The BOC Chair was also justified in driving out petitioners' watchers from the canvassing area because they were rowdy and unruly. As can likewise be gleaned from the supporting affidavits, petitioners' allegation of irregularity in the custody of elections returns and other documents were based on unfounded and unconfirmed presumptions. With respect to the cutting of the locks of the ballot boxes instead of using the keys, all the representatives of the candidates agreed thereto. All the decisions of the BOC were also reached in consultation with the other members. Anent the seeking of police assistance inside the canvassing area, this was done when the proceedings were interrupted by a supporter of the petitioner who screamed at the BOC Chair. As to the missing election return, the BEI concerned was duly summoned and asked to explain in the presence of all. (*Id*. at 171-180.)

via a petition for *certiorari* because it was not issued in the COMELEC's exercise of quasi-judicial functions. It was rather issued in the exercise of its power to enforce and administer all laws relative to the conduct of elections as enunciated in Section 52 of the OEC. Furthermore, the petition was filed beyond the 30-day reglementary period for questioning via *certiorari* final orders and resolutions of the COMELEC.[23]

A crucial issue in the resolution of this case is the propriety of the instant *certiorari* petition to challenge COMELEC Resolution No. 8212. Of equal significance is the issue of whether petitioners have sufficiently shown that the COMELEC gravely abused its discretion in issuing the challenged resolutions.

While petitioners correctly filed the instant *certiorari* petition to question COMELEC Resolution No. 8212, they failed to sufficiently show grave abuse of discretion on the part of the COMELEC in its issuance of the said Resolution.

To elucidate, the COMELEC *en banc*, on June 28, 2007, issued **Resolution No. 8212** or the Omnibus Resolution on Pending Cases, which excluded SPC Nos. 07-011 and 07-180 from the list of pre-proclamation cases that shall remain active after June 30, 2007. The exclusion of petitioners' cases is, in effect, **a denial by the COMELEC *en banc* of petitioners' pending motion for reconsideration in SPC No. 07-011,** and **a dismissal of SPC No. 07-180**. The Court notes that, at the time Resolution No. 8212 was issued, the COMELEC First Division had not yet made a definitive ruling in SPC No. 07-180 (as opposed to what it did in SPC No. 07-11) and the COMELEC *en banc* had not yet resolved the motion for reconsideration in SPC No. 07-11.

Necessarily, as the cases were already excluded from the aforesaid list, petitioners no longer had any reason to expect a favorable ruling by the division in SPC No. 07-180 and by the *banc* in SPC No. 07-11. It would have been futile then for petitioners to still adhere to the procedure mandated by Section 3

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[23] *Id.* at 180-181.

of Article IX-C of the 1987 Constitution,[24] await the decision of the COMELEC in the main cases, and then challenge the same on *certiorari* before this Court.[25]

Accordingly, the appropriate recourse was for petitioners to timely assail COMELEC Resolution No. 8212 before this Court, which they, in fact, did, via the special civil action of *certiorari*, following Rules 64 and 65 of the Rules of Court.[26]

We clarify, at this point, that COMELEC Resolution No. 8212 is an issuance in the exercise of the COMELEC's **adjudicatory** or **quasi-judicial** function. The same was issued pursuant to the second paragraph of Section 16 of R.A. No. 7166, which states that —

> [a]ll pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the boards of canvassers concerned shall be deemed affirmed, without prejudice to the filing of a regular election protest by the aggrieved party. However, *proceedings may continue when on the basis of the evidence thus far presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue* or when an appropriate order has been issued by the Supreme Court in a petition for *certiorari*. (Italics supplied)[27]

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[24] The constitutional provision reads:

> Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of elections cases, **including pre-proclamation controversies**. **All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc***. (Emphasis supplied)

[25] See *Milla v. Balmores-Laxa*, 454 Phil. 453, 462 (2003); see also *Jaramilla v. Commission on Elections*, 460 Phil. 507, 513 (2003), in which the Court stated that the procedural rule applies only in cases where the COMELEC exercises its adjudicatory or quasi-judicial powers, and not when it merely exercises purely administrative ones.

[26] See *Ambil, Jr. v. Commission on Elections*, 398 Phil. 257, 275 (2000); *Macabago v. Commission on Elections*, 440 Phil. 683, 690-691 (2002).

[27] We have explained in *Peñaflorida v. Commission on Elections*, 346 Phil. 924, 930 (1997), that "[t]his provision reflects the nation's deep concern that pre-proclamation disputes be not abused. For just as unscrupulous candidates

The determination by the COMELEC of the merits of a pre-proclamation case definitely involves the exercise of adjudicatory powers. The COMELEC examines and weighs the parties' pieces of evidence *vis-à-vis* their respective arguments, and considers whether, on the basis of the evidence thus far presented, the case appears to have merit. Where a power rests in judgment or discretion, so that it is of judicial nature or character, but does not involve the exercise of functions of a judge, or is conferred upon an officer other than a judicial officer, it is deemed quasi-judicial.[28]

The Court, in this case, therefore finds the instant petition to be the correct remedy in challenging COMELEC Resolution No. 8212.

Noticeable in the petition, however, is that petitioners, instead of denominating their petition as one under Rules 64 and 65 of the Rules, merely captioned it as one under Rule 65, and further erroneously invoked the 60-day reglementary period in the said Rule[29] rather than the 30-day period in Rule 64.[30] But respondents also erred in their counter-arguments that the petition is the wrong recourse and is belatedly filed.

The Court is disinclined to dismiss the petition based only on petitioners' alleged errors because, in reality, they filed a Rule 64 cum Rule 65 petition within the 30-day reglementary period.

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can grab the proclamations and prolong election contest, thus leading the lawmaking authority to provide for the pre-proclamation cases, so can equally unscrupulous candidates prejudice those who won by the indiscriminate filing of pre-proclamation controversies in order to prevent the proclamation of winners. In the end it is the expression of popular will which is frustrated. Hence the provision of §16 of R.A. No. 7166 was enacted to balance Art. XX of the Omnibus Election Code (B.P. No. 881)."

[28] *Cipriano v. Commission on Elections*, G.R. No. 158830, August 10, 2004, 436 SCRA 45, 56; *Sandoval v. Commission on Elections*, 380 Phil. 375, 395 (2000).

[29] *Rollo*, pp. 4-5.

[30] RULES OF COURT, Rule 64, Sec. 3.

We merely mentioned the said mistakes to emphasize the perplexity among many candidates and election law practitioners brought about by the issuance of COMELEC resolutions pursuant to Section 16, R.A. No. 7166. In the instant case, several factors further contributed to the confusion—the absence of a definitive ruling by the COMELEC division in SPC No. 07-180; the absence of a final ruling by the COMELEC *en banc* on petitioners' motion for reconsideration in SPC No. 07-011; and the issuance of the said COMELEC Resolution No. 8212 excluding petitioners' cases from the list of active cases without, as aforesaid, any definite resolution of the issues raised.

To avoid similar instances of confusion and for the guidance of the bench and the bar, the Court takes this opportunity to lay down the following guidelines on the appropriate recourse to assail COMELEC resolutions issued pursuant to Section 16 of R.A. No. 7166.

First, **if a pre-proclamation case is excluded from the list of those** (annexed to the *Omnibus Resolution on Pending Cases*) **that shall continue after the beginning of the term of the office involved**, the remedy of the aggrieved party is to timely file a *certiorari* petition assailing the Omnibus Resolution before the Court under Rules 64 and 65, regardless of whether a COMELEC division is yet to issue a definitive ruling in the main case or the COMELEC *en banc* is yet to act on a motion for reconsideration filed if there is any.

It follows that if the resolution on the motion for reconsideration by the *banc* precedes the exclusion of the said case from the list, what should be brought before the Court on *certiorari* is the decision resolving the motion.

Second, **if a pre-proclamation case is dismissed by a COMELEC division and, on the same date of dismissal or within the period to file a motion for reconsideration, the COMELEC *en banc* excluded the said case from the list annexed to the Omnibus Resolution**, the remedy of the aggrieved party is also to timely file a *certiorari* petition assailing the Omnibus Resolution before the Court under Rules 64 and 65.

The aggrieved party need no longer file a motion for reconsideration of the division ruling.

The rationale for this is that the exclusion by the COMELEC *en banc* of a pre-proclamation case from the list of those that shall continue is already deemed a final dismissal of that case not only by the division but also by the COMELEC *en banc*. As already explained earlier, the aggrieved party can no longer expect any favorable ruling from the COMELEC.

And third, **if a pre-proclamation case is dismissed by a COMELEC division but, on the same date of dismissal or within the period to file a motion for reconsideration, the COMELEC *en banc* included the case in the list annexed to the Omnibus Resolution**, the remedy of the aggrieved party is to timely file a motion for reconsideration with the COMELEC *en banc*. The reason for this is that the challenge to the ruling of the COMELEC division will have to be resolved definitively by the entire body.

In laying down the said guidelines, the Court is not unaware of its ruling in *Santos v. Commission on Elections*,[31] that the filing of a motion for reconsideration with the COMELEC *en banc* of a division's dismissal of a pre-proclamation case, and the **simultaneous** filing of a *certiorari* petition before this Court questioning the Omnibus Resolution/list constitutes forum shopping. The *Santos* doctrine shall continue to apply to every case with a similar or parallel factual setting.

Viewed in light of these guidelines, the instant petition is timely filed and is still the proper recourse to question COMELEC Resolution No. 8212.

However, the Court resolves to dismiss the petition.

For an action for *certiorari* to prosper, there must be a showing that the COMELEC acted with "grave abuse of discretion," which means such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction or excess thereof.[32] The abuse

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[31] G.R. No. 164439, January 23, 2006, 479 SCRA 487, 493-495.

[32] *Guerrero v. Commission on Elections*, 391 Phil. 344, 352 (2000).

of discretion must be patent and gross as to amount 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 is exercised in an arbitrary and despotic manner by reason of passion and hostility.[33]

In the present case, petitioners have not sufficiently shown that the COMELEC gravely abused its discretion in excluding their cases from the list of those that shall continue. Apart from petitioners' bare allegations, the record is bereft of any evidence to prove that petitioners' pre-proclamation cases appear meritorious. Let it be stressed that under Section 16 of Article 7166, the proceedings may continue when "on the basis of the evidence thus far presented," the COMELEC determines that the pre-proclamation petition appears meritorious.

Finally, the Court notes that with the proclamation of the winning candidates for the positions contested, the question of whether the petition raised issues proper for a pre-proclamation controversy is already of no consequence, since the well-entrenched rule in such situation is that a pre-proclamation case before the COMELEC is no longer viable, the more appropriate remedy being a regular election protest or a petition for *quo warranto*.[34]

WHEREFORE, premises considered, the petition for *certiorari* is *DISMISSED*.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Reyes, and *Leonardo-de Castro, JJ.,* concur.

Chico-Nazario and *Velasco, Jr., JJ.,* on official leave.

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[33] *Defensor-Santiago v. Guingona*, 359 Phil. 276, 304 (1998).

[34] *Sison v. Commission on Elections*, 363 Phil. 510, 519 (1999); see *Peñaflorida v. Commission on Elections*, *supra* note 27, at 931.

SECOND DIVISION

[A.M. No. 04-8-198-MeTC. January 31, 2008]

RE: REPORT OF JUDGE MARIA ELISA SEMPIO DIY, METROPOLITAN TRIAL COURT, BRANCH 34, QUEZON CITY, ABOUT THE LOSS OF CERTAIN VALUABLES AND ITEMS WITHIN THE COURT PREMISES.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY; IMPOSITION OF STRICTER PENALTY, JUSTIFIED.— In the matter of the Armscor gun, we agree with the OCA that Rota is guilty of simple neglect of duty. As the official custodian of case exhibits, it was sheer negligence on Rota not to have accepted the subject gun from Fernandez. Moreover, she should have been especially vigilant in safekeeping the same, considering its importance as evidence and its lethal nature. We note that this is not the first time that we find Rota to have been negligent in the performance of her duties as clerk of court. Thus, in our view, the OCA's recommended penalty in her case is too light. Moreover, the prescribed penalty for the second offense of simple neglect of duty is dismissal from the service. Following the prescribed penalty, Rota ought to be dismissed from the service. However, the subsequent discovery of the missing gun and for humanitarian considerations, we are agreeable to impose a penalty that is less severe than dismissal. In the recent case of *Seangio v. Parce,* we said that while we are duty-bound to sternly wield a corrective hand to discipline our errant employees and to weed out those who are undesirable, we also have the discretion to temper the harshness of our judgment with mercy. Thus, we find that a suspension of three months without pay is sufficient punishment for Rota's negligence. Finally, we take this occasion to remind Rota and all other clerks of court that as ranking officers of our judicial system who perform delicate administrative functions vital to the prompt and proper administration of justice, they should perform their duties with diligence and competence in order to uphold

the good name and integrity of the judiciary, and to serve as role models for their subordinates.

R E S O L U T I O N

QUISUMBING, *J.*:

This case stemmed from the Letter[1] dated February 12, 2003 of then Presiding Judge Maria Elisa Sempio Diy of the Metropolitan Trial Court (MeTC) of Quezon City, Branch 34. In her letter, Judge Diy informed the Office of the Court Administrator (OCA) regarding the loss of (1) a .38 caliber Armscor gun with Serial No. 68966, an object evidence in a pending criminal case[2] before her court; and (2) a Nokia 3310 cellular phone, which was allegedly left by its owner, Mr. Gian Carlo A. Zamora,[3] inside her courtroom on December 18, 2002.

Judge Diy likewise informed the OCA that she had initiated a preliminary investigation regarding the missing items. For purposes of said investigation, all her court personnel were required to submit their respective affidavits on the matter and had been subjected to polygraph tests by the National Bureau of Investigation.

In our Resolution[4] dated September 1, 2004, we referred the case to Executive Judge Natividad G. Dizon of the Regional Trial Court of Quezon City for investigation, report and recommendation. Pursuant to our directive, Judge Dizon required all the personnel of the MeTC of Quezon City, Branch 34, to submit their respective affidavits regarding the missing items and to appear before her for questioning.[5]

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[1] *Rollo*, pp. 5-7.

[2] *Id*. at 5. *People of the Philippines v. Dennis Lim*, Criminal Case Nos. 101176-77.

[3] *Id*. at 6. The dance instructor hired by the court staff for the MeTC Quezon City Christmas Party.

[4] *Id*. at 64.

[5] *Id*. at 83.

From the two investigations conducted on this case, the following were determined: (1) Ma. Theresa M. Fernandez, the clerk assigned for criminal cases, tried to turn over the subject gun to Clerk of Court Celestina D. Rota on October 15, 2002;[6] (2) Rota refused to take custody of the gun because she allegedly thought that the gun was temporarily surrendered only and was not presented as evidence in the pending case;[7] (3) when Fernandez asked Rota where to place the gun, Rota told her to just place the gun somewhere inside the court premises;[8] (4) Fernandez placed the gun inside the steel cabinet of the court;[9] (5) Fernandez announced to the other members of the court staff that she placed the gun inside the said cabinet; (6) the lock of the cabinet was defective;[10] and (7) the loss of the gun was discovered only on the scheduled hearing of the said criminal case on December 5, 2002.[11]

While the investigation was on-going, Rota found the missing gun on January 27, 2006. She submitted the gun to Judge Dizon on February 1, 2006.[12]

In her Report/Recommendation[13] dated February 15, 2006, Judge Dizon found that Rota had been negligent in safekeeping the subject gun, and recommended that she be appropriately disciplined for the same. Judge Dizon likewise stated in her report that the subsequent discovery of the gun does not relieve Rota of liability.

Anent the cellular phone, Judge Dizon noted that Zamora had not attended any of the scheduled hearings for this case and that Zamora had reportedly gone overseas.[14]

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[6] *Id*. at 104.

[7] *Id*. at 95.

[8] *Supra* note 6.

[9] *Id*.

[10] *Id*. at 12.

[11] *Id*. at 95, 104.

[12] *Id*. at 114-115.

[13] *Id*. at 118-120.

[14] *Id*. at 119.

In our Resolution[15] dated June 14, 2006, we referred the report and recommendation of Judge Dizon to the OCA for evaluation, report and recommendation.

After receipt of the OCA's Memorandum[16] dated July 25, 2006, we directed Rota to manifest if she is willing to submit the case for decision on the basis of the records already filed and submitted.[17] For her failure to file the required manifestation, however, we considered this case already submitted for decision in our Resolution[18] dated September 17, 2007.

In concurring with Judge Dizon's finding of negligence, the OCA pointed out that the control and management of case exhibits is one of the non-adjudicative functions of clerks of court.[19] It also cited our ruling in *Re: Loss of Court Exhibits at RTC, Br. 136, Makati City*,[20] where we reminded clerks of court that they cannot be permitted to slacken on their jobs under one pretext or another because of their key and vital role in the complement of the court.

The OCA found Rota liable for simple neglect of duty, but considered the subsequent discovery of the missing gun as a mitigating circumstance on her liability and recommended that we merely suspend Rota for fifteen (15) days without pay.

In connection with the cellular phone, the OCA said that it could not be established if Zamora had indeed left his phone within the premises of MeTC of Quezon City, Branch 34, since he did not show any interest in this case. No further action need now be taken on this matter.

In the matter of the Armscor gun, we agree with the OCA that Rota is guilty of simple neglect of duty. As the official

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[15] *Id.* at 134.

[16] *Id.* at 135-138.

[17] *Id.* at 139.

[18] *Id.* at 140.

[19] *Id.* at 137.

[20] A.M. No. 93-9-1237-RTC, August 21, 1997, 278 SCRA 1, 7.

custodian of case exhibits,[21] it was sheer negligence on Rota not to have accepted the subject gun from Fernandez. Moreover, she should have been especially vigilant in safekeeping the same, considering its importance as evidence and its lethal nature.

We note that this is not the first time that we find Rota to have been negligent in the performance of her duties as clerk of court. Thus, in our view, the OCA's recommended penalty in her case is too light.[22] Moreover, the prescribed penalty for the second offense of simple neglect of duty is dismissal from the service.[23]

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[21] Vol. I, THE 2002 REVISED MANUAL FOR CLERKS OF COURT 620 (2002).

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D. GENERAL FUNCTIONS AND DUTIES OF CLERKS OF COURT AND OTHER COURT PERSONNEL

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1.1.1.2 Non-Adjudicative Functions:

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b. Controls and manages all court records, exhibits, documents, properties and supplies;

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[22] See *Arevalo v. Loria*, A.M. No. P-02-1600, April 30, 2003, 402 SCRA 40, 47-48. We found Branch Clerk of Court Rota to be negligent in the performance of her duties when she issued a writ of demolition that was not strictly in accordance with the tenor of the judgment issued in the case of *Manila Paper Mills, Inc. v. Members of the Urban Poor United Neighborhood Association, Inc.*

[23] CIVIL SERVICE COMMISSION (CSC) Resolution No. 99-1936 (1999), Rule IV, Section 52 B (1).

Section 52. ***Classification of Offenses.*** — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

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B. The following are *less grave offenses* with the corresponding penalties:

1. Simple Neglect of Duty

1st Offense – Suspension 1 mo. 1 day to 6 mos.

2nd Offense – Dismissal

x x x x x x x x x

Following the prescribed penalty, Rota ought to be dismissed from the service. However, the subsequent discovery of the missing gun and for humanitarian considerations, we are agreeable to impose a penalty that is less severe than dismissal.[24] In the recent case of *Seangio v. Parce*,[25] we said that while we are duty-bound to sternly wield a corrective hand to discipline our errant employees and to weed out those who are undesirable, we also have the discretion to temper the harshness of our judgment with mercy.[26] Thus, we find that a suspension of three months without pay is sufficient punishment for Rota's negligence.

Finally, we take this occasion to remind Rota and all other clerks of court that as ranking officers of our judicial system who perform delicate administrative functions vital to the prompt and proper administration of justice,[27] they should perform their duties with diligence and competence in order to uphold the good name and integrity of the judiciary, and to serve as role models for their subordinates.

WHEREFORE, Celestina D. Rota, Clerk of Court of the Metropolitan Trial Court of Quezon City, Branch 34, is hereby found *GUILTY* of simple neglect of duty. She is thus *SUSPENDED* for three (3) months without pay and *STERNLY WARNED* that her commission of another or similar offense shall be dealt with more severely.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[24] See *Martillano v. Arimado*, A.M. No. P-06-2134, August 9, 2006, 498 SCRA 240, 245; *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003*, A.M. No. 00-06-09-SC, March 16, 2004, 425 SCRA 508, 518; *Re: Imposition of Corresponding Penalties on Employees of this Court for Habitual Tardiness Committed During the Second Sem. of 2000*, A.M. No. 00-6-09-SC, November 27, 2002, 393 SCRA 1, 9.

[25] A.M. No. P-06-2252, July 9, 2007, 527 SCRA 24.

[26] *Id.* at 37-38.

[27] *Reyes-Domingo v. Morales*, A.M. No. P-99-1285, October 4, 2000, 342 SCRA 6, 15.

THIRD DIVISION

[A.M. No. 06-9-545-RTC. January 31, 2008]

RE: CONVICTION OF JUDGE ADORACION G. ANGELES, REGIONAL TRIAL COURT, BRANCH 121, CALOOCAN CITY IN CRIMINAL CASE NOS. Q-97-69655 to 56 FOR CHILD ABUSE.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT OF COURT; ELUCIDATED.— In *Pilar Barredo-Fuentes v. Judge Romeo C. Albarracin*, we held: Contempt of court is a defiance of the authority, justice or dignity of the court, such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties, litigant or their witnesses during litigation. There are two kinds of contempt punishable by law: direct contempt and indirect contempt. Direct contempt is committed when a person is guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so. Indirect contempt or constructive contempt is that which is committed out of the presence of the court. Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice would constitute indirect contempt.

2. ID.; ID.; ID.; INDIRECT CONTEMPT; HOW PROCEEDINGS COMMENCED.— Section 4, Rule 71 of the Rules of Court provides: — Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt. **In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full**

compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned . . . A charge of indirect contempt must be filed in the form of a verified petition if it is **not initiated directly by the court** against which the contemptuous act was committed. On previous occasions, we clarified that such petition is in the nature of a special civil action. Certified true copies of related documents must be submitted with the petition and appropriate docket fees must be paid. The requirement of a verified petition is mandatory.

3. ID.; ID.; ID.; ID.; INDIRECT CONTEMPT ABSENT IN CASE AT BAR.— On the charge of indirect contempt of court, we find that SSP Velasco's statement, while irresponsible, did not necessarily degrade the administration of justice as to be considered contumacious. The salutary rule is that the power to punish for contempt must be exercised on the preservative, not vindictive principle, and on the corrective and not retaliatory idea of punishment. A lawyer's remarks explaining his position in a case under consideration do not necessarily assume the level of contempt that justifies the court's exercise of the power of contempt. We note that SSP Velasco's statement was made in support of his argument for the imposition of preventive suspension, *i.e.*, to prevent the respondent from using her current position to alter the course of the investigation and the disposition of the appealed criminal cases.

4. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DUTIES OF LAWYERS IN HIS PROFESSIONAL DEALINGS.— The following Canons of the Code of Professional Responsibility read: Canon 8. Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper. Canon 11. A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others. A lawyer is an officer of the Court. It is a lawyer's sworn and moral duty to help build and not unnecessarily destroy the people's high esteem and regard for the courts so essential to the proper administration of justice. A lawyer's language may be forceful but should always be dignified; emphatic but respectful, as befitting an advocate. Arguments, whether written or oral, should be gracious to both court and

opposing counsel, and should use such language as may be properly addressed by one person to another.

5. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; ADMINISTRATIVE MATTER DIFFERENT FROM CRIMINAL AND CIVIL CASES; CASE AT BAR.— Pertinent is our ruling in *Emmanuel Ymson Velasco v. Judge Adoracion G. Angeles*, which involved the same parties and where we held: An act unrelated to a judge's discharge of judicial functions may give rise to administrative liability even when such act constitutes a violation of penal law. When the issue is administrative liability, the quantum of proof required is only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. Evidence to support a conviction in a criminal case is not necessary, and the dismissal of the criminal case against the respondent in an administrative case is not a ground for the dismissal of the administrative case. **Conversely, conviction in the criminal case will not automatically warrant a finding of guilt in the administrative case.** We emphasize the well-settled rule that criminal and civil cases are altogether different from administrative matters, and each must be disposed of according to the facts and the law applicable to it. In *Nuñez v. Atty. Arturo B. Astorga*, the Court held that the mere existence of pending criminal charges against the respondent-lawyer cannot be a ground for disbarment or suspension of the latter. To hold otherwise would open the door to harassment of attorneys through the mere filing of numerous criminal cases against them. By parity of reasoning, the fact of respondent's conviction by the RTC does not necessarily warrant her suspension. We agree with respondent's argument that since her conviction of the crime of child abuse is currently on appeal before the CA, the same has not yet attained finality. As such, she still enjoys the constitutional presumption of innocence. It must be remembered that the existence of a presumption indicating the guilt of the accused does not in itself destroy the constitutional presumption of innocence unless the inculpating presumption, together with all the evidence, or the lack of any evidence or explanation, proves the accused's guilt beyond a reasonable doubt. Until the accused's guilt is shown in this manner, the presumption of innocence continues. In *Mangubat v. Sandiganbayan*, the Court

held that respondent Sandiganbayan did not act with grave abuse of discretion, correctible by *certiorari*, when it ruled that *despite her convictions, "Preagido has still in her favor the constitutional presumption of innocence x x x (and until) a promulgation of final conviction is made, this constitutional mandate prevails*." The Court therein further held that such ruling is not bereft of legal or logical foundation and cannot, in any sense, be characterized as a whimsical or capricious exercise of judgment. So also must we hold in this case. Moreover, it is established that any administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment. As aforementioned, the filing of criminal cases against judges may be used as tools to harass them and may in the long run create adverse consequences. The OCA, as well as SSP Velasco, failed to prove that other than the fact that a judgment of conviction for child abuse was rendered against the respondent, which is still on appeal, there are other lawful grounds to support the imposition of preventive suspension. Based on the foregoing disquisition, the Court is of the resolve that, while it is true that preventive suspension *pendente lite* does not violate the right of the accused to be presumed innocent as the same is not a penalty, the rules on preventive suspension of judges, not having been expressly included in the Rules of Court, are amorphous at best. Likewise, we consider respondent's argument that there is no urgency in imposing preventive suspension as the criminal cases are now before the CA, and that she cannot, by using her present position as an RTC Judge, do anything to influence the CA to render a decision in her favor. The issue of preventive suspension has also been rendered moot as the Court opted to resolve this administrative case.

6. ID.; ID.; ID.; JUDICIAL TEMPERAMENT MUST BE EXERCISED AT ALL TIMES.— It must be stressed that, as a dispenser of justice, respondent should exercise judicial temperament at all times, avoiding vulgar and insulting language. She must maintain composure and equanimity. The judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions. This is the price that judges have to pay for accepting and occupying their exalted positions in the administration of justice.

7. ID.; ID.; PUBLIC OFFICERS; PRIVILEGE TO INITIATE CHARGES MUST BE EXERCISED WITH PRUDENCE.— The parties herein have admitted in their various pleadings that they have filed numerous cases against each other. We do not begrudge them the prerogative to initiate charges against those who, in their opinion, may have wronged them. But it is well to remind them that this privilege must be exercised with prudence, when there are clearly lawful grounds, and only in the pursuit of truth and justice. This prerogative does not give them the right to institute shotgun charges with reckless abandon, or allow their disagreement to deteriorate into a puerile quarrel, not unlike that of two irresponsible children. Judge Angeles and SSP Velasco should bear in mind that they are high-ranking public officers whom the people look up to for zealous, conscientious and responsive public service. Name-calling hardly becomes them. Cognizant of the adverse impact and unpleasant consequences this continuing conflict will inflict on the public service, we find both officials wanting in the conduct demanded of public servants.

D E C I S I O N

NACHURA, *J.*:

Before this Court is yet another administrative case confronting respondent Adoracion G. Angeles (respondent), Presiding Judge of the Regional Trial Court (RTC), Branch 121, Caloocan City (sala) filed by the Office of the Court Administrator[1] (OCA) recommending that she be suspended pending the outcome of this administrative case.

The Facts

On July 17, 2006, the RTC, Branch 100, Quezon City rendered a Decision[2] in Criminal Case Nos. Q-97-69655-56 convicting respondent of violation of Republic Act (RA) No. 7610.[3] The

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[1] Then headed by retired Court Administrator Christopher O. Lock.

[2] *Rollo*, pp. 42-67.

[3] Otherwise known as "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination." Approved on June 17, 1992.

criminal cases are now on appeal before the Court of Appeals (CA).[4]

On July 25, 2006, Senior State Prosecutor Emmanuel Y. Velasco (SSP Velasco) of the Department of Justice (DOJ) wrote a letter[5] to then Chief Justice Artemio V. Panganiban inquiring whether it is possible for this Court, in the public interest, *motu proprio* to order the immediate suspension of the respondent in view of the aforementioned RTC Decision. SSP Velasco opined:

> 1. Judge Angeles now stands convicted on two counts of a crime, child abuse under Republic Act 7610, which involves moral turpitude. Until she clears her name of such conviction, her current moral qualification to do the work of a judge is under a dark cloud. Litigants seeking justice in our courts are entitled to a hearing by judges whose moral qualifications are not placed in serious doubt.
>
> 2. Although her conviction is not yet final, the presumption of innocence that Judge Angeles enjoyed during the pendency of the trial has already been overcome by its result. The presumption today is that she is guilty and must clear her name of the charges.
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>
> It simply would not be right to have a person presumably guilty of a crime involving moral turpitude to hear and adjudicate the cases of others.
>
> 3. Under Section 5 of Rule 114 of the Rules of Criminal Procedure, since the RTC of Quezon City convicted Judge Angeles of an offense not punishable by death, *reclusion perpetua* or life imprisonment, she no longer has a right to bail and, therefore, should ordinarily be held in prison pending adjudication of her appeal. That the RTC of Quezon City chose to exercise its discretionary power to nonetheless grant her bail does not change the fact that, except for the bail, Judge Angeles' rightful place by reason of conviction is within the confinement of prison.

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[4] Particularly docketed as CA-G.R. CR No. 30260; respondent's Appellant's Brief before the CA; *rollo*, pp. 78-156.

[5] *Id.* at 10-12.

It would seem incongruous for the Supreme Court to allow convicted felons out on bail to hear and adjudicate cases in its courts.

4. Finally, as a sitting judge who wields power over all persons appearing before her and has immeasurable influence within the judicial system as one of its members, Judge Angeles could definitely cause pressure to bear, not only on the members of the Court of Appeals and, possibly, the Supreme Court, but also on the Office of the Solicitor General that prosecutes her case on appeal. Only temporary suspension from official function, pending resolution of her case, will neutralize her judicial clout and clear the air of any kind of suspicion that justice is not going well in her case.

On July 27, 2006, the matter was referred to the OCA for comment and recommendation.[6]

On the basis of SSP Velasco's letter and by virtue of this Court's Resolution[7] dated March 31, 1981, the OCA submitted to this Court a Report[8] dated August 25, 2006 with an attached Administrative Complaint,[9] the dispositive portion of which reads as follows:

WHEREFORE, it is respectfully prayed that this administrative complaint be given due course and, respondent be ordered to file her Comment within ten (10) days from receipt. Considering the evidence is *prima facie* strong, it is respectfully recommended that she be **INDEFINITELY SUSPENDED** pending the outcome of the instant case or until further orders from this Court. It is further recommended that after the Comment is filed, the administrative proceeding be suspended to await the final outcome of the criminal cases filed against her.

In a Resolution[10] dated September 18, 2006, this Court's Second Division approved all of these recommendations, thus,

[6] Letter of Indorsement; *id.* at 9.

[7] Through said Resolution, the Court authorized the OCA, as a matter of public policy, to initiate *motu proprio* the filing of administrative proceedings against judges and/or employees of the inferior courts who have been convicted and/or charged before the Sandiganbayan or the courts.

[8] *Rollo*, pp. 1-5.

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

[10] *Id.* at 69.

suspending respondent from performing her judicial functions while awaiting the final resolution of her criminal cases or until further orders from this Court.

On October 6, 2006, respondent filed an Urgent Motion for Reconsideration[11] of the aforementioned Resolution. Respondent claimed that the suspension order was wielded against her without affording her the opportunity to be heard since she was not furnished copies of SSP Velasco's letter and OCA's Administrative Complaint. Thus, respondent submitted that her suspension is essentially unjust. Moreover, respondent manifested that the two criminal cases against her are on appeal before the CA and have, therefore, not yet attained finality. As such, respondent still enjoys the constitutional presumption of innocence and her suspension clashes with this presumption and is tantamount to a prejudgment of her guilt.

On the other hand, on October 11, 2006, SSP Velasco filed an Urgent Appeal/Manifestation[12] to the Court *En Banc* on the alleged unethical conduct of respondent, seeking the immediate implementation of this Court's Resolution dated September 18, 2006. On October 16, 2007, SSP Velasco filed an Opposition to the said Motion for Reconsideration,[13] manifesting that respondent continuously defied this Court's Resolution dated September 18, 2006 as she did not desist from performing her judicial functions despite her receipt of said Resolution on October 6, 2006. SSP Velasco stressed that an order of suspension issued by this Court is immediately executory notwithstanding the filing of a motion for reconsideration. Moreover, SSP Velasco reiterated that due to her conviction on two counts of child abuse, respondent no longer enjoys the constitutional presumption of innocence and should remain suspended in order to erase any suspicion that she is using her influence to obtain a favorable decision and in order to maintain and reaffirm the people's faith in the integrity of the judiciary.

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[11] *Id*. at 70-72.

[12] *Id*. at 217-220.

[13] *Id*. at 184-190.

Correlatively, the Integrated Bar of the Philippines-Caloocan, Malabon, Navotas Chapter (IBP-CALMANA Chapter), through its Public Relations Officer (PRO) Atty. Emiliano A. Mackay, wrote a letter[14] dated October 18, 2006 addressed to the Second Division of this Court inquiring as to the effectivity of the Resolution suspending the respondent so as not to sow confusion among the legal practitioners and party litigants with pending cases before the respondent's sala. Likewise, the IBP-CALMANA Chapter manifested that respondent did not cease to perform her judicial functions as evidenced by a Commitment Order[15] issued by respondent on October 16, 2006, and handwritten manifestations[16] of some party litigants attesting that on various dates they attended hearings before respondent's sala. In the same vein, in an undated letter[17] addressed to Associate Justice Angelina Sandoval-Gutierrez, the Concerned Trial Lawyers in the City of Caloocan raised the same concern before this Court.

In her Reply[18] to SSP Velasco's Opposition, respondent admitted that she continued discharging her bounden duties in utmost good faith after filing her motion for reconsideration. She averred that she did not have the slightest intention to defy or ignore this Court's Resolution which did not categorically state that the said suspension is immediately executory. Respondent reiterated her arguments against the suspension order on the grounds that she was deprived of due process; that her conviction is not yet final; and that the crimes for which she was convicted have nothing to do with the discharge of her official duties. Lastly, respondent claimed that the instant case is but another harassment suit filed against her by SSP Velasco because she earlier filed an administrative complaint against the latter for maliciously indicting respondent with respect to another case of child abuse.

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[14] *Id.* at 191-193.

[15] *Id.* at 207 (For Criminal Case No. C-71272).

[16] *Id.* at 208-213.

[17] *Id.* at 198.

[18] *Id.* at 199-202.

On October 25, 2006, respondent filed a Manifestation of Voluntary Inhibition[19] stating that she is voluntarily inhibiting from handling all cases scheduled for hearing before her *sala* from October 25, 2006 to November 13, 2006.

On October 27, 2006, the OCA conducted a judicial audit in respondent's sala. Per Report[20] of the judicial audit team, it was established that from October 6, 2006 to October 23, 2006, respondent conducted hearings, issued orders, decided cases and resolved motions, acting as if the order of suspension which the respondent received on October 6, 2006 was only a "mirage." The Report was brought to the attention of Chief Justice Reynato S. Puno by Court Administrator Christopher O. Lock (CA Lock).[21]

On October 30, 2006, SSP Velasco filed an Administrative Complaint against respondent for violation of the Court's Circulars, the New Code of Judicial Conduct, and the Civil Service Rules and Regulations, and for Gross Misconduct, asseverating, among others, that the suspension order was immediately executory[22] and that integrity as mandated by the New Code of Judicial Conduct is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

In her Comment,[23] respondent, in addition to her previous contentions, argued that the Resolution dated September 18, 2006 ordering her suspension was issued only by a Division of this Court contrary to Section 11, Article VIII of the Constitution, which provides that "*the Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon*."

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[19] *Id*. at 203.

[20] Dated January 3, 2007, conducted by Attys. Eduardo C. Tolentino and Eric S. Fortaleza.

[21] Memorandum dated January 3, 2007.

[22] Citing *Dr. Edgardo Alday v. Judge Escolastico Cruz*, 376 SCRA 12 (2002).

[23] Dated November 22, 2006.

On November 9, 2006, SSP Velasco filed a Supplement to the Opposition to Respondent's Urgent Motion for Reconsideration[24] of the Resolution dated September 18, 2006. Thereafter, numerous pleadings[25] were filed by both parties practically repeating their previous allegations.

Subsequently, in a Resolution dated February 19, 2007, this Court lifted the suspension of respondent on the ground that:

> Upon verification, it appears that the Office of the Clerk of Court, Second Division, indeed failed to attach a copy of the OCA complaint to the copy of our resolution dated September 18, 2006 sent to Judge Angeles. Due process requires that Judge Angeles be accorded the opportunity to answer the complaint.

Respondent was then given a fresh period of ten (10) days from the receipt of the OCA Administrative Complaint within which to file her comment.

On March 15, 2007, respondent filed her Comment[26] with the following material assertions: (1) that CA Lock as Court Administrator and who in behalf of the OCA stands as the complainant in this case, has no personal knowledge of the facts, issues and evidence presented in the criminal cases; (2) that the instant case, filed eleven (11) years after the criminal charges for child abuse were filed by Nancy Gaspar and Proclyn Pacay, smacks of malice and bad faith on the part of CA Lock; (3) that CA Lock is a friend and former subordinate of then National Bureau of Investigation (NBI) Director Epimaco Velasco (Director Velasco), father of herein party SSP Velasco, thus,

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[24] *Rollo*, pp. 225-233.

[25] Among these pleadings are: 1) Reply to the Supplement to the Opposition filed on November 13, 2006 by the respondent; (2) Reply to respondent's Comment dated November 22, 2006 filed by SSP Velasco on November 29, 2006; (3) Rejoinder filed by respondent on December 7, 2006; (4) Reply to Rejoinder filed by SSP Velasco on December 13, 2006; (5) Comment on the Reply to the Rejoinder filed by respondent on December 21, 2006; and (6) an Urgent *Ex-parte* Motion for Early Resolution filed by respondent on January 12, 2007.

[26] Dated March 14, 2007.

CA Lock's ill motive against respondent is clear; (4) that CA Lock should not use the OCA to harass a member of the judiciary; (5) that the decision in the aforementioned criminal cases has not yet become final; (6) that the acts for which she was convicted are totally alien to her official functions and have nothing to do with her fitness and competence as a judge; (7) that there is no wisdom in the imposition of the suspension which in this case is preventive in character because respondent cannot do anything through her office that could possibly cause prejudice to the prosecution of the child abuse case; (8) that the lifting of the suspension order retroacts to the date of its issuance; (9) that the instant case should be struck down because the judgment of conviction was contrary to law and jurisprudence; and (10) that under the circumstances, all the charges were merely concocted by respondent's detractors in order to embarrass, humiliate and vex her.

In his Motion for Reconsideration[27] of this Court's Resolution dated February 19, 2007, SSP Velasco argued that respondent's deprivation of her right to due process was cured when she filed her motion for the reconsideration of the suspension order; thus, there is no need to lift such order. He reiterated his previous statement that "*as a sitting judge who wields power over all persons appearing before her and thus has immeasurable influence within the judicial system as one of its members, Judge Angeles could definitely cause pressure to bear, not only on the members of the Court of Appeals and, possibly, the Supreme Court, but also on the Office of the Solicitor General (OSG) that prosecutes her case on appeal. Only her suspension from official function, pending resolution of her case, will neutralize her judicial clout and clear the air of any kind of suspicion that justice is not going well in her case.*"[28]

In response, respondent filed a Comment/Opposition to the said motion with a Motion to Declare SSP Velasco in contempt

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[27] Dated March 15, 2007.

[28] Citing Item No. 4 of SSP Velasco's letter to then Chief Justice Artemio V. Panganiban; *supra* note 5 and paragraph 12 of the instant motion (with minor modifications).

of Court[29] due to this aforementioned statement. Respondent argued that such statement betrays SSP Velasco's cheap and low perception of the integrity and independence of this Court, of the CA and of the OSG. It also shows his utter lack of respect for the judicial system. Moreover, respondent added that since she was not furnished a copy of the OCA Administrative Complaint, the issuance of the suspension order deprived her of her right to due process and prevented her from fully ventilating her arguments. Respondent, likewise, questioned SSP Velasco's legal personality in this case as it was the OCA which, *motu proprio*, initiated the filing of the said case.

In a Resolution dated July 4, 2007, this Court, among others, directed SSP Velasco to file his comment on respondent's motion to cite him for contempt. On August 21, 2007, SSP Velasco filed his Comment claiming that he has legal personality to file pleadings before this Court because it was he who initiated the filing of this case through his letter to then Chief Justice Artemio V. Panganiban on July 25, 2006. He admitted that the allegedly contemptuous statements were merely lifted from said letter. He argued that the former Chief Justice or the Court for that matter, did not find any contemptuous statement in the letter. Taking the letter in its entire context, SSP Velasco posited that he did not commit any act of disobedience to the orders of this Court; neither did he bring the Court's authority and the administration of law into disrepute nor did he impede the due administration of justice. Nowhere in the letter was it stated that this Court, the CA and the OSG could be pressured; the letter merely stated that respondent could cause pressure. SSP Velasco pointed that the letter to the then Chief Justice, in itself, shows his respect for the judiciary and the promotion of the administration of justice.

In her Reply[30] to said Comment, respondent argued that it cannot be said that somebody could cause pressure if no one is

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[29] Dated March 22, 2007.

[30] Dated August 24, 2007.

believed to be susceptible to pressure. Thus, the use of this kind of language tends to degrade the administration of justice and constitutes indirect contempt. She stressed that SSP Velasco's act of misrepresenting himself as the complainant in this case while it is clear from the Resolution of this Court that the OCA *motu proprio* filed the same, is *per se* contemptuous.

Meanwhile in its Memorandum,[31] the OCA reiterated its earlier position that respondent should be suspended pending the outcome of this administrative case. The OCA opined that the Resolution lifting the suspension order was basically premised on the ground that respondent was not accorded her right to due process. By filing her Comment raising arguments against her suspension, respondent has fully availed herself of such right. However, the OCA submitted that respondent's arguments are devoid of merit on the following grounds: (1) the Court Administrator need not personally know about the criminal cases of respondent because the instant case is based on a public document, *i.e.*, the decision of the RTC convicting the respondent of child abuse; (2) the fact that said decision has not attained finality is of no moment for what is being sought is merely preventive suspension. Thus, in the event that respondent is acquitted in the criminal cases of which she stands accused, she will receive the salaries and other benefits which she would not receive during her suspension; (3) even if the acts of child abuse have no connection with respondent's official functions as a judge, it is established that the private conduct of judges cannot be dissociated from their official functions; (4) respondent's preventive suspension shall serve an important purpose: it will protect the image of the judiciary and preserve the faith of the people in the same; and (5) citing the case of *Leonida Vistan v. Judge Ruben T. Nicolas*,[32] the RTC decision convicting

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[31] Dated August 7, 2007.

[32] Resolution for A.M. No. MTJ-87-79 dated February 21, 1991. Therein respondent Judge Ruben T. Nicolas was preventively suspended from office with respect to the charge of immorality, pending admission of the final report of the NBI and the final resolution of the administrative case against him. The Court held therein that preventive suspension may be imposed pending

respondent of child abuse is *prima facie* evidence that respondent committed the said crime which indicates the moral depravity of the offender and, as such, warrants the punishment of dismissal from the service. Thus, the OCA recommended that respondent be suspended pending the outcome of this administrative case and that the CA be directed to resolve the criminal cases with dispatch.

The Issues

There are two ultimate issues in this case:

First, whether or not grounds exist to cite SSP Velasco for indirect contempt of Court; and

Second, whether or not grounds exist to preventively suspend the respondent pending the resolution of this administrative case.

The Court's Ruling

We resolve the first issue in the negative.

In *Pilar Barredo-Fuentes v. Judge Romeo C. Albarracin*,[33] we held:

> Contempt of court is a defiance of the authority, justice or dignity of the court, such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties, litigant or their witnesses during litigation.
>
> There are two kinds of contempt punishable by law: direct contempt and indirect contempt. Direct contempt is committed when a person is guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an

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an investigation if the charge involves grave misconduct, or if there are reasons to believe that the respondent is guilty of the charges which would warrant his removal from the service (Presidential Decree No. 807, Sec. 41; 1987 Revised Administrative Code, Book V, Title I, Subtitle A, Chapter 6, Sec. 5). The Court added that immorality involves grave misconduct and the NBI finding is that there is *prima facie* proof that the charge is true.

[33] A.M. No. MTJ-05-1587, April 15, 2005, 456 SCRA 120, 130-131.

affidavit or deposition when lawfully required to do so. Indirect contempt or constructive contempt is that which is committed out of the presence of the court. Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice would constitute indirect contempt.

In her Comment/Opposition with Motion to Declare SSP Velasco in contempt of Court, respondent espoused the view that SSP Velasco is guilty of indirect contempt for using language which tends to degrade the administration of justice. But if this were so, respondent should have availed herself of the remedy in accordance with Section 4, Rule 71 of the Rules of Court, *viz*:

> SEC. 4. How proceedings commenced. — Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.
>
> **In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned . . .** (Emphasis supplied)

A charge of indirect contempt must be filed in the form of a verified petition if it is **not initiated directly by the court** against which the contemptuous act was committed. On previous occasions, we clarified that such petition is in the nature of a special civil action. Certified true copies of related documents must be submitted with the petition and appropriate docket fees must be paid. The requirement of a verified petition is mandatory. As Justice Florenz D. Regalado has explained:

> This new provision clarifies with a regulatory norm the proper procedure for commencing contempt proceedings. While such proceeding has been classified as a special civil action under the former Rules, the heterogeneous practice, tolerated by the courts, has been for any party to file a mere motion without paying any docket or lawful fees therefor and without complying with the

requirements for initiatory pleadings, which is now required in the second paragraph of [Section 4].[34]

On the charge of indirect contempt of court, we therefore find that SSP Velasco's statement, while irresponsible, did not necessarily degrade the administration of justice as to be considered contumacious. The salutary rule is that the power to punish for contempt must be exercised on the preservative, not vindictive principle, and on the corrective and not retaliatory idea of punishment. A lawyer's remarks explaining his position in a case under consideration do not necessarily assume the level of contempt that justifies the court's exercise of the power of contempt.[35] We note that SSP Velasco's statement was made in support of his argument for the imposition of preventive suspension, *i.e.,* to prevent the respondent from using her current position to alter the course of the investigation and the disposition of the appealed criminal cases.

Nevertheless, SSP Velasco must bear in mind that as a lawyer, he must be circumspect in his language. We remind him of our admonition to all lawyers to observe the following Canons of the Code of Professional Responsibility, which read:

Canon 8. Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

Canon 11. A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

A lawyer is an officer of the Court. It is a lawyer's sworn and moral duty to help build and not unnecessarily destroy the people's high esteem and regard for the courts so essential to the proper administration of justice. A lawyer's language may

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[34] *Sesbreño v. Igonia*, A.M. No. P-04-1791, January 27, 2006, 480 SCRA 243, 251-252, citing *Land Bank of the Phil. v. Listana, Sr.*, 455 Phil. 750 (2003), which further cited Justice Florenz D. Regalado as Vice-Chairperson of the Revision of the Rules of Court Committee that drafted the 1997 Rules of Civil Procedure.

[35] *Soriano v. Court of Appeals*, 416 Phil. 226, 253 (2001).

be forceful but should always be dignified; emphatic but respectful, as befitting an advocate. Arguments, whether written or oral, should be gracious to both court and opposing counsel, and should use such language as may be properly addressed by one person to another.[36]

We likewise resolve the second issue in the negative. The Court cannot fully agree with the recommendation of the OCA.

Pertinent is our ruling in *Emmanuel Ymson Velasco v. Judge Adoracion G. Angeles*,[37] which involved the same parties and where we held:

> An act unrelated to a judge's discharge of judicial functions may give rise to administrative liability even when such act constitutes a violation of penal law. When the issue is administrative liability, the quantum of proof required is only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. Evidence to support a conviction in a criminal case is not necessary, and the dismissal of the criminal case against the respondent in an administrative case is not a ground for the dismissal of the administrative case. **Conversely, conviction in the criminal case will not automatically warrant a finding of guilt in the administrative case.** We emphasize the well-settled rule that criminal and civil cases are altogether different from administrative matters, and each must be disposed of according to the facts and the law applicable to it.

In *Nuñez v. Atty. Arturo B. Astorga*,[38] the Court held that the mere existence of pending criminal charges against the respondent-lawyer cannot be a ground for disbarment or suspension of the latter. To hold otherwise would open the door to harassment of attorneys through the mere filing of numerous criminal cases against them.

By parity of reasoning, the fact of respondent's conviction by the RTC does not necessarily warrant her suspension. We

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[36] *Nuñez v. Astorga*, A.C. No. 6131, February 28, 2005, 452 SCRA 353, 364.

[37] A.M. No. RTJ-05-1908, August 15, 2007 (Emphasis supplied).

[38] *Supra* note 36, at 361-362.

agree with respondent's argument that since her conviction of the crime of child abuse is currently on appeal before the CA, the same has not yet attained finality. As such, she still enjoys the constitutional presumption of innocence. It must be remembered that the existence of a presumption indicating the guilt of the accused does not in itself destroy the constitutional presumption of innocence unless the inculpating presumption, together with all the evidence, or the lack of any evidence or explanation, proves the accused's guilt beyond a reasonable doubt. Until the accused's guilt is shown in this manner, the presumption of innocence continues.[39] In *Mangubat v. Sandiganbayan*,[40] the Court held that respondent Sandiganbayan did not act with grave abuse of discretion, correctible by *certiorari*, when it ruled that *despite her convictions*, "*Preagido has still in her favor the constitutional presumption of innocence . . . (and until) a promulgation of final conviction is made, this constitutional mandate prevails.*" The Court therein further held that such ruling is not bereft of legal or logical foundation and cannot, in any sense, be characterized as a whimsical or capricious exercise of judgment. So also must we hold in this case.

Moreover, it is established that any administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment.[41] As aforementioned, the filing of criminal cases against judges may be used as tools to harass them and may in the long run create adverse consequences. The OCA, as well as SSP Velasco, failed to prove that other than the fact that a judgment of conviction for child abuse was rendered against the respondent, which is still

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[39] *People of the Philippines v. Cesar Galvez*, G.R. No. 157221, March 30, 2007, citing *People v. Godoy*, 250 SCRA 676, 726-727 (1995) (Emphasis supplied).

[40] 227 Phil. 642, 646 (1986) (Emphasis supplied).

[41] *Emmanuel Ymson Velasco v. Judge Adoracion G. Angeles, supra* note 37, citing *Mataga v. Judge Rosete*, 440 SCRA 217 (2004).

on appeal, there are other lawful grounds to support the imposition of preventive suspension. Based on the foregoing disquisition, the Court is of the resolve that, while it is true that preventive suspension *pendente lite* does not violate the right of the accused to be presumed innocent as the same is not a penalty,[42] the rules on preventive suspension of judges, not having been expressly included in the Rules of Court, are amorphous at best.[43] Likewise, we consider respondent's argument that there is no urgency in imposing preventive suspension as the criminal cases are now before the CA, and that she cannot, by using her present position as an RTC Judge, do anything to influence the CA to render a decision in her favor. The issue of preventive suspension has also been rendered moot as the Court opted to resolve this administrative case.

However, even as we find that the OCA and SSP Velasco have not clearly and convincingly shown ample grounds to warrant the imposition of preventive suspension, we do note the use of offensive language in respondent's pleadings, not only against SSP Velasco but also against former CA Lock. To reiterate our previous ruling involving the respondent, her use of disrespectful language in her Comment is certainly below the standard expected of an officer of the court. The esteemed position of a magistrate of the law demands temperance, patience and courtesy both in conduct and in language.[44] Illustrative are the following statements: "CA Lock's hostile mindset and his superstar complex";[45] "In a frenzied display of arrogance and power";[46] "(CA Lock's)

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[42] *Gonzaga v. Sandiganbayan*, G.R. No. 96131, September 6, 1991, 201 SCRA 417, 422-423.

[43] *Office of the Court Administrator v. Judge Florentino V. Floro, Jr.*, A.M. No. RTJ-99-1460, A.M. No. 99-7-273-RTC and A.M. No. RTJ-06-1988, March 31, 2006, 486 SCRA 66, 144-145.

[44] *Emmanuel Ymson Velasco v. Judge Adoracion G. Angeles, supra* note 37, citing *Cua Shuk Yin v. Perello*, 474 SCRA 472 (2005).

[45] Comment, *supra* note 26, item no. 7.

[46] Referring to CA Lock when the same directed a team to conduct judicial audit in respondent's sala; *id.* item no. 8.

complaint is merely a pathetic echo of the findings of the trial court";[47] and "when (CA Lock) himself loses his objectivity and misuses the full powers of his Office to persecute the object of his fancy, then it is time for him to step down."[48] In the attempt to discredit CA Lock, respondent even dragged CA Lock's son into the controversy, to wit:

> It is noteworthy to mention that CA Lock's hostile attitude was aggravated by his embarrassment when the undersigned mentioned to him that she knew how he used his influence to secure a position for his son at the RTC Library of Pasay City which was then managed by Judge Priscilla Mijares. CA Lock had made sure that his son be assigned to the library to enable the latter to conveniently adjust his schedule in reviewing for the bar examination.

Neither was SSP Velasco spared. Of him, the respondent said: "A reading of the motion for reconsideration readily discloses that it is mainly anchored on SSP Velasco's malicious speculations about the guilt of the undersigned. *Speculations, especially those that emanate from the poisonous intentions of attention-seeking individuals, are no different from garbage that should be rejected outright*";[49] and "His *malicious insinuation* is no less than a revelation of his *warped mindset* that a person's position could cause pressure to bear among government officials. This brings forth a nagging question. *Did SSP Velasco use his position at the DOJ to 'cause pressure to bear' and obtain a favorable disposition of the administrative cases lodged against him by the undersigned? Is he afraid of his own ghost?*"[50]

It must be stressed again that, as a dispenser of justice, respondent should exercise judicial temperament at all times, avoiding vulgar and insulting language. She must maintain composure and equanimity. The judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions. This is the price that judges have to pay for accepting

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[47] *Id*. item no. 11.

[48] *Id*. item no. 37.

[49] Comment/Opposition, *supra* note 29, item no. 11 (Emphasis supplied).

[50] *Id*. item no. 14.

and occupying their exalted positions in the administration of justice.[51]

One final word. The parties herein have admitted in their various pleadings that they have filed numerous cases against each other. We do not begrudge them the prerogative to initiate charges against those who, in their opinion, may have wronged them. But it is well to remind them that this privilege must be exercised with prudence, when there are clearly lawful grounds, and only in the pursuit of truth and justice. This prerogative does not give them the right to institute shotgun charges with reckless abandon, or allow their disagreement to deteriorate into a puerile quarrel, not unlike that of two irresponsible children.

Judge Angeles and SSP Velasco should bear in mind that they are high-ranking public officers whom the people look up to for zealous, conscientious and responsive public service. Name-calling hardly becomes them.

Cognizant of the adverse impact and unpleasant consequences this continuing conflict will inflict on the public service, we find both officials wanting in the conduct demanded of public servants.

WHEREFORE, the instant administrative complaint is hereby *DISMISSED* for lack of merit. Nevertheless, respondent Adoracion G. Angeles, Presiding Judge of the Regional Trial Court of Caloocan City, Branch 121, is hereby *REPRIMANDED* for her use of intemperate language in her pleadings and is *STERNLY WARNED* that a repetition of the same or similar act shall merit a more severe sanction.

Senior State Prosecutor Emmanuel Y. Velasco of the Department of Justice is hereby WARNED that he should be more circumspect in the statements made in his pleadings and that a repetition of the same shall be dealt with more severely. The motion to cite him for contempt is *DENIED* for lack of merit.

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[51] *Re*: *Anonymous Complaint dated February 18, 2005 of a "Court Personnel" against Judge Francisco C. Gedorio, Jr., RTC, Branch 12, Ormoc City*, A.M. No. RTJ-05-1955, May 25, 2007.

The Court of Appeals is *DIRECTED* to resolve CA-G.R. CR No. 30260 involving respondent Judge Adoracion G. Angeles with dispatch.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. 07-8-207-MTC. January 31, 2008]

RE: JUDICIAL AUDIT CONDUCTED IN THE MUNICIPAL TRIAL COURT, ASUNCION, DAVAO DEL NORTE.

SYLLABUS

1. REMEDIAL LAW; 1985 RULES OF CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DUTY OF INVESTIGATING JUDGE AFTER CONCLUSION THEREOF; VIOLATED IN CASE AT BAR.— The audit team discovered two cases for preliminary investigation, docketed as Criminal Case Nos. 664 and 811, archived upon Orders dated May 27, 1998 and June 2, 1999, respectively, of then Acting Judge Justino G. Aventurado, now the Presiding Judge of the Regional Trial Court (RTC) of Tagum City, Davao del Norte, Branch 2. Instead of forwarding the records of the cases to the Provincial Prosecutor's Office, Judge Aventurado archived the cases on the ground that the accused in both cases could not be arrested. Indeed, Judge Aventurado should not have archived the two cases but should have forwarded their records to the Provincial Prosecutor's Office as ordained by the old rules.

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* In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 484 dated January 11, 2008.

2. ID.; ID.; ID.; ID.; ID.; PROPER PENALTY IN CASE AT BAR.— The OCA found that this is Judge Aventurado's *first offense*. Judge Aventurado also *immediately acknowledged his mistake* and *apologized*. Although the recommended penalty is the same amount of ₱5,000 fine we imposed in *Agcaoili v. Aquino*, an identical case as found by the OCA, we appreciate in favor of Judge Aventurado the fact that this is his first offense and that he immediately acknowledged his error and apologized. Thus, we reduce the fine to ₱2,000.

R E S O L U T I O N

QUISUMBING, *J.*:

Before the Court is a Report[1] dated August 14, 2007 of the Office of the Court Administrator (OCA) on the judicial audit of the Municipal Trial Court (MTC), Asuncion, Davao del Norte, conducted from May 8 to 20, 2006.

The audit team discovered two cases for preliminary investigation, docketed as Criminal Case Nos. 664[2] and 811,[3] archived upon Orders dated May 27, 1998[4] and June 2, 1999,[5] respectively, of then Acting Judge Justino G. Aventurado, now the Presiding Judge of the Regional Trial Court (RTC) of Tagum City, Davao del Norte, Branch 2. Instead of forwarding the records of the cases to the Provincial Prosecutor's Office, Judge Aventurado archived the cases on the ground that the accused in both cases could not be arrested.

On November 6, 2006, Deputy Court Administrator Reuben P. De La Cruz required Judge Aventurado to explain why he

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[1] *Rollo,* pp. 1-17.

[2] *Id*. at 20. *People of the Philippines v. Gilberto Corales Alias "Gilie,"* for frustrated murder.

[3] *Id*. at 23. *People of the Philippines v. Alias "Kadong/Anot/Bulhog" Palestina and Alias Windel Babagonio,* for robbery in an uninhabited house or public building.

[4] *Id*. at 21.

[5] *Id*. at 25.

archived Criminal Case Nos. 664 and 811 and to submit his orders relative to these two cases.[6]

In his Reply-Explanation[7] dated December 4, 2006, Judge Aventurado humbly apologized for his mistake in archiving Criminal Case No. 664. He said that he can hardly believe his error for he knows the jurisdiction of the MTC, he, having served as a prosecutor for eight years before his appointment as MTC judge. As regards Criminal Case No. 811, Judge Aventurado averred that he was probably misled by its title and the reference to Article 302 of the Revised Penal Code, violation of which is punishable by *prision correccional* in its medium and maximum periods. He maintained that his error was not malicious. He submitted copies of the orders of Judge Dorothy P. Montejo-Gonzaga of the MTC, Asuncion, Davao del Norte, forwarding the records of said cases to the Provincial Prosecutor's Office.[8]

Judge Aventurado prayed for consideration and said that his errors, out of the thousands of cases filed before him for preliminary investigation, showed that he is merely human. He stressed that his two errors did not cause damage to the government or the private complainants. He added that because the accused could not be arrested, the cases would likely be archived when eventually filed with the RTC.

In its report, the OCA found Judge Aventurado administratively liable, to wit:

> ALL THE ABOVE CONSIDERED, and considering that apparently this is Judge Aventurado's first offense, it is most respectfully recommended that he be **FINED FIVE THOUSAND PESOS (₱5,000.00)** for not having followed the regular procedure provided for by law and his apparent ignorance thereof, with a **WARNING** that the repetition of the same act will be dealt with more severely.[9]

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[6] *Id*. at 1.

[7] *Id*. at 18.

[8] *Id*. at 22, 26.

[9] *Id*. at 16-17.

The OCA stated that the Court, in similar infractions, found judges administratively liable and imposed appropriate penalties. The OCA first cited the case of *Castro v. Bartolome*,[10] where we emphasized the duty of the investigating judge after the preliminary investigation to transmit the entire records of the case to the prosecutor within ten (10) days, as mandated by the rules. There, we fined Judge Bartolome ₱20,000 for undue delay in transmitting the records of a case, a less serious charge under Section 9(1),[11] Rule 140 of the Rules of Court.

The OCA also cited *Agcaoili v. Aquino*,[12] where we imposed a fine of ₱5,000 on Judge Aquino for not following the regular procedure and his apparent ignorance thereof. We also stated therein that under the rules, it was Judge Aquino's duty to transmit the records of the case to the prosecutor within ten (10) days after the preliminary investigation. We said that there was no need to archive the case when the accused could not be served with the complaint.

In addition, the OCA called our attention to four other cases where the penalties we imposed varied from a fine of ₱2,000,[13] ₱20,000[14] and ₱40,000,[15] to suspension for three months without pay.[16]

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[10] A.M. No. MTJ-05-1589 (Formerly A.M. OCA IPI No. 03-1454-MTJ), April 26, 2005, 457 SCRA 13.

[11] SEC. 9. *Less Serious Charges*. — Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;

x x x x x x x x x

[12] A.M. No. MTJ-95-1051, October 21, 1996, 263 SCRA 403.

[13] *Ora v. Almajar*, A.M. No. MTJ-05-1599 (Formerly OCA I.P.I. No. 04-1569-MTJ), October 14, 2005, 473 SCRA 17, 24.

[14] *Gozun v. Gozum*, A.M. No. MTJ-00-1324 (Formerly OCA-I.P.I. No. 00-838-MTJ), October 5, 2005, 472 SCRA 49, 68.

[15] *In Re: Report on the Judicial and Financial Audit Conducted in the Municipal Trial Court in Cities, Koronadal City*, A.M. No. 02-9-233-MTCC, April 27, 2005, 457 SCRA 356, 375.

[16] *Loss of Court Exhibits at MTC-Dasmariñas, Cavite*, Adm. Matter. No. MTJ-03-1491 (Formerly A.M. No. 02-9-228-MTC), June 8, 2005, 459 SCRA 313, 331.

After a careful study of the facts of this case and the cases cited by the OCA, we agree with its finding that Judge Aventurado failed to follow the regular procedure in conducting the preliminary investigation in Criminal Case Nos. 664 and 811. Indeed, Judge Aventurado should not have archived the two cases but should have forwarded their records to the Provincial Prosecutor's Office as ordained by the old rules.[17]

We disagree, however, with the OCA's finding that Judge Aventurado is *apparently* ignorant of the rules on preliminary investigation. We cannot precipitately conclude that he is ignorant because he erred. At best, this point is a contested and unresolved factual issue. Note that Judge Aventurado said he was a prosecutor for eight years and he only erred twice in a thousand cases filed before him for preliminary investigation. On the other hand, the OCA did not specifically say in its evaluation that Judge Aventurado is ignorant of the rules on preliminary investigation, but stated in conclusion that he is apparently ignorant of said rules. Moreover, the OCA did not refute Judge Aventurado's statement.

As regards the penalty, the OCA was correct in not recommending a higher penalty such as the ₱20,000 fine we imposed in *Castro*

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[17] 1985 RULES OF CRIMINAL PROCEDURE, Rule 112, Sec. 5 (now 2000 RULES OF CRIMINAL PROCEDURE, Rule 112, Sec. 5).

SEC. 5. *Duty of investigating judge.* —Within ten (10) days after the conclusion of the preliminary investigation, the investigating judge shall transmit to the provincial or city fiscal, for appropriate action, the resolution of the case, stating briefly the findings of facts and the law supporting his action, together with the entire records of the case, which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused; (d) the order of release of the accused and cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

Should the provincial or city fiscal disagree with the findings of the investigating judge on the existence of probable cause, the fiscal's ruling shall prevail, but he must explain his action in writing furnishing the parties with copies of his resolution, not later than thirty (30) days from receipt of the records from the judge. If the accused is detained, the fiscal shall order his release.

v. Bartolome.[18] Compared to *Castro,* we note that Judge Aventurado did not insist that there was no need to forward to the prosecutor the transcript or records of the preliminary investigation which would have shown his utter unfamiliarity with the rules. We also note that unlike in *Castro*, Judge Aventurado has not been previously fined for gross ignorance of the law, nor reprimanded for making untruthful statements in defending himself in an administrative case. On the contrary, the OCA found that this is Judge Aventurado's *first offense*. Judge Aventurado also *immediately acknowledged his mistake* and *apologized*.

In one case,[19] we have considered exactly the same circumstances to mitigate the culpability of an employee of the judiciary who was found guilty of dishonesty, a grave offense that carries the extreme penalty of dismissal from the service. Instead, we only suspended her for three months without pay.

In this case, we also find proper to temper the penalty recommended by the OCA. Although the recommended penalty is the same amount of fine we imposed in *Agcaoili v. Aquino*,[20] an identical case as found by the OCA, we appreciate in favor of Judge Aventurado the fact that this is his first offense and that he immediately acknowledged his error and apologized. Thus, we reduce the fine to ₱2,000.

In *Ora v. Almajar*,[21] one of the four other cases cited by the OCA, we accepted the OCA's recommendation to impose a fine of ₱2,000 for Judge Almajar's ignorance of the rules on preliminary investigation. In said case, Judge Almajar was found to have issued a warrant of arrest on mere non-appearance of the accused on the first date of the preliminary investigation, and even disregarded the rule that a warrant of arrest may be

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[18] *Supra* note 10.

[19] *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.

[20] *Supra* note 12.

[21] *Supra* note 13.

issued only after examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers.

Finally, the warning that *the repetition of the same act will be dealt with more severely* is inappropriate since A.M. No. 05-8-26-SC, effective October 3, 2005, had removed the conduct of preliminary investigation from judges of the first level courts. Moreover, Judge Aventurado cannot possibly commit the same act since he is now an RTC judge.

WHEREFORE, Judge Justino G. Aventurado, now Presiding Judge of the Regional Trial Court, Branch 2, Tagum City, Davao del Norte, is *FINED* two thousand pesos (₱2,000), for failure to follow the rules on preliminary investigation then in force.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

THIRD DIVISION

[A.M. No. P-06-2280. January 31, 2008]
(Formerly AM No. OCA IPI No. 06-2457-P)

ELLEN BELARMINO LOPENA, *complainant, vs.* **MARY JANE L. SALOMA, Clerk of Court IV, Metropolitan Trial Court, Marikina City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; LOAFING; ALLEGED OFF-SETTING OF TARDINESS/ABSENCE BY WORKING EQUIVALENT NUMBER OF HOURS BEYOND REGULAR WORKING HOURS OR WORKING ANOTHER DAY, NOT

APPRECIATED IN CASE AT BAR.— The infractions committed by respondent constitute *loafing*, which is defined as "unauthorized absences from duty during regular hours," with the word "frequent" connoting that the employees absent themselves from duty more than once. It constitutes inefficiency and dereliction of duty which adversely affects the prompt delivery of justice. Respondent claims that she often goes back to work, even after office hours, after attending the hearings of her personal cases. Such claim cannot exculpate her from liability, as the practice of off-setting tardiness or absence, by working for an equivalent number of minutes or hours beyond the regular or approved working hours of the employee concerned is not allowed under the Civil Service Rules. For her June 20, 2006 half-day, respondent likewise claims that it was an off-set of her June 17, 2006 duty which is a Saturday. Said off-set does not comply with Administrative Circular No. 2-99, Section I(B) which provides that an employee assigned to work on Saturday shall have a full day-off the following week, on a day to be specified by the judge concerned. The said provision does not provide for off-sets of half-days; neither did respondent show that her Saturday duty was with the prior approval of the Executive Judge; thus, the same cannot be considered excused.

2. ID.; ID.; ID.; ABSENCE DURING OFFICE HOURS WITH ALLEGED PERMISSION OF JUDGE NOT APPRECIATED IN THE ABSENCE OF EVIDENTIARY DOCUMENT.— Her claim that her absence during office hours on May 17 and 24, 2006 was with the permission of the Executive Judge is also not worthy of merit because not only did she fail to present any document to substantiate such claim, the Executive Judge's permission, even if it was truly given in this case, is insufficient. The rules require that when the head of office, in the exercise of his discretion, allows a government employee to leave the office during office hours and not for official business, the same shall be reflected in the employee's time card and charged to his leave credits. Respondent should have applied for the proper leave with the OCA with the indorsement of the Executive Judge, and such absence during office hours should have been reflected in her time card and charged to her leave credits. Mere permission from the Executive Judge would not suffice.

3. ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; LOAFING AND FREQUENT UNAUTHORIZED ABSENCES OR TARDINESS IN REPORTING FOR DUTY; PENALTY FOR FIRST OFFENSE; PROPER PENALTY IN CASE AT BAR.— Under the premises, it is clear that respondent is liable for loafing or frequent unauthorized absences from duty during regular office hours, which offense, together with frequent unauthorized absences or tardiness in reporting for duty, is punishable by suspension for six months and one day to one year for the first offense following Rule IV Section 52 A(17) of the Uniform Rules on Administrative Cases in the Civil Service or CSC Memorandum Circular No. 19-99. Respondent's nomination as Most Outstanding Clerk of Court in the First Level Courts does not give her a privileged status so as to consider it as a mitigating circumstance. Considering however that this is respondent's first infraction in her 24 years of service in the judiciary, the Court finds that the mitigated penalty of suspension for three months with severe warning to be sufficient. The Court has made clear that while it is its duty to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy; for when an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.

4. ID.; ID.; COURT EMPLOYEES; OBSERVANCE OF PRESCRIBED OFFICE HOURS FOR PUBLIC SERVICE, HIGHLIGHTED.— Respondent is reminded that all judicial employees must devote their official time to government service. Public officials and employees must see to it that they follow the Civil Service Law and Rules. Consequently, they must observe the prescribed office hours and the efficient use of every moment thereof for public service if only to recompense the government and ultimately the people who shoulder the cost of maintaining the judiciary. To inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. This is because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women

who work thereat, from the judge to the last and lowest of its employees. Thus, court employees must exercise at all times a high degree of professionalism and responsibility, as service in the judiciary is not only a duty; it is a mission.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

Before this Court is a complaint filed by Ellen Belarmino Lopena (complainant) against Mary Jane L. Saloma, Clerk of Court IV (respondent) of the Metropolitan Trial Court (MeTC) Marikina City for dishonesty and misrepresentation.[1]

Complainant alleges that respondent represents herself as a lawyer when the truth is that she is not; that respondent is arrogant, quarrelsome and displays unethical behavior improper for a court employee; and that respondent, who filed several cases before the *barangay* and the Office of the Prosecutor, attends hearings during office hours.[2]

Respondent denies the allegations against her and claims that the complaint is false, malicious and is only meant to harass her.[3] She avers that she has served the judiciary in various capacities[4] and her recent nomination as Most Outstanding Clerk of Court of the First Level Courts would show her worth as a court employee. She explains that the misunderstanding between her and complainant started with the dispute over the titling of their respective properties. After the surveyor found that respondent was the actual occupant of the property, respondent tried to make peace with complainant's family; however, complainant shouted expletives at her in front of their neighbors, prompting respondent to file civil and criminal cases against

[1] *Rollo*, pp. 5-6.

[2] *Rollo*, pp. 5-6.

[3] *Id*. at 17, 21.

[4] As Stenographic Reporter III with RTC Makati; Executive Assistant under three Justices of the Court of Appeals; and a staff of Justice Presbitero Velasco at the Office of the Court Administrator, *id*. at 16.

her. In the process, respondent incurred absences and asked to be excused temporarily in order to be able to attend hearings. She reports to the office on Saturdays in order to be able to attend the hearings at the *barangay* and the prosecutor's office during weekdays. There are times when she goes back to the office after office hours especially when she has to prepare monthly collection reports. Most of the time, however, the hearings at the *barangay* were done at night.[5]

On October 13, 2006, the Office of the Court Administrator (OCA) submitted its report finding that a formal investigation is needed to determine (1) the veracity of complainant's allegations that respondent utilized official time to attend hearings in the *barangay*, and (2) whether respondent was authorized pursuant to Administrative Circular No. 2-99 dated January 15, 1999 to report for work during Saturdays and take her day off on week days.[6] The OCA explained that the investigation should be limited to the determination of these two issues, as there is no cogent proof supporting complainant's other allegations.[7]

In a Resolution dated December 4, 2006, the Court referred the complaint to the Executive Judge of the Regional Trial Court (RTC) of Marikina City for investigation, report and recommendation and directed her to resolve the two issues aforestated.[8]

Executive Judge Geraldine C. Fiel-Macaraig submitted her Report dated June 26, 2007, finding the following undisputed facts: at the hearing before the *barangay* on January 17, 2006, respondent left her office at 2:00 p.m. to attend the selection of the *Lupong Tagapamayapa* and returned to the office after she found out that the selection did not push through. However, respondent failed to present her time card to show that she indeed returned to her office. At the hearings on March 29 and

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[5] *Supra* note 3.

[6] *Rollo*, p. 2.

[7] *Id*. at 184.

[8] *Id*. at 61.

May 3, 2006, both set for 2:00 p.m. before the Office of the Prosecutor of Taguig, respondent attended the same *but* claims to have returned to her office right away without, however, showing her time cards. With respect to the hearings on May 17 and 24, 2006, set at 9:30 a.m. at the Office of the Prosecutor, respondent admitted having attended the same but claims that she asked permission from the Executive Judge, and that she returned to her office after the hearing. Respondent again did not submit her time card; neither did she submit a certification from the Executive Judge to support her claim. On June 6 and 20, 2006, respondent claims that she went on half-day; however, it was not shown that she filed the appropriate application for leave. As for her June 20, 2006 half-day, respondent claims that it was an off-set for the duty she rendered in the afternoon of June 17, 2006, which is a Saturday; yet, there is nothing to show that there was prior approval from the Executive Judge before she rendered the half-day.[9]

Judge Macaraig concluded that respondent is liable for unauthorized half-day off and unauthorized absences from the office on those days when she attended hearings during office hours without the corresponding authority from the Executive Judge. She qualified, however, that since respondent's absences were only few and far between, the same cannot be considered as Frequent Unauthorized Absences. She recommended that respondent be meted the penalty of reprimand or fine, or suspension from one day to ten days for utilizing official time to attend the hearings of her personal cases.[10]

In a Resolution dated July 30, 2007, the Court referred the report of Judge Macaraig to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

In the Memorandum dated October 24, 2007, the OCA agreed with the findings of the investigating judge that respondent utilized official time to attend hearings for her personal cases before the *barangay* and the Office of the City Prosecutor in Taguig.

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[9] *Rollo*, pp. 97, 146-147.

[10] *Id.* at 148.

The OCA found that following Rule IV of Civil Service Commission (CSC) Memorandum Circular No. 19-99, respondent is guilty of the grave offense of loafing or frequent unauthorized absences from duty during regular office hours, which is punishable for first offenders by suspension from six months and one day to one year. The OCA also found that respondent has a long record of satisfactory service in the judiciary, and that this is her first administrative offense. Thus, the OCA recommended that she be suspended from the service for three months.[11]

The Court agrees with the OCA's findings and recommended penalty.

The infractions committed by respondent constitute *loafing*, which is defined as "unauthorized absences from duty during regular hours," with the word "frequent" connoting that the employees absent themselves from duty more than once. It constitutes inefficiency and dereliction of duty which adversely affects the prompt delivery of justice.[12]

Respondent claims that she often goes back to work, even after office hours, after attending the hearings of her personal cases.[13] Such claim cannot exculpate her from liability, as the practice of off-setting tardiness or absence, by working for an equivalent number of minutes or hours beyond the regular or approved working hours of the employee concerned is not allowed under the Civil Service Rules.[14]

Her claim that her absence during office hours on May 17 and 24, 2006 was with the permission of the Executive Judge

[11] *Rollo*, pp. 187-188.

[12] *Anonymous v. Grande*, A.M. No. P-06-2114, December 5, 2006, 509 SCRA 495, 501; See also *Dipolog v. Montealto*, A.M. No. P-04-1901, November 23, 2004, 443 SCRA 465, 476.

[13] *Rollo*, p. 21.

[14] Section 9, Rule XVII of the Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws provides:

SEC. 9. Off-setting of tardiness or absence by working for an equivalent number of minutes or hours by which an officer or employee has been tardy or absent, beyond the regular or approved working hours of the employees concerned, shall not be allowed.

is also not worthy of merit because not only did she fail to present any document to substantiate such claim, the Executive Judge's permission, even if it was truly given in this case, is insufficient. The rules require that when the head of office, in the exercise of his discretion, allows a government employee to leave the office during office hours and not for official business, the same shall be reflected in the employee's time card and charged to his leave credits.[15] Respondent should have applied for the proper leave with the OCA with the indorsement of the Executive Judge, and such absence during office hours should have been reflected in her time card and charged to her leave credits. Mere permission from the Executive Judge would not suffice.

For her June 20, 2006 half-day, respondent likewise claims that it was an off-set of her June 17, 2006 duty which is a Saturday. Said off-set does not comply with Administrative Circular No. 2-99, Section I(B) which provides that an employee assigned to work on Saturday shall have a full day-off the following week, on a day to be specified by the judge concerned.[16] The said provision does not provide for off-sets of half-days; neither did respondent show that her Saturday duty was with the prior approval of the Executive Judge; thus, the same cannot be considered excused.

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[15] Section 1, Rule XVII of the Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws provides:

SECTION 1. It shall be the duty of each head of the department or agency to require all officers and employees under him to strictly observe the prescribed office hours. When the head of office, in the exercise of his discretion allows government officials and employees to leave the office during office hours and not for official business, but to attend social events/functions and/or wakes/interments, the same shall be reflected in their time cards and charged to their leave credits.

[16] Sec. I(B) reads:

"B. Court offices (*e.g.* Office of the Clerk of Court) and units which deal directly with the public, such as receiving, process-serving and cashier's units, shall maintain a skeletal force on Saturdays from 8:00 a.m. to noon, and from 12:30 p.m. to 4:30 p.m. Those assigned to work on Saturdays shall be notified of their assignment at least three days in advance. An employee so assigned shall have a full day-off the following week, on a day to be specified by the Justice/Judge concerned."

Under the premises, it is clear that respondent is liable for loafing or frequent unauthorized absences from duty during regular office hours, which offense, together with frequent unauthorized absences or tardiness in reporting for duty, is punishable by suspension for six months and one day to one year for the first offense following Rule IV Section 52 A(17) of the Uniform Rules on Administrative Cases in the Civil Service or CSC Memorandum Circular No. 19-99.[17]

Respondent's nomination as Most Outstanding Clerk of Court in the First Level Courts does not give her a privileged status so as to consider it as a mitigating circumstance. Considering however that this is respondent's first infraction in her 24 years of service in the judiciary, the Court finds that the mitigated penalty of suspension for three months with severe warning to be sufficient.[18]

The Court has made clear that while it is its duty to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy; for when an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[19]

Respondent is reminded that all judicial employees must devote their official time to government service.[20] Public officials and employees must see to it that they follow the Civil Service Law and Rules. Consequently, they must observe the prescribed office hours and the efficient use of every moment thereof for public

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[17] See *Dipolog v. Montealto, supra* note 12, at 474-475.

[18] See *Concerned Litigants v. Araya*, A.M. No. P-05-1960, January 26, 2007, 513 SCRA 9.

[19] *Id.* at 23.

[20] *Re: Findings of Irregularity on the Bundy Cards of Personnel of the Regional Trial Court, Branch 26 and Municipal Trial Court, Medina, Misamis Oriental,* A.M. No. 04-11-671-RTC, October 14, 2005, 473 SCRA 1, 12; *Anonymous v. Grande*, *supra* note 12.

service if only to recompense the government and ultimately the people who shoulder the cost of maintaining the judiciary. To inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time.[21] This is because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the last and lowest of its employees. Thus, court employees must exercise at all times a high degree of professionalism and responsibility, as service in the judiciary is not only a duty; it is a mission.[22]

WHEREFORE, the Court finds Mary Jane L. Saloma, Clerk of Court IV, Metropolitan Trial Court, Marikina City, guilty of loafing or frequent unauthorized absences from duty during regular office hours and is meted the penalty of *SUSPENSION* for three (3) months without pay with *WARNING* that a repetition of the same or similar act in the future shall be dealt with more severely.

SO ORDERED.

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

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[21] *Re: Habitual Tardiness of Ms. Adelaida E. Sayam, Clerk III, RTC, Br. 5, Cebu City*, AM No. P-04-1868, February 15, 2007, 516 SCRA 1, 4.

[22] *Anonymous v. Grande*, *supra* note 12.

* In lieu of Justice Minita Chico-Nazario, per Special Order No. 484, dated January 11, 2008.

SECOND DIVISION

[A.M. No. P-08-2418. January 31, 2008]
(Formerly A.M. O.C.A. IPI No. 05-2152-P)

FERDINAND S. BASCOS, *complainant, vs.* **ATTY. RAYMUNDO A. RAMIREZ, Clerk of Court, Regional Trial Court of Ilagan, Isabela,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; P.D. No. 1079 ON PUBLICATION OF JUDICIAL NOTICES, *ETC.*; DISCUSSED.— Supreme Court Circular No. 5-98 dated January 12, 1998 directs all executive judges and other court personnel to **strictly comply** with the provisions of P.D. No. 1079, "REVISING AND CONSOLIDATING ALL LAWS AND DECREES REGULATING PUBLICATION OF JUDICIAL NOTICES, ADVERTISEMENTS FOR PUBLIC BIDDINGS, NOTICES OF AUCTION SALES AND OTHER SIMILAR NOTICES," in the publication of notices under Act No. 3135, judicial notices, notices in special proceedings, court orders and summonses and all similar announcements required by law to be published. Executive judges are required under the P.D. to distribute those notices **by raffle** for publication to qualified newspapers or periodicals, such raffle to be conducted **personally** by the executive judge after designating a regular working day and a **definite** time each week for such purpose. Failure to follow this procedure is punishable by a fine of not less than five thousand pesos (₱5,000) nor more than twenty thousand pesos (₱20,000) and imprisonment for not less than (6) months nor more than two (2) years. In addition, the offending executive judge or court personnel is perpetually disqualified from holding any public office in the government. The stringent provisions of P.D. No. 1079 were intended to prevent unfair competition, meant ultimately for the protection of the press. On the other hand, this Court's *En Banc* Resolution No. A.M. 01-01-07-SC dated October 16, 2001 provides for uniform and comprehensive guidelines in the accreditation of newspapers and other periodicals seeking to publish the notices mentioned in P.D. No. 1079 and Circular 5-98 dated January 12, 1998.

2. ID.; ID.; ID.; VIOLATION THEREOF IS NEGLECT OF DUTY; CASE AT BAR.— Evidently, the language and tenor of the aforecited authorities show that the distribution of notices for publication by raffle is mandatory and cannot be dispensed with. By failing to include **more than twenty** foreclosure cases in the raffle, respondent showed a blatant disregard for the procedure enjoined by P.D. No. 1079 and by this Court. Respondent, as a lawyer and an employee of the court, ought to know the requirements in and the importance of distributing notices for publication. And he is expected to keep his own record of the applications for extra-judicial foreclosure and the minutes of the raffle thereof so he can effectively assist the judge in the performance of his functions. It is incumbent upon him to help the judge devise an efficient recording and filing system in the court so that no disorderliness can affect the flow of cases, particularly foreclosure cases, and their speedy disposition. That all efforts should be addressed towards maintaining public confidence in the courts can never be overemphasized. Respondent's failure to heed the mandate of the law and Supreme Court directives constitutes unjustified and neglectful conduct prejudicial to the best interest of the judicial system and the public, and signifies inefficiency and incompetence in the performance of official duties. As a member of the bar, respondent is, moreover, charged with the duty to obey the laws of the land and promote respect for law and legal processes.

3. ID.; ID.; ID.; ID.; AGGRAVATED IN CASE AT BAR BY ACTS OF INSUBORDINATION TOWARDS A SUPERIOR AND VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— That respondent has up to now failed to submit to the Executive Judge copies of all applications for extra-judicial foreclosure from December 2002 up to February 27, 2003, even as he ignored the Executive Judge's earlier directive for him to comment on complainant's above-stated letter dated January 31, 2003, reveals an obstinate refusal to perform his official duty and to comply with a direct order of a superior. This Court will not countenance such outright insubordination. On the **more than twenty** instances that respondent failed to include in the raffle the notices for publication, respondent displayed on each occasion dereliction and gross neglect of duty, aggravated by acts of insubordination

towards a superior and violation of the Code of Professional Responsibility.

D E C I S I O N

CARPIO MORALES, *J.*:

By a sworn letter-complaint dated November 25, 2004[1] filed with the Office of the Court Administrator (OCA), Ferdinand S. Bascos (complainant) charges Atty. Raymundo A. Ramirez (respondent), Clerk of Court and *Ex-officio* Provincial Sheriff, Regional Trial Court (RTC), Ilagan, Isabela, with neglect of duty, arrogance and willful and deliberate violation of circulars of this Court in relation to Presidential Decree (P.D.) No. 1079,[2] and for several attempts at extortion.

Complainant, manager of the local community newspaper *The Valley Times*, reported, by letter of January 31, 2003,[3] to the then Executive Judge Juan A. Bigornia, Jr. of the RTC of Ilagan, Isabela that respondent failed to follow the judge's verbal order to designate a day of the week for the raffling of judicial and extra-judicial notices and other court processes requiring publication; and respondent was partial to another newspaper, the *Isabela Profile*, when he awarded to it 13 of the 14 notices of extra-judicial foreclosure filed by the Home Development Mutual Fund (Pag-ibig Fund) without the benefit of raffle and the requisite notices to the public.

Judge Bigornia thereupon ordered respondent, by 1st Indorsement of February 3, 2003,[4] to submit in five days his comments on complainant's letter within five days from receipt. Respondent failed to comply, however, drawing the judge to send him a letter dated February 27, 2003 directing him to submit the following:

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

[2] Dated January 28, 1977.

[3] *Rollo*, p. 5.

[4] *Id.* at 6.

1. Copies of the application for Extra-Judicial Foreclosures [*sic*] together with the docket number from December, 2002 to date;

2. To whom among the Deputy Sheriffs of this Court were these applications for extra-judicial foreclosure raffled respectively; and

3. The name of the newspaper to whom these notices were sent for publication.

notifying him that:

From hereon, application for judicial foreclosure either by Notary Public or by the Sheriff shall be raffled to the different Deputy Sheriffs under my direction. The Deputy Sheriffs of this Court, in turn, shall raffle the notices for publication to the accredited newspaper under my direction.

and warning him that

Any violation of this directive shall be dealt with severely.[5]

Respondent never complied with the judge's directives, however.[6]

On June 24, 2003 complainant filed a petition in the RTC of Ilagan[7] for the disqualification of the *Isabela Profile* from participating in the raffle of notices requiring publication on the main ground that it had no editorial and business offices in Santiago City or in the province of Isabela, its principal address being in Cabanatuan City. On complainant's manifestation and motion made in open court, however, the petition was dismissed.[8]

In the complaint at bar,[9] complainant explains that he had to withdraw his petition for the disqualification of the *Isabela Profile* because said newspaper's application for accreditation was

[5] *Id.* at 7.

[6] *Id.* at 68.

[7] *Id.* at 42-43.

[8] *Id.* at 67.

[9] *Vide* note 1.

approved *ex-parte*. He alleges that the approval of the application was facilitated by respondent by not setting it for hearing nor furnishing complainant with a copy of the application, thereby denying him the opportunity to oppose and prove that *Isabela Profile* had no editorial and business offices in the province.

Complainant further alleges that respondent concealed from Judge Bigornia several judicial and extra-judicial foreclosure cases requiring publication and that, as shown by the attachments to his letter-complaint, respondent did not include in the raffle more than twenty (20) foreclosure cases filed by the Pag-big Fund, the publication of notices of which respondent subsequently awarded to the *Isabela Profile*.

Complainant goes on to allege that respondent demanded from him exorbitant commissions in exchange for the right to publish extra-judicial foreclosure cases, and when he refused, respondent awarded the right to publish to the *Isabela Profile*, again without a raffle.[10]

Complainant thus prayed that respondent be directed to forward to the OCA for examination the records of the application for accreditation filed by the *Isabela Profile* and that he be meted the appropriate sanctions and penalties for his questioned acts.

By Comment dated April 25, 2005,[11] respondent, in compliance with the OCA's 1st Indorsement dated March 30, 2005,[12] denied the allegations of complainant, claiming that he was merely a victim of the business rivalry between complainant and the *Isabela Profile*. Specifically, he claimed that complainant's charge of partiality towards the *Isabela Profile* is a product of "wild imagination"; the allegation that he concealed from Judge Bigornia several extra-judicial foreclosure cases is "too malicious and sweeping a statement" and the Judge is not naïve as not to notice the same if it were true and there would have been complaints of undue delay or late publication of foreclosure

[10] *Rollo*, p. 69.

[11] *Id.* at 45-58.

[12] *Id*. at 44.

cases; with respect to the charge that he failed to conduct a raffle of the more than 20 foreclosure cases which were all awarded and published by *Isabela Profile,* he merely complied with the Judge's order excluding him from participating "in the publication of foreclosure" cases; and that the charge of extortion is "a blatant lie" and was unsubstantiated.

In fine, respondent claimed that "[i]f all the foregoing allegations were true, why is this case not filed against the Executive Judge of the Regional Trial Courts of Ilagan instead of against the Clerk of Court, since the facts of this case fits squarely with that case filed by the same complainant against Honorable Fe Albano-Madrid, Executive Judge of the Regional Trial Courts of Santiago City?"[13] and "if I am really arrogant, then all the lawyers in the Hall of Justice at Ilagan, Isabela are all arrogant, because it is the humble belief of the herein respondent he is the most friendly and approachable lawyer in all his dealings, especially towards the litigating public. If there were cases filed in which the respondent had been a party, he was rather more of a victim than an aggressor."[14]

After due evaluation, the OCA, by report dated July 18, 2005,[15] finds respondent's defenses untenable and recommends that he be fined ₱2,000.00, with warning that similar infractions in the future will be dealt with more severely. Observes the Court Administrator:

> x x x [Respondent] could have right away proved that "Valley Times" was actually given publication awards by merely attaching the minutes of the raffle. His contention that he faithfully complied with the Executive Judge's Order limiting his responsibility to the raffling of petitions to the Deputy Sheriffs and that it is for this reason that the notices published in the "Isabela Profile" x x x bear the names of the Deputy Sheriffs is likewise unacceptable. The "Isabela Profile" issue containing the questioned foreclosure cases covers the period January 8-14, 2003. On the other hand, the directive of the Executive

[13] *Id*. at 54.

[14] *Id*. at 56.

[15] *Id*. at 68-71.

Judge laying down the new procedure in raffling of cases requiring publication was issued only on 27 February 2003.

x x x x x x x x x

The documents which the respondent were to submit pertain to all the applications for Extra-Judicial Foreclosures received from December 2002 to 27 February 2003, the names of the Deputy Sheriffs to whom the applications were forwarded and the name of the newspaper to whom the notices were sent for publication. This only shows that the **acts complained of have not yet been cleared and settled with the Executive Judge**. Otherwise there would be no more reason for the examination of the aforesaid documents.

Moreover, the respondent could have right away disproved the above allegations by simply attaching an affidavit executed by the executive judge to give light on the matter.

For the above reasons, **this Office is convinced that the respondent did not include the more than twenty (20) foreclosure cases in the raffle**.[16] (Emphasis added)

This Court finds the observations of the OCA well taken. But not its recommendation.

Supreme Court Circular No. 5-98 dated January 12, 1998[17] directs all executive judges and other court personnel to **strictly comply** with the provisions of P.D. No. 1079, "REVISING AND CONSOLIDATING ALL LAWS AND DECREES REGULATING PUBLICATION OF JUDICIAL NOTICES, ADVERTISEMENTS FOR PUBLIC BIDDINGS, NOTICES OF AUCTION SALES AND OTHER SIMILAR NOTICES,"[18] in the publication of notices under Act No. 3135, judicial notices, notices in special proceedings, court orders and summonses and all similar announcements required by law to be published.

Executive judges are required under the P.D. to distribute those notices **by raffle** for publication to qualified newspapers

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[16] *Id*. at 70.

[17] "REQUIREMENTS FOR THE PUBLICATION OF JUDICIAL NOTICES AND OTHER SIMILAR ANNOUNCEMENTS."

[18] *Vide* note 2.

or periodicals, such raffle to be conducted **personally** by the executive judge after designating a regular working day and a **definite** time each week for such purpose.[19] Failure to follow this procedure is punishable by a fine of not less than five thousand pesos (₱5,000) nor more than twenty thousand pesos (₱20,000) and imprisonment for not less than (6) months nor more than two (2) years. In addition, the offending executive

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[19] The pertinent portions of Circular No. 5-98 state that:

To forestall complaints from publishers of newspapers relative to the participation of publications not qualified to publish judicial notices and other similar announcements in the distribution by raffle of the said notices and to prevent the commission of any irregularity, unnecessary commercialism and unfair competition among community newspapers, all Executive Judges concerned should **strictly comply** with the following provisions of Presidential Decree No. 1079 (1977):

1. SECTION 1. All notices of auction sales in extra-judicial foreclosure of real estate mortgage under Act No. 3135, as amended, judicial notices such as notices of sale on execution of real properties, notices in special proceedings, court orders and summonses and all similar announcements arising from court litigation required by law to be published in a newspaper or periodical of general circulation in particular provinces and/or cities shall be published in newspapers or publications published, edited and circulated in the same city and/or province where the requirement of general circulation applies: Provided, That the province or city where the publication's principal office is located shall be considered the place where it is edited and published: Provided, further; That in the event there is no newspaper or periodical published in the locality, the same may be published in the newspaper or periodical published, edited and circulated in the nearest city or province: Provided, finally, That no newspaper or periodical which has not been authorized by law to publish and which has not been regularly published for at least one year before the date of publication of the notices or announcements which may be assigned to it shall be qualified to publish the said notices; and

2. SECTION 2. The executive judge of the court of first instance shall designate a regular working day and a definite time each week during which the said judicial notices or advertisements shall be distributed **personally** by him for publication to qualified newspapers or periodicals as defined in the preceding section, **which distribution shall be done by raffle**: Provided, That should the circumstances require that another day be set for the purpose, he shall notify in writing the editors and publishers concerned at least three (3) days in advance of the designated date: Provided, further, That the distribution of the said notices by raffle shall be dispensed with in case only one newspaper or periodical is in operation in a particular province or city. (Emphasis added)

judge or court personnel is perpetually disqualified from holding any public office in the government.[20]

The stringent provisions of P.D. No. 1079 were intended to prevent unfair competition, meant ultimately for the protection of the press. Thus, the fifth preambular paragraph of the P.D. provides:

> WHEREAS, to better implement the philosophy behind the publication of the above-mentioned notices and announcements and **prevent cross commercialism and unfair competition among community newspapers, which conditions prove to be inimical to the development of a truly free and responsible press**, it is necessary to revise and consolidate all laws and decree affecting the publication of judicial notices and other announcements herein referred to x x x. (Emphasis added)

On the other hand, this Court's *En Banc* Resolution No. A.M. 01-01-07-SC dated October 16, 2001[21] provides for uniform and comprehensive guidelines in the accreditation of newspapers and other periodicals seeking to publish the notices mentioned in P.D. No. 1079 and Circular 5-98 dated January 12, 1998.

Evidently, the language and tenor of the aforecited authorities show that the distribution of notices for publication by raffle is mandatory and cannot be dispensed with. By failing to include **more than twenty** foreclosure cases in the raffle, respondent showed a blatant disregard for the procedure enjoined by P.D. No. 1079 and by this Court.

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[20] Section 6 of P.D. 1079 provides:

> Violation of any provision of this Decree shall be punished by a fine or not less than five thousand pesos (₱5,000.00) nor more than twenty thousand pesos (₱20,000.00) and imprisonment for not less than (6) months nor more than two (2) years. The offending executive judge or court personnel shall be perpetually disqualified from holding any public office in the government.

[21] "GUIDELINES IN THE ACCREDITATION OF NEWSPAPERS AND PERIODICALS SEEKING TO PUBLISH JUDICIAL AND LEGAL NOTICES AND OTHER SIMILAR ANNOUNCEMENTS AND IN THE RAFFLE THEREOF."

Respondent, as a lawyer and an employee of the court, ought to know the requirements in and the importance of distributing notices for publication. And he is expected to keep his own record of the applications for extra-judicial foreclosure and the minutes of the raffle thereof so he can effectively assist the judge in the performance of his functions.[22] It is incumbent upon him to help the judge devise an efficient recording and filing system in the court so that no disorderliness can affect the flow of cases, particularly foreclosure cases, and their speedy disposition. That all efforts should be addressed towards maintaining public confidence in the courts can never be overemphasized.

Respondent's failure to heed the mandate of the law and Supreme Court directives constitutes unjustified and neglectful conduct prejudicial to the best interest of the judicial system and the public, and signifies inefficiency and incompetence in the performance of official duties. As a member of the bar, respondent is, moreover, charged with the duty to obey the laws of the land and promote respect for law and legal processes.[23]

That respondent has up to now failed to submit to the Executive Judge copies of all applications for extra-judicial foreclosure from December 2002 up to February 27, 2003, even as he ignored the Executive Judge's earlier directive for him to comment on complainant's above-stated letter dated January 31, 2003, reveals an obstinate refusal to perform his official duty and to comply with a direct order of a superior. This Court will not countenance such outright insubordination.

On the **more than twenty** instances that respondent failed to include in the raffle the notices for publication, respondent displayed on each occasion dereliction and gross neglect of duty,

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[22] *Vide* Administrative Order No. 6, dated June 30, 1975 and Circular No. 7 dated September 23, 1974 requiring that raffle proceedings should be stenographically recorded, and the results signed by the Judges **or their representatives and the Clerk of Court** in attendance, and the branch assignment shall be recorded in words and figures on the *Rollo*.

[23] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1.

aggravated by acts of insubordination towards a superior and violation of the Code of Professional Responsibility.

Albeit this appears to be respondent's first offense, the Court finds that under the facts of the case, he deserves a penalty higher than that recommended by the OCA.

The OCA, noting that portion of Judge Bigornia's letter dated February 27, 2003[24] directing that:

> From hereon, application for judicial foreclosure either by Notary Public or by the Sheriff shall be raffled to the different Deputy Sheriffs under my direction. The Deputy Sheriffs of this Court, in turn, shall raffle the notices for publication to the accredited newspaper under my direction (underscoring supplied),

violates Section 2 of P.D. No. 1079[25] which requires an Executive Judge to personally distribute by raffle the notices for publication to the different qualified newspapers and periodicals, recommends that the Court direct the current Executive Judge to strictly observe the provisions of P.D. No. 1079, Circular 5-98 dated January 12, 1998, and *En Banc* Resolution No. A.M. 01-01-07-SC dated October 16, 2001. Consistent with the disquisition made above, the Court finds the recommendation of the OCA in order. Since respondent's questioned acts constitute a violation of the Code of Professional Responsibility,[26] the Court considers the same in the determination of the penalty to be imposed on him.

The Court takes this occasion to remind all Executive Judges to strictly observe the provisions of P.D. No. 1079 in relation to Circular No. 5-98 dated January 12, 1998 and *En Banc* Resolution (A.M. No. 01-01-07-SC) dated October 16, 2001 in distributing judicial and legal notices and other similar

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[24] *Vide* note 5.

[25] *Vide* note 16.

[26] A.M. No. 02-9-02-SC, *Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and the Court Officials who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar.*

announcements for publication to qualified newspapers and periodicals.

WHEREFORE, the Court finds Clerk of Court and *Ex-Officio* Provincial Sheriff of the Regional Trial Court of Ilagan, Atty. Raymundo A. Ramirez, *GUILTY* of dereliction of duty, gross neglect, insubordination and for violating the Code of Professional Responsibility. He is ordered to pay a *FINE* of Twenty Thousand (₱20,000) Pesos, with *WARNING* that the commission of the same or similar acts in the future shall be dealt with more severely.

Respondent is further *ORDERED* to submit with utmost dispatch the records and documents specified in the February 27, 2003 Letter of then Executive Judge Juan A. Bigornia, Jr. This is without prejudice to the possible filing of criminal charges against respondent under Section 6 of P.D. 1079.[27]

SO ORDERED.

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

Velasco, Jr., J., no part.

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[27] *Vide* note 20, *supra*.

EN BANC

[A.M. No. RTJ-08-2100. January 31, 2008]
(Formerly A.M. OCA IPI No. 03-1689-RTJ)

MAYOR SHIRLEY M. PANGILINAN, *complainant, vs.* **JUDGE INOCENCIO M. JAURIGUE, Presiding Judge and ATTY. CIRILO Q. TEJOSO, JR., Branch Clerk of Court, both of Branch 44, Regional Trial Court, Mamburao, Occidental Mindoro,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GROSS INEFFICIENCY; PRESENT WHEN JUDGE FAILED TO RECTIFY HIS EVIDENTLY ERRONEOUS ORDER IN CASE AT BAR.— The Order dated June 5, 2002 directing, without qualification, the revision of ballots for the remaining precincts to commence on June 10, 2002 pursuant to the Comelec Order of May 24, 2002, is erroneous, for it failed to take into account that said Comelec Order covered only certain ballot boxes in specified precincts, not all the ballot boxes protested in EC No. 19 before respondent Judge. While the erroneous interpretation by respondent Judge of the Comelec Order dated May 24, 2002 may not be considered gross ignorance of the law, his failure to rectify his Order dated June 5, 2002 when complainant filed an urgent motion for postponement with manifestation and clarification, constitutes gross inefficiency.

2. ID.; ID.; ID.; SHOWN BY FAILURE TO EXERCISE THE REQUISITE CIRCUMSPECTION AND DILIGENCE IN THE DISCHARGE OF OFFICIAL DUTIES AND FUNCTIONS REQUIRED BY THE ATTENDANT CIRCUMSTANCES.— The erroneous interpretation of the Comelec Order dated May 24, 2002 would have been avoided or readily corrected by respondent Judge and the revision of ballots covered by Comelec's *status quo* Order would not have proceeded, had respondent Judge been in his office on June 5 (Wednesday), 6 (Thursday), 7 (Friday), 10 (Monday) and 11 (Tuesday), 2002. x x x The unexplained absences of respondent Judge, including the issuance of the Order dated June 5, 2002 without his signature, constitute serious misconduct, gross

neglect of duty and gross inefficiency, as he failed to exercise the requisite circumspection and diligence in the discharge of his official duties and functions required by the attendant circumstances.

3. ID.; ID.; COURT PERSONNEL; CLERK OF COURT; FAILURE TO EXERCISE REASONABLE DILIGENCE IN CASE AT BAR.— [R]espondent Clerk of Court failed to exercise reasonable diligence when he failed to take into account that the ballot boxes to be revised in EC Case No. 19 should only be those specified in the Comelec Order dated May 24, 2002. Since the basis of the Order dated June 5, 2002 which he prepared was the Comelec Order dated May 24, 2002, he should have carefully read and analyzed the contents of said Comelec Order. Also, when complainant filed the motion for postponement of June10, 2002, citing the reasons therefor, respondent Clerk of Court should have exercised prudence in proceeding with the revision of ballot boxes, by revising first those which were mentioned in the Comelec Order dated May 24, 2002, specifically ballot boxes of Precinct Nos. 26A1 and 48A.

APPEARANCES OF COUNSEL

Advocates Circle Lawyers for compainant.

D E C I S I O N

AZCUNA, *J.*:

This case concerns an administrative complaint for "gross ignorance of the law, abuse of authority and disobedience to a superior order"[1] filed by complainant Shirley M. Pangilinan (then Mayor of the Municipality of Paluan, Occidental Mindoro) against respondents Judge Inocencio M. Jaurigue and Branch Clerk of Court Cirilo Q. Tejoso, Jr. (both of Branch 44, Regional Trial Court, Mamburao, Occidental Mindoro).

In an Order dated May 14, 2004, Justice Fernanda Lampas Peralta[2] directed the parties to appear for a preliminary conference

[1] *Rollo,* p. 4.

[2] The Court designated Court of Appeals Associate Justice Fernanda Lampas Peralta as the Investigator.

on June 3, 2004.[3] Only the complainant and her counsel appeared on the scheduled preliminary conference, as both respondents merely filed a manifestation dated May 21, 2004, stating that "they are waiving their appearance in the preliminary conference x x x due to heavy workload in their official station that needs immediate attention, but rather move and pray that in lieu thereof, they be allowed to submit position paper and submit this case on the basis of the pleadings filed."[4] Complainant did not oppose the manifestation. The preliminary conference was deemed terminated and the parties were directed to submit their position papers and all pertinent documents. A hearing was scheduled on June 22, 2004 for the presentation of the parties' evidence.[5]

On June 22, 2004, respondents again did not appear and merely filed their position paper, stating that they were waiving their appearance and were willing to submit their case on the basis of their position papers, pleadings and documents submitted.[6] Complainant, through counsel, manifested that she was submitting affidavits of witnesses. In view of respondents' waiver of appearance and to expedite the proceedings, the Investigating Justice allowed the complainant to submit the affidavits of witnesses, together with her position paper and other pertinent documents, after which the case was deemed submitted for report and recommendation, unless a hearing would be necessary to clarify the positions of the parties.[7]

Complainant submitted her position paper dated June 21, 2004,[8] an affidavit dated June 21, 2004[9] of Ma. Cristina Leido and other documents. Respondents submitted their position paper dated June 17, 2004[10] and other documents. Subsequently,

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[3] *Rollo,* p. 91.

[4] *Id.* at 99.

[5] *Id.* at 101-103.

[6] *Id.* at 104.

[7] *Id.* at 105.

[8] *Id.* at 498-522.

[9] *Id.* at 533-534.

[10] *Id.* at 104-129.

respondent Judge submitted an "Addendum to Respondents' Position Paper" dated July 14, 2004, attaching thereto an affidavit dated July 14, 2004 of Atty. Ulysses D. Delgado.

As stated by the Investigating Justice, the facts are as follows:

The controversy started when the questioned Order dated June 5, 2002 was issued in Election Case (EC) No. 19, directing the resumption of revision of ballots on June 10, 2002, which Order was merely stamped "Original Signed" by respondent Clerk of Court upon the alleged instruction of respondent Judge.

Prior to the issuance of the Order dated June 5, 2002, the following facts, as narrated in complainant's position paper, are undisputed:

> Complainant [was] the incumbent Mayor of the Municipality of Paluan, Occidental Mindoro, having been elected in the local election of May 2001;
>
> That sometime in May 2001, the losing mayoralty candidate Pablo T. De Ocampo, filed an election protest against Shirley M. Pangilinan, docketed as Election Case No. 19, before the Regional Trial Court – Mamburao, Occidental Mindoro, Branch 44, presided by Hon. Inocencio M. Jaurigue with Atty. Cirilo Q. Tejoso, as the Branch Clerk of Court;
>
> That the Revision Committee was created with respondent Atty. Cirilo Q. Tejoso, as the Head Revisor;
>
> That sometime July 25, 2002, complainant Shirley Pangilinan filed a Petition for *Certiorari* before the Comelec, docketed as SPC. No. 31-2002; (sic)[11]
>
> That conformably with the Petition for *Certiorari*, the Commission on Election (sic) issued an Order dated November 13, 2001, the dispositive portion of which reads as follows:
>
> > "In the meantime, considering that the twenty (20) day temporary restraining order issued in this case on November 23, 2001 (sic)[12] would soon expire, it was the consensus of the

[11] Should be SPR No. 32-2001.

[12] Should be October 23, 2001, *rollo*, p. 54.

members of the Commission present that the parties follow the *status quo*, so as not to render this case moot and academic. Hence, the Commission issued a *status quo* order in open court enjoining the parties to maintain the *status quo* in this case, until further orders from the Second Division."

x x x x x x x x x

That in the said Order, the COMELEC directed the parties to maintain the *status quo* until further notice from the Second Division considering that the twenty (20) day restraining order issued in the case on November 13, 2001 (sic)[13] would soon expire and in order not to render the case moot and academic;

That conformably with the said Order, the Presiding Judge on December 11, 2001, issued an Order, the dispositive portion of which reads:

"ACCORDINGLY, the Court has nothing to do but to defer the revision of ballots in the remaining precincts of the above-entitled case, and instead let this case be held in abeyance until receipt of the Order from the Second Division, Commission on Election."

From the time that the questioned Order dated June 5, 2002 was issued by respondent Judge directing the revision of ballots in ECC No. 19, the parties presented their respective versions, as follows:

COMPLAINANT'S VERSION

That on June 5, 2002, the Presiding Judge issued an Order directing the revision of the ballot for the remaining precincts to commence on June 10, 2002 at 9:00 o'clock in the morning and 2:00 o'clock in the afternoon, pursuant to the Order of the Commission on Elections dated May 24, 2002 thru Commissioner Mehol K. Sadain issued in Comelec Case No. ERPC No. 2001-34 – entitled "*Ricardo Quintos, protestee vs. Jose Villarosa*, protestant," x x x;

That on June 10, 2002, complainant filed an Urgent motion for Postponement with Clarification and Manifestation, x x x;

That despite the said Urgent Motion for Postponement with Manifestation and Clarification, the Branch Clerk of Court,

[13] *Id.*

Atty. Cirilo Q. Tejoso, Jr., proceeded with the revision, in clear defiance of the *status quo* Order dated November 13, 2001.

That in [the] absence of the Presiding Judge, Atty. Tejoso proceeded with [the] revision. In the two (2) day revision, *i.e.*, on June 10 and 11, 2002, the committee was able to revise the following:

Revision Date	**Precincts**
June 10, 2002	26A1
June 10, 2002	46A, Tubili
June 10, 2002	10A, Harrison
June 11, 2002	15A, Mananaw
June 11, 2002	16A, 17A, Mananaw
June 11, 2002	5A, Harrison

Clearly, under the Order of the Comelec dated May 24, 2002, in the case of *Quintos v. Villarosa* (EPC No. 2001-34), only the following ballots were to be revised to wit:

Precincts Nos. 13A/14A, 23A, 25A, 24A, 3A, 47A1/48A, 29A/30/A, 35A, 27A/28A, 7A/8A, 26A1, 9A, 36A and 47A,

That prior thereto, from October 17, 2001 to October 24, 2001, the Revision Committee was able to revise twenty one (21) precincts, consisting of the following:

Revision Date	**Precinct No.**
October 17, 2001	44A
October 17, 2001	13A/14A
October 18, 2001	23A, Brgy. I
October 18, 2001	24A, Brgy. I
October 19, 2001	29A/30A
October 19, 2001	25A, Brgy. I
October 22, 2001	9A, Brgy. Harrison
October 22, 2001	3A, Alipaoy
October 23, 2001	27A/28A, Brgy. II
October 23, 2001	36A/37A, Brgy. 4
October 23, 2001	47A, Tubili
October 24, 2001	26A, Brgy. I

October 24, 2001	35A, Brgy. 4
October 24, 2001	47A1/48, Tubili
October 24, 2001	7A/8A

That clearly, respondent's Order dated June 5, 2002 directing the resumption of the revision on June 10, 2002, was not in accordance with the Order, dated May 24, 2002 of the Comelec (Second Division in EPC No. 2001-34 *Quintos v. Villarosa*).

Only precinct 26A1 should have been revised pursuant to the said Order. However, the committee was able to revise also the following precincts:

June 10, 2002	46A, Tubili
June 10, 2002	10A, Harrison
June 11, 2002	15A, Mananaw
June 11, 2002	16A, 17A Mananaw
June 11, 2002	5A, Harrison

That the COMELEC issued an Order dated 11 June 2002 which effectively restrained the Presiding Judge in hearing the case. x x x That it was only on account of the issuance of the said Order that the respondents stopped the revision of the ballot boxes.[14]

RESPONDENT'S VERSION

On June 05, 2002, the respondent judge, while holding trial of several cases pending before his sala, received an important and urgent call asking him to come to San Jose, Occidental Mindoro, which is more or less 173 kilometers far from Mamburao, his official station, on the same date to attend to some important official business, *i.e*. dialogue with IBP-Occidental Mindoro Chapter, but taking into account the Order dated May 24, 2002 issued by the Commission on Elections and the policy of preferential disposition of election cases because the term of local officials is only three (3) years, he immediately instructed respondent Clerk of Court to prepare for him and issue an Order for the resumption of revision of ballots commencing on June 10, 2002, giving the latter an authority to do the signing by using the stamped "original signed" since the respondent judge had to leave and could not wait to sign the Order by virtue of the above-mentioned important calling;

[14] *Rollo,* pp. 499-503.

In compliance with such Order dated June 05, 2002, the Revision Committee resumed their duties in the revision of ballots on June 10, 2002 despite the "Urgent Motion for Postponement with Clarification and Manifestation" filed by Protestee, Shirley Pangilinan, thru counsel, on the same date at 8:45 in the morning;

When respondent judge reported back to office on June 11, 2002, he immediately signed the challenged order while the Revision Committee was conducting revision of ballots in the Session Hall of the Court, x x x;

The revision of ballots last[ed] until June 11, 2002 when the Commission on Elections, Second Division issued an Order dated June 11, 2002, enjoining the parties to maintain the *status quo* in the case, as directed in [the] November 13, 2001 Order of the Commission, until further orders from the Second Division, x x x;

To formally suspended (sic) the revision of ballots, the Court issued an Order on June 13, 2002 ordering the Revision Committee to cease and desist from opening the ballot boxes involved in the protest, x x x;[15]

x x x x x x x x x

Respondent Clerk of Court followed the instructions of the respondent judge, bearing in mind that he is always subject to the control and supervision of the Presiding Judge, and only performs and discharges duties as may be assigned by the Presiding Judge aside from the duties imposed under the Manual for Clerks of Court. He never exercised judicial functions but merely ministerial ones. x x x;

x x x x x x x x x

Respondent Judge x x x unwittingly construed or interpreted differently the Order dated May 24, 2002 issued by the Second Division, Commission on Elections in EPC No. 2001-34, involving the case of *Quintos vs. Villarosa*, as to be applied in the election protest pending before the court, but considering that the said controversy is imbued with public interest; x x x.[16]

Accordingly, the issues are:

1. WHETHER OR NOT THE ORDER DATED JUNE 5, 2002 OF RESPONDENT JUDGE DIRECTING THE REVISION

[15] *Id.* at 111-112.

[16] *Id.* at 115.

OF BALLOTS TO COMMENCE ON JUNE 10, 2002 WAS ISSUED WITH GROSS IGNORANCE OF THE LAW TANTAMOUNT TO GROSS INEFFICIENCY. COROLLARILLY, WHETHER OR NOT THE VARIOUS COMELEC ORDERS WERE INCONSISTENT OR AMBIGUOUS WHICH PROVIDED REASONABLE BASIS FOR THE ISSUANCE OF THE JUNE 5, 2002 ORDER.

2. WHETHER OR NOT THE ORDER DATED JUNE 5, 2002 WHICH WAS ISSUED AND RELEASED IN THE ABSENCE OF RESPONDENT JUDGE AND MERELY STAMPED WITH ORIGINAL SIGNED BY RESPONDENT CLERK OF COURT IS TANTAMOUNT TO GROSS ABUSE OF AUTHORITY OR SERIOUS MISCONDUCT ON THE PART OF BOTH RESPONDENTS. COROLLARILLY, WHETHER OR NOT THE ABSENCE OF RESPONDENT JUDGE FROM THE COURT TO ATTEND TO MATTERS NOT RELATED TO HIS OFFICIAL FUNCTIONS PREJUDICED THE PERFORMANCE OF HIS JUDICIAL FUNCTIONS.

Justice Fernanda Lampas Peralta made the following findings:

FIRST ISSUE

On the Comelec Orders providing for the *status quo* and the Comelec Orders directing revision of ballots in EC No. 19

For clarity, there are two Comelec cases which are related to EC No. 19 of Branch 44, RTC-Mamburao, Occidental Mindoro wherein respondent Judge issued the questioned Order dated June 5, 2002, thus:

(1) SPR No. 32-2001,[17] "*Shirley Pangilinan v. Hon. Inocencio Jaurigue and Pablo Ocampo*" of the Second Division, Comelec, which is a petition for *certiorari* emanating from EC No. 19, wherein Comelec issued *status quo* Orders dated November 13, 2001 and June 11, 2002, thus holding in abeyance the revision of ballots in EC No. 19;

[17] *Id.* at 465-474.

(2) EPC No. 2001-34,[18] "*Ricardo Quintos v. Jose Villarosa*" of the Second Division, Comelec, which is an election protest against the proclamation of Jose Villarosa as the winning candidate for the Office of Governor, Occidental Mindoro, wherein Comelec issued the following Orders directing the revision of ballots in EC No. 19:

(a) Order dated August 27, 2001 directing respondent Judge to conduct revision/appreciation of ballots in EC Nos. 19 and 20.

(b) Order dated May 24, 2002 directing respondent Judge to proceed and terminate revision and/or appreciation of ballots of the precincts subject of the protest within fifteen (15) days.

There is no question that respondent Judge complied with Comelec's *status quo* Order dated November 13, 2001 when he issued an Order dated December 11, 2001 deferring the revision of ballots in the remaining precincts in EC No. 19 until receipt of further orders from Comelec. When Comelec issued again another *status quo* Order on June 11, 2002 in SPR No. 32-2001, respondent Judge issued an Order dated June 13, 2002 ordering the "Revision Committee to cease and desist from opening the ballot boxes involved x x x until further orders from the same Commission."

Complainant claims that Comelec Order dated May 24, 2002 directing the revision of ballots contemplates only the ballot boxes of certain precincts as specified in said order. Pertinent portions of Comelec Order dated May 24, 2002 read:

Anent the protested ballot box of Precinct No. 13A/14A and the counter-protested ballot boxes of Precinct Nos 23A, 25A, 24A, 3A, 47A1/48A, 29A/30A, 35A, 27A/28A, 7A/8A, 26A1,9A, 36A and 47A, all of Paluan, Occidental Mindoro, which are the subject of Election Case Nos. 19 and 20 (*Ocampo vs. Pangilinan* and *Terana vs. Velandrai*, respectively) pending before the Regional Trial Court, Branch 44, Mamburao, Occidental Mindoro, the Commission (Second

[18] *Id.* at 486-494.

Division), pursuant to its August 27, 2001 Order giving the court a *quo* first priority over the said ballot boxes and directing thus:

> *"2. The Regional Trial Court on Mamburao, Occidental Mindoro, Branch 44, is requested to conduct the revision and appreciation proceedings in Election Case Nos. 19 and 20 (Ocampo vs. Pangilinan and Terena vs. Valandrai, respectively) in the most expeditious manner possible in order that the subject ballot boxes and other election documents can be turned over to the Commission in due time. xxx"*

hereby:

1. DIRECTS the Honorable Presiding Judge of the Regional Trial Court (RTC), Branch 44, Mamburao, Occidental Mindoro to expedite and terminate the revision and/or appreciation of ballots of the aforementioned precincts of the Municipality of Paluan involved in the cases pending before it within fifteen days from receipt hereof. x x x.[19]

Indeed, Comelec Order dated May 24, 2002 (EPC No.2001-34) contemplates only the ballot boxes of the following Precinct Nos: 13A/14A, 23A, 25A, 24A, 3A, 47A1/48A, 29A/30A, 35A, 27A/28A, 7A/8A, 26A1, 9A, 36A and 47A. These ballot boxes were also among the contested ballot boxes in EC No. 19 before respondent Judge.[20] Of these ballot boxes, the following had already been revised from October 17 to 24, 2001, or prior to Comelec's issuance of the status *quo* order dated November 13, 2001 in SPR 32-2001:

> Precincts Nos. 3A, 13A/14A, 23A, 24A, 25A, 27A/28A, 29A/30A, 35A, 36A, 47A, 47A1[21]

Hence, when Comelec Order dated May 24, 2002 in EPC No. 2001-34 was issued directing respondent Judge to proceed with and terminate the revision and/or appreciation of ballots of the precincts subject of the protest only, the following ballot

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[19] *Id.* at 35.

[20] Page 2, Petition of Protest annexed to Compliance dated June 17, 2004.

[21] Page 2, Affidavit of Ma. Cristina A. Lindo, Annex G of complainant's position paper.

boxes may be revised in EC No. 19 as they were mentioned in said Order dated May 24, 2002: 26A1 AND 48A.

Respondent Judge claims that he unwittingly interpreted Comelec Order dated May 24, 2002 which was the basis for the issuance of the Order dated June 5, 2002 directing the resumption of revision of ballots. Thus:

> As early as August 27, 2001, the Court received an Order (Annex 6) issued by the Second Division, Commission on Elections in EPC No. 2001-34, Quintos vs. Villarosa, or the gubernatorial protest case, directing this court to conduct the revision and appreciation proceedings in Election Case Nos. 19 and 20 (*De Ocampo vs. Pangilinan* and *Terana vs. Velendria,* respectively,) in the most expeditious manner in order that the subject ballot boxes and other election documents both subject of election protest pending the court and the Commission on Elections can be turned over in due time.
>
> On November 13, 2001, however, the same Commision issued *status quo* order in SPR No. 32-2001 (Annex 7), thus, the Court had nothing to do but defer the revision of ballots in the remaining precincts x x x and instead the election protest case pending before the court was held in abeyance until receipt of the Order from the Second Division, Commission on Elections.
>
> Another order was issued in ECP No. 2001-34 directing the court to expedite and terminate within fifteen (15) days from notice the revision and appreciation of ballots.
>
> x x x x x x x x x
>
> Without passing the blame on the Commission on Elections, it is necessary, however, with all due respect to mention that the Commission on Elections itself had been inexplicably inconsistent and ambiguous when, in EPC No. 2001-34, it directed speedy termination of revision and appreciation proceedings in the cases pending in the court first in its August 27, 2001 order and subsequently in May 24, 2002 order but only to be overruled and/or negated by its issuance of the November 23, 2001 then the June 11, 2002 status quo order in SPR No. 32-2001.
>
> Confronted with such contradictory orders, respondent judge had the prerogative to reasonably construe, without having in mind to

disobey the issuance of superior order, as it had done, to the effect that the May 24, 2002 Order in EPC No. 2001-34 had effectively lifted the status order in SPR No. 32-2001. Simply stated, between one which adheres to the policy and legal mandate for speedy disposition of election protest cases, and one which contravenes or hampers said policy respondent's only recourse, a just and logical one, is to implement the former order.[22]

Evidently, the Order dated June 5, 2002 directing, without qualification, the revision of ballots for the remaining precincts to commence on June 10, 2002 pursuant to the Comelec Order of May 24, 2002, is erroneous, for it failed to take into account that said Comelec Order covered only certain ballot boxes in specified precincts, not all the ballot boxes protested in EC No. 19 before respondent Judge. While the erroneous interpretation by respondent Judge of the Comelec Order dated May 24, 2002 may not be considered gross ignorance of the law, his failure to rectify his Order dated June 5, 2002 when complainant filed an urgent motion for postponement with manifestation and clarification, constitutes gross inefficiency.

SECOND ISSUE

On the alleged absences of respondent Judge

The erroneous interpretation of the Comelec Order dated May 24, 2002 would have been avoided or readily corrected by respondent Judge and the revision of ballots covered by Comelec's *status quo* Order would not have proceeded, had respondent Judge been in his office on June 5 (Wednesday), 6 (Thursday), 7 (Friday), 10 (Monday) and 11 (Tuesday), 2002.

Respondent Judge admits that he was not in his official station on June 6, 7 and 10, 2002.[23] However, there is no showing that he ever filed an application for leave of absence on said dates. Neither did he state any reason for his absence on June 7 and 10, 2002.

Respondent Judge claims that on June 5, 2002, while holding trial of several cases pending before his sala, he received an

[22] *Rollo*, Position Paper of Respondents, pp. 113-114, 116.

[23] *Rollo,* p. 121.

important and urgent call asking him to come to San Jose, Occidental Mindoro on the same date to attend to some important "official business." Thus, he immediately instructed respondent Clerk of Court to prepare for him and issue an Order for the resumption of revision of ballots on June 10, 2002, giving respondent Clerk of Court authority to do the signing by using the stamp "Original Signed."

Initially, respondent Judge claimed that he had a dialogue with the IBP Chapter President in Occidental Mindoro on June 5, 2002,[24] but he later claimed that the dialogue was on June 6, 2002.[25] When he went to San Jose, Occidental Mindoro on June 5, 2002 in order to attend to some "official business," he could not specify what "official business" it was. It could not be the supposed dialogue with the IBP Chapter President, because the certification[26] submitted by respondent Judge refers to a conference with the IBP Chapter President on the following day, June 6, 2002. The certification is also dubious, as it has no letterhead or any address of the signatory thereto. Even if, indeed, such conference transpired on June 6, 2002, respondent Judge cannot claim that he was on official business because his dialogue with the IBP Chapter President is not part of his judicial functions.

The allegations of respondent Judge that he was still able to hold trial of several cases in the morning of June 5, 2002 and that he even signed some Orders before he left for San Jose, Occidental Mindoro does not inspire credence for if it did, he could have readily prepared the one-page Order dated June 5, 2002 and signed the same before he left for San Jose, Occidental Mindoro. The Orders[27] in the other cases purportedly signed by respondent Judge on June 5, 2002, merely pertain to resetting of hearings in said cases. The Orders do not conclusively show that respondent Judge indeed signed the Order of June 5, 2002,

[24] *Id.* at 111.

[25] *Id.* at 558.

[26] *Id.* at 561.

[27] *Id.* at 563, 565, 567, 569, 571, 573, and 576.

as he himself claims that he signed the Order of June 5, 2002 in EC No. 19 only after he reported back to his office. Moreover, the calendar of hearing on June 5, 2002[28], as compared to the other calendars of hearings on June 4, 5, 19, 20, 21, 25, 26 and 27, 2002[29] submitted by respondent Judge, does not bear any handwritten notes as to what transpired in the hearing.

Moreover, after his alleged dialogue with the IBP Chapter President on June 6, 2002, respondent Judge should have reported to his official station on June 7, 2002, or at least, immediately after he was informed of complainant's urgent motion for postponement of the scheduled revision on June 10, 2002. The claim of respondent Judge that he reported back to his official station on June 11, 2002 and signed the order of June 5, 2002 while the revision committee was conducting revision of ballots is also not credible and not supported by independent and competent evidence. Even if, indeed, he signed the Order dated June 5, 2002 on June 11, 2002, the fact remains that the revision of ballots proceeded on the basis of the June 5, 2002 Order which was merely stamped with "Original Signed" by respondent Clerk of Court. Also, if he was back to his office on June 11, 2002, why did he stay inside his chambers instead of attending to the ongoing revision on said date? His claim that his presence was not necessary[30] deserves scant consideration, because even if the Head Revisor was respondent Clerk of Court, the revision proceedings should be under his direct control and supervision and therefore his presence thereat was essential.

The foregoing considerations show that, indeed, respondent Judge was absent in his official station not only on June 6, 7 and 10, 2002, as he admits, but also on June 5 and 11, 2002. The unexplained absences of respondent Judge, including the issuance of the Order dated June 5, 2002 without his signature, constitute serious misconduct, gross neglect of duty and gross inefficiency, as he failed to exercise the requisite circumspection

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[28] *Id.* at 194-195.

[29] *Id.* at 190-193, 196-209.

[30] *Id.* at 578.

and diligence in the discharge of his official duties and functions required by the attendant circumstances.

On the other hand, respondent Clerk of Court failed to exercise reasonable diligence when he failed to take into account that the ballot boxes to be revised in EC Case No. 19 should only be those specified in the Comelec Order dated May 24, 2002. Since the basis of the Order dated June 5, 2002 which he prepared was the Comelec Order dated May 24, 2002, he should have carefully read and analyzed the contents of said Comelec Order. Also, when complainant filed the motion for postponement of June10, 2002, citing the reasons therefor, respondent Clerk of Court should have exercised prudence in proceeding with the revision of ballot boxes, by revising first those which were mentioned in the Comelec Order dated May 24, 2002, specifically ballot boxes of Precinct Nos. 26A1 and 48A.

On the basis of her findings, the Investigating Justice recommends that respondent Judge be meted suspension from office, without pay, for a period of six (6) months for gross inefficiency, serious misconduct and gross neglect of duty, and that respondent Clerk of Court be reprimanded for failure to exercise reasonable diligence in the issuance of the Order dated June 5, 2002 and in the revision of ballots.

The Court fully agrees with the findings of Justice Fernanda Lampas Peralta. The records and copies of the Orders issued by respondent Judge in relation to the Orders of the Comelec clearly support the finding of gross inefficiency. The admission of respondent Judge in the face of his patently lame excuses equally bears out his serious misconduct and gross neglect of duty.

Similarly, the respondent Clerk of Court's failure to exercise reasonable diligence in the issuance of the Order dated June 5, 2002 in the revision of ballots is incontrovertible.

WHEREFORE, respondent Judge Inocencio M. Jaurigue is found *GUILTY* of gross inefficiency, serious misconduct and gross neglect of duty and is hereby *SUSPENDED* from office, without pay, for six (6) months. Respondent Clerk of Court

Atty. Cirilo Q. Tejoso, Jr. is hereby *REPRIMANDED* for failure to exercise reasonable diligence in the performance of his duty with a warning that a repetition of the same will be more severely dealt with.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Nachura, Reyes, and *Leonardo-de Castro, JJ.*, concur.

Chico-Nazario, J., on official leave.

Velasco, Jr., J., on leave.

SECOND DIVISION

[G.R. Nos. 146184-85. January 31, 2008]

MANILA INTERNATIONAL AIRPORT AUTHORITY and ANTONIO P. GANA, *petitioners, vs.* **OLONGAPO MAINTENANCE SERVICES, INC. and TRIPLE CROWN SERVICES, INC.,** *respondents.*

[G.R. No. 161117. January 31, 2008]

ANTONIO P. GANA (in his capacity as Gen. Manager of the Manila International Airport Authority) and MANILA INTERNATIONAL AIRPORT AUTHORITY, *petitioners, vs.* **TRIPLE CROWN SERVICES, INC.,** *respondent.*

[G.R. No. 167827. January 31, 2008]

TRIPLE CROWN SERVICES, INC., *petitioner, vs.* **MANILA INTERNATIONAL AIRPORT AUTHORITY and THE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; MANDATORY INJUNCTION; PROPRIETY THEREOF.— In *Bautista v. Barcelona*, we made clear that a mandatory injunction is an extreme remedy and will be granted only on a showing that (a) the invasion of the right is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; FREEDOM TO STIPULATE, RECOGNIZED.— Under Art. 1308 of the Civil Code, the contract between the parties is the law between them; mutuality being an essential characteristic of contracts giving rise to reciprocal obligations. And under Art. 1306 of the Code, the parties may establish stipulations mutually acceptable to them for as long as such are not contrary to law, morals, good customs, public order, or public policy. And where a determinate period for a contract's effectivity and expiration has been mutually agreed upon and duly stipulated, the lapse of such period ends the contract's effectivity and the parties cease to be bound by the contract.

3. POLITICAL LAW; ADMINISTRATIVE LAW; EXECUTIVE ORDER (EO) 301 (DECENTRALIZING ACTIONS ON GOVERNMENT NEGOTIATED CONTRACTS, *ETC.*); PUBLIC BIDDING REQUIRED IN CONTRACTS FOR PUBLIC SERVICE AS IN JANITORIAL AND MAINTENANCE SERVICES.— We cannot agree with the contention of MIAA and Gana that the exceptions to the public bidding rule in Sec. 1 of EO 301 cover both contracts for public services and for supplies, materials, and equipment. Their reliance on Sec. 1(e) of EO 301 for the award of a service contract for janitorial and maintenance services without public bidding is misplaced. For clarity, we quote in full Sec. 1 of EO 301: Section 1. Guidelines for Negotiated Contracts. Any provision of the law,

decree, executive order or other issuances to the contrary notwithstanding, **no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities shall be renewed or entered into without public bidding,** except under any of the following situations: x x x e. **In cases where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned;** x x x. In *Andres v. Commission on Audit*, this Court explained the rationale behind EO 301, upholding the general rule that contracts shall not be entered into or renewed without public bidding, thus: Executive Order No. 301 explicitly permits negotiated contracts in particular identified instances. In its preamble, it adverted to the then existing set-up of **"a centralized administrative system. . . for reviewing and approving negotiated contracts . . . ," and to the unsatisfactory character thereof in that "such centralized administrative system is not at all 'facilitative'** ***particularly in emergency situations,*** **characterized as it is by red tape and too much delay in the processing and final approval of the required transaction or activity"; hence, the "need to decentralize the processing and final approval of negotiated contracts. . ."** It then laid down, in its Section 1, "guidelines for negotiated contracts" thenceforth to be followed. **While affirming the general policy that contracts shall not be entered into or renewed without public bidding**. x x x It is only in the instances enumerated above that public bidding may be dispensed with and a contract closed through negotiations. x x x A contract for janitorial and maintenance services, like a contract of lease of equipment, is not included in the exceptions, particularly Sec. 1(e) relied upon by MIAA and Gana.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; ***CERTIORARI*****; AUTHORITY OF THE COURT OF APPEALS (CA) TO ACT THEREON, RECOGNIZED.—** Sec. 1 of Rule 65 pertinently provides: SECTION 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person

aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. The above provision clearly vests the CA the authority and discretion to give due course to the petitions before it or to dismiss them when they are not sufficient in form and substance, the required pleadings and documents are not attached to them, and no sworn certificate on non-forum shopping is submitted. This discretion must be exercised, not arbitrarily or oppressively, but in a reasonable manner in consonance with the spirit of the law, always with the view in mind of seeing to it that justice is served.

5. ID.; ID.; ID.; PROPER IN ASSAILING INTERLOCUTORY ORDER; CASE AT BAR.— What we held in *Metropolitan Bank & Trust Company v. Court of Appeals* is instructive, thus: It has been held that "[a]n interlocutory order does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits." It "refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision on the whole controversy." Conversely, a final order is one which leaves to the court nothing more to do to resolve the case. The test to ascertain whether an order is interlocutory or final is: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final. TCSI argues that since the trial court still has to hear the issue on damages in Civil Case No. 03-0025 for *mandamus* and no final decision has yet been rendered, the *mandamus* writ is an interlocutory one, and cannot be subject of an appeal. However, Rule 41 clearly states that while an interlocutory order cannot be subject of an appeal and the aggrieved party has to await the decision of the court, still it allows the filing of a special civil action of *certiorari* under Rule 65 when there is grave abuse of discretion in the issuance

of the order. Moreover, under the circumstances of the case, MIAA had no other plain, speedy, and adequate remedy other than a petition for *certiorari* under Rule 65. MIAA assailed the lack or excess of jurisdiction of the RTC resulting from grave abuse of discretion when it issued the questioned orders. Abuse of discretion is precisely the thrust in a petition for *certiorari* under Rule 65.

6. ID.; CIVIL PROCEDURE; FORUM SHOPPING; WHEN PRESENT.— Forum shopping exists when the elements of *litis pendentia* are present, or when a final judgment in one case will amount to *res judicata* in another. There is forum shopping when the following elements concur: (1) identity of the parties or, at least, of the parties who represent the same interest in both actions; (2) identity of the rights asserted and relief prayed for, as the latter is founded on the same set of facts; and (3) identity of the two preceding particulars, such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration or will constitute *litis pendentia*.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche and *R. Cipriano & Associates Law Office* for Triple Crown Services, Inc.

Kapunan Imperial Panaguiton & Bongolan for Olongapo Maintenance Services, Inc.

D E C I S I O N

VELASCO, JR., *J.*:

The rationale behind the requirement of a public bidding, as a mode of awarding government contracts, is to ensure that the people get maximum benefits and quality services from the contracts. More significantly, the strict compliance with the requirements of a public bidding echoes the call for transparency in government transactions and accountability of public officers. Public biddings are intended to minimize occasions for corruption and temptations to abuse of discretion on the part of government authorities in awarding contracts.

Before us are three separate petitions from service contractors that question the legality of awarding government contracts without public bidding.

The first petition, docketed as **G.R. Nos. 146184-85**, assails the November 24, 2000 Decision[1] of the Court of Appeals (CA) in consolidated cases CA-G.R. SP Nos. 50087 and 50131. The CA affirmed the November 18, 1998 Order[2] of the Regional Trial Court (RTC), Branch 119, Pasay City in Civil Case No. 98-1875 entitled *Olongapo Maintenance Services, Inc. v. Manila International Airport Authority and Antonio P. Gana*, granting an injunctive writ to respondent Olongapo Maintenance Services, Inc. (OMSI).

The same CA Decision likewise upheld the November 19, 1998 Order[3] of the RTC, Branch 113, Pasay City, granting an injunctive writ to respondent Triple Crown Services, Inc. (TCSI) in Civil Case No. 98-1885 entitled *Triple Crown Services, Inc. v. Antonio P. Gana (In his capacity as General Manager of the Manila International Airport Authority) and Goodline Staffers & Allied Services, Inc.*

The second, docketed as **G.R. No. 161117**,[4] assails the November 28, 2003 CA Decision[5] in CA-G.R. SP No. 67092, which affirmed the Decision[6] dated February 1, 2001 of the RTC, Branch 113, Pasay City and its April 16, 2001 Order[7] in Civil Case No. 98-1885, extending the November 19, 1998 injunctive writ adverted to earlier, ordering petitioners to conduct

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[1] *Rollo* (G.R. Nos. 146184-85), pp. 29-42.

[2] *Id.* at 80-87, misdated as October 18, 1998, per Judge Pedro De Leon Gutierrez.

[3] *Id.* at 157-170.

[4] *Rollo* (G.R. No. 161117), pp. 9-23.

[5] *Id.* at 24-38. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Romeo A. Brawner (now ret.) and Rebecca de Guia-Salvador.

[6] *Id.* at 114-124.

[7] *Id.* at 133.

a public bidding for the areas serviced by respondent TCSI, and denying petitioners' motion for reconsideration, respectively.

In the third, docketed as **G.R. No. 167827**,[8] TCSI assails the September 9, 2004 CA Decision[9] in CA-G.R. SP No. 76138, as veritably reiterated in the CA's April 13, 2005 Resolution,[10] which granted Manila International Airport Authority's (MIAA's) petition for *certiorari* charging TCSI with forum shopping. The CA lifted the March 19, 2003 Writ of *Mandamus*[11] issued by the RTC, Branch 115 in Civil Case No. 03-0025 entitled *Triple Crown Services, Inc. v. Manila International Airport Authority* for *Mandamus* with Damages.

We consolidated **G.R. Nos. 146184-85** with **G.R. No. 161117** and **G.R. No. 167827** as they all arose from the cancellation of the service contracts of OMSI and TCSI with MIAA.[12]

The antecedent facts are as follows:

OMSI and TCSI were among the five contractors of MIAA which had janitorial and maintenance service contracts covering various areas in the Ninoy Aquino International Airport. Before their service contracts expired on October 31, 1998, the MIAA Board of Directors, through Antonio P. Gana, then General Manager (GM) of MIAA, wrote OMSI and TCSI informing them that their contracts would no longer be renewed after October 31, 1998.[13]

On September 28, 1998, TCSI, in a letter to Gana, expressed its concern over the award of its concession area to a new

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[8] *Rollo* (G.R. No. 167827), pp. 3-29.

[9] *Id*. at 34-46. Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Rebecca de Guia-Salvador and Rosmari D. Carandang.

[10] *Id*. at 31-32.

[11] *Id*. at 278-279.

[12] *Id*. at 727-728, Report dated March 28, 2007 submitted by Atty. Lucita Abjelina-Soriano, Clerk of Court, Third Division, recommending the consolidation of the three cases.

[13] *Rollo* (G.R. Nos. 146184-85), pp. 43 & 311.

service contractor through a negotiated contract. It said that to award TCSI's contract by mere negotiation would violate its right to equal protection of the law. TCSI thus suggested that a public bidding be conducted and that the effectivity of its service contract be meanwhile extended until a winning bid is declared.

A similar letter from OMSI to MIAA followed.[14]

In reply, MIAA wrote TCSI and OMSI reiterating its disinclination to renew the latter's contracts, adding that it was to the government's advantage to instead just negotiate with other contractors. The MIAA said that awarding a contract through negotiation was in accordance with Section 9 of Executive Order No. (EO) 903; Sec. 82 of Republic Act No. (RA) 8522, otherwise known as the *General Appropriations Act for 1998*; and Sec. 417 of the Government Accounting and Auditing Manual (GAAM).[15]

Consequently, OMSI and TCSI instituted civil cases against MIAA to forestall the termination of their contracts and prevent MIAA from negotiating with other service contractors.

Civil Case Nos. 98-1875 and 98-1885

On October 26, 1998, OMSI filed with the Pasay City RTC a Complaint for *Injunction and Damages with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction*[16] against MIAA (OMSI case). Docketed as Civil Case No. 98-1875, the case was raffled to Branch 119 of the court.

Two days after, TCSI filed Civil Case No. 98-1885 (first TCSI case) for *Prohibition, Mandamus and Damages with Prayer for Temporary Restraining Order (TRO) and Injunction*[17] against Gana and Goodline Staffers & Allied Services, Inc. (Goodline), a service contractor that was awarded the

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[14] *Id*. at 44.

[15] *Id*. at 45-46 & 317-320.

[16] *Id*. at 47-56.

[17] *Id*. at 111-118.

contract heretofore pertaining to TCSI. This was raffled to the RTC, Branch 113, Pasay City. The OMSI and TCSI cases are now the consolidated cases G.R. Nos. 146184-85.

Both Branches 113 and 119 granted TROs to OMSI and TCSI.[18] Subsequently, on November 18, 1998, Branch 119 granted a preliminary injunctive writ[19] in favor of OMSI. A day after, Branch 113 also granted a similar writ[20] in favor of TCSI.

Without filing any motion for reconsideration, MIAA assailed as void the issuance of the injunctive writs before the CA through petitions for *certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP Nos. 50087 and 50131.[21]

Meanwhile, even as the cases were pending before the CA, Branch 113 continued to hear the first TCSI case. On February 1, 2001, the trial court rendered a Decision declaring as null and void the negotiated contract award to Goodline and the Resolution of the MIAA Board dated October 2, 1998, which authorized Gana to negotiate the award of the service contract, and ordered the holding of a public bidding on the janitorial service contract. Branch 113 also ordered the writ of preliminary injunction in the case enforced until after a qualified bidder is determined.[22]

In its Decision, the trial court said MIAA and Gana violated TCSI's right to equal protection and that the authority to negotiate the MIAA Board granted to Gana was tainted with grave abuse of discretion as Gana's exercise of the management's prerogative to choose the awardee of a service contract was done arbitrarily. Gana, the RTC added, should have conducted a public bidding, noting that Gana erred in relying on the law and executive issuances he cited because those do not do away with the required

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[18] *Id*. at 58-61 & 119-126.

[19] *Id*. at 80-87.

[20] *Id*. at 157-180.

[21] *Id*. at 88-104 & 171-189.

[22] *Id*. at 123-124. Penned by Judge Caridad H. Grecia-Cuerdo.

public bidding, as held in *National Food Authority v. Court of Appeals*.[23]

Following the denial of Gana's motion for reconsideration, MIAA and Gana appealed before the CA, their recourse docketed as CA-G.R. SP No. 67092.

Civil Case Nos. 02-0517 and 03-0025

During the pendency of the appeal of the first TCSI case before the CA in CA-G.R. SP No. 67092, MIAA and TCSI engaged in several exchanges regarding payment of TCSI employees' salaries. It appears that MIAA promised to pay TCSI's employees who were allegedly not paid their salaries on time. According to MIAA, it had not paid TCSI the monthly billings per contract owing to the non-submission by TCSI, as required in the contract, of the proper billing requirements and proof of actual payment of TCSI's employees for the payroll period.

On September 9, 2002, TCSI sent a demand letter[24] to MIAA for contract billings since late June 2002. In the letter, TCSI also protested MIAA's unilateral precondition that the former submit proof of actual wage payment to its employees. TCSI claimed MIAA's delay in payment resulted in financial losses for TCSI. TCSI reiterated its demand on October 4, 2002 for the periods covering July to September 2002, TCSI this time accusing MIAA of deliberately delaying payment which had adversely affected TCSI's business since it could not increase its manpower nor buy enough janitorial supplies and materials, making it liable to MIAA for liquidated damages. TCSI appealed to MIAA to waive the liquidated damages it was charging TCSI for the period July to September 2002.

On October 30, 2002, MIAA informed TCSI that it was terminating the latter's contract effective 10 days from receipt of the notice or on November 14, 2002.[25] As reason therefor, MIAA alleged that TCSI's manpower was insufficient and, thus,

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[23] G.R. Nos. 115121-25, February 9, 1996, 253 SCRA 470.

[24] *Rollo* (G.R. No. 167827), pp. 168-170.

[25] *Id.* at 71.

was delinquent in the delivery of supplies—both in violation of paragraph 9.02[26] of the service contract.

TCSI protested the termination which it viewed as violative of the injunctive writ issued by Branch 113. It blamed MIAA for deliberately refusing and delaying to pay TCSI, which forced TCSI into a situation where it could not comply with its contract. TCSI accused MIAA of arbitrarily terminating its contract to replace TCSI with another outfit and for ignoring Article VIII of the contract, the arbitration clause. It also posited that par. 9.02 was a clause of adhesion and could not be enforced. On November 11, 2002, TCSI sent a demand letter[27] for PhP 18,091,957.94 to MIAA, the amount representing, among others, claims for janitorial services, illegal deductions made from billing for janitorial services, and arbitrary deductions made for alleged undelivered supplies.

In its letter-reply[28] of November 13, 2002, MIAA asserted that the termination of TCSI's service contract did not violate the injunctive writ as the writ covered only the extension of the contract period until such time that a new awardee was chosen through public bidding. To MIAA, the writ did not enjoin contract termination for cause, such as for violation of par. 9.02 of the contract. Moreover, MIAA asserted that TCSI did not comply with Art. 1, par. 1.03 of the "status quo contract" which stipulates that TCSI shall strictly and fully comply with the procedures/ instructions issued by MIAA, as part of the invitation to bid, and instructions that may be issued by MIAA from time to time—all integral parts of the contract. According to MIAA, it was TCSI that chose to ignore these instructions and did not present proof of actual payment to TCSI employees.

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[26] *Id*. at 52. Par. 9.02 states: Notwithstanding any provision to the contrary, the MIAA has the right to terminate or rescind this Contract without need of judicial intervention by giving at least ten (10) days written notice to that effect upon the CONTRACTOR, which notice shall be final and binding on both parties. In such event, the MIAA shall have the right to stop issuing passes to the CONTRACTOR and its employees to prevent them from entering the NAIA premises.

[27] *Id*. at 72-73.

[28] *Id*. at 182-185.

On the eve of November 18, 2002, MIAA refused entry to TCSI employees and took over the janitorial services in the area serviced by TCSI.

Subsequently, on November 25, 2002, TCSI filed a Petition for Contempt with Motion to Consolidate,[29] impleading Edgardo Manda who took over as GM of MIAA. The petition, entitled *Triple Crown Services, Inc. v. Edgardo Manda, in his capacity as General Manager of the Manila International Airport Authority* and docketed as Civil Case No. 02-0517 (second TCSI case for contempt), was raffled to the RTC, Branch 108, Pasay City. In it, TCSI mainly alleged that the unilateral termination by MIAA of their service contract on alleged contract violation brought about by MIAA's refusal to pay TCSI was a blatant and contumacious violation of the injunctive writ issued by Branch 113. TCSI also prayed that the petition for contempt be consolidated with the first TCSI case.

On the same day that the petition for contempt was filed, MIAA sent a reply[30] to TCSI's demand letter asserting that MIAA could not pay the items TCSI demanded because TCSI had not presented any billings for the period it wanted to be paid, among other reasons.

Meanwhile, pending resolution of the second TCSI case for contempt, TCSI filed on January 24, 2003 a Petition for *Mandamus* with Damages[31] against MIAA entitled *Triple Crown Services, Inc. v. Manila International Airport Authority*, docketed as Civil Case No. 03-0025 (third TCSI case for *mandamus*) and again raffled to Branch 115, wherein TCSI sought to maintain the status quo order issued by Branch 113 in the first TCSI case and to compel MIAA to pay PhP18 million to TCSI.

In its Comment, MIAA denied all of TCSI's allegations and accused TCSI of forum shopping.

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[29] *Id.* at 155-166.

[30] *Id.* at 238-239.

[31] *Id.* at 76-91.

On March 4, 2003, in the third TCSI case for *mandamus*, Branch 115 granted[32] the Writ of *Mandamus* to TCSI and ordered MIAA to comply with the Writ of Preliminary Injunction issued by Branch 113 in the first TCSI case.

A week after and because MIAA refused to allow TCSI to peacefully continue its contract services, TCSI filed an *Urgent Manifestation With Prayer for the Court to Cite Respondent Motu Proprio in Contempt.*[33]

After the trial court denied MIAA's Motion for Reconsideration,[34] Manda, in compliance with the trial court's show cause order, explained that the writ of *mandamus* had not yet become final and executory and a writ of execution was still needed before *mandamus* could be enforced.

On March 24, 2003, MIAA assailed the March 4, 2003 and March 19, 2003 Orders of the trial court before the CA through a petition for *certiorari* under Rule 65 in CA-G.R. SP No. 76138, praying for a TRO and/or writ of preliminary injunction for the trial court to desist from further proceedings with the third TCSI case for *mandamus*.

A day after, in the second TCSI case for contempt, the RTC directed the arrest of Manda for his failure to comply with the orders of the court. This did not materialize because two days after, the CA granted a TRO enjoining the enforcement of the assailed orders and the writ of *mandamus* and, consequently, lifted the warrant of arrest for Manda.

Thereafter, Manda filed a Manifestation and Motion to Dismiss the second TCSI case for contempt on the ground of forum shopping. The trial court denied the motion on the ground that the contempt case was an entirely distinct and separate cause of action from the *mandamus* case pending in another RTC branch. It said the contempt case was grounded on the alleged

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[32] *Id.* at 256-258, per Judge Francisco G. Mendiola.

[33] *Id.* at 259-262.

[34] *Id.* at 266-272.

disobedience of Manda of the RTC, Branch 113 Order and injunctive writ in the first TCSI case appealed before the CA which could not be considered final and executory. Hence, the trial court ruled that the contempt case was prematurely filed and it thus had not acquired jurisdiction over it.

The Ruling of the Court of Appeals in the consolidated cases docketed CA-G.R. SP Nos. 50087 and 50131 involving the injunctive writs issued in the OMSI case and First TCSI case

Recall that MIAA assailed the injunctive writs issued by the trial court thru petitions for *certiorari* under Rule 65 before the CA, docketed as CA-G.R. SP Nos. 50087 and 50131. On November 24, 2000, the CA rendered the assailed Decision, denying due course to and dismissing the petitions.[35] The CA stated that respondents-judges did not gravely abuse their discretion in issuing the injunctive writs enjoining MIAA from terminating the service contracts of OMSI and TCSI. Relying on *Manila International Airport Authority v. Mabunay* (*Mabunay*)[36] and *National Food Authority*,[37] the CA said that MIAA and Gana failed to satisfactorily show why the aforementioned cases should not apply. Moreover, the appellate court explained that notwithstanding the expiration of the service contracts of OMSI and TCSI, they both have extant interests as possible applicants. Aggrieved by the CA Decision, MIAA and Gana filed the instant petition docketed as **G.R. Nos. 146184-85**.

The Ruling of the Court of Appeals in CA-G.R. SP No. 67092

Recall likewise that the RTC in the first TCSI case granted an injunctive writ in favor of TCSI. On appeal, on November 28, 2003, the CA in CA-G.R. SP No. 67092 rendered the assailed Decision, affirming that of the RTC[38] and reasoning that Sec. 1(e) of EO 301, series of 1987, entitled *Decentralizing*

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[35] *Rollo* (G.R. Nos. 146184-85), p. 42.

[36] G.R. No. 126151, January 20, 2000, 322 SCRA 760.

[37] *Supra* note 23.

[38] *Rollo* (G.R. No. 161117), p. 37.

Actions on Government Negotiated Contracts, Lease Contracts and Records Disposal, relied upon by Gana and MIAA, does not apply to service contracts but only to requisitions of needed supplies. The CA applied our ruling in *Kilosbayan, Incorporated v. Morato* (*Kilosbayan*),[39] where we held that the "supplies" mentioned as exceptions in EO 301 refer only to contracts for the purchase of supplies, materials, and equipment, and do not refer to other contracts, such as lease of equipment, and that in the same vein, "supplies" in Sec. 1(e) of EO 301 only include materials and equipment and not service contracts, which are included in the general rule of Sec. 1. The CA, relying on *Mabunay*[40] and *National Food Authority*, explained that Sec. 9 of EO 903, Sec. 82 of RA 8522, and Sec. 417 of the GAAM must be harmonized with the provisions of EO 301 on public biddings in all government contracted services. The rationale for public bidding, the CA said, is to give the public the best possible advantages through open competition.

Without filing a motion for reconsideration, Gana and MIAA now question the above Decision of the appellate court in CA-G.R. SP No. 67092 through a Petition for Review on *Certiorari* docketed as **G.R. No. 161117** before us.

The Ruling of the Court of Appeals in CA-G.R. SP No. 76138

On September 9, 2004, the CA rendered the assailed Decision, granting MIAA's petition for *certiorari*. It annulled and set aside the March 4, 2003 Order and March 19, 2003 Writ of *Mandamus* and dismissed the third TCSI case for *mandamus* with prejudice.[41] The CA found TCSI guilty of forum shopping when it filed the third TCSI case for *mandamus* while the second TCSI case for contempt was pending. Further, the CA observed that the two cases have identical parties, prayed for the same reliefs, and were anchored on the same writ of preliminary injunction issued in the first TCSI case. Citing *Philippine*

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[39] G.R. No. 118910, July 17, 1995, 246 SCRA 540.

[40] *Supra* note 36.

[41] *Rollo* (G.R. No. 167827), pp. 45-46.

Commercial International Bank v. Court of Appeals,[42] the CA concluded that elements of *litis pendentia* were present and TCSI was guilty of forum shopping.

TCSI's motion for reconsideration was likewise denied in the April 13, 2005 CA Resolution. TCSI now assails the above Decision and Resolution before us in a Petition for Review on *Certiorari* under Rule 45 docketed as **G.R. No. 167827**.

The Issues

In **G.R. Nos. 146184-85**, MIAA and Gana raise the following issues for our consideration:

1. Whether [or not] the Court of Appeals erred in declaring that respondents had extant interests in the awarding of the service contracts.
2. Whether [or not] the Court of Appeals erred in holding that petitioners had no power to award the service contracts through negotiation.[43]

In **G.R. No. 161117**, Gana and MIAA raise the following issues for our consideration:

Whether [or not] the Court of Appeals erred in holding that the exception in Section 1 (e) of [EO] 301 applies only to requisition of needed supplies and not to the contracting of public services.

Whether [or not] the Court of Appeals erred in holding that respondent is not estopped from questioning the negotiated contract between MIAA and [Goodline].

Whether there was a violation of respondent's right to equal protection.[44]

In **G.R. No. 167827**, TCSI raises the following issues for our consideration:

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[42] G.R. No. 114951, July 17, 2003, 406 SCRA 575.

[43] *Rollo* (G.R. Nos. 146184-85), p. 13.

[44] *Rollo* (G.R. No. 161117), p. 13.

I.

Whether or not the respondent can be compelled by *Mandamus* to maintain the *status quo ante*, as earlier ordered by this Honorable Court and be held liable for damages for unilaterally terminating the service contract of the petitioner in violation of said status quo order.

II.

Whether or not the herein petitioner is guilty of forum shopping.

III.

Whether or not the herein private respondent complied with the requisites for the institution of a petition for *certiorari* under Rule 65 with the Court of Appeals.[45]

Propriety of the issuance of the injunctions

We will jointly tackle G.R. Nos. 146184-85 and 161117 since the issues raised are closely interwoven. The incidents in the two assailed decisions not only arose from the first TCSI case, but also involved the same issue of the propriety of preliminary and permanent injunctions.

MIAA and Gana strongly assert that OMSI and TCSI have no right to be protected by the injunctive writs as the term of their service contracts had already expired on October 31, 1998. Petitioners rely on *National Food Authority*, where we held that no court can compel a party to agree to a contract or its extension through an injunctive writ since an extension of a contract is only upon mutual consent of the parties.

MIAA and Gana also argue that OMSI and TCSI are estopped from questioning the validity of a contract acquired through negotiations since the service contracts of OMSI and TCSI with MIAA were also negotiated contracts and did not undergo public bidding. These negotiated contracts are among the exceptions in Sec. 1 of EO 301. MIAA and Gana posit that the exceptions in Sec. 1 cover both contracts for public services and contracts for supplies, materials, and equipment. And, since TCSI's contract

[45] *Rollo* (G.R. No. 167827), p. 14.

expired on October 31, 1998, and MIAA refused to extend the contracts, OMSI and TCSI have no right of renewal or extension of their service contract.

We agree with MIAA and Gana.

It is undisputed that the service contracts of OMSI and TCSI expired on October 31, 1998 and were not extended by MIAA. Hence, all the rights and obligations arising from said contracts were extinguished on the last day of the term. As a result, OMSI and TCSI had already lost their rights to render janitorial and maintenance services for MIAA starting November 1, 1998.

Such being the case, the Court rules that the TROs and writs of preliminary injunction issued in favor of OMSI and TCSI are irregular and without legal basis for the following reasons, to wit:

(1) The November 18, 1998 injunctive writ in favor of OMSI in the OMSI case and the November 19, 1998 injunctive writ in favor of TCSI in the first TCSI case were in the nature of writs of mandatory preliminary injunction. In *Bautista v. Barcelona*,[46] we made clear that a mandatory injunction is an extreme remedy and will be granted only on a showing that (a) the invasion of the right is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.[47] It is apparent that OMSI and TCSI have no more legal rights under the service contracts and, therefore, they have not met the vital procedural requirement that they must have material and substantial rights that have to be protected by courts.

(2) The service contracts of OMSI and TCSI may not be extended through the instrumentality of an injunctive writ. It is a doctrine firmly settled in this jurisdiction that courts have no power to make a contract for the parties nor can they construe

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[46] 100 Phil. 1078 (1957).

[47] See also *Merville Park Homeowners Association, Inc. v. Velez*, G.R. No. 82985, April 22, 1991, 196 SCRA 189; cited in Regalado, *REMEDIAL LAW COMPENDIUM,* 707 & 710 (9th ed.).

contracts in such a manner as to change the terms of the contracts not contemplated by the parties.[48] Verily, under Art. 1308 of the Civil Code, the contract between the parties is the law between them; mutuality being an essential characteristic of contracts giving rise to reciprocal obligations.[49] And under Art. 1306 of the Code, the parties may establish stipulations mutually acceptable to them for as long as such are not contrary to law, morals, good customs, public order, or public policy. And where a determinate period for a contract's effectivity and expiration has been mutually agreed upon and duly stipulated, the lapse of such period ends the contract's effectivity and the parties cease to be bound by the contract.

It is undisputed that the service contracts were to terminate on October 31, 1998. Thus, by the lapse of such date, where no contract extension had been mutually agreed upon by the parties, the trial court cannot force the parties nor substitute their mutual consent to a contract extension through an injunction.

Indeed, MIAA's decision not to extend the service contracts of OMSI and TCSI is a valid exercise of management prerogative. Certainly, there is no law that prohibits management discretion, even if it be a governmental agency or instrumentality or a government-owned or controlled corporation, from extending or not extending a service contract. Certainly, MIAA's management can determine, in the exercise of its sound discretion and the options available, given the factual and economic milieu prevailing, whether or not it is to its interest to extend a service contract for janitorial and maintenance services.

From the foregoing premises, the RTCs in Civil Case Nos. 98-1875 and 98-1885 have erred in issuing the assailed writs of mandatory injunction. Hence, these writs must be nullified.

The next issue to be resolved is whether MIAA, in the context of this case, can be barred from entering into negotiated contracts

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[48] *New Life Enterprises v. CA*, G.R. No. 94071, March 31, 1992, 207 SCRA 669.

[49] CIVIL CODE, Art. 1308. The contracts must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

after the expiration of the service contracts of OMSI and TCSI on October 31, 1998.

The answer is in the affirmative.

Exceptions in EO 301 apply to purchase of supplies, materials and equipment not to contracts for public services

We cannot agree with the contention of MIAA and Gana that the exceptions to the public bidding rule in Sec. 1 of EO 301 cover both contracts for public services and for supplies, material, and equipment. Their reliance on Sec. 1(e) of EO 301 for the award of a service contract for janitorial and maintenance services without public bidding is misplaced.

For clarity, we quote in full Sec. 1 of EO 301:

Section 1. Guidelines for Negotiated Contracts. Any provision of the law, decree, executive order or other issuances to the contrary nothwithstanding, **no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities shall be renewed or entered into without public bidding**, except under any of the following situations: x x x

a. Whenever the supplies are urgently needed to meet an emergency which may involve the loss of, or danger to, life and/or property;

b. Whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;

c. Whenever the materials are sold by an exclusive distributor or manufacturer who does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;

d. Whenever the supplies under procurement have been unsuccessfully placed on bid for at least two consecutive times, either due to lack of bidders or the offers received in each instance were exorbitant or non-conforming to specifications;

e. **In cases where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned**; and

f. Whenever the purchase is made from an agency of the government. (Emphasis supplied.)

In *Andres v. Commission on Audit*, this Court explained the rationale behind EO 301, upholding the general rule that contracts shall not be entered into or renewed without public bidding, thus:

> Executive Order No. 301 explicitly permits negotiated contracts in particular identified instances. In its preamble, it adverted to the then existing set-up of "**a centralized administrative system . . . for reviewing and approving negotiated contracts . . .," and to the unsatisfactory character thereof in that "such centralized administrative system is not at all 'facilitative' *particularly in emergency situations,* characterized as it is by red tape and too much delay in the processing and final approval of the required transaction or activity;" hence, the "need to decentralize the processing and final approval of negotiated contracts** . . . " It then laid down, in its Section 1, "guidelines for negotiated contracts" thenceforth to be followed. **While affirming the general policy that contracts shall not be entered into or renewed without public bidding**, x x x. (Emphasis supplied.)[50]

It is only in the instances enumerated above that public bidding may be dispensed with and a contract closed through negotiations.

MIAA and Gana posit the view that Sec. 1(e) of EO 301 includes contracts for public services and is not limited to supplies, materials, or equipment, and applies to all forms of contracts.

We are not convinced.

In *Kilosbayan*,[51] we ruled that Sec. 1 of EO 301 "applies only to the contracts for the purchase of supplies, materials, and equipment. It does not cover contracts of lease of equipment

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[50] G.R. No. 94476, September 26, 1991, 201 SCRA 780, 787.

[51] *Supra* note 39.

like the [Equipment Lease Agreement]." While the lease of equipment was the subject of *Kilosbayan*, the ruling therein can very well apply to the cases at bar. We agree with the apt observation of OMSI and TCSI that Sec. 1 of EO 301 and the exceptions to the bidding rule enumerated therein only pertain to contracts for the procurement of supplies, materials, and equipment. Thus, corollarily, this express enumeration excludes all others in accord with the elemental principle in legal hermeneutics, *expressio unius est exclusio alterius* or the express inclusion of one implies the exclusion of all others. A contract for janitorial and maintenance services, like a contract of lease of equipment, is not included in the exceptions, particularly Sec. 1(e) relied upon by MIAA and Gana.

Moreover, in *Kilosbayan*, in denying Kilosbayan Incorporated's motion for reconsideration and debunking its contention that EO 301 covers all types of contracts for public services, this Court, in a Resolution, reiterated its original ruling and held that EO 301 was promulgated merely to decentralize the system of reviewing negotiated contracts of purchase for the furnishing of supplies, materials, and equipment as well as lease contracts of buildings. We concluded:

> In sum, **E.O. No. 301 applies only to contracts for the purchase of supplies, materials and equipment**, and it was merely to change the system of administrative review of emergency purchases, as theretofore prescribed by E.O. No. 298, that E.O. No. 301 was issued on July 26, 1987. Part B of this Executive Order applies to leases of buildings, not of equipment, and therefore does not govern the lease contract in this case. (Emphasis supplied.)[52]

It is thus clear that the contention of MIAA and Gana that the exceptions in EO 301, particularly Sec. 1(e), include contracts for public services cannot be sustained.

Further, suffice it to say that Sec. 9 of EO 903,[53] Sec. 82 of RA 8522 or the *General Appropriations Act for 1998*, and

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[52] G.R. No. 118910, November 16, 1995, 250 SCRA 130, 150.

[53] "Providing for a Revision of Executive Order No. 778 Creating the Manila International Airport Authority, Transferring Existing Assets of the Manila International Airport to the Authority, and Vesting the Authority with Power to Administer and Operate the Manila International Airport" (1983).

Sec. 417 of the GAAM, likewise relied upon by MIAA and Gana for grant of authority to negotiate service contract, do not do away with the general rule on public bidding. In *Mabunay*, we ruled that RA 7845 or the *General Appropriations Act for 1995* cannot be construed to eliminate public bidding in the award of a contract for security services, as RA 7845 "is not the governing law on the award of the service contracts by government agencies nor does it do away with the general requirement of public bidding"[54] and that "administrative discretion may not transcend the statutes"[55] that require public bidding. Thus, RA 8522, particularly its Sec. 82, does not dispense with the requirement of public bidding to award a contract for janitorial and maintenance services.

Furthermore, our ruling in *National Food Authority*, cited in *Mabunay*, is still valid. It directly applies to the legal issue in the instant consolidated cases that public bidding is required for the award of service contracts.

RA 9184 provides for alternative procurement procedures

In sum, we reiterate the legal requirement of competitive public bidding for all government public service contracts and procurement of materials, supplies, and equipment. Competitive public bidding may not be dispensed with nor circumvented, and alternative modes of procurement for public service contracts and for supplies, materials, and equipment may only be resorted to in the instances provided for by law. In the instant case, no express provision of law has granted MIAA the right to forego public bidding in negotiating the award of contracts for janitorial and maintenance services.

In *Abaya v. Ebdane*,[56] this Court outlined the history of Philippine procurement laws from the introduction of American public bidding through Act No. 22, enacted on October 15,

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[54] *Supra* note 36, at 766; citing *National Food Authority*, *supra* note 23.

[55] *Mabunay*, *supra* at 768; citing Tantuico, Jr., *STATE AUDIT CODE OF THE PHILIPPINES* 448 (1982).

[56] G.R. No. 167919, February 14, 2007, 515 SCRA 720.

1900, and the subsequent laws and issuances. On October 8, 2001, President Arroyo issued EO 40 which repealed, amended, or modified all executive issuances, orders, rules and regulations, or parts inconsistent with her EO.[57]

On January 10, 2003, President Arroyo signed into law RA 9184,[58] which expressly repealed, among others, EO 40, EO 262, EO 301, EO 302, and Presidential Decree No. 1594, as amended, and is the current law on government procurement. This law still requires public bidding as a preferred mode of award. However, RA 9184 allows exceptions to public bidding rule in certain instances, conditions, or extraordinary circumstances. Sec. 53[59] of RA 9184 in particular authorizes negotiated procurement, while other alternative methods of

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[57] EO 40, Sec. 48.

[58] "An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and For Other Purposes," promulgated on January 10, 2003 and took effect on January 26, 2003, or 15 days after its publication in two newspapers of general circulation.

[59] SEC. 53. *Negotiated Procurement.*—Negotiated Procurement shall be allowed only in the following instances:

(a) In cases of two (2) failed biddings, as provided in Section 35 hereof;

(b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: *Provided, however*, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: *Provided, further,* That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable,

procurement are set forth under Art. XVI[60] of RA 9184. Thus, under the present law, MIAA can enter into negotiated contracts in the exceptional situations allowed by RA 9184.

With regard to the prayer for a mandatory preliminary injunction, OMSI and TCSI have amply demonstrated their right to require the holding of a public bidding for the service contracts with MIAA. While we have previously explained that OMSI and TCSI have no right to a writ of mandatory injunction to have their service contracts extended by the courts beyond the fixed term, the situation is different with respect to their right to participate in the public bidding prescribed by law. Since they were the previous service contractors of MIAA and have manifested their desire to participate in the public bidding for the new contracts, then they have satisfactorily shown that they have material and substantial rights to be protected and preserved by a mandatory injunctive writ against MIAA. Considering that the negotiated contract is contextually illegal under EO 301, EO 903, Sec. 82 of RA 8522, and Sec. 417 of the GAAM, then MIAA can be directed to conduct a public bidding instead of resorting to a negotiated contract.

MIAA, however, eventually discarded the negotiation of new contracts with prospective service contractors and has decided to hire personnel to render janitorial and messengerial services starting July 31, 2005. Clearly, the employment of said personnel is within the realm of management prerogatives of MIAA allowed under its charter, EO 903, and other existing laws. Since the hiring of said employees dispensed with the need for getting

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this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,

(e) Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989.

[60] Alternative methods provided for under Art. XVI, specifically Sec. 48, are: (a) limited source bidding; (b) direct contracting; (c) repeat order; (d) shopping; and (e) negotiated procurement.

service contractors, then the relief of requiring MIAA to conduct public bidding is already unavailing and has become moot and academic.

On the claim of OMSI and TCSI that their rights to equal protection of laws were violated by the negotiation of the contracts by MIAA with other service contractors, the Court finds no law that is discriminatory against them in relation to their expired service contracts. EO 301, EO 903, RA 8522, and the GAAM are not discriminatory against them precisely because, as the Court ruled, there has to be public bidding where OMSI and TCSI are allowed to participate. At most, what can be discriminatory is the intended negotiation of the new service contracts by MIAA which prevents OMSI and TCSI from participating in the bidding. We find such act illegal and irregular because of the wrong application of the laws by MIAA and not because the pertinent laws are discriminatory against them.

We stressed in *Genaro R. Reyes Construction, Inc. v. CA*:

> [A]lthough the law be fair on its face, and impartial in appearance, yet if applied and administered by the public authorities charged with their administration x x x with an evil eye and unequal hand so as to practically make unjust and illegal determination, the denial of equal justice is still within the prohibition of the Constitution.[61]

Given the antecedent facts of these consolidated cases, we agree with the courts *a quo* that the constitutional right of OMSI and TCSI to equal protection is violated by MIAA and Gana when no public bidding was called precisely because the latter were going to award the subject service contracts through negotiation. Worse, the acts of MIAA and Gana smack of arbitrariness and discrimination as they not only did not call for the required public bidding but also did not even accord OMSI and TCSI the opportunity to submit their proposals in a public bidding. What OMSI and TCSI got was a terse reply that their contracts will not be renewed and that MIAA would negotiate contracts lower than those of OMSI and TCSI without granting them the opportunity to submit their own bids or proposals.

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[61] G.R. No. 108718, July 14, 1994, 234 SCRA 116, 131-132.

On the ground of uneven protection of law, we could grant the prayer for an order directing a public bidding. Unfortunately, such action is already foreclosed by the decision of MIAA not to hire any service contractor.

The CA has discretion to give due course to the petition

We now tackle the procedural issues raised in G.R. No. 167827 on whether MIAA complied with the requirements of Rule 65 before the CA and whether forum shopping is present.

TCSI argues that MIAA's petition for *certiorari* under Rule 65 before the CA should have been outrightly dismissed for manifest violation of par. 2, Sec. 1 of Rule 65 in failing to attach the required certified true copies of the assailed RTC Orders. Moreover, TCSI contends that MIAA failed to raise any genuine jurisdictional issues correctable by *certiorari*, as the issues raised by MIAA were all factual matters which involved questions of error of judgment and not of jurisdiction.

We are not persuaded.

Sec. 1 of Rule 65 pertinently provides:

> SECTION 1. *Petition for certiorari*.—When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

The above provision clearly vests the CA the authority and discretion to give due course to the petitions before it or to

dismiss them when they are not sufficient in form and substance, the required pleadings and documents are not attached to them, and no sworn certificate on non-forum shopping is submitted. This discretion must be exercised, not arbitrarily or oppressively, but in a reasonable manner in consonance with the spirit of the law, always with the view in mind of seeing to it that justice is served.

The CA has exercised its discretion in giving due course to MIAA's petition before it. We will not delve into this issue to bear on the instant petition. Certainly, TCSI has not shown that the CA has arbitrarily or oppressively exercised its sound discretion. Nor has it shown that the appellate court was not able to or could not go over the pertinent documents in resolving the instant case on review before it. Neither has TCSI shown any manifest bias, fraud, or illegal consideration on the part of the CA to merit reconsideration for the grant of due course.

***Certiorari* is a proper remedy for an interlocutory order granting *mandamus* (Third TCSI case for *Mandamus*)**

The March 4, 2003 and March 19, 2003 Orders granting *mandamus* and denying MIAA's motion for reconsideration, respectively, are clearly interlocutory orders. What we held in *Metropolitan Bank & Trust Company v. Court of Appeals* is instructive, thus:

> It has been held that "[a]n interlocutory order does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits." It "refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision on the whole controversy." Conversely, a final order is one which leaves to the court nothing more to do to resolve the case. The test to ascertain whether an order is interlocutory or final is: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final."[62]

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[62] G.R. No. 110147, April 17, 2001, 356 SCRA 563, 570-571; citing *Bitong v. Court of Appeals*, G.R. No. 123553, July 13, 1998, 292 SCRA 503, 521: An example of an interlocutory order is one dismissing a motion to dismiss. The court must still conduct a trial before it can resolve the merits of such a case.

TCSI argues that since the trial court still has to hear the issue on damages in Civil Case No. 03-0025 for *mandamus* and no final decision has yet been rendered, the *mandamus* writ is an interlocutory one, and cannot be subject of an appeal. However, Rule 41 clearly states that while an interlocutory order cannot be subject of an appeal and the aggrieved party has to await the decision of the court, still it allows the filing of a special civil action of *certiorari* under Rule 65 when there is grave abuse of discretion in the issuance of the order. Moreover, under the circumstances of the case, MIAA had no other plain, speedy, and adequate remedy other than a petition for *certiorari* under Rule 65.

MIAA raised issues alleging grave abuse of discretion on the part of the RTC

TCSI argues that MIAA only raised factual matters before the CA which the trial court has ruled upon in the exercise of its jurisdiction and thus are not reviewable by *certiorari* but only by appeal.

Contrary to TCSI's contention, a close perusal of the issues raised by MIAA in CA-G.R. SP No. 76138 shows that not all the issues the latter raised were factual issues. MIAA assailed the lack or excess of jurisdiction of the RTC resulting from grave abuse of discretion when it issued the questioned orders. Abuse of discretion is precisely the thrust in a petition for *certiorari* under Rule 65.

Forum shopping exists

TCSI contends that the CA committed reversible error when it held TCSI resorted to forum shopping. TCSI argues it was not guilty of forum shopping when it filed the second TCSI case for contempt and the third TCSI case for *mandamus.* According to TSCI, as these are two distinct and separate cases, the elements of *litis pendentia* amounting to *res judicata* do not exist.

TCSI's contention is devoid of merit.

Forum shopping exists when the elements of *litis pendentia* are present, or when a final judgment in one case will amount to *res judicata* in another.[63] There is forum shopping when the following elements concur: (1) identity of the parties or, at least, of the parties who represent the same interest in both actions; (2) identity of the rights asserted and relief prayed for, as the latter is founded on the same set of facts; and (3) identity of the two preceding particulars, such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration or will constitute *litis pendentia*.[64]

We uphold the CA's finding that TCSI was guilty of forum shopping:

> An examination of the two petitions filed by [TCSI] reveals that the elements of *litis pendentia* are present. Both petitions are based on the alleged violation by petitioner of the writ of preliminary injunction dated November 19, 1998 issued in Civil Case No. 98-1885 [first TCSI case] enjoining the latter to maintain the *status quo* until after a qualified winning bidder is chosen by way of a public bidding. The reliefs prayed for in the two petitions are likewise founded on the same fact, *i.e.*, the alleged disobedience or violation of the writ of preliminary injunction by petitioner.
>
> In the assailed Order dated March 4, 2003 granting the writ of *mandamus*, respondent Judge directed petitioner to immediately comply with the writ of preliminary injunction. In the Order dated March 12, 2003, respondent Judge directed petitioner's General Manager, Edgardo Manda, to explain why he should not be cited for contempt for defying the Order dated March 4, 2003. Respondent Judge found the explanation of Manda devoid of merit and directed the latter to allow private respondent to re-assume its post at the airport terminal immediately, otherwise, a warrant of arrest shall be issued against him, pursuant to Section 8, Rule 71 of the Rules of Court. In fact, a warrant of arrest was issued against Manda on

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[63] *Philippine Nails and Wires Corporation v. Malayan Insurance Co., Inc.*, G.R. No. 143933, February 14, 2003, 397 SCRA 431, 443-444.

[64] *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, G.R. No. 154187, April 14, 2004, 427 SCRA 585, 590.

March 25, 2003 for his failure to comply with the Orders dated March 4, 2003 and March 19, 2003. In other words, the same penalty could be imposed on Manda in the petition for contempt filed by private respondent with the RTC, Branch 108, Pasay City, should the Presiding Judge thereof find him guilty of violating the writ of preliminary injunction. Moreover, Section 7, Rule 71 of the Rules of Court provides that if the contempt consists in the violation of writ of injunction, temporary restraining order or *status quo* order, the person adjudged guilty of contempt may also be ordered to make complete restitution to the party injured by such violation of the property involved or such amount as may be alleged and proved. Thus, private respondent could likewise claim damages in the petition for contempt filed by it with Branch 108. That private respondent did not find the petition for contempt to be an adequate and speedy remedy as no action has been taken by Branch 108 as of the date of the filing of the petition for *mandamus* with damages only shows that private respondent indulged in forum shopping.[65]

If the first TCSI case for Prohibition, *Mandamus*, and Damages with Prayer for TRO and Injunction would not be considered in determining whether forum shopping was resorted to by TCSI when it subsequently filed the second TCSI case for contempt and the third TCSI case for *mandamus*, then there could have been merit in TCSI's claim of non-forum shopping. The fact, however, is the second and third TCSI cases stemmed from the first TCSI case, anchored as they were on the alleged breach by MIAA of the November 19, 1998 writ of preliminary injunction. Such being the case, the court *a quo* did not err when it ruled that the reliefs in the second and third TCSI cases in effect prayed for the enforcement of the November 19, 1998 injunctive writ. Moreover, the causes of action in the second and third cases are substantially identical because the basis is the disobedience or breach of the writ of injunction.[66] Hence, forum shopping is present.

The Court's Dispositions

I. **G.R. No. 146184** (CA-G.R. SP No. 50087)
Civil Case No. 98-1875 entitled *OMSI v. MIAA* before the Pasay City RTC, Branch 119

[65] *Rollo* (G.R. No. 167827), pp. 43-44.

Re: November 18, 1998 Order granting writ of preliminary injunction in Civil Case No. 98-1875

(1) We rule to nullify the November 18, 1998 Order granting the injunctive writ for want of any legal right on the part of OMSI to be entitled to a writ of mandatory injunction.

(2) The November 24, 2000 CA Decision in CA-G.R. SP Nos. 50087 and 50131, affirming the aforementioned November 18, 1998 Order in Civil Case No. 98-1875, is accordingly reversed and set aside.

II. **G.R. No. 146185** (CA-G.R. SP No. 50131)
Civil Case No. 98-1885 entitled *TCSI v. Antonio P. Gana, MIAA and Goodline* (first TCSI case) before the Pasay City RTC, Branch 113

Re: November 19, 1998 Order granting the injunctive writ

(1) We rule to nullify the November 19, 1998 Order granting the writ of mandatory injunction in the absence of any real and substantial right on the part of TCSI entitling it to such writ under the rules and applicable jurisprudence.

(2) The November 24, 2000 CA Decision in CA-G.R. SP. Nos. 50087 and 50131, affirming the November 18, 1998 Order in Civil Case No. 98-1875, is also accordingly reversed and set aside.

III. **G.R. No. 161117** (CA-G.R. SP No. 67092)
Civil Case No. 98-1885 entitled *TSCI v. Antonio P. Gana, MIAA and Goodline* (first TCSI case)

Re: February 1, 2001 Decision in Civil Case No. 98-1885

(1) We rule that the negotiated contract between MIAA and Goodline and the resolution of the MIAA Board dated October 2, 1998, authorizing MIAA's management and/or GM Gana to negotiate and award service contracts upon the expiration of

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[66] *Northcott & Co. v. Villa-Abrille*, 41 Phil. 462 (1921).

the present service contract on October 31, 1998, are null and void. We, therefore, affirm par. 1 of the February 1, 2001 Decision of the Pasay City RTC, Branch 113.

(2) We rule that, in 1998, MIAA was required by EO 301 to conduct public bidding, and the negotiated contract for services with Goodline is prohibited and null and void. However, since MIAA decided against hiring contractors for janitorial and maintenance services and instead directly hired employees for the purpose, it would be legally improper to require MIAA to contract out such services by public bidding since this involves management decisions and prerogative. We, therefore, set aside par. 2 of the February 1, 2001 Pasay City RTC, Branch 113 Decision in Civil Case No. 98-1885, requiring MIAA and Gana to hold a public bidding, for being moot and academic.

(3) The writ of preliminary injunction is nullified, as TCSI has not shown any legal basis for the grant thereof. We, therefore, set aside par. 3 of the February 1, 2001 RTC Decision in Civil Case No. 98-1885. The November 28, 2003 CA Decision in CA-G.R. SP No. 67092, affirming the aforementioned pars. 2 and 3 of said RTC Decision, is likewise reversed and set aside.

IV. **G.R. No. 167827** (CA-G.R. SP No. 76138)
Civil Case No. 03-0025 entitled *TCSI v. MIAA* (third TCSI case for *mandamus*) before the Pasay City RTC, Branch 115

Re: March 19, 2003 Writ of *Mandamus* in Civil Case No. 03-0025

Since the November 19, 1998 Order of the Pasay City RTC, Branch 115 in Civil Case No. 98-1885 (first TCSI case) granting the injunctive writ is, for want of legal basis, null and void, it follows that the March 19, 2003 Writ of *Mandamus* issued in Civil Case No. 03-0025 is likewise null and void.

WHEREFORE, the petition in **G.R. Nos. 146184-85** is *GRANTED*. The November 24, 2000 CA Decision in CA-G.R. SP Nos. 50087 and 50131 is *REVERSED* and *SET ASIDE*. Likewise, both the November 18, 1998 Order of the Pasay

City RTC, Branch 119 in Civil Case No. 98-1875 and the November 19, 1998 Order of the Pasay City RTC, Branch 113 in Civil Case No. 98-1885 are *REVERSED* and *SET ASIDE*. The Court declares the service contracts of OMSI and TCSI to have been legally and validly terminated on October 31, 1998 by virtue of the expiration of the contracts' term and their non-renewal. The Pasay City RTC, Branch 119 is ordered to continue with the proceedings in Civil Case No. 98-1875.

The petition in **G.R. No. 161117** is *PARTLY GRANTED*. The November 28, 2003 CA Decision in CA-G.R. SP No. 67092 and the February 1, 2001 Decision of the Pasay City RTC, Branch 113 in Civil Case No. 98-1885, which was affirmed by the CA, are *AFFIRMED* with *MODIFICATIONS*, as follows:

WHEREFORE, a decision is hereby rendered, ordering as follows:

1. The negotiated contract by and between the respondents and the resolution of the MIAA Board, dated October 2, 1998, authorizing MIAA management and/or respondent GM Gana to negotiate and award service contracts upon the expiration of the present service contract, on October 31, 1998 are hereby declared NULL and VOID;

2. The hiring of employees to render janitorial and maintenance services by GM Gana and/or the MIAA management is declared VALID and LEGAL. However, should said petitioners decide to procure the services of a contractor for janitorial and maintenance services, then they are ordered to hold a public bidding for said services, subject to certain exceptions, set forth in RA 9184 or the *Government Procurement Act,* if applicable;

3. The writ of preliminary injunction is RECALLED and NULLIFIED; and

4. No pronouncement as to costs and attorney's fees.

The petition in **G.R. No. 167827** is *DENIED* for lack of merit and the September 9, 2004 Decision in CA-G.R. SP No. 76138 is *AFFIRMED.*

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 155550. January 31, 2008]

NORTHWEST AIRLINES, INC., *petitioner, vs.* **STEVEN P. CHIONG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE REQUIRED IN CIVIL CASES.— The records reveal that Chiong, as plaintiff in the trial court, satisfied the burden of proof required in civil cases, *i.e.*, preponderance of evidence. Section 1 of Rule 133 provides: **SECTION 1.** *Preponderance of evidence, how determined.* – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstance of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though preponderance is not necessarily with the greater number.

2. ID.; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.— We have scoured the records, and found no reason to depart from the well-settled rule that factual findings of the lower courts deserve the utmost respect and are not to be disturbed on appeal.

3. ID.; ID.; CREDIBILITY OF WITNESSES; NOT NECESSARILY AFFECTED BY RELATIONSHIP TO THE VICTIM.— It is of no moment that Chiong's witnesses – who all corroborated his testimony on his presence at the airport on, and flight details for, April 1, 1989, and that he was subsequently bumped-off – are, likewise, employees of Philimare which may have an interest in the outcome of this case. We intoned in *Philippine*

Airlines, Inc. v. Court of Appeals, thus: **(T)his Court has repeatedly held that a witness' relationship to the victim does not automatically affect the veracity of his or her testimony.** While this principle is often applied in criminal cases, we deem that the same principle may apply in this case, albeit civil in nature. **If a witness' relationship with a party does not *ipso facto* render him a biased witness in criminal cases where the quantum of evidence required is proof beyond reasonable doubt, there is no reason why the same principle should not apply in civil cases where the quantum of evidence is only preponderance of evidence.**

4. ID.; CIVIL PROCEDURE; PLEADINGS; DEFENSES AND OBJECTIONS NOT PLEADED, DEEMED WAIVED.— We uphold the RTC's and CA's ruling that the failure of Northwest to raise the foregoing defense in its Motion to Dismiss or Answer constituted a waiver thereof. Section 1, Rule 9 of the Rules of Court provides: **SECTION 1.** *Defenses and objections not pleaded.*— **Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.** However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. Similarly, Section 8, Rule 15 of the Rules of Court reads: **SECTION 8.** *Omnibus Motion*.— Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

5. ID.; EVIDENCE; MAXIM THAT *FALSUS IN UNO, FALSUS IN OMNIBUS*; NOT APPLICABLE IN CASE AT BAR.— Northwest insists – now that there is a pending criminal case for False Testimony against Chiong – that a falsified part of Chiong's testimony would indicate the falsity of his entire testimony, consistent with the "*falsus in uno, falsus in omnibus*" doctrine. Following Northwest's flawed logic, this would invariably lead to the conclusion that the corroborating testimonies of Chiong's witnesses are also false. The legal maxim *falsus in uno, falsus in omnibus*, cited by Northwest, is not a positive rule of law and is not strictly applied in this

jurisdiction. Before this maxim can be applied, the witness must be shown to have willfully falsified the truth on one or more material points. The principle presupposes the existence of a positive testimony on a material point contrary to subsequent declarations in the testimony. However, the records show that Chiong's testimony did not contain inconsistencies on what occurred on April 1, 1989. Yet, Northwest never even attempted to explain or impugn the evidence that Chiong passed through the PCG counter on April 1, 1989, and that his passport was accordingly stamped, obviously for purposes of his departure on that day. As to the criminal case, it is well to note that there is no final determination, as yet, of Chiong's guilt by the courts. But even if Chiong is adjudged guilty, it will have little effect on the outcome of this case. As we held in *Leyson v. Lawa*: The testimony of a witness must be considered in its entirety instead of in truncated parts. The technique in deciphering a testimony is not to consider only its isolated parts and anchor a conclusion on the basis of said parts. In ascertaining the facts established by a witness, everything stated by him on direct, cross and redirect examinations must be calibrated and considered. It must be stressed that facts imperfectly or erroneously stated in answer to one question may be supplied or explained as qualified by his answer to other question. The principle *falsus in uno, falsus in omnibus* is not strictly applied in this jurisdiction. The doctrine deals only with the weight of evidence and is not a positive rule of law, and the same is not an inflexible one of universal application. The testimony of a witness can be believed as to some facts and disbelieved as to others: x x x Professor Wigmore gives the following enlightening commentary: It may be said, once for all, that the maxim is in itself worthless— *first*, in point of validity, because in one form it merely contains in loose fashion a kernel of truth which no one needs to be told, and in the others, it is absolutely false as a maxim of life; and *secondly*, in point of utility, because it merely tells the jury what they may do in any event, not what they must do or must not do, and therefore it is a superfluous form of words. It is also in practice pernicious, *first*, because there is frequently a misunderstanding of its proper force, and *secondly*, because it has become in the hands of many counsel a mere instrument for obtaining new trials upon points wholly unimportant in themselves.

6. CIVIL LAW; DAMAGES; MORAL DAMAGES; PROPER IN BREACHES OF CONTRACT PRESENT BAD FAITH.— Under Article 2220 of the Civil Code of the Philippines, an award of moral damages, in breaches of contract, is in order upon a showing that the defendant acted fraudulently or in bad faith. Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong. It means breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud. Bad faith is in essence a question of intention.

7. ID.; ID.; EXEMPLARY DAMAGES; PROPER IN CASE AT BAR.— The courts carefully examined the evidence as to the conduct and outward acts of Northwest indicative of its inward motive. It is borne out by the records that Chiong was given the run-around at the Northwest check-in counter, instructed to deal with a "man in *barong*" to obtain a boarding pass, and eventually barred from boarding Northwest Flight No. 24 to accommodate an American, W. Costine, whose name was merely inserted in the Flight Manifest, and did not even personally check-in at the counter. Under the foregoing circumstances, the award of exemplary damages is also correct given the evidence that Northwest acted in an oppressive manner towards Chiong.

8. ID.; ID.; ATTORNEY'S FEES; PROPER IN CASE AT BAR.— As for the award of attorney's fees, while we recognize that it is sound policy not to set a premium on the right to litigate, we sustain the lower courts' award thereof. Attorney's fees may be awarded when a party is compelled to litigate or incur expenses to protect his interest, or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. In the case at bench, Northwest deliberately breached its contract of carriage with Chiong and then repeatedly refused to satisfy Chiong's valid, just and demandable claim. This unjustified refusal constrained Chiong to not only lose income under the crew agreement, but to further incur expenses and exert effort for almost two (2) decades in order to protect his interests and vindicate his right. Therefore, this Court deems it just and equitable to grant Chiong ₱200,000.00 as attorney's fees. The award is reasonable in view of the time it has taken for this case to be resolved.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
Albert R. Palacios & Associates for respondent.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Court of Appeals (CA) Decision[1] in CA-G.R. CV No. 50308[2] which affirmed *in toto* the Regional Trial Court (RTC) Decision[3] holding petitioner Northwest Airlines, Inc. (Northwest) liable for breach of contract of carriage.

On March 14, 1989, Philimare Shipping and Seagull Maritime Corporation (Philimare), as the authorized Philippine agent of TransOcean Lines (TransOcean), hired respondent Steven Chiong as Third Engineer of TransOcean's vessel *M/V Elbia* at the San Diego, California Port. Under the service crew agreement, Chiong was guaranteed compensation at a monthly salary of US$440.00 and a monthly overtime pay of US$220.00, or a total of US$7,920.00 for one year.

Subsequently, on March 27, 1989, Philimare dispatched a Letter of Guarantee to CL Hutchins & Co., Inc., TransOcean's agent at the San Diego Port, confirming Chiong's arrival thereat in time to board the *M/V Elbia* which was set to sail on April 1, 1989 (California, United States time). For this purpose, Philimare purchased for Chiong a Northwest plane ticket for San Diego, California with a departure date of April 1, 1989 from Manila. Ten (10) days before his scheduled departure, Chiong fetched

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[1] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Salvador J. Valdez, Jr. (deceased) and Juan Q. Enriquez, Jr., concurring; *rollo,* pp. 91-101.

[2] Dated April 11, 2002.

[3] Dated May 26, 1995 and penned by Judge Enrico A. Lanzanas; *rollo,* pp. 655-685.

his entire family from Samar and brought them to Manila to see him off at the airport.

On April 1, 1989, Chiong arrived at the Manila International Airport[4] (MIA), at about 6:30 a.m., three (3) hours before the scheduled time of departure. Marilyn Calvo, Philimare's Liaison Officer, met Chiong at the departure gate, and the two proceeded to the Philippine Coast Guard (PCG) Counter to present Chiong's seaman service record book for clearance. Thereafter, Chiong's passport was duly stamped, after complying with government requirements for departing seafarers.

Calvo remained at the PCG Counter while Chiong proceeded to queue at the Northwest check-in counter. When it was Chiong's turn, the Northwest personnel[5] informed him that his name did not appear in the computer's list of confirmed departing passengers. Chiong was then directed to speak to a "man in *barong*" standing outside Northwest's counters from whom Chiong could allegedly obtain a boarding pass. Posthaste, Chiong approached the "man in *barong*" who demanded US$100.00 in exchange therefor. Without the said amount, and anxious to board the plane, Chiong queued a number of times at Northwest's Check-in Counter and presented his ticket. However, the Northwest personnel at the counter told him to simply wait and that he was being a pest.

Frustrated, Chiong went to Calvo at the PCG counter and inquired if she had money so he could obtain a boarding pass from the "man in *barong*." Calvo, who already saw that something was amiss, insisted that Chiong's plane ticket was confirmed and as such, he could check-in smoothly and board the plane without shelling out US$100.00 for a boarding pass. Ultimately, Chiong was not allowed to board Northwest Flight No. 24 bound for San Diego that day and, consequently, was unable to work at the *M/V Elbia* by April 1, 1989 (California, U.S.A. time).

It appears that Chiong's name was crossed out and substituted with "W. Costine" in Northwest's Air Passenger Manifest.[6]

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[4] Now called the Ninoy Aquino International Airport (NAIA).

[5] Presumably a Check-in Agent.

[6] Records (Vol. II), p. 324.

In a letter dated April 3, 1989, Chiong's counsel demanded as recompense: (1) the amount equivalent to Chiong's salary under the latter's Crew Agreement[7] with TransOcean; (2) ₱15,000.00 for Chiong's expenses in fetching and bringing his family from Samar to Manila; (3) ₱500,000.00 as moral damages; and (4) ₱500,000.00 as legal fees.[8]

Northwest demurred. Thus, on May 24, 1989, Chiong filed a Complaint for breach of contract of carriage before the RTC. Northwest filed a Motion to Dismiss[9] the complaint citing the trial court's lack of jurisdiction over the subject matter of the case, but the trial court denied the same.[10]

In its Answer,[11] Northwest contradicted the claim that it breached its contract of carriage with Chiong, reiterating that Chiong had no cause of action against it because per its records, Chiong was a "no-show" passenger for Northwest Flight No. 24 on April 1, 1989.

In the RTC's Pre-trial Order[12] based on the parties' respective Pre-trial Briefs,[13] the triable issues were limited to the following:

(a) Whether [Chiong] was bumped-off by [Northwest] from Flight NW 24 or whether [Chiong] "no-showed" for said flight.

(b) If defendant is found guilty of having breached its contract of carriage with plaintiff, what damages are awardable to plaintiff and how much.

In the course of proceedings, Northwest, on September 14, 1990, filed a separate criminal complaint for False Testimony[14]

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[7] US$7,920.00 as basic annual salary, plus vacation leave with pay and gratuities.

[8] Records (Vol. I), pp. 147-148.

[9] *Id*. at 17-24.

[10] *Id*. at 94-97.

[11] *Id*. at 111-113.

[12] *Id*. at 161.

[13] Chiong's Pre-Trial Brief, *id*. at 125-134.

[14] Under Art. 180 of the Revised Penal Code.

against Chiong based on the latter's testimony that he did not leave the Philippines after April 1, 1989 contrary to the notations in his seaman service record book that he had left the country on April 17, 1989, and returned on October 5 of the same year. Chiong did not participate in the preliminary investigation; thus, on December 14, 1990, the City Prosecutor of Manila filed an Information against Chiong with the RTC Manila, Branch 54, docketed as Criminal Case No. 90-89722.

In the meantime, after a flurry of motions filed by Northwest in the civil case were denied by the RTC, Northwest filed a Petition for *Certiorari* before the CA imputing grave abuse of discretion to the RTC.[15] Correlatively, Northwest moved for a suspension of the proceedings before the trial court. However, both the Petition for *Certiorari* and Motion for Suspension of the proceedings were denied by the CA and RTC, respectively.[16]

After trial, the RTC rendered a Decision finding preponderance of evidence in favor of Chiong, and holding Northwest liable for breach of contract of carriage. The RTC ruled that the evidence adduced by the parties supported the conclusion that Chiong was deliberately prevented from checking-in and his boarding pass unjustifiably withheld to accommodate an American passenger by the name of W. Costine.

The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, in consideration of all the foregoing, judgment is hereby rendered, ordering the defendant liable to plaintiff in damages by reason of the latter's inability to take defendant's NW Flight No. 24 on April 1, 1989, for the following amounts:
>
> 1) U.S.$8,447.00[17] or its peso equivalent at the time of finality of this judgment with legal interests until fully paid, representing compensatory damages due to plaintiff's loss of income for one (1) year as a direct result of defendant's breach of contract of carriage;

[15] Records (Vol. I), pp. 460-484.

[16] *Rollo*, p. 455.

[17] See note 7.

2) ₱15,000.00, Philippine Currency, representing plaintiff's actual incurred damages as a consequence of his failure to avail of defendant's Flight No. 24 on April 1, 1989;

3) ₱200,000.00, Philippine Currency, representing moral damages suffered and sustained by the plaintiff as a result of defendant's breach of contract of carriage;

4) ₱200,000.00, Philippine Currency, representing exemplary or punitive damages due to plaintiff from defendant, owing to the latter's breach of contract of carriage with malice and fraud; and

5) ₱200,000.00, Philippine Currency, for and as attorney's fees, plus costs of suit.

SO ORDERED.

On appeal, the CA affirmed *in toto* the ruling of the RTC. Identical to the RTC's findings, those of the CA were as follows: on April 1, 1989, Chiong was at the MIA three hours before the 10:15 a.m. departure time for Northwest Flight No. 24. Contrary to Northwest's claim that Chiong was a "no-show" passenger, the CA likewise concluded, as the RTC did, that Chiong was not allowed to check-in and was not issued a boarding pass at the Northwest check-in counter to accommodate a certain W. Costine. As for Northwest's defense that Chiong had left the country after April 1, 1989 and worked for *M/V Elbia*, the CA ruled that Northwest's failure to raise this defense in its Answer or Motion to Dismiss is equivalent to a waiver thereof. The CA declared that, in any event, Northwest failed to present any evidence to prove that Chiong had worked under the original crew agreement.

Hence, this recourse.

Northwest ascribes grievous errors to the CA when the appellate court ruled that: (1) Northwest breached the contract of carriage with Chiong who was present at the MIA on April 1, 1989 to board Northwest's Flight No. 24; (2) As a result of the breach, Northwest is liable to Chiong for compensatory, actual, moral and exemplary damages, attorney's fees, and costs of suit; and (3) Northwest's Exhibits "2" and "3", the Flight Manifest and

the Passenger Name Record, respectively, were hearsay evidence and ought to be excluded from the records.

The petition must fail.

We are in complete accord with the common ruling of the lower courts that Northwest breached the contract of carriage with Chiong, and as such, he is entitled to compensatory, actual, moral and exemplary damages, attorney's fees and costs of suit.

Northwest contends that Chiong, as a "no-show" passenger on April 1, 1989, already defaulted in his obligation to abide by the terms and conditions of the contract of carriage;[18] and thus, Northwest could not have been in breach of its reciprocal obligation to transport Chiong. In sum, Northwest insists that Chiong's testimony is a complete fabrication, supposedly demonstrated by the following: (1) Chiong's seaman service record book reflects that he left the Philippines after April 1, 1989, specifically on April 17, 1989, to board the *M/V Elbia*, and was discharged therefrom upon his personal request; (2) the Information filed against Chiong for False Testimony; and (3) the Flight Manifest and the Passenger Name Record both indicate that he was a "no-show" passenger.

We are not convinced.

The records reveal that Chiong, as plaintiff in the trial court, satisfied the burden of proof required in civil cases, *i.e.*, preponderance of evidence. Section 1 of Rule 133 provides:

SECTION 1. *Preponderance of evidence, how determined.* – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstance of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability

[18] The "Conditions of Contract" is written at the back of the airplane ticket.

or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though preponderance is not necessarily with the greater number.

In this regard, the Court notes that, in addition to his testimony, Chiong's evidence consisted of a Northwest ticket for the April 1, 1989 Flight No. 24, Chiong's passport and seaman service record book duly stamped at the PCG counter, and the testimonies of Calvo, Florencio Gomez,[19] and Philippine Overseas Employment and Administration (POEA) personnel who all identified the signature and stamp of the PCG on Chiong's passport.

We have scoured the records, and found no reason to depart from the well-settled rule that factual findings of the lower courts deserve the utmost respect and are not to be disturbed on appeal.[20] Indeed, Chiong's Northwest ticket for Flight No. 24 on April 1, 1989, coupled with the PCG stamps on his passport showing the same date, is direct evidence that he was present at MIA on said date as he intended to fly to the United States on board that flight. As testified to by POEA personnel and officers, the PCG stamp indicates that a departing seaman has passed through the PCG counter at the airport, surrendered the exit pass, and complied with government requirements for departing seafarers. Calvo, Philimare's liaison officer tasked to assist Chiong at the airport, corroborated Chiong's testimony on the latter's presence at the MIA and his check-in at the PCG counter without a hitch. Calvo further testified that she purposely stayed at the PCG counter to confirm that Chiong was able to board the plane, as it was part of her duties as Philimare's liaison officer, to confirm with their principal, TransOcean in this case, that the seafarer had left the country and commenced travel to the designated port where the vessel is docked.[21] Thus, she had

[19] Assistant Manager of Philimare.

[20] *Lambert v. Heirs of Ray Castillon*, G.R. No. 160709, February 23, 2005, 452 SCRA 285, 290, citing *Imperial v. Jaucian*, 427 SCRA 517 (2004).

[21] TSN, August 1, 1990, pp. 9-14.

observed that Chiong was unable to check-in and board Northwest Flight No. 24, and was actually being given the run-around by Northwest personnel.

It is of no moment that Chiong's witnesses – who all corroborated his testimony on his presence at the airport on, and flight details for, April 1, 1989, and that he was subsequently bumped-off – are, likewise, employees of Philimare which may have an interest in the outcome of this case. We intoned in *Philippine Airlines, Inc. v. Court of Appeals*,[22] thus:

(T)his Court has repeatedly held that a witness' relationship to the victim does not automatically affect the veracity of his or her testimony. While this principle is often applied in criminal cases, we deem that the same principle may apply in this case, albeit civil in nature. **If a witness' relationship with a party does not *ipso facto* render him a biased witness in criminal cases where the quantum of evidence required is proof beyond reasonable doubt, there is no reason why the same principle should not apply in civil cases where the quantum of evidence is only preponderance of evidence.**

The foregoing documentary and testimonial evidence, taken together, amply establish the fact that Chiong was present at MIA on April 1, 1989, passed through the PCG counter without delay, proceeded to the Northwest check-in counter, but when he presented his confirmed ticket thereat, he was not issued a boarding pass, and ultimately barred from boarding Northwest Flight No. 24 on that day.

In stark contrast is Northwest's bare-faced claim that Chiong was a "no-show" passenger, and was scheduled to leave the country only on April 17, 1989. As previously discussed, the records belie this assertion. It is also noteworthy that Northwest did not present any evidence to support its belated defense that Chiong departed from the Philippines on April 17, 1989 to work as Third Engineer on board *M/V Elbia* under the original crew agreement.

It is true that Chiong's passport and seaman service record book indicate that he had left the country on April 17, 1989

[22] 462 Phil. 649, 666 (2003). (Emphasis supplied.)

and come back on October 5 of the same year. However, this evidence fails to debunk the facts established to have transpired on April 1, 1989, more particularly, Chiong's presence at the airport and his subsequent bumping-off by Northwest despite a confirmed ticket. Although initially, the burden of proof was with Chiong to prove that there was a breach of contract of carriage, the burden of evidence shifted to Northwest when Chiong adduced sufficient evidence to prove the facts he had alleged. At that point, Northwest had the burden of going forward[23] to controvert Chiong's *prima facie* case. As the party asserting that Chiong was a "no-show" passenger, Northwest then had the burden of evidence to establish its claim. Regrettably, Northwest failed to do so.

Furthermore, it has not escaped our attention that Northwest, despite the declaration in its Pre-Trial Brief, did not present as a witness their check-in agent on that contentious date.[24] This omission was detrimental to Northwest's case considering its claim that Chiong did not check-in at their counters on said date. It simply insisted that Chiong was a "no-show" passenger and totally relied on the Flight Manifest, which, curiously, showed a horizontal line drawn across Chiong's name, and the name W. Costine written above it. The reason for the insertion, or for Chiong's allegedly being a "no-show" passenger, is not even recorded on the remarks column of the Flight Manifest beside the Passenger Name column. Clearly, the categorical declaration of Chiong and his other witnesses, coupled with the PCG stamp on his passport and seaman service record book, prevails over Northwest's evidence, particularly the Flight Manifest. Thus, we are perplexed why, despite the evidence presented by Chiong, and the RTC's specific order to Northwest's counsel to present the person(s) who prepared the Flight Manifest and Passenger Name Record for a proper identification of, and to testify on, those documents, Northwest still insisted on presenting Gonofredo Mendoza and Amelia Meris who were, admittedly, not competent to testify thereon.[25]

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[23] In our rule on evidence, also called burden of evidence.

[24] Records (Vol. I), p. 123.

[25] *Rollo*, pp. 465-472, 499-510.

In its desperate attempt to evade liability for the breach, Northwest claims that Chiong worked at *M/V Elbia* when he left the Philippines on April 17, 1989. The argument was not only belatedly raised, as we have repeatedly stated, but is off-tangent.

On this point, we uphold the RTC's and CA's ruling that the failure of Northwest to raise the foregoing defense in its Motion to Dismiss or Answer constituted a waiver thereof. Section 1, Rule 9 of the Rules of Court provides:

> **SECTION 1.** *Defenses and objections not pleaded.*— **Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.** However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (Emphasis supplied)

Similarly, Section 8, Rule 15 of the Rules of Court reads:

> **SECTION 8.** *Omnibus Motion*.— Subject to the provisions of Section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

Moreover, Northwest paints a scenario that ostensibly transpired on a different date. Even if Chiong left the Philippines on April 17, 1989, it would not necessarily prove that Chiong was a "no-show" on April 1, 1989. Neither does it negate the already established fact that Chiong had a confirmed ticket for April 1, 1989, and first passed through the PCG counter without delay, then reached and was at the Northwest check-in counters on time for the scheduled flight.

Essentially, Northwest argues that Chiong was a "no-show" passenger on two (2) separate occasions, March 28 and April 1, 1989 because he was actually scheduled to depart for the US on April 17, 1989 as ostensibly evidenced by his passport and seaman record book. Had this new matter alleged been

proven by Northwest, it would prevent or bar recovery by Chiong. Unfortunately, Northwest was unsuccessful in proving not only the "no-show" claim, but that Chiong, likewise, worked under the original crew agreement.

Northwest likewise insists – now that there is a pending criminal case for False Testimony against Chiong – that a falsified part of Chiong's testimony would indicate the falsity of his entire testimony, consistent with the "*falsus in uno, falsus in omnibus*"[26] doctrine. Following Northwest's flawed logic, this would invariably lead to the conclusion that the corroborating testimonies of Chiong's witnesses are also false.

The legal maxim *falsus in uno, falsus in omnibus*, cited by Northwest, is not a positive rule of law and is not strictly applied in this jurisdiction. Before this maxim can be applied, the witness must be shown to have willfully falsified the truth on one or more material points. The principle presupposes the existence of a positive testimony on a material point contrary to subsequent declarations in the testimony. However, the records show that Chiong's testimony did not contain inconsistencies on what occurred on April 1, 1989. Yet, Northwest never even attempted to explain or impugn the evidence that Chiong passed through the PCG counter on April 1, 1989, and that his passport was accordingly stamped, obviously for purposes of his departure on that day.

As to the criminal case, it is well to note that there is no final determination, as yet, of Chiong's guilt by the courts. But even if Chiong is adjudged guilty, it will have little effect on the outcome of this case. As we held in *Leyson v. Lawa*:[27]

> The testimony of a witness must be considered in its entirety instead of in truncated parts. The technique in deciphering a testimony is not to consider only its isolated parts and anchor a conclusion on the basis of said parts. In ascertaining the facts established by a witness, everything stated by him on direct, cross and redirect examinations must be calibrated and considered.

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[26] False in one, false in everything.

[27] G.R. No. 150756, October 11, 2006, 504 SCRA 147, 161-162.

It must be stressed that facts imperfectly or erroneously stated in answer to one question may be supplied or explained as qualified by his answer to other question. The principle *falsus in uno, falsus in omnibus* is not strictly applied in this jurisdiction. The doctrine deals only with the weight of evidence and is not a positive rule of law, and the same is not an inflexible one of universal application. The testimony of a witness can be believed as to some facts and disbelieved as to others:

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Professor Wigmore gives the following enlightening commentary:

> It may be said, once for all, that the maxim is in itself worthless— *first*, in point of validity, because in one form it merely contains in loose fashion a kernel of truth which no one needs to be told, and in the others, it is absolutely false as a maxim of life; and *secondly*, in point of utility, because it merely tells the jury what they may do in any event, not what they must do or must not do, and therefore it is a superfluous form of words. It is also in practice pernicious, *first*, because there is frequently a misunderstanding of its proper force, and *secondly*, because it has become in the hands of many counsel a mere instrument for obtaining new trials upon points wholly unimportant in themselves.

From the foregoing disquisition, the ineluctable conclusion is that Northwest breached its contract of carriage with Chiong.

Time and again, we have declared that a contract of carriage, in this case, air transport, is primarily intended to serve the traveling public and thus, imbued with public interest. The law governing common carriers consequently imposes an exacting standard of conduct. As the aggrieved party, Chiong only had to prove the existence of the contract and the fact of its non-performance by Northwest, as carrier, in order to be awarded compensatory and actual damages.

We reiterate that Northwest failed to prove its claim that Chiong worked on *M/V Elbia* from April 17 to October 5, 1989 under the original crew agreement. Accordingly, we affirm the lower court's finding on Chiong's entitlement to actual and compensatory damages.

We, likewise, uphold the findings of both courts on Northwest's liability for moral and exemplary damages, and attorney's fees.

Under Article 2220 of the Civil Code of the Philippines, an award of moral damages, in breaches of contract, is in order upon a showing that the defendant acted fraudulently or in bad faith. Bad faith does not simply connote bad judgment or negligence.[28] It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong.[29] It means breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud.[30] Bad faith is in essence a question of intention.[31]

In the case at bench, the courts carefully examined the evidence as to the conduct and outward acts of Northwest indicative of its inward motive. It is borne out by the records that Chiong was given the run-around at the Northwest check-in counter, instructed to deal with a "man in *barong*" to obtain a boarding pass, and eventually barred from boarding Northwest Flight No. 24 to accommodate an American, W. Costine, whose name was merely inserted in the Flight Manifest, and did not even personally check-in at the counter.[32]

Under the foregoing circumstances, the award of exemplary damages is also correct given the evidence that Northwest acted in an oppressive manner towards Chiong.[33]

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[28] *BPI Family Savings Bank v. Franco*, G.R. No. 123498, November 23, 2007.

[29] *Id*.

[30] *Lopez v. Pan American World Airways*, 123 Phil. 256, 264-265 (1966).

[31] *China Airlines, Ltd. v. Court of Appeals*, 453 Phil. 959, 979 (2003).

[32] TSN, October 6, 1992, p. 29.

[33] Articles 2232 in relation to Article 2234 of the Civil Code:

Art. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

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As for the award of attorney's fees, while we recognize that it is sound policy not to set a premium on the right to litigate,[34] we sustain the lower courts' award thereof.

Attorney's fees may be awarded when a party is compelled to litigate or incur expenses to protect his interest,[35] or where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim.[36] In the case at bench, Northwest deliberately breached its contract of carriage with Chiong and then repeatedly refused to satisfy Chiong's valid, just and demandable claim. This unjustified refusal constrained Chiong to not only lose income under the crew agreement, but to further incur expenses and exert effort for almost two (2) decades in order to protect his interests and vindicate his right. Therefore, this Court deems it just and equitable to grant Chiong ₱200,000.00 as attorney's fees. The award is reasonable in view of the time it has taken for this case to be resolved.[37]

Finally, the issue of the exclusion of Northwest's Exhibits "2" and "3" need not detain us long. Suffice it to state that the RTC and CA correctly excluded these documents as hearsay evidence. We quote with favor the CA's holding thereon, thus:

As a rule, "entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received

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Art. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

[34] *Supra* note 28.

[35] CIVIL CODE, Art. 2208, par. 2.

[36] CIVIL CODE, Art. 2208, par. 5.

[37] *Supra* note 28.

as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of a duty and in the ordinary or regular course of business or duty." [Rule 130, Section 43, Revised Rules of Court]

Otherwise stated, in order to be admissible as entries in the course of business, it is necessary that: (a) the person who made the entry must be dead or unable to testify; (b) the entries were made at or near the time of the transactions to which they refer; (c) the entrant was in a position to know the facts stated in the entries; (d) the entries were made in his professional capacity or in the performance of a duty; and (e) the entries were made in the ordinary or regular course of business or duty.

Tested by these requirements, we find the manifest and passenger name record to be mere hearsay evidence. While there is no necessity to bring into court all the employees who individually made the entries, it is sufficient that the person who supervised them while they were making the entries testify that the account was prepared under his supervision and that the entries were regularly entered in the ordinary course of business. **In the case at bench, while MENDOZA was the supervisor on-duty on April 1, 1989, he has no personal knowledge of the entries in the manifest since he did not supervise the preparation thereof. More importantly, no evidence was presented to prove that the employee who made the entries was dead nor did the defendant-appellant set forth the circumstances that would show the employee's inability to testify**.[38]

WHEREFORE, premises considered, the petition is hereby *DENIED*. The ruling of the Court of Appeals in CA-G.R. CV No. 50308 is hereby *AFFIRMED***.** Costs against the petitioner.

SO ORDERED.

*Ynares-Santiago (Chaiperson), Austria-Martinez, Corona,** and *Reyes, JJ.*, concur.

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[38] *Rollo*, p. 100. (Emphasis supplied.)

* In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 484 dated January 11, 2008.

SECOND DIVISION

[G.R. No. 157264. January 31, 2008]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX REFUNDS CONSTRUED LIBERALLY AGAINST TAXPAYER, CASE AT BAR.— Tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority, and the *taxpayer bears the burden of establishing the factual basis of his claim for a refund*. Under the quoted portion of Section 28 (b)(7)(B) of the National Internal Revenue Code of 1977 (now Section 32(B)6(b) of the National Internal Revenue Code of 1997), it is incumbent on PLDT as a claimant for refund on behalf of each of the separated employees to show that each employee received the income payments as part of gross income and the fact of withholding. The CTA found that PLDT failed to establish that the redundant employees actually received separation pay and that it withheld taxes therefrom and remitted the same to the BIR.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF THE COURT OF TAX APPEALS (CTA) IF AFFIRMED BY THE APPELLATE COURT, RESPECTED.— The appellate court affirmed the findings of the CTA. *Apropos* is this Court's ruling in *Far East Bank and Trust Company v. Court of Appeals:* The findings of fact of the CTA, a special court exercising particular expertise on the subject of tax, are generally regarded as final, binding, and conclusive upon this Court, especially if these are substantially similar to the findings of the C[ourt of] A[ppeals] which is normally the final arbiter of questions of fact.

3. TAXATION; CTA CIRCULAR 1-95; APPLICATION IN CASE AT BAR.— While SGV certified that it had "been able to trace the remittance of the withheld taxes summarized in the C[ash] S[alary] V[ouchers] to the Monthly Remittance Return of Income

Taxes Withheld for the appropriate period covered by the final payment made to the concerned executives, supervisors, and rank and file staff members of PLDT," the same cannot be appreciated in PLDT's favor as the courts cannot verify such claim. While the records of the case contain the Alphabetical List of Employee from Whom Taxes Were Withheld for the year 1995 and the Monthly Remittance Returns of Income Taxes Withheld for December 1995, the documents from which SGV "traced" the former to the latter have not been presented. Failure to present these documents is fatal to PLDT's case. For the relevant portions of CTA Circular 1-95 instruct: 1. The party who desires to introduce as evidence such voluminous documents must, after motion and approval by the Court, present: (a) a Summary containing, among others, a chronological listing of the numbers, dates and amounts covered by the invoices or receipts and the amount/s of tax paid; and (b) a Certification of an independent Certified Public Accountant attesting to the correctness of the contents of the summary after making an examination, evaluation and audit of the voluminous receipts and invoices x x x 2. The method of individual presentation of each and every receipt, invoice or account for marking, identification and comparison with the originals thereof need not be done before the Court or Clerk of Court anymore after the introduction of the summary and CPA certification. **It is enough that the receipts, invoices, vouchers or other documents covering the said accounts or payment to be introduced in evidence must be pre-marked by the party concerned and submitted to the Court** in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. Likewise the originals of the voluminous receipts, invoices and accounts must be ready for verification and comparison in case of doubt on the authenticity thereof is raised during the hearing or resolution of the formal offer of evidence. *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, citing *Commissioner of Internal Revenue v. Manila Mining Corporation* explains the need for the promulgation of the immediately-cited CTA Circular and its effect: x x x The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. It **does not relieve respondent of its**

imperative task of *premarking* photocopies of sales receipts and invoices and *submitting the same to the court* after the independent CPA shall have examined and compared them with the originals. Without presenting these pre-marked documents as evidence – from which the summary and schedules were based, **the court cannot verify the authenticity and veracity of the independent auditor's conclusions.**

4. REMEDIAL LAW; CIVIL PROCEDURE; NEW TRIAL; GROUNDS; NEWLY DISCOVERED EVIDENCE.— New trial may be granted on either of these grounds: a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result. Newly discovered evidence as a basis of a motion for new trial should be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence. And the grant or denial of a new trial is, generally speaking, addressed to the sound discretion of the court which cannot be interfered with unless a clear abuse thereof is shown. PLDT has not shown any such abuse, however.

5. TAXATION; RULES OF THE COURT OF TAX APPEALS; LIBERAL APPLICATION, NOT APPRECIATED.— On PLDT's plea for a liberal application of the rules of procedure, *Commissioner of Internal Revenue v. A. Soriano Corporation* furnishes a *caveat* on the matter: Perhaps realizing that under the Rules the said report cannot be admitted as newly discovered evidence, the petitioner invokes a liberal application of the Rules. He submits that Section 8 of the Rules of the Court of Tax Appeals declaring that the latter shall not be governed strictly by technical rules of evidence mandates a relaxation of the requirements of new trial on the basis of newly discovered evidence. This is a dangerous proposition and one which we refuse to countenance. We cannot agree more with the Court of Appeals when it stated thus, "To accept the contrary view of the petitioner would give rise to a dangerous precedent in that there would be no end to a hearing before respondent court because, every time a party is aggrieved by its decision, he can have it set aside by asking to

be allowed to present additional evidence without having to comply with the requirements of a motion for new trial based on newly discovered evidence. Rule 13, Section 5 of the Rules of the Court of Tax Appeals should not be ignored at will and at random to the prejudice of the orderly presentation of issues and their resolution. To do so would affect, to a considerable extent, the stability of judicial decisions." We are left with no recourse but to conclude that this is a simple case of negligence on the part of the petitioner. For this act of negligence, the petitioner cannot be allowed to seek refuge in a liberal application of the Rules. For it should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. In the case at bench, a liberal application of the rules of procedure to suit the petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Office of the Legal Division (BIR) for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner, the Philippine Long Distance Telephone Company (PLDT), claiming that it terminated in 1995 the employment of several rank-and-file, supervisory, and executive employees due to redundancy; that in compliance with labor law requirements, it paid those separated employees separation pay and other benefits; and that as employer and withholding agent, it deducted from the separation pay withholding taxes in the total amount of ₱23,707,909.20 which it remitted to the Bureau of Internal Revenue (BIR), filed on November 20, 1997 with the BIR a claim for tax credit or refund of the ₱23,707,909.20, invoking Section 28(b)(7)(B) of the 1977 National Internal Revenue Code[1] which excluded from gross income

[1] Presidential Decree No. 1158 as amended, also known as the National Internal Revenue Code of 1977.

[a]ny amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee.[2] (Underscoring supplied)

As the BIR took no action on its claim, PLDT filed a claim for judicial refund before the Court of Tax Appeals (CTA).

In its Answer,[3] respondent, the Commissioner of Internal Revenue, contended that PLDT failed to show proof of payment of separation pay and remittance of the alleged withheld taxes.[4]

PLDT later manifested on March 19, 1998 that it was reducing its claim to ₱16,439,777.61 because a number of the separated employees opted to file their respective claims for refund of taxes erroneously withheld from their separation pay.[5]

PLDT thereafter retained Sycip Gorres Velayo and Company (SGV) to conduct a special audit examination of various receipts, invoices and other long accounts, and moved to avail of the procedure laid down in CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, allowing the presentation of a certification of an independent certified public accountant in lieu of voluminous documents.[6] The CTA thereupon appointed Amelia Cabal (Cabal) of SGV as Commissioner of the court.[7] Cabal's audit report, which formed part of PLDT's evidence,[8] adjusted PLDT's claim to ₱6,679,167.72.[9]

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[2] The same provision has been incorporated in Section 32(B)(6)(b) of the National Internal Revenue Code of 1997.

[3] CTA records, pp. 40-42.

[4] *Id*. at 41.

[5] *Id*. at 47.

[6] *Id*. at 92-94; TSN, September 1, 1998, pp. 4-5.

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

[8] CTA records, pp. 113-120, 147-150, 159-160.

[9] *Id*. at 160, 203.

By Decision[10] of July 25, 2000, the CTA denied PLDT's claim on the ground that it "failed to sufficiently prove that the terminated employees received separation pay and that taxes were withheld therefrom and remitted to the BIR."[11]

PLDT filed a Motion for New Trial/Reconsideration, praying for an opportunity to present the receipts and quitclaims executed by the employees and prove that they received their separation pay.[12] Justifying its motion, PLDT alleged that

> x x x [t]hese Receipts and Quitclaims could not be presented during the course of the trial despite diligent efforts, the files having been misplaced and were only recently found. Through excusable mistake or inadvertence, undersigned counsel relied on the audit of SGV & Co. of the voluminous cash salary vouchers, and was thus not made wary of the fact that the cash salary vouchers for the rank and file employees do not have acknowledgement receipts, unlike the cash salary vouchers for the supervisory and executive employees. If admitted in evidence, these Receipts and Quitclaims, together with the cash salary vouchers, will prove that the rank and file employees received their separation pay from petitioner.[13] (Underscoring supplied)

The CTA denied PLDT's motion.[14]

PLDT thus filed a Petition for Review[15] before the Court of Appeals which, by Decision[16] of February 11, 2002, dismissed the same. PLDT's Motion for Reconsideration[17] having been

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[10] Penned by Court of Tax Appeals Presiding Judge Ernesto D. Acosta, with the concurrence of Associate Judges Ramon O. de Veyra and Amancio Q. Saga. *Id.* at 221-230.

[11] *Id.* at 226.

[12] *Id.* at 231 (second of two consecutive pages both numbered "231")-241.

[13] *Id.* at 232.

[14] *Id.* at 345-348.

[15] CA *rollo*, pp. 11-32.

[16] Penned by then-Court of Appeals Associate Justice Romeo Callejo, Sr., with the concurrences of Associate Justices Remedios Salazar-Fernando and Perlita J. Tria Tirona. *Id.* at 623-650.

[17] *Id.* at 653-659.

denied,[18] it filed the present Petition for Review on *Certiorari*,[19] faulting the appellate court to have committed grave abuse of discretion

A.

. . . WHEN IT HELD THAT PROOF OF PAYMENT OF SEPARATION PAY TO THE EMPLOYEES IS REQUIRED IN ORDER TO AVAIL OF REFUND OF TAXES ERRONEOUSLY PAID TO THE BUREAU OF INTERNAL REVENUE.

B.

. . . WHEN IT HELD THAT PETITIONER FAILED TO ESTABLISH THAT PETITIONER'S EMPLOYEES RECEIVED THEIR SEPARATION PAY.

C.

. . . IN DISREGARDING THE CERTIFICATION/REPORT OF SGV & CO., WHICH CERTIFIED THAT PETITIONER IS ENTITLED TO A REFUND OF THE AMOUNT OF ₱6,679,167.72.

D.

. . . IN NOT ORDERING A NEW TRIAL TO ALLOW PETITIONER TO PRESENT ADDITIONAL EVIDENCE IN SUPPORT THEREOF.[20]

PLDT argues against the need for proof that the employees received their separation pay and proffers the issue in the case in this wise:

It is not essential to prove that the separation pay benefits were actually received by the terminated employees. This issue is not for the CTA, nor the Court of Appeals to resolve, but is a matter that falls within the competence and exclusive jurisdiction of the Department of Labor and Employment and/or the National Labor Relations Commission. x x x

Proving, or submitting evidence to prove, receipt of separation pay would have been material, relevant and necessary if its deductibility

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[18] *Id*. at 707-708.

[19] *Rollo*, pp. 10-43.

[20] *Id*. at 16.

as a business expense has been put in issue. But this has never been an issue in the instant case. The issue is whether or not the withholding taxes, which Petitioner remitted to the BIR, should be refunded for having been erroneously withheld and paid to the latter.

For as long as there is no legal basis for the payment of taxes to the BIR, the taxpayer is entitled to claim a refund therefore. **Hence, any taxes withheld from separation benefits and paid to the BIR constitute erroneous payment of taxes and should therefore, be refunded/credited to the taxpayer/withholding agent, regardless of whether or not separation pay was actually paid to the concerned employees**.[21] (Emphasis in the original; underscoring supplied)

PLDT's position does not lie. Tax refunds, like tax exemptions, are construed strictly against the taxpayer and liberally in favor of the taxing authority, and the *taxpayer bears the burden of establishing the factual basis of his claim for a refund*.[22]

Under the earlier quoted portion of Section 28 (b)(7)(B) of the National Internal Revenue Code of 1977 (now Section 32(B)6(b) of the National Internal Revenue Code of 1997), it is incumbent on PLDT as a claimant for refund on behalf of each of the separated employees to show that each employee did

x x x reflect in his or its own return the income upon which any creditable tax is required to be withheld at the source. Only when there is an excess of the amount of tax so withheld over the tax due on the payee's return can a refund become possible.

A taxpayer must thus do two things to be able to successfully make a claim for the tax refund: (a) declare the income payments it received as part of its gross income and (b) establish the fact of withholding. On this score, the relevant revenue regulation provides as follows:

> "Section 10. *Claims for tax credit or refund*. — Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is

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[21] *Id*. at 18-19.

[22] *Vide Far East Bank and Trust Company v. Court of Appeals*, G.R. No. 129130, December 9, 2005, 477 SCRA 49, 57-58.

shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payer to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom."[23] (Underscoring supplied)

In fine, PLDT must prove that the employees received the income payments as part of gross income and the fact of withholding.

The CTA found that PLDT failed to establish that the redundant employees actually received separation pay and that it withheld taxes therefrom and remitted the same to the BIR, thus:

With respect to the redundant rank and file employees' final payment/terminal pay x x x, the cash salary vouchers relative thereto have **no payment acknowledgement receipts**. Inasmuch as these cash vouchers were not signed by the respective employees to prove actual receipt of payment, the same merely serves as proofs of authorization for payment and not actual payment by the Petitioner of the redundant rank and file employees' separation pay and other benefits. In other words, Petitioner failed to prove that the rank and file employees were actually paid separation pay and other benefits.

To establish that the withholding taxes deducted from the redundant employees' separation pay/other benefits were actually remitted to the BIR, therein petitioner submitted the following:

	Exhibit
a) Monthly Remittance Return of Income Taxes Withheld for December 1995	D
b) Revised SGV & Co. Certification	E to E-3-d
c) Annual Information Return of Income Tax Withheld on Compensation, Expanded	E-6

[23] *Id*. at 54, citing Revenue Regulation 6-85.

and Final Withholding Taxes for the year 1995	
d) Summary of Income Taxes Withheld for the calendar year ended December 31, 1995	E-6-a
e) Summary of Gross Compensation and Tax Withheld	E-6-b to E-6-e

However, it cannot be determined from the above documents whether or not Petitioner actually remitted the total income taxes withheld from the redundant employees' taxable compensation (inclusive of the separation pay/other benefits) for the year 1995. **The amounts of total taxes withheld for each redundant employees (Exhs. E-4, E-5, E-7, inclusive) cannot be verified against the "Summary of Gross Compensation and Tax Withheld for 1995" (Exhs. E-6-b to E-6-e, inclusive) due to the fact that this summary enumerates the amounts of income taxes withheld from Petitioner's employees on per district/area basis.** The only schedule (with names, corresponding gross compensation, and withholding taxes) attached to the summary was for the withholding taxes on service terminal pay (Exh. E-6-e). However, the names listed thereon were not among the names of the redundant separated employees being claimed by petitioner.

x x x x x x x x x

It is worthy to note that Respondent presented a witness in the person of Atty. Rodolfo L. Salazar, Chief of the BIR Appellate Division, who testified that a portion of the Petitioner's original claim for refund of ₱23,706,908.20 had already been granted. He also testified that out of 769 claimants, who opted to file directly with the BIR, 766 had been processed and granted. In fact, x x x three claims were not processed because the concerned taxpayer failed to submit the income tax returns and withholding tax certificates. Considering that no documentary evidence was presented to bolster said testimony, **We have no means of counter checking whether the 766 alleged to have been already granted by the Respondent pertained to the ₱16,439,777.61 claim for refund withdrawn by the Petitioner from the instant petition or to the remaining**

balance of ₱6,679,167.72 which is the subject of this claim.[24] (Emphasis and underscoring supplied)

The appellate court affirmed the foregoing findings of the CTA. *Apropos* is this Court's ruling in *Far East Bank and Trust Company v. Court of Appeals*:[25]

> The findings of fact of the CTA, a special court exercising particular expertise on the subject of tax, are generally regarded as final, binding, and conclusive upon this Court, especially if these are substantially similar to the findings of the C[ourt of] A[ppeals] which is normally the final arbiter of questions of fact.[26] (Underscoring supplied)

While SGV certified that it had "been able to trace the remittance of the withheld taxes summarized in the C[ash] S[alary] V[ouchers] to the Monthly Remittance Return of Income Taxes Withheld for the appropriate period covered by the final payment made to the concerned executives, supervisors, and rank and file staff members of PLDT,"[27] the same cannot be appreciated in PLDT's favor as the courts cannot verify such claim. While the records of the case contain the Alphabetical List of Employee from Whom Taxes Were Withheld for the year 1995 and the Monthly Remittance Returns of Income Taxes Withheld for December 1995, the documents from which SGV "traced" the former to the latter have not been presented. Failure to present these documents is fatal to PLDT's case. For the relevant portions of CTA Circular 1-95 instruct:

> 1. The party who desires to introduce as evidence such voluminous documents must, after motion and approval by the Court, present: (a) a Summary containing, among others, a chronological listing of the numbers, dates and amounts covered by the invoices or receipts and the amount/s of tax paid; and (b) a Certification of an independent Certified Public Accountant attesting to the correctness of the contents of

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[24] CTA records, p. 229.

[25] *Supra* note 22 at 54, citing *Revenue Regulation* 6-85.

[26] *Id*. at 52.

[27] CTA records, p. 122.

the summary after making an examination, evaluation and audit of the voluminous receipts and invoices x x x

2. The method of individual presentation of each and every receipt, invoice or account for marking, identification and comparison with the originals thereof need not be done before the Court or Clerk of Court anymore after the introduction of the summary and CPA certification. **It is enough that the receipts, invoices, vouchers or other documents covering the said accounts or payment to be introduced in evidence must be pre-marked by the party concerned and submitted to the Court** in order to be made accessible to the adverse party who desires to check and verify the correctness of the summary and CPA certification. Likewise the originals of the voluminous receipts, invoices and accounts must be ready for verification and comparison in case of doubt on the authenticity thereof is raised during the hearing or resolution of the formal offer of evidence. (Emphasis and underscoring supplied)

Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,[28] citing *Commissioner of Internal Revenue v. Manila Mining Corporation*[29] explains the need for the promulgation of the immediately-cited CTA Circular and its effect:

x x x The circular, in the interest of speedy administration of justice, was promulgated to avoid the time-consuming procedure of presenting, identifying and marking of documents before the Court. It **does not relieve respondent of its imperative task** of *premarking* photocopies of sales receipts and invoices and *submitting the same to the court* after the independent CPA shall have examined and compared them with the originals. Without presenting these pre-marked documents as evidence – from which the summary and schedules were based, **the court cannot verify the authenticity and veracity of the independent auditor's conclusions**. (Italics in the original; Emphasis and underscoring supplied).[30]

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[28] G.R. No. 145526, March 16, 2007, 518 SCRA 425.

[29] G.R. No. 153204, August 31, 2005, 468 SCRA 571.

[30] *Supra* note 28 at 432.

On the denial of PLDT's motion for new trial: new trial may be granted on either of these grounds:

a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.[31]

Newly discovered evidence as a basis of a motion for new trial should be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.[32] And the grant or denial of a new trial is, generally speaking, addressed to the sound discretion of the court which cannot be interfered with unless a clear abuse thereof is shown.[33] PLDT has not shown any such abuse, however.

The affirmance by the appellate court of the CTA's denial of PLDT's motion for new trial on the ground of "newly discovered evidence," *viz*:

x x x x x x x x x

The petitioner appended to its **"Motion for New Trial"**, *etc*., unnotarized copies of **"Receipts, Release and Quitclaim"** bearing the signatures purportedly of those employees for whom the Petitioner filed the **"Petition"** before the CTA, dated December 28, 1995 x x x[.][34]

x x x x x x x x x

Although the Rules require the appendage, by the Petitioner, of the **"Affidavits of Witnesses"** it intends to present in a new trial,

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[31] RULES OF COURT, Rule 37, Section 1.

[32] *Vide* RULES OF COURT, Rule 37, Section 2.

[33] *Tumang v. Court of Appeals*, G.R. No. 82072, April 17, 1989, 172 SCRA 328, 335 (citation omitted).

[34] CA *rollo*, p. 647.

the Petitioner failed to append to its **"Motion for New Trial"** any affidavits of said witnesses. The **"Receipts, Releases, and Quitclaims"** appended to the Petition are not authenticated. Indeed, the said deeds were not notarized, despite their having been signed, allegedly by the employees, as early as December 28, 1995, or approximately two (2) years before the Petitioner filed the Petition before the CTA. It behooved the Petitioner to have appended the Affidavits of the separated employees to authenticate the **"Receipts, Releases and Quitclaims"** purportedly executed by them, respectively. The petitioner did not.

The Petitioner wanted the CTA to believe that the employees executed the aforesaid **"Receipts, Releases and Quitclaims"** as early as December 28, 1995, and kept the same in its possession and custody. However, the petitioner divulged the existence of said Receipts, *etc*., only when it filed its **"Motion for New Trial**, *etc*." on August 18, 2000, or an ***interregnum*** of almost five (5) years. None of the responsible officers of the Petitioner, especially the custodian of said Receipts, *etc*., executed an **"Affidavit"** explaining why the same (a) were not notarized on or about December 28, 1995; (b) whether the said deeds were turned over to its counsel when it filed the Petition at bench; (c) why it failed to present the said Receipts to the SGV & Co., while the latter was conducting its examination and/or audit of the records of the Petitioner. It is incredible that, if it is true, as claimed by Petitioner, the employees, indeed, signed the said Receipts on December 28, 1995, the Petitioner, one of the biggest corporations in the Philippines and laden with competent executives/officers/employees, did not bother having the same notarized on or about December 28, 1995. For sure, when the Petitioner endorsed the preparation and filing of the Petition to its counsel, it should have collated all the documents necessary to support its Petition and submit the same to its counsel. If the Petitioner did, its counsel has not explained why it failed to present the same before the Commissioner and/or adduce the same in evidence during the hearing of the Petition on its merits with the CTA. We are convinced that the said Receipts, *etc*. were antedated and executed only after the CTA rendered its Decision and only in anticipation of the **"Motion for New Trial,** *etc*." filed by the Petitioner.[35] (Emphasis and underscoring in the original),

is thus in order.

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[35] *Id*. at 649-unnumbered page between pp. 649 and 650.

Finally, on PLDT's plea for a liberal application of the rules of procedure,[36] *Commissioner of Internal Revenue v. A. Soriano Corporation*[37] furnishes a *caveat* on the matter:

> Perhaps realizing that under the Rules the said report cannot be admitted as newly discovered evidence, the petitioner invokes a liberal application of the Rules. He submits that Section 8 of the Rules of the Court of Tax Appeals declaring that the latter shall not be governed strictly by technical rules of evidence mandates a relaxation of the requirements of new trial on the basis of newly discovered evidence. This is a dangerous proposition and one which we refuse to countenance. We cannot agree more with the Court of Appeals when it stated thus,
>
> > "To accept the contrary view of the petitioner would give rise to a dangerous precedent in that there would be no end to a hearing before respondent court because, every time a party is aggrieved by its decision, he can have it set aside by asking to be allowed to present additional evidence without having to comply with the requirements of a motion for new trial based on newly discovered evidence. Rule 13, Section 5 of the Rules of the Court of Tax Appeals should not be ignored at will and at random to the prejudice of the orderly presentation of issues and their resolution. To do so would affect, to a considerable extent, the stability of judicial decisions."
>
> We are left with no recourse but to conclude that this is a simple case of negligence on the part of the petitioner. For this act of negligence, the petitioner cannot be allowed to seek refuge in a liberal application of the Rules. For it should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. In the case at bench, a liberal application of the rules of procedure to suit the petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[38] (Underscoring supplied)

At all events, the alleged "newly discovered evidence" that PLDT seeks to offer does not suffice to establish its claim for refund, as

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[36] *Rollo*, pp. 33-34.

[37] G.R. No. 113703, January 31, 1997, 267 SCRA 313.

[38] *Id.* at 319.

it would still have to comply with Revenue Regulation 6-85 by proving that the redundant employees, on whose behalf it filed the claim for refund, declared the separation pay received as part of their gross income. Furthermore, the same Revenue Regulation requires that "the fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom."

WHEREFORE, the petition is *DENIED*.

Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 157966. January 31, 2008]

EDDIE PACQUING, RODERICK CENTENO, JUANITO M. GUERRA, CLARO DUPILAD, JR., LOUIE CENTENO, DAVID REBLORA* and RAYMUNDO ANDRADE,** *petitioners, vs.* **COCA-COLA PHILIPPINES, INC.,*** *respondent.*

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* Spelled as "Rablora" in other parts of the *rollo*.

** Spelled as "Reymundo" in other parts of the *rollo*.

*** The present petition impleaded the Court of Appeals as respondent. Pursuant to Section 4, Rule 45 of the Rules of Court, the name of the Court of Appeals is deleted from the title.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; NON-FORUM SHOPPING; REQUIREMENTS THAT ALL PLAINTIFFS MUST SIGN THE CERTIFICATE; SUBSTANTIAL COMPLIANCE THEREOF MAY BE ALLOWED UNDER JUSTIFIABLE CIRCUMSTANCES.— While the general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient, the Court has stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. Strict compliance with the provision regarding the certificate of non-forum shopping underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. It does not, however, prohibit substantial compliance therewith under justifiable circumstances, considering especially that although it is obligatory, it is not jurisdictional. In recent decisions, the Court has consistently held that when all the petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the rules.

2. ID.; LIBERAL CONSTRUCTION OF THE RULES APPLIED IN THE INTEREST OF SUBSTANTIAL JUSTICE; DEFECTIVE VERIFICATION IN THE APPEAL MEMORANDUM BEFORE THE NLRC, ALLOWED IN THE CASE AT BAR.— As to the defective verification in the appeal memorandum before the NLRC, the same liberality of law applies. After all, the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court or tribunal may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending

circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served. Moreover, no less than the Labor Code directs labor officials to use all reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities; while Section 10, Rule VII of the New Rules of Procedure of the NLRC provides that technical rules are not binding. Indeed, the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice. Thus, the execution of the verification in the appeal memorandum by only two complainants in behalf of the other complainants also constitute substantial compliance. Indeed, it is more in accord with substantial justice and equity to overlook petitioners' procedural lapses. Labor cases must be decided according to justice and equity and the substantial merits of the controversy. After all, the policy of our judicial system is to encourage full adjudication of the merits of an appeal. Procedural niceties should be avoided in labor cases in which the provisions of the Rules of Court are applied only in suppletory manner. Indeed, rules of procedure may be relaxed to relieve a part of an injustice not commensurate with the degree of noncompliance with the process required. For this reason, the Court cannot indulge respondent in its tendency to nitpick on trivial technicalities to boost its arguments. The strength of one's position cannot be hinged on mere procedural niceties but on solid bases in law and jurisprudence.

3. ID.; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ALLOWED; EXCEPTIONS.— Generally, the existence of an employer-employee relationship is a factual matter that will not be delved into by this Court, since only questions of law may be raised in petitions for review. Needless to stress, the established rule is that in the exercise of the Supreme Court's power of review, the Court not being a trier of facts, does not normally embark on a re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. This rule, however, has several well-recognized exceptions, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; **(2) when the inference made is manifestly mistaken, absurd or impossible;** (3) when there is grave abuse of discretion; **(4) when the judgment**

is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

4. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; REGULAR WORKERS; SALES ROUTE HELPERS.— The pivotal question of whether respondent's sales route helpers or *cargadores* or *pahinantes* are regular workers of respondent has already been resolved in *Magsalin v. National Organization of Working Men,* thus: x x x **The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to respondent workers as sales route helpers so involves merely "post production activities," one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual business or trade, there would have then been no need for it to even maintain regular truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not on a confined scope. The repeated rehiring of respondent workers and the continuing need for their services clearly attest to the necessity or desirability of their services in the regular conduct of the business or trade of petitioner company. The Court of Appeals has found each of respondents to have worked for at least one year with petitioner company.** x x x

5. REMEDIAL LAW; PRINCIPLE OF *STARE DECISIS*.— Under the principle of *stare decisis et non quieta movere* (follow

past precedents and do not disturb what has been settled), it is the Court's duty to apply the previous ruling in *Magsalin* to the instant case. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner. Else, the ideal of a stable jurisprudential system can never be achieved.

6. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; BACK WAGES AND REINSTATEMENT, PROPER.— Being regular employees of respondent, petitioners are entitled to security of tenure, as provided in Article 279 of the Labor Code, and may only be terminated from employment due to just or authorized causes. Because respondent failed to show such cause, the petitioners are deemed illegally dismissed and therefore entitled to back wages and reinstatement without loss of seniority rights and other privileges.

7. CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES; NOT PROPER IN THE ABSENCE OF BAD FAITH.— On the claim for moral and exemplary damages, there is no basis to award the same. Moral and exemplary damages are recoverable only where the dismissal of an employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence, for the law always presumes good faith. Petitioners failed to prove bad faith, fraud or ill motive on the part of respondent. Moral damages cannot be awarded. Without the award of moral damages, there can be no award of exemplary damages, nor attorney's fees.

APPEARANCES OF COUNSEL

Armando San Antonio for petitioners.

Laguesma Magsalin Consulta & Gastardo Law Offices for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated November 25, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 68756 which dismissed petitioners' Petition for *Certiorari* and the CA Resolution[2] dated April 15, 2003 which denied petitioners' Motion for Reconsideration.

The factual background of the case is as follows:

Eddie Pacquing, Roderick Centeno, Juanito M. Guerra, Claro Dupilad, Jr., Louie Centeno, David Reblora, Raymundo Andrade (petitioners) were sales route helpers or *cargadores-pahinantes* of Coca-Cola Bottlers Philippines, Inc., (respondent), with the length of employment as follows:

Name	Date Hired	Date Dismissed
Eddie P. Pacquing	June 14, 1987	January 30, 1988
Roderick Centeno	November 15, 1985	January 15, 1995
Juanito M. Guerra	June 16, 1980	February 20, 1995
Claro Dupilad, Jr.	March 1, 1992	June 30, 1995
David R. Reblora	September 15, 1988	December 15, 1995
Louie Centeno	September 15, 1988	March 15, 1996
Raymundo Andrade	January 15, 1988	October 15, 1995

Petitioners were part of a complement of three personnel comprised of a driver, a salesman and a regular route helper, for every delivery truck. They worked exclusively at respondent's plants, sales offices, and company premises.

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[1] Penned by Associate Justice Oswaldo D. Agcaoili (now retired) and concurred in by Associate Justices Eliezer R. De los Santos (now deceased) and Regalado E. Maambong, CA *rollo*, p. 348.

[2] *Id.* at 408.

On October 22, 1996, petitioners[3] filed a Complaint[4] against respondent for unfair labor practice and illegal dismissal with claims for regularization, recovery of benefits under the Collective Bargaining Agreement (CBA), moral and exemplary damages, and attorney's fees.

In their Position Paper,[5] petitioners alleged that they should be declared regular employees of respondent since the nature of their work as *cargadores-pahinantes* was necessary or desirable to respondent's usual business and was directly related to respondent's business and trade.

In its Position Paper,[6] respondent denied liability to petitioners and countered that petitioners were temporary workers who were engaged for a five-month period to act as substitutes for an absent regular employee.

On July 5, 2000, Labor Arbiter Adolfo C. Babiano rendered a Decision[7] dismissing the complaint. He declared that petitioners were temporary workers hired through an independent contractor and acted as substitutes for the company's regular work force; that petitioner cannot be considered regular employees because, as *cargadores-pahinantes*, their work was not necessary or desirable in respondent's business — the manufacture of softdrinks.

On August 22, 2000, petitioners filed a Memorandum of Appeal[8] with the National Labor Relations Commission (NLRC). The appeal memorandum was verified by Roderick and Louie Centeno only.[9]

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[3] Including Jovito C. Estolonio, who was also a party-complainant in the NLRC and petitioner in the CA, but who no longer joined in the present petition.

[4] *Id.* at 42.

[5] *Id.* at 47.

[6] *Id.* at 59.

[7] *Id.* at 77.

[8] *Id.* at 83.

[9] *Id.* at 88-89.

On October 17, 2000, respondent filed an Opposition to Appeal[10] alleging that with the exception of Roderick and Louie Centeno, the Decision of the Labor Arbiter has become final and executory as regards the other complainants who did not indicate their consent to the filing of the appeal by proper verification or grant of authority; that even if the appeal is effective with respect to all complainants, the Labor Arbiter was correct in finding that complainants are not regular employees of the respondent.

On June 8, 2001, the NLRC issued a Resolution[11] dismissing the appeal and affirming the Decision of the Labor Arbiter. The NLRC held that in the absence of showing that the other complainants have authorized Roderick and Louie Centeno to act for and in their behalf for the purpose of pursuing their appeal, the non-verification by the other complainants rendered the decision final as against them; that complainants cannot be considered regular employees since the nature of their duties are not directly related to respondent's primary or main business but pertained to post production or delivery operations.

On July 7, 2001, petitioners filed a Motion for Reconsideration[12] but it was denied by the NLRC in a Resolution[13] dated October 31, 2001.

On January 25, 2002, petitioners filed a Petition for *Certiorari*[14] with the CA. This time, the Verification and Certification[15] was signed by five[16] of the eight petitioners.

On November 25, 2002, the CA rendered a Decision[17] dismissing the petition for petitioner's failure to comply with

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[10] *Id.* at 92.

[11] *Id.* at 33.

[12] *Id.* at 100.

[13] *Id.* at 40.

[14] *Id.* at 2.

[15] *Id.* at 29.

[16] Namely: Eddie Pacquing, Roderick Centeno, Juanito M. Guerra, Louie Centeno, and Raymundo Andrade.

[17] *Id.* at 348.

the verification requirement in the petition and the appeal memorandum. It held that the failure of all the petitioners to affix their signatures in the verification and certification against non-forum shopping rendered the petition dismissable, citing *Loquias v. Office of the Ombudsman;*[18] that with respect to the appeal memorandum in the NLRC, petitioners failed to comply with the New Rules of Procedure of the NLRC, specifically Section 3, Rule VI thereof, which requires that the appeal memorandum be under oath. The CA affirmed the NLRC's finding that petitioners' functions were not related to respondent's main business.

Petitioners filed a Motion for Reconsideration[19] but it was denied by the CA in a Resolution[20] dated April 15, 2003.

Petitioners then filed the present petition raising the following issues for resolution:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR *CERTIORARI* FILED BY THE PETITIONER (sic) DUE TO THE FAILURE OF THREE OUT OF THE EIGHT PETITIONERS TO AFFIX THEIR SIGNATURES (sic) THE VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING.

II

WHETHER OR NOT THE RESOLUTIONS OF HONORABLE COURT OF APPEALS DEPARTED OR DEVIATED FROM THE PREVAILING DOCTRINE OR LAW AND APPLICABLE DECISIONS OF THIS HIGH TRIBUNAL THAT VERIFICATION IS MERELY A MATTER OF FORM AND NON-COMPLIANCE THEREWITH DOES NOT RENDER THE PLEADING FATALLY DEFECTIVE.

III

WHETHER OR NOT THE CONCLUSIONS AND DECISIONS OF THE LABOR ARBITER [sic] NATIONAL LABOR RELATIONS

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[18] 392 Phil. 596 (2000).

[19] *Id.* at 357.

[20] *Id.* at 408.

COMMISSION [sic] IN ACCORDANCE WITH EVIDENCE, JURISPRUDENCE, LABOR LAWS, STATUTES AND CONSTITUTIONAL MANDATES PROPITIOUS TO THE PETITIONERS.

IV

WHETHER OR NOT PETITIONERS SHOULD BE DECLARED REGULAR EMPLOYEES OF COCA-COLA AND THUS ENTITLED TO BE REINSTATED WITH BACKWAGES FROM THE DATE OF THEIR DISMISSAL UP TO THE DATE OF THEIR ACTUAL REINSTATEMENT, DAMAGES AND ATTORNEY'S FEES[21]

Petitioners contend that the absence of the signatures of the three other petitioners in the verification and certification against forum-shopping in the Petition for *Certiorari* before the CA was not fatal since verification is merely a matter of form of pleading and non-compliance does not render the pleading fatally defective; that the absence of the signature of the six other complainants in the verification in the appeal memorandum was not fatal since technicalities have no room in labor cases; that petitioners are regular employees of respondent since they have been employed for more than one year and perform functions necessary to respondent's business.

Respondent, on the other hand, argues that petitioners' blatant violation of and non-compliance with procedural rules should not be countenanced; that the petition seeks an evaluation of evidence and factual findings of the CA and the NLRC which is beyond the scope of a petition for review on *certiorari* under Rule 45 of the Rules of Court where only questions of law are entertained.

The petition is impressed with merit.

While the general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient, the Court has stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice,

[21] *Id.* at 420.

should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. Strict compliance with the provision regarding the certificate of non-forum shopping underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.[22] It does not, however, prohibit substantial compliance therewith under justifiable circumstances,[23] considering especially that although it is obligatory, it is not jurisdictional.[24]

In recent decisions, the Court has consistently held that when all the petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the rules.[25]

In *HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association*,[26] it was held that the signature of only one of the petitioners substantially complied with the Rules because all the petitioners share a **common interest** and invoke a **common cause of action or defense**. The Court said:

Respondents (who were plaintiffs in the trial court) filed the complaint against petitioners as a group, represented by their

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[22] *Iglesia ni Cristo v. Ponferrada*, G.R. No. 168943, October 27, 2006, 505 SCRA 828; *HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association*, G.R. No. 139360, September 23, 2003, 411 SCRA 504, 508; *Bank of the Philippine Islands v. Court of Appeals*, 450 Phil. 532, 540 (2003); *Cavile v. Heirs of Cavile*, 448 Phil. 302, 311 (2003); *Twin Towers Condominium Corporation v. Court of Appeals*, 446 Phil. 208, 298 (2003).

[23] *Solmayor v. Arroyo*, G.R. No. 153817, March 31, 2006; 486 SCRA 326, 341; *Cavile v. Heirs of Cavile, supra* note 22, at 311.

[24] *Cua v. Vargas*, G.R. No. 156536, October 31, 2006, 506 SCRA 374, 390; *Heirs of Dicman v. Cariño*, G.R. No. 146459, June 8, 2006, 490 SCRA 240, 261; *Heirs of Agapito T. Olarte v. Office of the President of the Philippines*, G.R. No. 165821, June 21, 2005, 460 SCRA 561, 566.

[25] *Cua v. Vargas, supra* note 24; *San Miguel Corporation v. Aballa*, G.R. No. 14911, June 28, 2005, 461 SCRA 392, 411, 412; *Espina v. Court of Appeals*, G.R. No. 164582, March 28, 2007, 519 SCRA 327, 344-345.

[26] *Supra* note 22.

homeowners' association president who was likewise one of the plaintiffs, Mr. Samaon M. Buat. **Respondents raised one cause of action** which was the breach of contractual obligations and payment of damages. They **shared a common interest** in the subject matter of the case, being the aggrieved residents of the poorly constructed and developed Emily Homes Subdivision. **Due to the collective nature of the case, there was no doubt that Mr. Samaon M. Buat could validly sign the certificate of non-forum shopping in behalf of all his co-plaintiffs**. In cases therefore where it is **highly impractical to require all the plaintiffs to sign** the certificate of non-forum shopping, it is sufficient, in order not to defeat the ends of justice, for one of the plaintiffs, acting as representative, to sign the certificate provided that xxx the **plaintiffs share a common interest in the subject matter of the case or filed the case as a "collective," raising only one common cause of action or defense.** (Emphasis and underscoring supplied)[27]

In *San Miguel Corporation v. Aballa*,[28] the dismissed employees filed with the NLRC a complaint for declaration as regular employees of San Miguel Corporation (SMC) and for an illegal dismissal case, following SMC's closure of its Bacolod Shrimp Processing Plant. After an unfavorable ruling from the NLRC, the dismissed employees filed a petition for *certiorari* with the CA. Only three out of the 97 named petitioners signed the verification and certification of non-forum shopping. This Court ruled that given the collective nature of the petition filed before the CA, which raised only one common cause of action against SMC, the execution by the three petitioners of the certificate of non-forum shopping constitutes substantial compliance with the Rules.

More recently, in *Espina v. Court of Appeals*,[29] the Court held that the signatures of 25 out of the 28 employees who filed the Petition for *Certiorari* in the CA, likewise, constitute substantial compliance with the Rules. Petitioners therein raised one common cause of action against M.Y. San and Monde,

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[27] *Id.* at 509-510.

[28] *Supra* note 25.

[29] *Supra* note 25.

i.e., the illegal closure of M.Y. San and its subsequent sale to Monde, which resulted in the termination of their services. They shared a common interest and common defense in the complaint for illegal dismissal which they filed with the NLRC. Thus, when they appealed their case to the CA, they pursued the same as a collective body, raising only one argument in support of their rights against the illegal dismissal allegedly committed by M.Y. San and Monde. There was sufficient basis, therefore, for the 25 petitioners, to speak for and in behalf of their co-petitioners, to file the petition in the CA.

In the same vein, this is also true in the instant case where petitioners have filed their case as a collective group, sharing a common interest and having a common single cause of action against respondent. Accordingly, the signatures of five of the eight petitioners in the Petition for *Certiorari* before the CA constitute substantial compliance with the rules.

Contrary to the CA's pronouncement, *Loquias* finds no application here. In said case, the co-parties were being sued in their individual capacities as mayor, vice mayor and members of the municipal board of San Miguel, Zamboanga del Sur, who were criminally charged for allegedly withholding the salary increases and benefits of the municipality's health personnel. They were tried for alleged violation of Republic Act No. 3019[30] in their various respective personal capacities. Clearly, the conviction or acquittal of one accused would not necessarily apply to all the accused in a graft charge.

As to the defective verification in the appeal memorandum before the NLRC, the same liberality applies. After all, the requirement regarding verification of a pleading is formal, not jurisdictional.[31] Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective.[32] Verification

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[30] Otherwise known as the "Anti-Graft and Corrupt Practices Act."

[31] *Valdecantos v. People*, G.R. No. 148852, September 27, 2006, 503 SCRA 474, 481; *Uy v. Land Bank of the Philippines*, 391 Phil. 303, 312 (2000).

[32] *Republic v. Lee Wai Lam*, 139 Phil. 265, 269 (1969).

is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[33] The court or tribunal may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.[34]

Moreover, no less than the Labor Code directs labor officials to use all reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities;[35] while Section 10, Rule VII of the New Rules of Procedure of the NLRC provides that technical rules are not binding.[36] Indeed, the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice.[37] Thus, the execution of the verification in the appeal memorandum by only two complainants in behalf of the other complainants also constitute substantial compliance.

Indeed, it is more in accord with substantial justice and equity to overlook petitioners' procedural lapses. Labor cases must be decided according to justice and equity and the substantial merits

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[33] *Id*.; *Sy v. Habacon-Garayblas*, Adm. Matter No. MTJ-93-860, December 21, 1993, 228 SCRA 644, 646; *Republic v. Lee Wai Lam*, *supra* note 32, at 269-270.

[34] *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, July 6, 2004, 433 SCRA 455, 465; *Robern Development Corporation v. Judge Quitain*, 373 Phil. 773, 787 (1999).

[35] Article 221, as amended.

[36] Section 10. TECHNICAL RULES NOT BINDING. The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission *shall use every and all reasonable means to ascertain the facts in each case speedily and objectively*, without regard for technicalities of law or procedure, all in the interest of due process. (Emphasis supplied)

[37] *Casimiro v. Stern Real Estate, Inc.*, G.R. No. 162233, March 10, 2006, 484 SCRA 463, 479; *Mayon Hotel & Restaurant v. Adana*, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 628.

of the controversy.[38] After all, the policy of our judicial system is to encourage full adjudication of the merits of an appeal. Procedural niceties should be avoided in labor cases in which the provisions of the Rules of Court are applied only in suppletory manner. Indeed, rules of procedure may be relaxed to relieve a part of an injustice not commensurate with the degree of noncompliance with the process required.[39] For this reason, the Court cannot indulge respondent in its tendency to nitpick on trivial technicalities to boost its arguments. The strength of one's position cannot be hinged on mere procedural niceties but on solid bases in law and jurisprudence.[40]

The primordial issue in the present petition is whether petitioners are regular employees of the respondent.

Generally, the existence of an employer-employee relationship is a factual matter that will not be delved into by this Court, since only questions of law may be raised in petitions for review.[41] Needless to stress, the established rule is that in the exercise of the Supreme Court's power of review, the Court not being a trier of facts, does not normally embark on a re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court.[42] This rule, however, has several well-recognized exceptions, to wit: (1) when the

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[38] *Garcia v. Philippine Airlines, Inc.*, G.R. No. 160798, June 8, 2005, 459 SCRA 768, 780-781; *EDI Staff Builders International, Inc. v. Magsino*, 411 Phil. 730 (2001).

[39] *Garcia v. Philippine Airlines, Inc., supra*; *Novelty Philippines, Inc. v. Court of Appeals,* 458 Phil. 36 (2003).

[40] *De Ysasi III v. National Labor Relations Commission*, G.R. No. 104599, March 11, 1994, 231 SCRA 173.

[41] *Sigaya v. Mayuga*, G.R. No. 143254, August 18, 2005, 467 SCRA 341, 352; *Centeno v. Spouses Viray*, 440 Phil. 881, 887 (2002); *Villarico v. Court of Appeals*, 424 Phil. 26, 32 (2002).

[42] *Heirs of Dicman v. Cariño, supra* note 30; *Bank of the Philippine Islands v. Sarmiento*, G.R. No. 146021, March 10, 2006, 484 SCRA 261, 267-268; *Almendrala v. Ngo*, G.R. No. 142408, September 30, 2005, 471 SCRA 311, 322.

findings are grounded entirely on speculation, surmises or conjectures; **(2) when the inference made is manifestly mistaken, absurd or impossible;** (3) when there is grave abuse of discretion; (**4) when the judgment is based on a misapprehension of facts;** (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[43] Exceptions (2) and (4) are present in the instant case.

The pivotal question of whether respondent's sales route helpers or *cargadores* or *pahinantes* are regular workers of respondent has already been resolved in *Magsalin v. National Organization of Working Men*,[44] thus:

The basic law on the case is Article 280 of the Labor Code. Its pertinent provisions read:

> Art. 280. Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or

[43] *Heirs of Dicman v. Cariño*, *supra* note 30, at 261-262; *Bank of the Philippine Islands v. Sarmiento*, *supra*; *Almendrala v. Ngo*, *supra*.

[44] 451 Phil. 254 (2003).

where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Coca-Cola Bottlers Phils., Inc., is one of the leading and largest manufacturers of softdrinks in the country. Respondent workers have long been in the service of petitioner company. Respondent workers, when hired, would go with route salesmen on board delivery trucks and undertake the laborious task of loading and unloading softdrink products of petitioner company to its various delivery points.

Even while the language of law might have been more definitive, the clarity of its spirit and intent, *i.e.*, to ensure a "regular" worker's security of tenure, however, can hardly be doubted. In determining whether an employment should be considered regular or non-regular, the applicable test is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The standard, supplied by the law itself, is whether the work undertaken is necessary or desirable in the usual business or trade of the employer, a fact that can be assessed by looking into the nature of the services rendered and its relation to the general scheme under which the business or trade is pursued in the usual course. It is distinguished from a specific undertaking that is divorced from the normal activities required in carrying on the particular business or trade. But, although the work to be performed is only for a specific project or seasonal, where a person thus engaged has been performing the job for at least one year, even if the performance is not continuous or is merely intermittent, the law deems the repeated and continuing need for its performance as being sufficient to indicate the necessity or desirability of that activity to the business or trade of the employer. The employment of such person is also then deemed to be regular with respect to such activity and while such activity exists.

The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to respondent workers as sales route helpers so involves merely

"post production activities," one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual business or trade, there would have then been no need for it to even maintain regular truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not on a confined scope.

The repeated rehiring of respondent workers and the continuing need for their services clearly attest to the necessity or desirability of their services in the regular conduct of the business or trade of petitioner company. The Court of Appeals has found each of respondents to have worked for at least one year with petitioner company. While this Court, in *Brent School, Inc. vs. Zamora*, has upheld the legality of a fixed-term employment, it has done so, however, with a stern admonition that where from the circumstances it is apparent that the period has been imposed to preclude the acquisition of tenurial security by the employee, then it should be struck down as being contrary to law, morals, good customs, public order and public policy. The pernicious practice of having employees, workers and laborers, engaged for a fixed period of few months, short of the normal six-month probationary period of employment, and, thereafter, to be hired on a day-to-day basis, mocks the law. Any obvious circumvention of the law cannot be countenanced. The fact that respondent workers have agreed to be employed on such basis and to forego the protection given to them on their security of tenure, demonstrate nothing more than the serious problem of impoverishment of so many of our people and the resulting unevenness between labor and capital. A contract of employment is impressed with public interest. The provisions of applicable statutes are deemed written into the contract, and "the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other."[45]

Under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled),[46]

[45] *Id.* at 203-206.

[46] *J.M. Tuason & Co., Inc. v. Mariano*, G.R. No. L-33140, October 23, 1978, 85 SCRA 644, 647; *Santiago and Flores v. Valenzuela and Pardo*, 78 Phil. 397, 410 (1947).

it is the Court's duty to apply the previous ruling in *Magsalin* to the instant case. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner.[47] Else, the ideal of a stable jurisprudential system can never be achieved.

Being regular employees of respondent, petitioners are entitled to security of tenure, as provided in Article 279[48] of the Labor Code, and may only be terminated from employment due to just or authorized causes. Because respondent failed to show such cause,[49] the petitioners are deemed illegally dismissed and therefore entitled to back wages and reinstatement without loss of seniority rights and other privileges.[50]

On the claim for moral and exemplary damages, there is no basis to award the same. Moral and exemplary damages are recoverable only where the dismissal of an employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[51] The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence, for the law always presumes good faith.[52] Petitioners failed to prove

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[47] *Pines City Educational Center v. National Labor Relations Commission*, G.R. No. 96779, November 10, 1993, 227 SCRA 655, 665; *Associated Sugar, Inc. v. Commissioner of Customs*, G.R. No. L-30391, November 25, 1982, 118 SCRA 657, 663.

[48] Art. 279. Security of Tenure — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[49] THE LABOR CODE, Articles 282 to 284.

[50] THE LABOR CODE, Article 279.

[51] *Acuña v. Court of Appeals*, G.R. No. 159832, May 5, 2006, 489 SCRA 658, 668; *Ford Philippines, Inc. v. Court of Appeals*, 335 Phil. 1 (1997).

[52] *Acuña v. Court of Appeals, supra*; *Equitable Banking Corporation v. National Labor Relations Commission*, G.R. No. 102467, June 13, 1997, 273 SCRA 352, 379.

bad faith, fraud or ill motive on the part of respondent.[53] Moral damages cannot be awarded. Without the award of moral damages, there can be no award of exemplary damages, nor attorney's fees.[54]

WHEREFORE, the present petition is *GRANTED*. The assailed Decision dated November 25, 2002 and Resolution dated April 15, 2003 of the Court of Appeals in CA-G.R. SP No. 68756 are *REVERSED* and *SET ASIDE*. Petitioners are declared regular employees of the respondent. Respondent is ordered to reinstate petitioners to their former positions with full backwages, inclusive of allowances, and to other benefits or their monetary equivalent, computed from the date of their termination up to the time of their actual reinstatement.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 159625. January 31, 2008]

COCA-COLA BOTTLERS PHILIPPINES, INC., *petitioner, vs.* **VALENTINA GARCIA,** *respondent.*

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[53] *Acuña v. Court of Appeals, supra*; *Audion Electric Co., Inc. v. National Labor Relations Commission*, G.R. No. 106648, June 17, 1999, 308 SCRA 340, 355.

[54] *Acuña v. Court of Appeals, supra*; *Bernardo v. Court of Appeals,* 341 Phil. 413 (1997).

**** In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 484 dated January 11, 2008.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FAILURE TO APPEAL THE DECISION OF CA TO THE COURT; EFFECT THEREOF.— The Court agrees with petitioner that respondent can no longer seek a review of the CA's ruling on the validity of her termination from employment on the ground of abandonment of work. Records do not show that respondent appealed from the CA decision. For failure to appeal the decision of the CA to this Court, respondent cannot obtain any affirmative relief other than that granted in the decision of the CA. That decision of the CA on the validity of her termination has become final as against her and can no longer be reviewed, much less reversed, by this Court. It is well-settled that a party who has not appealed from a decision cannot seek any relief other than what is provided in the judgment appealed from. An appellee who has himself not appealed may not obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed, and he can assign errors in his brief if such is required to strengthen the views expressed by the court a *quo*. These assigned errors in turn may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of reversing or modifying the judgment in the appellee's favor and giving him other reliefs.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; REQUIRED NOTICES; THAT FIRST NOTICE MUST INFORM EMPLOYEE OF ACT OR OMISSION CHARGED WARRANTING DISMISSAL; RATIONALE.— In dismissing an employee, the employer has the burden of proving that the dismissed worker has been served two notices: (1) the first to inform the employee of the particular acts or omissions for which the employer seeks his dismissal, and (2) the second to inform the employee of his employer's decision to terminate him. The first notice must state that the employer seeks dismissal for the act or omission charged against the employee; otherwise, the notice does not comply with the rules. In

Maquiling v. Philippine Tuberculosis Society, Inc., the Court held that the first notice must inform outright the employee that an investigation will be conducted on the charges specified in such notice which, if proven, will result in the employee's dismissal. The Court explained the rationale for this rule, thus: This notice will afford the employee an opportunity to avail all defenses and exhaust all remedies to refute the allegations hurled against him for what is at stake is his very life and limb his employment. Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process. One's work is everything, thus, it is not too exacting to impose this strict requirement on the part of the employer before the dismissal process be validly effected. This is in consonance with the rule that all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.

3. ID.; ID.; ID.; ID.; ID.; COMPLIANCE THEREOF MUST BE SUFFICIENTLY ESTABLISHED; INADEQUATE IN CASE AT BAR.— Article 277 of the Labor Code explicitly provides: ART. 277. *Miscellaneous provisions.* x x x (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. x x x Section 2, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides: Section 2. *Standards of due process: requirements of notice*. – In all cases of termination of employment, the following standards of due process shall be substantially observed: l. For termination of employment based on just causes as defined in Article 282 of the Code: (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee

reasonable opportunity within which to explain his side; (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. x x x There is no dispute that in cases of abandonment of work, notice shall be served at the worker's last known address. While petitioner presented the envelopes of the alleged notices sent to respondent's last known address, the contents thereof were not offered in evidence. Thus, the records are wanting of proof that respondent was properly apprised of the charges against her and given an opportunity to explain her side, as petitioner maintains. Evidently, it is clear that respondent's dismissal was effected without the notice required by law. Thus, petitioner failed to satisfy the two-notice requirement.

4. ID.; ID.; ID.; ID.; NON-COMPLIANCE THEREOF WARRANTS PAYMENT OF INDEMNITY IN THE FORM OF NOMINAL DAMAGES.— The *Serrano* doctrine, which awarded full backwages to "ineffectual dismissal cases" where an employee dismissed for cause was denied due process, was applied by the CA. That doctrine has been abandoned by the Court's ruling in *Agabon*, where the Court held that if the dismissal was for cause, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual; but the employer's violation of the employee's right to statutory due process warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the Court, taking into account the relevant circumstances. The Court explicitly ruled in *Agabon* that it was abandoning the *Serrano* doctrine in this wise: After carefully analyzing the consequences of the divergent doctrines in the law on employment termination, we believe that in cases involving dismissals for cause but without observance of the twin requirements of notice and hearing, the better rule is to abandon the *Serrano* doctrine and to follow *Wenphil* by holding that the dismissal was for just cause but imposing sanctions on the employer. Such sanctions, however, must be stiffer than that imposed in *Wenphil*. By doing so, this Court would be

able to achieve a fair result by dispensing justice not just to employees, but to employers as well. Considering the foregoing, the Court deems the amount of ₱30,000.00 as sufficient nominal damages, pursuant to prevailing jurisprudence, to vindicate or recognize respondent's right to procedural due process which was violated by her employer, herein petitioner.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and *Cruz* for petitioner.
Vicente A. Espina, Jr. for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated September 24, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 51794 and the CA Resolution[2] dated July 25, 2003 which denied petitioner's Motion for Partial Reconsideration.

The factual background of the case is as follows:

On December 1, 1988, Coca-Cola Bottlers Philippines, Inc. (petitioner) hired Valentina G. Garcia (respondent) as Quality Control Technician on probationary status. She was assigned at petitioner's Tacloban plant. On June 1, 1989 she became a regular employee. She was the most junior among the personnel in the Quality Control Department (Department).

In the middle of 1989, petitioner adopted some modernization programs which resulted in increased efficiency and production. Likewise, the work load of their employees was substantially reduced. As a result, one employee in the Department became

[1] Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Buenaventura J. Guerrero and Eloy R. Bello, Jr., CA *rollo*, p. 282.

[2] *Id.* at 337.

redundant. Under the Collective Bargaining Agreement (CBA) and Article 283 of the Labor Code, respondent, as the most junior employee of the Department could be validly terminated. However, instead of terminating respondent on ground of redundancy, petitioner decided to assign her to its Iloilo plant.

Thus, sometime in April 1990, petitioner informed respondent that she would be transferred to the Iloilo plant for being an excess or redundant employee in the Tacloban plant. Respondent refused to be transferred. Through her Union, she brought the matter to their grievance machinery. Meanwhile, petitioner pushed through with respondent's transfer. On June 26, 1990, petitioner gave respondent notice of her transfer to take effect on July 2, 1990. Yet, on said date, respondent reported for work at the Tacloban plant. The security guard refused her entry.

Records show that on June 17, 1991, or almost one year after she was refused entry, respondent filed a complaint for illegal dismissal with Regional Arbitration Branch No. VIII, Tacloban City, National Labor Relations Commission (NLRC).

In its Position Paper, petitioner denied that respondent was illegally dismissed and countered that it gave respondent her transfer notice on June 26, 1990, giving her until June 30, 1990 to transfer to Iloilo. Petitioner claims that respondent ignored said notice; that when the Iloilo plant could no longer wait for respondent, petitioner decided to serve her notice of dismissal on July 13, 1990 for abandonment of work.

On August 15, 1995, the Labor Arbiter (LA) rendered a Decision[3] finding that respondent was illegally dismissed which petitioner appealed.

On September 26, 1996, the NLRC rendered a Decision[4] reversing the decision of the LA. It held that there was a valid transfer since the mobility clause in petitioner's employment contract was valid; and because petitioner refused to be transferred, she was considered to have abandoned her work.

[3] CA *rollo*, p. 29.

[4] *Id*. at 35.

Respondent's Motion for Reconsideration was denied by the NLRC in a Resolution dated November 25, 1996.

Respondent then filed with this Court a Petition for *Certiorari*[5] which was referred to the CA pursuant to *St. Martin Funeral Homes v. National Labor Relations Commission*.[6]

On September 24, 2002, the CA rendered a Decision[7] partially granting the petition. While the CA held that abandonment of work was a just cause to effect respondent's dismissal, it found that the dismissal was ineffectual since it did not comply with due process requirements, as petitioner received only the notice of her dismissal on the ground of abandonment, and she was not given the initial notice of her impending dismissal or the chance to explain her side. It held petitioner liable for backwages from the time respondent was dismissed up to the finality of the decision, in accordance with *Serrano v. National Labor Relations Commission*.[8]

Petitioner and respondent filed their respective motions for partial reconsideration.[9] Respondent questioned the CA's finding that she abandoned her work. Petitioner, for its part, assailed the CA's pronouncement that it failed to observe due process, arguing that it sent several notices to respondent's last known address. On July 25, 2003, the CA issued a Resolution[10] denying the motions for partial reconsideration.

Hence, the present petition anchored on the following grounds:

I

THE COURT OF APPEALS HAS DECIDED IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS

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[5] *Id.* at 4.

[6] 356 Phil. 811 (1998).

[7] CA *rollo*, p. 282.

[8] 387 Phil. 345 (2000).

[9] CA *rollo*, pp. 297, 301.

[10] *Id.* at 337.

OF THE SUPREME COURT, WHEN IT RULED THAT PETITIONER FAILED TO OBSERVE DUE PROCESS IN TERMINATING RESPONDENT, DESPITE THE UNCONTROVERTED FACT THAT SEVERAL NOTICES WERE SENT TO RESPONDENT'S LAST KNOWN ADDRESS BUT WERE RETURNED UNSERVED DUE TO CAUSES SOLELY ATTRIBUTABLE TO RESPONDENT HERSELF.

II

THE COURT OF APPEALS HAS DECIDED IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS OF THE SUPREME COURT, WHEN IT RETROACTIVELY APPLIED THE "SERRANO DOCTRINE" TO THE INSTANT CASE WHICH WAS ALREADY PENDING BEFORE SUCH DOCTRINE WAS PROMULGATED BY THE HONORABLE SUPREME COURT.[11]

Petitioner argues that since respondent was terminated on the ground of abandonment of work, the sending of several notices to respondent's last known address informing her of the charges against her and giving her an opportunity to explain her side was sufficient compliance with due process; that it cannot be held liable for violation of due process when the notices were returned unserved due to causes solely attributable to the respondent herself; that the *Serrano* doctrine is inapplicable since it was superseded by *Agabon v. National Labor Relations Commission*[12] which ruled that a violation of an employee's statutory right to two notices prior to the termination of employment for just cause entitles such dismissed employee to *nominal damages* only, not payment of full backwages.

Respondent, on the other hand, contends that the records of the case would show that she did not abandon her work nor did she have any intention to abandon her work or sever the employer-employee relationship; that her termination was actually an illegal scheme on the part of petitioner to correct certain personnel lapses; that she was dismissed without due process; and that petitioner is obliged to pay backwages.

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[11] *Rollo*, p. 40.

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

Petitioner avers that respondent, in raising the issue of the legality of her termination in her Comment, cannot be allowed to seek affirmative relief from the Court since the CA's ruling thereon had already become final for her failure to appeal therefrom.

The Court agrees with petitioner that respondent can no longer seek a review of the CA's ruling on the validity of her termination from employment on the ground of abandonment of work. Records do not show that respondent appealed from the CA decision. For failure to appeal the decision of the CA to this Court, respondent cannot obtain any affirmative relief other than that granted in the decision of the CA. That decision of the CA on the validity of her termination has become final as against her and can no longer be reviewed, much less reversed, by this Court.

It is well-settled that a party who has not appealed from a decision cannot seek any relief other than what is provided in the judgment appealed from.[13] An appellee who has himself not appealed may not obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below.[14] The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed, and he can assign errors in his brief if such is required to strengthen the views expressed by the court *a quo*.[15] These assigned errors in turn may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of reversing or modifying the judgment in the appellee's favor and giving him other reliefs.[16]

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[13] *Solidbank Corp. v. Court of Appeals*, 456 Phil. 879, 887 (2003); *Buot v. Court of Appeals*, G.R. No. 119679, May 18, 2001, 357 SCRA 846, 860; *Quezon Development Bank v. Court of Appeals*, 360 Phil. 392, 399 (1998).

[14] *Solidbank Corp. v. Court of Appeals*, *supra* note 13; *Buot v. Court of Appeals*, *supra* note 13, at 860-861; *Quezon Development Bank v. Court of Appeals*, *supra* note 13.

[15] *Buot v. Court of Appeals*, *supra* note 13, at 861; *Quezon Development Bank v. Court of Appeals*, *supra* note 13.

[16] *Id.*; *id.*; *Custodio v. Court of Appeals*, 323 Phil. 575, 584 (1996).

Consequently, the sole issue for resolution in the present petition is whether respondent was accorded procedural due process before her separation from work.

The answer is in the negative.

In dismissing an employee, the employer has the burden of proving that the dismissed worker has been served two notices: (1) the first to inform the employee of the particular acts or omissions for which the employer seeks his dismissal, and (2) the second to inform the employee of his employer's decision to terminate him.[17] The first notice must state that the employer seeks dismissal for the act or omission charged against the employee; otherwise, the notice does not comply with the rules.[18]

In *Maquiling v. Philippine Tuberculosis Society, Inc.*,[19] the Court held that the first notice must inform outright the employee that an investigation will be conducted on the charges specified in such notice which, if proven, will result in the employee's dismissal. The Court explained the rationale for this rule, thus:

> This notice will afford the employee an opportunity to avail all defenses and exhaust all remedies to refute the allegations hurled against him for what is at stake is his very life and limb his employment. Otherwise, the employee may just disregard the notice as a warning without any disastrous consequence to be anticipated. Absent such statement, the first notice falls short of the requirement of due process. One's work is everything, thus, it is not too exacting to impose this strict requirement on the part of the employer before the dismissal process be validly effected. This is in consonance with the rule that all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.[20]

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[17] *Challenge Socks Corporation v. Court of Appeals*, G.R. No. 165268, November 8, 2005, 474 SCRA 356, 363-364; *Manly Express, Inc. v. Payong, Jr.*, G.R. No. 167462, October 25, 2005, 474 SCRA 323, 330.

[18] *Manly Express, Inc. v. Payong, Jr.*, *id.*; *Electro System Industries Corporation v. National Labor Relations Commission*, G.R. No. 165282, October 5, 2005, 472 SCRA 199, 203; *Tan v. National Labor Relations Commission*, 359 Phil. 499, 516 (1998).

[19] G.R. No. 143384, February 4, 2005, 450 SCRA 465.

[20] *Id.* at 477.

In the present case, petitioner argues that the purpose of the notice requirement was achieved when petitioner sent several notices to respondent at her last known address.

The Court is not persuaded by such argument.

Article 277 of the Labor Code explicitly provides:

ART. 277. *Miscellaneous provisions*. x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. x x x

Section 2, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides:

Section 2. *Standards of due process: requirements of notice*. – In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. x x x

There is no dispute that in cases of abandonment of work, notice shall be served at the worker's last known address.[21] While petitioner presented the envelopes of the alleged notices sent to respondent's last known address, the contents thereof were not offered in evidence. Thus, the records are wanting of proof that respondent was properly apprised of the charges against her and given an opportunity to explain her side, as petitioner maintains. Evidently, it is clear that respondent's dismissal was effected without the notice required by law. Thus, petitioner failed to satisfy the two-notice requirement.

The *Serrano* doctrine, which awarded full backwages to "ineffectual dismissal cases" where an employee dismissed for cause was denied due process, was applied by the CA. That doctrine has been abandoned by the Court's ruling in *Agabon*, where the Court held that if the dismissal was for cause, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual; but the employer's violation of the employee's right to statutory due process warrants the payment of indemnity[22] n the form of nominal damages. The amount of such damages is addressed to the sound discretion of the Court, taking into account the relevant circumstances.[23] The Court explicitly ruled in *Agabon* that it was abandoning the *Serrano* doctrine in this wise:

> After carefully analyzing the consequences of the divergent doctrines in the law on employment termination, we believe that in cases involving dismissals for cause but without observance of the twin requirements of notice and hearing, the better rule is to abandon the *Serrano* doctrine and to follow *Wenphil* by holding that the dismissal was for just cause but imposing sanctions on the employer. Such sanctions, however, must be stiffer than that imposed in *Wenphil*. By doing so, this Court would be able to achieve a fair result by dispensing justice not just to employees, but to employers as well.[24]

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[21] *Agabon* case, *supra* note 12, at 609; Section 2, Rule XIV, Book V of the Omnibus Implementing Rules and Regulations of the Labor Code.

[22] See *Garcia v. National Labor Relations Commission*, 327 Phil. 649 (1996).

[23] *Agabon v. National Labor Relations Commission*, *supra* note 12, at 617.

[24] *Id.* at 613-614.

Considering the foregoing, the Court deems the amount of ₱30,000.00 as sufficient nominal damages, pursuant to prevailing jurisprudence,[25] to vindicate or recognize respondent's right to procedural due process which was violated by her employer, herein petitioner.

WHEREFORE, the present petition is *DENIED*. The Decision dated September 24, 2002 and Resolution dated July 25, 2003 of the Court of Appeals in CA-G.R. SP No. 51794 are *AFFIRMED* with *MODIFICATION* that petitioner Coca-Cola Bottlers Philippines, Inc. is *ORDERED* to pay respondent Valentina Garcia the amount of ₱30,000.00 as nominal damages for failure to comply fully with the notice requirement as part of due process. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 160426. January 31, 2008]

CAPITOLINA VIVERO NAPERE, *petitioner, vs.* **AMANDO BARBARONA and GERVACIA MONJAS BARBARONA,** *respondents.*

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[25] *Philemploy Services and Resources, Inc. v. Rodriguez,* G.R. No. 152616, March 31, 2006, 486 SCRA 302, 318; *Durban Apartments Corporation v. Catacutan,* G.R. No. 167136, December 14, 2005, 477 SCRA 801, 811; *Amadeo Fishing Corporation v. Nierra,* G.R. No. 163099, October 4, 2005, 472 SCRA 13, 35; *Central Luzon Conference Corporation of Seventh Day Adventist Church, Inc. v. Court of Appeals,* G.R. No. 161976, August 12, 2005, 466 SCRA 711, 713; *Caingat v. National Labor Relations Commission,* G.R. No. 154308, March 10, 2005, 453 SCRA 142, 155.

* In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 484 dated January 11, 2008.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; DEATH OF PARTY; WHERE CLAIM NOT EXTINGUISHED BY DEATH OF PARTY, SUBSTITUTION OF HEIRS IS REQUIRED; NON-COMPLIANCE, HOWEVER, WILL NOT INVALIDATE PROCEEDINGS CONDUCTED AND JUDGMENT RENDERED.— When a party to a pending case dies and the claim is not extinguished by such death, the Rules require the substituion of the deceased party by his legal representative or heirs. In such case, counsel is obliged to inform the court of the death of his client and give the name and address of the latter's legal representative. The complaint for recovery of possession, quieting of title and damages is an action that survives the death of the defendant. Notably, the counsel of Juan Napere complied with his duty to inform the court of his client's death and the names and addresses of the heirs. The trial court, however, failed to order the substitution of the heirs. Nonetheless, despite this oversight, we hold that the proceedings conducted and the judgment rendered by the trial court are valid. The Court has repeatedly declared that failure of the counsel to comply with his duty to inform the court of the death of his client, such that no substitution is effected, will not invalidate the proceedings and the judgment rendered thereon if the action survives the death of such party. The trial court's jurisdiction over the case subsists despite the death of the party. Mere failure to substitute a deceased party is not sufficient ground to nullify a trial court's decision. The party alleging nullity must prove that there was an undeniable violation of due process.

2. ID.; ID.; ID.; ID.; ID.; RATIONALE.— Strictly speaking, the rule on substitution by heirs is not a matter of jurisdiction, but a requirement of due process. The rule on substittution was crafted to protect every party's right to due process. It was designed to ensure that the deceased party would continue to be properly represented in the suit through his heirs or the duly appointed legal representative of his estate. Moreover, non-compliance with the Rules results in the denial of the right to due process for the heirs who, though not duly notified of the proceedings, would be substantially affected by the decision rendered therein. Thus, it is only when there is a denial of due

process, as when the deceased is not represented by any legal representative or heir, that the court nullifies the trial proceedings and the resulting judgment therein.

3. ID.; ID.; ID.; ID.; ID.; ID.; DUE PROCESS NOT VIOLATED WHERE SUBSTITUTE PARTY VOLUNTARILY APPEARED AND PARTICIPATED IN THE CASE.— Formal substitution by heirs is not necessary when they themselves voluntarily appear, participate in the case, and present evidence in defense of the deceased. In such case, there is really no violation of the right to due process. The essence of due process is the reasonable opportunity to be heard and to submit any evidence available in support of one's defense. When due process is not violated, as when the right of the representative or heir is recognized and protected, noncompliance or belated formal compliance with the Rules cannot affect the validity of a promulgated decision.

4. ID.; ID.; ID.; ID.; ID.; ID.; ALLEGED DENIAL OF DUE PROCESS CAN ONLY BE ASSERTED BY PERSONS WHOSE RIGHTS WERE VIOLATED.— The alleged denial of due process as would nullify the proceedings and the judgment thereon can be invoked only by the heirs whose rights have been violated. Violation of due process is a personal defense that can only be asserted by the persons whose rights have been allegedly violated. Petitioner, who had every opportunity and who took advantage of such opportunity, through counsel, to participate in the trial court proceedings, cannot claim denial of due process.

APPEARANCES OF COUNSEL

Antonio A. Cablitas and *Zosimo J. Cablitas* for petitioner.

Public Attorney's Office for respondents.

R E S O L U T I O N

NACHURA, *J.*:

Petitioner Capitolina Vivero Napere interposes this petition for review to assail the Court of Appeals' Decision[1] dated

[1] Penned by Associate Justice Marina L. Buzon, with Associate Justices Sergio L. Pestaño and Jose C. Mendoza, concurring; *rollo*, pp. 32-41.

October 9, 2003, which upheld the validity of the Regional Trial Court's decision despite failure to formally order the substitution of the heirs of the deceased defendant, petitioner's husband.

The case stems from the following antecedents:

Respondent Amando Barbarona is the registered owner of Lot No. 3177, situated in Barangay San Sotero (formerly Tambis), Javier, Leyte and covered by Original Certificate of Title (OCT) No. P-7350. Lot No. 3176, covered by OCT No. 1110 in the name of Anacleto Napere, adjoins said lot on the northeastern side. After Anacleto died, his son, Juan Napere, and the latter's wife, herein petitioner, planted coconut trees on certain portions of the property with the consent of his co-heirs.

In their complaint, respondents alleged that in April 1980, the spouses Napere, their relatives and hired laborers, by means of stealth and strategy, encroached upon and occupied the northeastern portion of Lot No. 3177; that the Naperes harvested the coconut fruits thereon, appropriated the proceeds thereof, and, despite demands, refused to turn over possession of the area; that in April 1992, a relocation survey was conducted which confirmed that the respondents' property was encroached upon by the Naperes; that on the basis of the relocation survey, the respondents took possession of this encroached portion of the lot and harvested the fruits thereon from April 1993 to December 1993; but that in January 1994, the Naperes repeated their acts by encroaching again on the respondents' property, harvesting the coconuts and appropriating the proceeds thereof, and refusing to vacate the property on demand.

On November 10, 1995, while the case was pending, Juan Napere died. Their counsel informed the court of Juan Napere's death, and submitted the names and addresses of Napere's heirs.

At the pre-trial, the RTC noted that the Naperes were not contesting the respondents' right of possession over the disputed portion of the property but were demanding the rights of a

planter in good faith under Articles 445 and 455 of the Civil Code.

On October 17, 1996, the RTC rendered a Decision against the estate of Juan Napere, thus:

> WHEREFORE, this Court finds in favor of the plaintiff and against the defendant, hereby declaring the following:
>
> a) The estate of Juan Napere is liable to pay the amount of ONE HUNDRED SEVENTY-NINE THOUSAND TWO HUNDRED (₱179,200.00) PESOS in actual damages;
>
> b) The estate of Juan Napere shall be liable to pay FIVE THOUSAND (₱5,000.00) PESOS in litigation expenses, and the
>
> c) Cost[s] of suit.
>
> SO ORDERED.[2]

Petitioner appealed the case to the Court of Appeals (CA), arguing, *inter alia*, that the judgment of the trial court was void for lack of jurisdiction over the heirs who were not ordered substituted as party-defendants for the deceased.

On October 9, 2003, the CA rendered a Decision affirming the RTC Decision.[3] The appellate court held that failure to substitute the heirs for the deceased defendant will not invalidate the proceedings and the judgment in a case which survives the death of such party.

Thus, this petition for review where the only issue is whether or not the RTC decision is void for lack of jurisdiction over the heirs of Juan Napere. Petitioner alleges that the trial court did not acquire jurisdiction over the persons of the heirs because of its failure to order their substitution pursuant to Section 17,[4] Rule 3 of the Rule of Court; hence, the proceedings conducted and the decision rendered by the trial court are null and void.

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[2] *Rollo*, p. 48.

[3] *Id*. at 40.

[4] Now Section 16, Rule 3 of the 1997 Rules of Civil Procedure.

The petition must fail.

When a party to a pending case dies and the claim is not extinguished by such death, the Rules require the substitution of the deceased party by his legal representative or heirs. In such case, counsel is obliged to inform the court of the death of his client and give the name and address of the latter's legal representative.

The complaint for recovery of possession, quieting of title and damages is an action that survives the death of the defendant. Notably, the counsel of Juan Napere complied with his duty to inform the court of his client's death and the names and addresses of the heirs. The trial court, however, failed to order the substitution of the heirs. Nonetheless, despite this oversight, we hold that the proceedings conducted and the judgment rendered by the trial court are valid.

The Court has repeatedly declared that failure of the counsel to comply with his duty to inform the court of the death of his client, such that no substitution is effected, will not invalidate the proceedings and the judgment rendered thereon if the action survives the death of such party.[5] The trial court's jurisdiction over the case subsists despite the death of the party.

Mere failure to substitute a deceased party is not sufficient ground to nullify a trial court's decision. The party alleging nullity must prove that there was an undeniable violation of due process.[6]

Strictly speaking, the rule on substitution by heirs is not a matter of jurisdiction, but a requirement of due process.[7] The rule on substitution was crafted to protect every party's right to due process.[8] It was designed to ensure that the deceased

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[5] *Riviera Filipina, Inc. v. Court of Appeals*, 430 Phil. 8, 30-31 (2002); *Benavidez v. Court of Appeals*, 372 Phil. 615, 623-624 (1999).

[6] *De la Cruz v. Joaquin*, G.R. No. 162788, July 28, 2005, 464 SCRA 576, 586.

[7] *Id.* at 585.

[8] *Id.* at 584.

party would continue to be properly represented in the suit through his heirs or the duly appointed legal representative of his estate.[9] Moreover, non-compliance with the Rules results in the denial of the right to due process for the heirs who, though not duly notified of the proceedings, would be substantially affected by the decision rendered therein.[10] Thus, it is only when there is a denial of due process, as when the deceased is not represented by any legal representative or heir, that the court nullifies the trial proceedings and the resulting judgment therein.[11]

Formal substitution by heirs is not necessary when they themselves voluntarily appear, participate in the case, and present evidence in defense of the deceased.[12] In such case, there is really no violation of the right to due process. The essence of due process is the reasonable opportunity to be heard and to submit any evidence available in support of one's defense.[13] When due process is not violated, as when the right of the representative or heir is recognized and protected, noncompliance or belated formal compliance with the Rules cannot affect the validity of a promulgated decision.[14]

In light of these pronouncements, we cannot nullify the proceedings before the trial court and the judgment rendered therein because the petitioner, who was, in fact, a co-defendant of the deceased, actively participated in the case. The records show that the counsel of Juan Napere and petitioner continued to represent them even after Juan's death. Hence, through counsel, petitioner was able to adequately defend herself and the deceased in the proceedings below. Due process simply demands an

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[9] *Heirs of Bertuldo Hinog v. Melicor*, G.R. No. 140954, April 12, 2005, 455 SCRA 460, 478.

[10] *Vda. de Salazar v. Court of Appeals*, 320 Phil. 373, 378 (1995).

[11] *De la Cruz v. Joaquin*, *supra* note 6, at 585-586.

[12] *Id.* at 585.

[13] *Gochan v. Gochan*, 446 Phil. 433, 450 (2003).

[14] *De la Cruz v. Joaquin*, *supra* note 6, at 585-586.

opportunity to be heard and this opportunity was not denied petitioner.

Finally, the alleged denial of due process as would nullify the proceedings and the judgment thereon can be invoked only by the heirs whose rights have been violated. Violation of due process is a personal defense that can only be asserted by the persons whose rights have been allegedly violated.[15] Petitioner, who had every opportunity and who took advantage of such opportunity, through counsel, to participate in the trial court proceedings, cannot claim denial of due process.

WHEREFORE, premises considered, the petition is *DENIED DUE COURSE*. The Decision of the Court of Appeals, dated October 9, 2003, in CA-G.R. CV No. 56457, is *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 167954. January 31, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PERLITO MONDIGO *y* ABEMALEZ,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE, ELEMENTS; MUST BE SUFFICIENTLY

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[15] *Carandang v. Heirs of Quirino A. De Guzman*, G.R. No. 160347, November 29, 2006, 508 SCRA 469, 480.

* In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 484 dated January 11, 2008.

ESTABLISHED.— By invoking self-defense, appellant admitted committing the felonies for which he was charged albeit under circumstances which, if proven, would justify his commission of the crimes. Thus, the burden of proof is shifted to appellant who must show, beyond reasonable doubt, that the killing of Damaso and wounding of Anthony were attended by the following circumstances: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

2. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT IN CASE AT BAR.— The location and nature of the wound inflicted against Anthony and the manner by which appellant carried out his attack show intent to kill and treachery. Contrary to appellant's claim, treachery attended the attack as the evidence showed that while the group was in the midst of their drinking spree, appellant slipped out, went to his house to get the bolo, and while Anthony was sitting among the group, appellant took out his bolo and hacked Anthony on the left side of the head, causing a 15.25-centimeter long laceration. Treachery is present when the offender commits the crime employing means, methods or forms in its execution which tend directly and specially to insure its execution, without risk to himself arising from the defense that the offended party might make. Anthony, totally unprepared for what was to befall him, was completely defenseless.

3. ID.; HOMICIDE; CRIME COMMITTED IN THE ABSENCE OF TREACHERY AS QUALIFYING CIRCUMSTANCE.— We find merit in the OSG's recommendation that appellant is only liable for Homicide for the killing of Damaso. None of the prosecution witnesses saw how the attack on Damaso commenced. Anthony testified that after he regained consciousness, he saw his father, with multiple stab wounds, crawling towards their house. For her part, Lumagi testified that after hearing shouts coming from the scene of the crime, she ran towards that direction and saw appellant hacking Damaso who was lying on his back, arms raised to ward off appellant's blows. This evidence fails to meet the requirement that for treachery to be appreciated, the prosecution must show how the criminal act commenced, developed and ended. That treachery may have attended the attack against Anthony does

not follow that the same also attended the assault against Damaso as treachery must be shown in the performance of the acts of execution against each of the victims.

4. ID.; ALTERNATIVE CIRCUMSTANCES; INTOXICATION AS MITIGATING CIRCUMSTANCE, NOT APPRECIATED.— For the alternative circumstance of intoxication to be treated as a mitigating circumstance, the defense must show that the intoxication is not habitual, not subsequent to a plan to commit a felony and the accused's drunkenness affected his mental faculties. Here, the only proof on record on this matter is appellant's testimony that before Damaso, Anthony, and Delfin attacked him, he drank "about 3 to 4 bottles of beer." The low alcohol content of beer, the quantity of such liquor appellant imbibed, and the absence of any independent proof that appellant's alcohol intake affected his mental faculties all negate the finding that appellant was intoxicated enough at the time he committed the crimes to mitigate his liability.

5. ID.; HOMICIDE; PROPER PENALTY APPLYING THE INDETERMINATE SENTENCE LAW AND ABSENT ANY QUALIFYING CIRCUMSTANCE; PROPER CIVIL PENALTIES.— Homicide under Article 249 of the Revised Penal Code is punishable by *reclusion temporal.* Applying the Indeterminate Sentence Law, the range of the penalty imposable on appellant is 6 years and 1 day to 12 years of *prision mayor*, as minimum, to 12 years and 1 day to 20 years of *reclusion temporal*, as maximum. In the absence of any mitigating or aggravating circumstance, we find it proper to impose upon appellant a prison term of 8 years and 1 day of *prision mayor*, as minimum, to 14 years and 8 months of *reclusion temporal*, as maximum. Appellant is also liable to pay the heirs of Damaso civil indemnity of ₱50,000 and moral damages of ₱50,000 which are awarded automatically.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

This is an appeal from the Decision [1] dated 16 March 2005 of the Court of Appeals convicting appellant Perlito Mondigo *y* Abemalez (appellant) of Murder and Frustrated Murder.

The Facts

The prosecution evidence showed that in the morning of 27 September 1998, appellant, Damaso Delima (Damaso), Damaso's son Delfin Delima (Delfin) and three other unidentified individuals were having a drinking spree in Ligas, Malolos, Bulacan. At around noon, Damaso's other son, Anthony Delima (Anthony), joined the group. At around 6:00 p.m., appellant, using a "jungle bolo," suddenly hacked Anthony on the head, causing him to fall to the ground unconscious. Appellant next attacked Damaso. A witness who was in the vicinity, Lolita Lumagi (Lumagi), hearing shouts coming from the scene of the crime, rushed to the area and there saw appellant repeatedly hacking Damaso who was lying on his back, arms raised to ward off appellant's blows. Damaso later died from the injuries he sustained. Anthony sustained a 15.25-centimeter long lacerated wound on his left temporal area.

Appellant was charged before the Regional Trial Court of Malolos, Bulacan, Branch 78 (trial court) with Murder (Criminal Case No. 2001-M-99) and Frustrated Murder (Criminal Case No. 1993-M-99) qualified by treachery, evident premeditation, and taking advantage of superior strength.

Appellant invoked self-defense. According to him, a quarrel broke out between him and Anthony during their drinking spree. Damaso and Delfin arrived and ganged-up on him. He ran home, followed by Anthony, Damaso, and Delfin. Upon reaching his

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[1] Penned by Associate Justice Magdangal M. De Leon with Associate Justices Salvador J. Valdez, Jr. and Mariano C. Del Castillo, concurring.

house, he got hold of a "flat bar" and whacked Anthony's head with it. Damaso attacked him with a bolo but Damaso lost hold of the weapon which fell to the ground. Appellant retrieved the bolo and used it to hack Damaso.

The Ruling of the Trial Court

In its Decision dated 15 February 2002, the trial court found appellant guilty of Murder for the killing of Damaso and Serious Physical Injuries for the hacking of Anthony, mitigated by intoxication.[2] The trial court gave credence to the testimonies of prosecution witnesses Anthony and Lumagi, and correspondingly found unconvincing appellant's claim of self-defense. The trial court also held that treachery qualified Damaso's killing which was done swiftly, giving him no opportunity to make a defensive stance and protect himself from the attack, thereby insuring the commission of appellant's aggressive act.

Petitioner appealed to this Court, contending that (1) the testimonies of the prosecution witnesses on the manner of the attack on Anthony, the presence of other individuals at the site of the incident, and the identity of the individual who shouted during the attack are contradictory; (2) Lumagi's failure to execute a sworn statement before taking the witness stand renders her testimony unreliable; (3) the nature of the wound Anthony sustained, as indicated in the medical certificate, belies his

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[2] The dispositive portion of the ruling provides (CA *rollo*, pp. 22-23):

WHEREFORE, this Court hereby finds accused Perlito Mondigo GUILTY beyond reasonable doubt:

1. In Crim. Case No. 1993-M-99, the crime of Serious Physical Injuries, as defined and penalized under Art. 263 par. 4 of the Revised Penal Code, and hereby sentences him to suffer the indeterminate penalty of thirty (30) days of *arresto menor* as minimum to 2 years 4 months of *prision correccional* minimum as maximum and to pay the costs; and

2. In Crim. Case No. 2001-M-99, the crime of Murder, as defined and penalized under Art. 248 of the Revised Penal Code, and hereby sentences him to suffer the penalty of *Reclusion Perpetua* with all its accessory penalties; to pay the heirs of victim Damaso Delima the sum of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and to pay the costs.

claim that he was hacked by a bladed weapon; and (4) treachery did not attend the killing of Damaso as mere suddenness of an attack does not suffice to show *alevosia*, not to mention that neither Anthony nor Lumagi saw how appellant initiated the attack against Damaso.

In its appellee's brief, the Office of the Solicitor General (OSG) recommended the modification of the trial court's judgment by holding appellant liable only for Homicide for the killing of Damaso.

We transferred the case to the Court of Appeals following the ruling in *People v. Mateo*.[3]

The Ruling of the Court of Appeals

In its Decision of 16 March 2005, the Court of Appeals affirmed the trial court's ruling with the modification that appellant was liable for Frustrated Murder for the hacking of Anthony.[4] The Court of Appeals held that (1) the testimonies of the prosecution witnesses are credible despite the inconsistencies appellant noted as these had nothing to do with the central question of whether appellant attacked Anthony and Damaso with a bolo; (2) the lack of motive for appellant to attack the victims does not negate the commission of the crimes in question as motive becomes material only when the identity of the assailant is in doubt; and (3) Damaso's killing was attended by treachery as appellant launched his attack without any warning, leaving the victims no chance to defend themselves.

Hence, this appeal. In separate manifestations, the parties informed the Court that they were no longer filing supplemental briefs and accordingly agreed to submit the case for resolution

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

[4] The dispositive portion of the ruling provides (*Rollo*, pp. 13-14):

WHEREFORE, the appealed Decision is AFFIRMED with MODIFICATION. Appellant PERLITO MONDIGO *y* ABEMALEZ is hereby found GUILTY of frustrated murder in Crim. Case No. 1993-M-99 and sentenced to suffer the indeterminate penalty of Eight (8) Years and One (1) Day of *prision mayor*, as minimum, to Fourteen (14) Years and Eight (8) Months of *reclusion temporal*, as maximum.

based on the points raised in their briefs filed with the Court of Appeals.

The Issue

The issue is whether appellant is guilty of Murder and Frustrated Murder, as charged.

The Ruling of the Court

We find appellant guilty of Homicide and Frustrated Murder.

Appellant Failed to Prove Self-defense

By invoking self-defense, appellant admitted committing the felonies for which he was charged albeit under circumstances which, if proven, would justify his commission of the crimes.[5] Thus, the burden of proof is shifted to appellant who must show, beyond reasonable doubt, that the killing of Damaso and wounding of Anthony were attended by the following circumstances: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[6]

As the Court of Appeals observed, appellant's version of how Damaso and Anthony ganged-up on him, wholly uncorroborated, fails to convince. Appellant does not explain why a flat bar, which he claims to have used to whack Anthony on the head, conveniently lay outside his house. Further, the nature of the wound Anthony sustained, a 15.25-centimeter long laceration, could only have been caused by a bladed weapon and not by a blunt-edged instrument such as a flat bar. As for Damaso's alleged unlawful aggression, assuming this claim is true, such aggression ceased when Damaso lost hold of the bolo. Thus, there was no longer any reason for appellant to pick-up the bolo and attack Damaso with it.

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[5] *People v. Ignacio*, 337 Phil. 173 (1997); *People v. Mindac*, G.R. No. 83030, 14 December 1992, 216 SCRA 558.

[6] *People v. Astudillo*, 449 Phil. 778 (2003).

In contrast, the prosecution witnesses' testimonies that appellant, without any provocation, attacked two of his drinking companions with a bolo ring true and are consistent in their material points. After reviewing their testimonies, we find no reason to disturb the lower courts' findings giving full credence to the testimonies of the prosecution witnesses.

Appellant is Guilty of Frustrated Murder and Homicide

Treachery Attended the Attack Against Anthony

As the Court of Appeals correctly held, the location and nature of the wound inflicted against Anthony and the manner by which appellant carried out his attack show intent to kill and treachery. Contrary to appellant's claim, treachery attended the attack as the evidence showed that while the group was in the midst of their drinking spree, appellant slipped out, went to his house to get the bolo, and while Anthony was sitting among the group, appellant took out his bolo and hacked Anthony on the left side of the head, causing a 15.25-centimeter long laceration. Treachery is present when the offender commits the crime employing means, methods or forms in its execution which tend directly and specially to insure its execution, without risk to himself arising from the defense that the offended party might make.[7] Anthony, totally unprepared for what was to befall him, was completely defenseless.

Appellant is Guilty of Homicide for the Killing of Damaso

We find merit in the OSG's recommendation that appellant is only liable for Homicide for the killing of Damaso. None of the prosecution witnesses saw how the attack on Damaso commenced. Anthony testified that after he regained consciousness, he saw his father, with multiple stab wounds, crawling towards their house.[8] For her part, Lumagi testified that after hearing shouts coming from the scene of the crime, she ran towards that direction and saw appellant hacking Damaso who was lying on his back, arms raised to ward off appellant's blows.[9] This evidence fails

[7] Article 14(16), Revised Penal Code.

[8] TSN (Anthony Delima), 17 November 2000, pp. 3-4.

[9] TSN (Lolita Lumagi), 19 February 2001, pp. 3-4.

to meet the requirement that for treachery to be appreciated, the prosecution must show how the criminal act commenced, developed and ended.[10] That treachery may have attended the attack against Anthony does not follow that the same also attended the assault against Damaso as treachery must be shown in the performance of the acts of execution against each of the victims.

Intoxication as Mitigating Circumstance not Proven

The trial court erred in crediting appellant with the circumstance of intoxication as having mitigated his crimes because "the stabbing incident ensued in the course of a drinking spree."[11] For the alternative circumstance of intoxication[12] to be treated as a mitigating circumstance, the defense must show that the intoxication is not habitual, not subsequent to a plan to commit a felony and the accused's drunkenness affected his mental faculties.[13] Here, the only proof on record on this matter is appellant's testimony that before Damaso, Anthony, and Delfin attacked him, he drank "about 3 to 4 bottles of beer."[14] The low alcohol content of beer, the quantity of such liquor appellant imbibed, and the absence of any independent proof that appellant's alcohol intake affected his mental faculties all negate the finding that appellant was intoxicated enough at the time he committed the crimes to mitigate his liability.

The Penalty Applicable for Homicide

Homicide under Article 249 of the Revised Penal Code is punishable by *reclusion temporal*. Applying the Indeterminate Sentence Law, the range of the penalty imposable on appellant is 6 years and 1 day to 12 years of *prision mayor*, as minimum, to 12 years and 1 day to 20 years of *reclusion temporal*, as maximum. In the absence of any mitigating or aggravating circumstance, we find it proper to impose upon appellant a

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[10] See *People v. Mationg*, 407 Phil. 771 (2001).

[11] CA *rollo*, p. 66.

[12] Article 15, Revised Penal Code.

[13] I REYES, *THE REVISED PENAL CODE* 465, 467 (14th ed.).

[14] TSN (Perlito Mondigo), 4 June 2001, p. 2.

prison term of 8 years and 1 day of *prision mayor*, as minimum, to 14 years and 8 months of *reclusion temporal*, as maximum. Appellant is also liable to pay the heirs of Damaso civil indemnity of ₱50,000 and moral damages of ₱50,000 which are awarded automatically.[15]

WHEREFORE, we *AFFIRM* the Decision dated 16 March 2005 of the Court of Appeals, with the *MODIFICATION* that appellant Perlito Mondigo *y* Abemalez is found *GUILTY* of Homicide for the killing of Damaso Delima. Appellant Perlito Mondigo *y* Abemalez is sentenced as follows:

1. In Crim. Case No. 1993-M-99, eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum;

2. In Crim. Case No. 2001-M-99, eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum. Appellant Perlito Mondigo *y* Abemalez is further ordered to pay the heirs of Damaso Delima civil indemnity of ₱50,000 and moral damages of ₱50,000.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 168350. January 31, 2008]

PERCIVAL A. CENDAÑA, *petitioner, vs.* **CIRILO A. AVILA,** *respondent.*

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[15] *People v. Delim*, 444 Phil. 430 (2003); *People v. Cabacan*, 436 Phil. 397 (2002).

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* ACTUAL ADDRESSES OF ALL PETITIONERS AND RESPONDENTS REQUIRED IN THE PETITION; NON-COMPLIANCE WARRANTS DISMISSAL THEREOF.— Under Section 3, Rule 46 in relation to Section 1, Rule 65 of the Rules of Court, a petition for *certiorari* shall contain the actual addresses of all the petitioners and the respondents. The requirement that a petition for *certiorari* must contain the actual addresses of all the petitioners and the respondents is mandatory. Petitioner's failure to comply with the said requirement is sufficient ground for the dismissal of his petition. Thus, the Court of Appeals correctly dismissed the petition for *certiorari* on the ground that the parties' actual addresses were not indicated therein.

2. ID.; ID.; ID.; PETITION WITH APPLICATION FOR WRIT OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER; FAILURE TO POST BOND RESULTS IN DENIAL OF APPLICATION, NOT DISMISSAL OF PETITION.— Petitioner's failure to manifest willingness to post a bond, in his petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or a temporary restraining order, is not a fatal defect. This omission would, at the most, only result in the denial of his application for a writ of preliminary injunction and/or temporary restraining order, not in the dismissal of his petition for *certiorari*.

3. ID.; ID. ID.; REQUIRES PRIOR FILING OF MOTION FOR RECONSIDERATION OF THE QUESTIONED ORDER; LIBERAL APPLICATION OF THE RULE, NOT PROPER IN CASE AT BAR.— The Court of Appeals correctly dismissed the petition for *certiorari* on the ground that petitioner failed to file a motion for reconsideration of the questioned RTC Order. The filing of a motion for reconsideration to give the court *a quo* a chance to correct itself is a jurisdictional and mandatory requirement which must be strictly complied with. Although there are exceptions to this general rule, the instant case presents no valid and compelling reason to deviate from the said rule. Procedural rules illumine the path of the law and rationalize the pursuit of justice. Hence, every case must be prosecuted in accordance with the prescribed procedure to

insure proper dispensation of justice. The liberal interpretation and application of the rules apply only in exceptional circumstances, none of which obtains in the present case. Hence, the Court of Appeals could not be faulted for dimissing the petition for ***certiorari*** for non-compliance with jurisdictional and mandatory procedural requirements.

R E S O L U T I O N

QUISUMBING, *J.*:

For review on *certiorari* is the Resolution[1] dated June 2, 2005 of the Court of Appeals in CA-G.R. SP No. 89750, which dismissed the petition for *certiorari* with prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction filed by herein petitioner.

The facts are undisputed.

On January 7, 2003, herein respondent, Cirilo A. Avila, joined the Land Transportation Office (LTO) as Director II of its Law Enforcement Service. While in office, Avila was conferred a Certificate of Career Service Executive Eligibility by the Civil Service Commission.

On January 11, 2005, petitioner Percival A. Cendaña was appointed to the same position by President Gloria Macapagal-Arroyo. Cendaña took his oath of office and assumed the duties of Director II of the LTO's Law Enforcement Service. The LTO immediately issued an order directing Avila to formally turn over his post to Cendaña. The LTO likewise issued a memorandum to all LTO officials announcing the new appointment.

Aggrieved, Avila filed in the Regional Trial Court (RTC) of Quezon City, Branch 222 a petition[2] for *quo warranto* with a prayer for the issuance of a writ of preliminary injunction. The RTC granted the injunctive relief applied for, thus:

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[1] *Rollo*, pp. 38-39. Penned by Associate Justice Renato C. Dacudao, with Associate Justices Edgardo F. Sundiam and Rosalinda Asuncion-Vicente concurring.

[2] *Id*. at 47-55.

WHEREFORE, premises considered, let a **Writ of Preliminary Injunction** issue directing respondent Percival A. Cendaña, and all persons acting for and his own behalf, to immediately cease and desist from taking over and assuming the functions and/or duties and responsibilities of the Office of the Director II for Law Enforcement Service of the Land Transportation Office or from otherwise exercising any and/or all acts exclusively to petitioner and from further disturbing or interfering with his functions as such until further orders from this Court and/or unless restrained by higher judicial authority, upon the filing of a bond in the amount of **FIVE HUNDRED THOUSAND PESOS (₱500,000.00)** executed in favor of the said respondent to answer for all damages to be sustained by the latter by reason of the injunction, should the Court finally determine that the petitioner is not entitled thereto.

Let the writ and a copy of this Order be served on the defendant by Sheriff IV Neri G. Loy of this Branch, at petitioner's expense.

SO ORDERED.[3]

Cendaña filed in the Court of Appeals a petition for *certiorari* with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction. The appellate court dismissed the said petition, to wit:

WHEREFORE, for being procedurally flawed, at the very least, this petition for *certiorari*, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, must be as it hereby is, **DENIED DUE COURSE** and consequently **DISMISSED.**

Needless to say, since the prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction is merely an adjunct to the main suit, the same must be pro tanto **DENIED.**

SO ORDERED.[4]

Undaunted, petitioner Cendaña then filed the instant petition for review on *certiorari* anchored on the following grounds:

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[3] *Id*. at 75-76.

[4] *Id*. at 38-39.

I.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN DISMISSING THE PETITION BEFORE IT ON THE GROUNDS THAT (1) PETITIONER DID NOT STATE THE "ACTUAL" ADDRESSES OF THE PARTIES; (2) PETITIONER DID NOT MANIFEST HIS WILLINGNESS TO POST BOND IN HIS PRAYER FOR A TEMPORARY RESTRAINING ORDER AND WRIT OF PRELIMINARY INJUNCTION; AND (3) PETITIONER DID NOT FILE A MOTION FOR RECONSIDERATION BEFORE FILING THE PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.

II.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN DISMISSING THE PETITION BEFORE IT IN COMPLETE DISREGARD OF THE RULE THAT CASES SHOULD BE DETERMINED ON THE MERITS, NOT ON TECHNICALITIES.[5]

Petitioner contends there was no need to state his address in the petition for *certiorari* because notice to his counsel, the Office of the Solicitor General, is notice to him. Petitioner argues, his failure to manifest willingness to post a bond in his prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction should not adversely affect the merits of his petition. Petitioner stresses, immediate recourse to the Court of Appeals through a petition for *certiorari* is justified because the questioned RTC Order is a patent nullity. Petitioner insists that the appellate court erred in dismissing the petition for *certiorari* on a technicality instead of ruling on its merits.

Respondent, however, counters that the subject Resolution of the appellate court, which dismissed the petition for *certiorari*, cannot be the subject of a petition for review. Respondent maintains the petition for *certiorari* filed in the Court of Appeals and the instant petition for review are both frivolous and intended merely for delay. Respondent stresses that the addresses of the parties must be stated in initiatory pleadings to determine venue and jurisdiction. Respondent points out that petitioner failed to prove the alleged patent nullity of the RTC Order to justify immediate recourse to a petition for *certiorari*.

[5] *Id*. at 16.

After a thorough consideration of submissions by the parties, we are in agreement that the petition is without merit.

Under Section 3, Rule 46 in relation to Section 1, Rule 65 of the Rules of Court, a petition for *certiorari* shall contain the actual addresses of all the petitioners and the respondents, thus:

SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* — **The petition shall contain the** full names and **actual addresses of all the petitioners and respondents**, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

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It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied.)

The requirement that a petition for *certiorari* must contain the actual addresses of all the petitioners and the respondents is mandatory.[6] Petitioner's failure to comply with the said requirement is sufficient ground for the dismissal of his petition. Thus, the Court of Appeals correctly dismissed the petition for *certiorari* on the ground that the parties' actual addresses were not indicated therein.

However, petitioner's failure to manifest willingness to post a bond, in his petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or a temporary restraining order, is not a fatal defect. This omission would, at the most, only result in the denial of his application for a writ of preliminary injunction and/or a temporary restraining order, not in the dismissal of his petition for *certiorari*.[7] The Court of Appeals' unqualified dismissal of the petition for *certiorari* on the ground that petitioner failed to manifest willingness to post a bond is clearly inappropriate.

Nevertheless, the Court of Appeals correctly dismissed the petition for *certiorari* on the ground that petitioner failed to file a motion for reconsideration of the questioned RTC Order. The filing of a motion for reconsideration to give the court *a quo* a chance to correct itself is a jurisdictional and mandatory requirement which must be strictly complied with. Although there are exceptions[8] to this general rule, the instant case presents no valid and compelling reason to deviate from the said rule.

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[6] *Bukluran ng Manggagawa sa Clothman Knitting Corp.-Solidarity of Unions in the Phils. for Empowerment and Reforms v. Court of Appeals*, G.R. No. 158158, January 17, 2005, 448 SCRA 642, 653-654.

[7] *Quintano v. National Labor Relations Commission*, G.R. No. 144517, December 13, 2004, 446 SCRA 193, 205.

[8] *Abraham v. National Labor Relations Commission*, G.R. No. 143823, March 6, 2001, 353 SCRA 739, 744-745.

(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

Procedural rules illumine the path of the law and rationalize the pursuit of justice.[9] Hence, every case must be prosecuted in accordance with the prescribed procedure to insure proper dispensation of justice.[10] The liberal interpretation and application of the rules apply only in exceptional circumstances, none of which obtains in the present case.

Hence, the Court of Appeals could not be faulted for dismissing the petition for *certiorari* for non-compliance with jurisdictional and mandatory procedural requirements.

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Resolution dated June 2, 2005 of the Court of Appeals in CA-G.R. SP No. 89750, which dismissed the petition for *certiorari* filed by herein petitioner, is *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

(b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and

(i) where the issue raised is one purely of law or where public interest is involved.

[9] *Norris v. Parentela, Jr.,* G.R. No. 143216, February 27, 2003, 398 SCRA 346, 354.

[10] *Id*.

SECOND DIVISION

[G.R. No. 172771. January 31, 2008]

SPS. ESTER SANTIAGO & DOMINGO CRISTOBAL, IMELDA SANTIAGO & JHONY TAI and JOSE SANTIAGO & EVELYN DAMIN and ELIZABETH SANTIAGO, *petitioners, vs.* **AIDA G. DIZON,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; EXTINGUISHMENT OF; CONVENTIONAL REDEMPTION; PRESUMPTION OF EQUITABLE MORTGAGE, NOT CONCLUSIVE; CASE AT BAR.— The presumption of equitable mortgage created in Article 1602 of the Civil Code is not conclusive. It may be rebutted by competent and satisfactory proof of the contrary. In the case at bar, ample evidence supports petitioners' claim that the transaction between them and respondent was one of sale with option to repurchase. While after the sale of the property respondent remained therein, her stay was not in the concept of an owner. Through her, petitioners were the ones who received rentals paid by lessees with whom she had contracted before the sale of the property to petitioners. After the 3-month option to buy back the property expired without respondent exercising it, petitioner Elizabeth was the one who directly dealt with and entered into contracts with tenants of the property and received the rentals. While it appears that respondent paid taxes on the property in 1987, the evidence shows that petitioners paid taxes on the property in 1987, the evidence shows that petitioners paid taxes thereon from 1988 up to 1999. Payment by petitioners of realty taxes after the consummation of the sale in 1987 is not, of course, conclusive evidence of ownership, but it bolsters their claim thereon.

2. ID.; ID.; ID.; ID.; ID.; ALLEGED INADEQUACY OF PURCHASE PRICE, NOT APPRECIATED.— As for the alleged inadequacy of the purchase price – a consideration so far short of the real value of the property as to startle a correct mind – this Court, in determining whether the price of a property

is inadequate, has often referred to its assessed value. In the case at bar, as of 1988, the market value of the land was ₱85,550 while that of its improvements was ₱27,880. And the assessed value of the land and its improvements for the same year was ₱29,850. Clearly, the ₱550,000 purchase price at which petitioners bought the property in 1987 is not inadequate.

3. ID.; ID.; ID.; ID.; ID.; ID.; CASE OF *BUNDALIAN VS. CA*, NOT APPLICABLE IN CASE AT BAR.— The trial court and the Court of Appeals harped on the marked difference between the ₱550,000 purchase price and the would-be ₱900,000 repurchase price as an indicator that the purchase price was unusually inadequate. They cited *Bundalian v. Court of Appeals*. In declaring the contract in *Bundalian* to be an equitable mortgage, this Court, noting the following considerations: One of the terms and conditions was that **the repurchase price would escalate month after month,** depending on when repurchase would be effected. The price would be ₱532,480.66 computed at ₱160.00 per square meter after the first month; ₱565,760.00 computed at ₱170.00 per square meter after the second month; ₱599,040 completed at ₱180.00 per square meter after the third month; and ₱632,320.00 computed at ₱190.00 per square meter after the fourth month, from and after the date of the instrument. It was also stipulated in the same contract that the vendor shall have the right to possess, use; and **build on, the property** during the period **pending redemption.** held that: The stipulation in the contract sharply escalating the repurchase price every month enhances the presumption that the transaction is an equitable mortgage. Its purpose is to secure the return of the money invested with substantial profit or interest, a common characteristic of loans. Unlike in *Bundalian,* however, there was, in the present case, no escalation of purchase price to depend on when repurchase by respondent would be effected, for a fixed price and fixed date of repurchase were agreed upon by respondent and petitioners. Also unlike in *Bundalian*, respondent-vendor did not have the right to, among other things, "build on the property during the period pending redemption." In fine, respondent failed to prove that the transaction was one of equitable mortgage. Reformation of the deed of sale of the property to petitioners does not thus lie.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioners.
Ildefonso C. Puerto for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Aida G. Dizon (respondent) mortgaged to Monte de Piedad Mortgage and Savings Bank (Monte de Piedad) a 168.6-square meter parcel of land, which was registered in her name under Transfer Certificate of Title No. 132499, including the two-storey apartment (the property) built thereon, to secure a ₱265,000 loan.

Respondent failed to settle the loan, drawing Monte de Piedad to foreclose the mortgage, consolidate its ownership of the property, and register it in its name. Monte de Piedad nevertheless gave respondent until May 28, 1987 to purchase back the property for ₱550,000.

On May 28, 1987, petitioner Elizabeth Santiago (Elizabeth), on behalf of respondent, paid ₱550,000 for the property. Monte de Piedad thereupon executed a deed of sale in favor of respondent who, the following day or on May 29, 1987, in turn executed a deed of sale in favor of Elizabeth and her herein co-petitioners.

Also on May 29, 1987, respondent and petitioners executed an agreement giving respondent "the option to buy back the property within three (3) months from the date of this agreement at the price of ₱900,000.00,"[1] failing which respondent should "vacate the premises occupied by her, and turn over possession thereof to [petitioners] including the lessees of the building."[2]

Respondent thus continued to stay in the property. Three months having elapsed without respondent repurchasing the

[1] Records, p. 10.

[2] *Ibid*.

property, petitioners registered with the Registry of Deeds of Manila the Deed of Sale executed by Monte de Piedad in favor of respondent, as well as the Deed of Sale of the property executed by respondent in favor of petitioners who were issued a title thereover.

Respondent failed to vacate the property. Petitioner Elizabeth thus filed an ejectment case against her before the Manila Metropolitan Trial Court (MeTC), Branch 21 of which decided in petitioner Elizabeth's favor. On appeal, Branch 27 of the Regional Trial Court (RTC) of Manila reversed the MeTC decision. The Court of Appeals affirmed the RTC decision.

On petitioners' Motion for Reconsideration, the appellate court reversed the RTC decision and reinstated the MeTC decision (in favor of petitioner Elizabeth).

Respondent thus filed a Petition for Review before this Court which affirmed the appellate court's reinstatement of the MeTC decision.[3] This Court held, however, that the ejectment case did not bar a subsequent action to settle the issue of ownership.[4]

Respondent subsequently filed before the RTC of Manila a verified Complaint,[5] docketed as Civil Case No. 96-81354, against petitioners and Hon. Godofredo CA. Fandialan in his capacity as Presiding Judge of Branch 21 of MeTC of Manila, for reformation of the deed of sale in favor of petitioners, alleging, *inter alia*, that

> [the] actual agreement between the parties is that of a loan and mortgage x x x and x x x [the] subject document denominated as a deed of sale was actually an **equitable mortgage** considering the **inadequacy of the price** at ₱550,000.00 in the deed of sale dated May 29, 1987 for such prime property within the university and commercial belt in Manila; the fact that the "sale" was with a right of repurchase at ₱900,000.00; that plaintiff continued to exercise rights of ownership after the "sale" such as the payment of realty taxes and collection

[3] *Dizon v. Court of Appeals*, 332 Phil. 429, 434 (1996).

[4] *Id*. at 432-433.

[5] Records, pp. 1-8.

of rentals from tenants; and the fact that the ₱550,000.00 was in fact a loan by private defendants to plaintiff which was paid to Monte de Piedad to buy back the property for plaintiff.[6] (Emphasis and underscoring supplied)

In their Answer, petitioners maintained that their transaction with respondent was a *bona fide* sale.

Branch 6 of the Manila RTC, applying Articles 1602[7] and 1603[8] of the Civil Code, decided in favor of respondent by Decision of March 22, 2002,[9] it holding that the transaction between respondent and petitioners was an equitable mortgage in light of the following considerations:

1. Exhibits "A" and "B" were signed and executed by the parties on the same day, May 29, 1987. The purchase price of the subject property was ₱550,000.00 in the Deed of Absolute Sale (Exhibit "A") while in the Agreement (Exhibit "B")

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[6] *Id*. at 4.

[7] Article 1602, Civil Code:

The contract shall be presumed to be an equitable mortgage, in any of the following cases:

(1) When the price of a sale with right to repurchase is unusually inadequate;

(2) When the vendor remains in possession as lessee or otherwise;

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay taxes on the thing sold;

(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

[8] Article 1603, Civil Code: "In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage."

[9] Records, pp. 340-348.

defendants agreed to give plaintiff the option to buy back the subject property within the period of three (3) months from the date of the Agreement at ₱900,000.00. There was a tremendous increase of ₱350,000.00 in the repurchase price of the subject property within a period of three (3) months. It has been held that a stipulation in the contract sharply escalating the repurchase price enhances the presumption that the transaction is an equitable mortgage. Its purpose is to secure the return of the money invested with substantial profit or interest, a common characteristic of loans.

2. The fact that the repurchase price of the subject property as stated in the Agreement dated May 29, 1987, was ₱900,000.00, clearly indicates that the purchase price of the subject property at ₱550,000.00 was *inadequate* as stated in the Contract of Absolute Sale.

3. Plaintiff remained in possession of the subject property in question after the execution of the Absolute Deed of Sale. Plaintiff continued to exercise the rights and obligations of owner-lessor after the execution of the Absolute Deed of Sale when she paid the realty taxes and collected rentals from the other tenants of the apartment building which were turned over to the defendants.

4. Where vendor (herein plaintiff) was given the right to possess the subject property pending the redemption period of three (3) months, equitable mortgage exists.

5. Having just repurchased the subject property from the Bank at the price of ₱550,000.00, it would have been utterly senseless for the plaintiff to sell the same property to the defendants at the same price of ₱550,000.00, without profit (Exhibit "A"). However, by the terms of the Agreement Exhibit "B", plaintiff would have to repurchase the same property from the defendants at an increased price of ₱900,000.00. Thus, from the afore-said documents, there is no other possible and logical conclusion that Exhibits "A" and "B", taken together, [are] an equitable mortgage because they were executed as security for the loan of ₱550,000.00 extended by defendants to plaintiff, for the latter to buy back the subject property from the Bank.

x x x x x x x x x[10]

[10] *Id.* at 345-346 (citations omitted).

By Decision[11] of February 8, 2006, the Court of Appeals affirmed the RTC decision.

Hence, the present Petition for Review on *Certiorari*[12] faulting the Court of Appeals in affirming

I. . . . the findings and conclusions of the Regional Trial Court of Manila (Branch 06) despite the fact [that] there was no equitable mortgage.

II. . . . the findings and conclusions of the Regional Trial Court of Manila (Branch 06) even when these conclusions run contrary to the prevailing law and jurisprudence.[13]

The petition is impressed with merit.

The presumption of equitable mortgage created in Article 1602 of the Civil Code is not conclusive. It may be rebutted by competent and satisfactory proof of the contrary.[14] In the case at bar, ample evidence supports petitioners' claim that the transaction between them and respondent was one of sale with option to repurchase.

While after the sale of the property respondent remained therein, her stay was not in the concept of an owner.[15] Through her, petitioners were the ones who received rentals paid by

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[11] Penned by Court of Appeals Associate Justice Eliezer R. de los Santos, with the concurrence of Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag. CA *rollo*, pp. 263-279.

[12] *Rollo*, pp. 9-49.

[13] *Id*. at 22-23.

[14] *Sps. Austria v. Sps. Gonzales, Jr.*, 465 Phil. 355, 365 (2004).

[15] Vide *Vda. de Cruzo v. Carriaga, Jr.*, G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 345:

> x x x Treading on the same supposition that there existed such a right to repurchase, petitioners insist that the *pacto de retro* sale is, for all intents and purposes, an equitable mortgage on the pretext that they have been in continuous possession of the land from the time of the execution of the document. This again is a result of the distorted notion that the petitioners' possession is in the concept that of an owner.

lessees with whom she had contracted before the sale of the property to petitioners. After the 3-month option to buy back the property expired without respondent exercising it, petitioner Elizabeth was the one who directly dealt with and entered into contracts with tenants of the property and received the rentals.[16]

Contrary to respondent's claim that after the sale of the property in 1987, the tax declarations remained in her name and she continued to pay realty taxes thereon,[17] the record shows that the 1987 tax declarations were in the names of Monte de Piedad and petitioners.[18] Respondent's copy of the tax declaration purporting to prove her claim was not only even a photocopy; it was for the year 1985.[19]

While it appears that respondent paid taxes on the property in 1987, the evidence shows that petitioners paid taxes thereon from 1988 up to 1999.[20] Payment by petitioners of realty taxes after the consummation of the sale in 1987 is not, of course, conclusive evidence of ownership, but it bolsters their claim thereon.[21]

As for the alleged inadequacy of the purchase price a consideration so far short of the real value of the property as to startle a correct mind[22] this Court, in determining whether the price of a property is inadequate, has often referred to its assessed value.[23] In the case at bar, as of 1988, the market

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[16] TSN, November 16, 1999, pp. 9-10, TSN, October 16, 2000, p. 6. *Vide* records, pp. 17-18.

[17] Records, p. 3.

[18] *Id*. at 319-320.

[19] *Id*. at 63 (dorsal side).

[20] *Id*. at 305-318.

[21] *Vide Tuazon v. Court of Appeals*, 396 Phil. 32, 45 (2000).

[22] *Vide Asia Banking Corporation v. Corcuera*, 51 Phil. 781, 784-785 (1928).

[23] *Vide Abapo-Almario v. Court of Appeals*, 283 Phil. 933, 941 (2000); *Jocson v. Court of Appeals*, G.R. No. 55322, February 16, 1989, 170 SCRA 333, 343; *Bagadiong v. Vda. de Abundo*, G.R. No. 75395, September 19, 1988, 165 SCRA 459, 462.

value of the land was ₱85,550 while that of its improvements was ₱27,880.[24] And the assessed value of the land and its improvements for the same year was ₱29,850.[25] Clearly, the ₱550,000 purchase price at which petitioners bought the property in 1987 is not inadequate.

The trial court and the Court of Appeals harped on the marked difference between the ₱550,000 purchase price and the would-be ₱900,000 repurchase price as an indicator that the purchase price was unusually inadequate.[26] They cited *Bundalian v. Court of Appeals*.[27] In declaring the contract in *Bundalian* to be an equitable mortgage, this Court, noting the following considerations:

> One of the terms and conditions was that **the repurchase price would escalate month after month**, depending on when repurchase would be effected. The price would be ₱532,480.66 computed at ₱160.00 per square meter after the first month; ₱565,760.00 computed at ₱170.00 per square meter after the second month; ₱599,040.00 computed at ₱180.00 per square meter after the third month; and ₱632,320.00 computed at ₱190.00 per square meter after the fourth month, from and after the date of the instrument. It was also stipulated in the same contract that the vendor shall have the right to possess, use, and **build on, the property** during the period **pending redemption**. (Emphasis and underscoring supplied),[28]

held that:

> The stipulation in the contract sharply escalating the repurchase price every month enhances the presumption that the transaction is an equitable mortgage. Its purpose is to secure the return of the money invested with substantial profit or interest, a common characteristic of loans.[29]

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[24] Records, pp. 319-320 (see dorsal portions).

[25] *Ibid*.

[26] CA *rollo*, pp. 272-273; Records, pp. 345-346.

[27] 214 Phil. 565 (1984).

[28] *Id.* at 567.

[29] *Id.* at 574.

Unlike in *Bundalian*, however, there was, in the present case, no escalation of purchase price to depend on when repurchase by respondent would be effected, for a fixed price and fixed date of repurchase were agreed upon by respondent and petitioners. Also unlike in *Bundalian*, respondent-vendor did not have the right to, among other things, "build on the property during the period pending redemption."

In fine, respondent failed to prove that the transaction was one of equitable mortgage. Reformation of the deed of sale of the property to petitioners does not thus lie.

WHEREFORE, the petition is *GRANTED*. The challenged February 8, 2006 decision of the Court of Appeals is *SET ASIDE*. Civil Case No. 96-81354 of the Manila Regional Trial Court is *DISMISSED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178061. January 31, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOHN MONTINOLA @ TONY MONTINOLA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES IN THE TESTIMONY OF YOUNG RAPE VICTIM; CASE AT BAR.— A minor inconsistency, instead of suggesting prevarication, indicates spontaniety. It is expected from a witness of tender

age who is unaccustomed to court proceedings. In *People v. Bejic*, the Court held that: Rape victims do not cherish keeping in their memory an accurate account of the manner in which they were sexually violated. Thus, errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience so humiliating and painful as rape. In addition, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation. In the instant case, a minor inconsistency is expected especially because (1) AAA was a *child* witness, (2) she was made to testify on painful and humiliating incidents, (3) she was sexually abused *several times*, and (4) she was made to recount details and events that happened *several years* before she testified.

2. ID.; ID.; ID.; NOT AFFECTED BY DELAY IN REPORTING THE CRIME; CASE AT BAR.— The Court is not impressed with Montinola's claim that AAA's failure to immediately report the incidents to her relatives or to the proper authorities affected her credibility. AAA's failure to report the incidents immediately was justifiable: (1) Montinola threatened her that he would cut her throat, as well as the throats of her siblings, if she told anyone about the incidents; (2) her mother was at work most of the time; (3) Montinola had moral and physical control over her, kept an eye on her, and interrupted her whenever she attempted to report the incidents to her mother; (4) even if she told her mother, her mother would not have believed her; (5) she was overwhelmed by fear and confusion; (6) telling people that one has been raped by her own father is not easy to do; and (7) a 14-year-old child cannot be expected to know how to go about reporting crimes to the proper authorities. In *People v. Bugarin*, the Court held that: **[D]elay in making a criminal accusation [does not] impair the credibility of a witness** if such delay is satisfactorily explained. In *People vs. Coloma*, x x x **the Court adverted to the father's moral and physical control over the young complainant in explaining the delay** of eight years **before the complaint against her father was made.** In this case, **[complainant] must have been overwhelmed by fear and confusion, and shocked that her own father had defiled her.** x x x She also testified that she was afraid to tell her mother because the latter might be angered x x x. Indeed, **a survey conducted by**

the University of the Philippines Center for Women's Studies showed that victims of rape committed by their fathers took much longer in reporting the incidents to the authorities than did other victims. Many factors account for this difference: the fact that the father lives with the victim and constantly exerts moral authority over her, the threat he might make against her, the victim's fear of her mother and other relatives.

3. CRIMINAL LAW; RAPE; NOT NEGATED BY ALLEGED PRESENCE OF OTHER PEOPLE AT THE TIME OF RAPE.— The Court is not impressed with Montinola's claim that he could not have raped AAA because there were other people in the house when the incidents took place. There is no rule that rape can only be committed in seclusion. AAA's siblings were sleeping when the incidents took place. In *Bugarin*, the Court held that, "Suffice it to state that lust is no respecter of time and place. Our cases record instances of rape committed inside family dwellings when other occupants are asleep." In *People v. Alarcon*, the Court held that: [The accused's] argument that rape could not have been committed due to the presence of AAA's siblings by her side is x x x bereft of merit. Rape is not a respecter of place or time. It is not necessary that the place where the rape is committed be isolated. **There have been too many instances when rape was committed under circumstances as indiscreet and audacious as a room full of family members sleeping side by side. Rape is not rendered impossible simply because the siblings of the victim who were with her in that small room were not awakened during its commission.**

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBLE TESTIMONY OF COMPLAINANT RAPE VICTIM MAY BE THE SOLE BASIS OF CONVICTION.— In rape cases, the credibility of the complainant's testimony is almost always the single most important issue. When the complainant's testimony is credible, it may be the *sole basis* for the accused's conviction. In the instant case, both the trial court and the Court of Appeals found AAA's testimony credible. The trial court held that, "The Court is impressed with the testimony of [AAA] who testified in *categorical* and *straightforward manner* and *ramained consistent throughout her testimony.*" The evaluation of the witnesses' credibility

is a matter best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial. Thus, the Court accords great respect to the trial court's findings, unless it overlooked or misconstrued substantial facts which could have affected the outcome of the case. AAA revealed that her own father raped her, allowed the examination of her vagina, and willingly underwent a public trial where she divulged in detail her painful experiences. She wanted Montinola imprisoned. She wanted to kill him. In *Bejic*, the Court held that: **[N]o young woman, especially of tender age, would concoct a story of defloration at the hands of her own father, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is highly improbable that a girl of tender years, not yet exposed to the ways of the world, would impute to her own father a crime so serious as rape if what she claims is [**sic**] not true.** This is more true in our society since reverence and respect for the elders is deeply rooted in Filipino children and is even recognized by law. Thus, it is against human nature for a x x x girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father.

5. CRIMINAL LAW; R.A. NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT); CHILD PROSTITUTION AND OTHER SEXUAL ABUSE; INCLUDES ACTS OF LASCIVIOUSNESS; ELUCIDATED.— The Court sustains Montinola's conviction for acts of lasciviousness. He should be punished under *Section 5(b)* of Republic Act No. 7610 which covers acts of lasciviousness. Section 5(b) provides: SEC. 5. *Child Prostitution and Other Sexual Abuse*. – **Children**, whether male or female, **who** for money, profit, or any other consideration or **due to the coercion or influence of any adult,** syndicate or group, **indulge in** sexual intercourse or **lascivious conduct, are deemed to be children exploited** in prostitution and other sexual abuse. **The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:** x x x (b) **Those who commit**

the act of sexual intercourse or **lascivious conduct with a child** exploited in prostitution or subjected to other sexual abuse: *Provided,* That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided,* That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period. In *Navarrete v. People,* the Court held that sexual abuse under Section 5(b) has three elements: (1) the accused commits an act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child is below 18 years old. Under Section 32 of the Implementing Rules and Regulations of Republic Act No. 7610, lascivious conduct includes the intentional touching, either directly or through clothing, of the genitalia and inner thigh, with an intent to arouse or gratify the sexual desire of any person. In *Navarrete*, the Court held that a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. In *Amployo v. People,* the Court held that: [I]ntimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls who could [sic] not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.

6. ID.; ID.; ID.; ID.; ALTERNATIVE CIRCUMSTANCE OF RELATIONSHIP, CONSIDERED AGGRAVATING; PROPER PENALTY THEREOF.— In Criminal Case No. 02-725 (on Acts of Lasciviousness), the alternative circumstance of relationship under Article 15 of the Revised Penal Code should be considered against Montinola. In *People v. Fetalino,* the Court held that, "in crimes against chastity, like acts of lasciviousness, relationship is considered aggravating." In that case, the Court considered relationship as an aggravating circumstance since the informations mentioned, and the accused admitted, that

the complainant was his daughter. In the instant case, the information expressly states that AAA is Montinolas's daughter, and Montinola openly admitted this fact. Accordingly, the Court modifies the penalty imposed in Criminal Case No. 02-725. Section 5(b) of Republic Act No. 7610 prescribes the penalty of *reclusion temporal* in its medium period to *reclusion perpetua*. Since there is an aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period — *reclusion perpetua*. Also, the Court orders Montinola to indemnify AAA ₱15,000 as moral damages and pay a fine of ₱15,000.

7. ID.; RAPE; PROPER CIVIL PENALTY IN CASE AT BAR.— The Court sustains Montinola's conviction for rape in Criminal Case No. 02-720. He is ordered to pay AAA ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱25,000 as exemplary damages.

8. ID.; ATTEMPTED RAPE; PROPER CIVIL PENALTY IN CASE AT BAR.— The Court sustains Montinola's conviction for attempted rape in Criminal Case Nos. 02-721, 02-723, and 02-724. He is ordered to pay AAA ₱30,000 as civil indemnity, ₱25,000 as moral damages, and ₱10,000 as exemplary damages for each count of attempted rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

This is an appeal from the 28 February 2007 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01440. The Court of Appeals affirmed without modification the 26 August 2005

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring.

Joint Decision[2] of the trial court finding John Montinola @ Tony Montinola (Montinola) guilty beyond reasonable doubt of rape, three counts of attempted rape, and acts of lasciviousness.

The Facts

In six informations,[3] the prosecution charged Montinola with raping his minor daughter, AAA,[4] on 29 October 1999, 19 December 1999, February 2000, March 2000, 4 November 2000, and January 2001. AAA was born on 12 October 1987.

In Criminal Case No. 02-720, AAA alleged that on 29 October 1999, at around 3:00 p.m., Montinola was inside the house and drunk. He allowed all his children to play outside, except AAA. While AAA was in the living room, Montinola came out of the bedroom wearing only his underwear. He approached AAA, forced her to remove her clothes, and raped her. She tried to resist but he strangled her and spread her legs. When he inserted his penis in her vagina, she felt pain. He threatened her that if she told anyone about what happened, he would cut her throat, as well as the throats of her siblings. AAA believed Montinola's threats. She was scared of him because he often beat her severely.[5]

AAA attempted to report the 29 October 1999 incident to her mother. However, whenever she tried to tell her mother, Montinola interrupted her and told her mother that, "*Kasi ginulpi ko 'yan, kaya 'yan ganyan.* x x x *ginulpi ko 'yan dahil may ginawa 'yang kasalanan.*"[6]

In Criminal Case No. 02-721, AAA alleged that on 19 December 1999, at around 4:00 a.m., she and her siblings were preparing to attend the midnight mass. Montinola did not allow AAA to attend the midnight mass because, according to him,

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[2] Penned by Acting Presiding Judge Oscar B. Pimentel.

[3] CA *rollo*, pp. 14-25.

[4] The real name of the victim is withheld per Republic Acts No. 7610 and 9262.

[5] CA *rollo*, p. 48.

[6] *Id*.

she was just flirting with boys at the church. After her siblings had left, he asked her why she failed to clean the house and bathe her siblings the night before. He then told her, "*Alam mo na ang mangyayari sa 'yo.*" He forced her to remove her clothes and tried to insert his penis in her vagina. He told her that he would rape her every time she did something wrong. He failed to insert his penis because she resisted and kept on moving.[7]

AAA did not report the 19 December 1999 incident to her mother because her mother was at work most of the time and AAA was scared of Montinola, who always kept an eye on her.[8]

In Criminal Case No. 02-722, AAA alleged that on 15 February 2000, at around 1:00 a.m., Montinola ordered her to remove her clothes. Her sisters were sleeping and her mother was at work. During the trial, AAA stated that, "*Ganoon pa rin po, pinahubad pa rin niya ako. Tapos ano po noong ginalaw na naman niya ako, pinahubad na naman niya ako.*" She begged for mercy and asked Montinola why he would rape her. He told her that she was being punished because she did something wrong.[9]

In Criminal Case No. 02-723, AAA alleged that on 28 March 2000, at around 8:00 p.m., she was sleeping beside her three sisters. She awoke when Montinola started to remove her clothes. She pretended to be asleep, but when Montinola started to insert his penis in her vagina, she resisted and cried. She was not sure whether he was able to insert his penis. Then on 29 March 2000, at around 8:00 p.m., Montinola caressed AAA's body. He said it was his gift to her because she had just graduated from elementary school. Again, she resisted and cried. He told her to stop resisting, fondled and kissed her breasts, and tried to insert his penis in her vagina. She thought he was able to insert his penis.[10]

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[7] *Id.* at 48-49.

[8] *Id.* at 49.

[9] *Id.* at 49-50.

[10] *Id.* at 50.

In Criminal Case No. 02-724, AAA alleged that on 4 November 2000, at around 1:00 a.m., AAA was sleeping on the sofa in the living room. She awoke when Montinola touched her. He was drunk. He forcibly removed her shorts, pulled her underwear, tried to insert his penis in her vagina, and told her not to resist — as a birthday gift to him. She resisted and she was not sure whether Montinola was able to insert his penis.[11]

In Criminal Case No. 02-725, AAA alleged that in the last week of January 2001, at around 5:30 a.m., she was sleeping on the sofa in the living room. Montinola roused her from her sleep wearing only his underwear. He caressed her right thigh, slipped his hand under her shorts, and touched her vagina. Suddenly, AAA's mother walked in on them. After seeing what was happening, AAA's mother asked Montinola, "*Anong ginagawa mo*?" AAA's parents then went inside the bedroom and argued heatedly.[12]

In the first week of March 2001, AAA ran away and went to her friends for help. She told them that she was being beaten at home, but did not say anything about the sexual abuses. When asked why she did not tell her friends about the incidents, AAA stated that, "*Ano naman po ang magagawa nila at saka iniisip ko po baka ipagsabi nila sa ibang kapitbahay namin*."[13]

One of her friends' older sister, Cheche, accompanied AAA to the Makati office of the Department of Social Welfare and Development (DSWD). There, AAA talked to a social worker about Montinola's physical and sexual abuses. The DSWD kept AAA in its custody for one week then returned her to her parents after they explained to the DSWD that AAA was just being disciplined at home.[14]

Thereafter, AAA ran away again and went to her friend's cousin's house in Pasay. She went to Batangas with her friend's

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[11] *Id.* at 51.

[12] *Id.* at 52.

[13] TSN, 2 April 2003, p. 46.

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

cousin's aunt and did not return home for two weeks. She learned that her parents were looking for her when she saw a notice in the newspaper saying that she was missing.[15]

Cheche referred AAA to one Atty. Crystal Tenorio for legal assistance. On 26 March 2001, AAA went to the National Bureau of Investigation (NBI) where she executed affidavits. Dr. Maria Salome Fernandez of the NBI examined AAA and found a healed hymenal laceration:

Q What about x x x the genital examination, *Dra*., what was the result?

x x x x x x x x x

A x x x I was able to note the presence of hymenal laceration which was already healed at the 6 o'clock position of the hymen. The edges are already rounded and non-coaptable.

x x x x x x x x x

Q In layman's language, *Dra*., could you explain to us the result of the genital examination?

A This means that [AAA] has had injuries before around probably more than two (2) weeks before the examination was done because the laceration has already showed signs of healing. That means that it does not bleed anymore. The edges of the laceration are already rounded. Meaning, bleeding has already taken place.

Q And what was your conclusion regarding these cases of [AAA]?

A x x x It would fall under conclusive evidence of injury secondary to intravaginal penetration by a blunt object.

x x x x x x x x x

Q Could you say with certainty that [AAA] is a victim of sexual abuse?

x x x x x x x x x

A Yes.[16]

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[15] *Id*.

[16] TSN, 14 January 2004, pp. 6-8.

Montinola was charged with six counts of rape. He pleaded not guilty to all of them.[17] He claimed that AAA made up the accusations against him because he often beat her. Moreover, he claimed that, if it were true that he raped her, (1) he would have been caught by people outside the house, *if* there were any; and (2) she would have sustained injuries in her vagina because his penis has pellets embedded in it.[18] AAA's mother, two brothers, and sister corroborated Montinola's claim that he did not rape AAA.[19]

The Trial Court's Ruling

In its 26 August 2005 Joint Decision, the trial court found Montinola guilty beyond reasonable doubt of rape, three counts of attempted rape, and acts of lasciviousness:

> WHEREFORE, premises considered:
>
> 1. In **Criminal Case No. 02-720**, and finding the accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Rape, defined and punished under Article 266(a) of the Revised Penal Code, as amended by RA 8353 in relation to RA 7610, said accused is hereby sentenced to suffer the penalty of *reclusion perpetua*, with all the accessories of law.
>
>   The accused is further ordered to pay the offended party, [AAA], the amount of ₱75,000.00 as indemnity for the loss of her honor plus moral damages in the amount of ₱50,000.00 and exemplary damages of ₱50,000.00. With cost against the accused.
>
> 2. In **Criminal Case No. 02-721**, and finding accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Attempted Rape and not as consummated rape as charge [sic], said accused is hereby sentenced to an indeterminate penalty of from 4 years and 2 months of *prision correccional* as minimum to 10 years

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[17] CA *rollo*, p. 109.

[18] *Id.* at 148-149.

[19] *Id.* at 143-153.

of *prision mayor* as maximum plus ₱10,000.00 as moral damages, with all the accessories of law. With cost against the accused.

3. In **Criminal Case No. 02-722**, and finding accused JOHN MONTINOLA @ TONY MONTINOLA not to be [sic] guilty of the crime of Rape on the ground of reasonable doubt, he is hereby ACQUITTED.

4. With respect to **Criminal Case No. 02-723**, and finding accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Attempted Rape, said accused is hereby sentenced to suffer an indeterminate penalty of from 4 years and 2 months of *prision correccional* as minimum to 10 years of *prision mayor* as maximum plus ₱10,000.00 as moral damages to be paid to [AAA]. With cost against the accused.

5. With respect to **Criminal Case No. 02-724**, and finding accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Attempted Rape, said accused is hereby sentenced to suffer an indeterminate penalty of from 4 years and 2 months of *prision correccional* as minimum to 10 years of *prision mayor* as maximum, and to pay [AAA] the sum of ₱10,000.00 as moral damages. With cost against the accused.

6. And finally, in **Criminal Case No. 02-725**, and finding the accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of Acts of Lasciviousness resulting to Child Abuse of a Minor, who is over 12 years of age, as defined and punished under Article 336 of the Revised Penal Code, as amended by RA 7610, said accused is hereby sentenced to suffer an indeterminate penalty of from 2 years and 4 months of *prision correccional* as minimum to 6 years and 1 day of *prision mayor* as maximum, with all the accessories of law.[20]

The trial court held that (1) AAA's testimony was categorical, straightforward, and consistent; (2) her failure to immediately report the incidents to her relatives or to the proper authorities

[20] *Id.* at 176-178.

did not affect her credibility; and (3) rape can be committed even in places where there are other people.[21]

On appeal, Montinola contended that the trial court erred in giving full weight and credence to AAA's testimony and finding him guilty beyond reasonable doubt of the crimes charged.[22] He claimed that AAA was not credible: (1) her testimony was inconsistent, (2) her testimony was not in accord with human experience, (3) she failed to immediately report the incidents to her relatives or to the proper authorities, (4) she admitted that there were other people in the house when the alleged incidents took place yet she did not ask them for help, and (5) the medical report did not prove that Montinola was the one who raped AAA.[23]

The Court of Appeals' Ruling

In its 28 February 2007 Decision, the Court of Appeals affirmed the trial court's decision without modification: "WHEREFORE, in view of the foregoing, the assailed judgment dated August 26, 2005 of the Regional Trial Court of Makati City, Branch 144, is **AFFIRMED** in ***TOTO***."[24]

The Court of Appeals held that (1) AAA's testimony was candid, straightforward, spontaneous, honest, sincere, and categorical; (2) the minor inconsistency in AAA's testimony did not affect her credibility; (3) AAA's failure to immediately report the incidents to her relatives or to the proper authorities did not affect her credibility; and (4) rape can be committed even in places where there are other people.[25]

Hence this appeal.

The Court's Ruling

The Court finds the appeal unmeritorious. AAA is credible and the lower courts did not err.

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[21] *Id*. at 71-73.

[22] *Id*. at 108.

[23] *Id*. at 121-124.

[24] *Rollo*, p. 15.

[25] *Id*. at 11-15.

An appeal in a criminal case opens the entire case for review. The Court can correct errors unassigned in the appeal.[26]

The Court is not impressed with Montinola's claim that AAA's testimony is not credible because it contains an inconsistency. Montinola pointed out that, on direct examination, AAA stated that she was *not sure* whether Montinola was able to insert his penis in her vagina during the 28 March 2000, 29 March 2000, and 4 November 2000 incidents. Then, on cross examination, she stated that Montinola *was* able to insert his penis during those instances. The Court of Appeals held that this minor inconsistency was expected and did not destroy AAA's credibility:

> [M]inor lapses should be expected when a person is made to recall minor details of an experience so humiliating and so painful as rape. After all, the credibility of a rape victim is not destroyed by some inconsistencies in her testimony. Moreover, testimonies of child victims are given full faith and credit.[27]

Indeed, a minor inconsistency, instead of suggesting prevarication, indicates spontaneity. It is expected from a witness of tender age who is unaccustomed to court proceedings.[28] In *People v. Bejic*,[29] the Court held that:

> Rape victims do not cherish keeping in their memory an accurate account of the manner in which they were sexually violated. Thus, errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience so humiliating and painful as rape. In addition, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation.

In the instant case, a minor inconsistency is expected especially because (1) AAA was a *child* witness, (2) she was made to

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[26] *Manaban v. Court of Appeals*, G.R. No. 150723, 11 July 2006, 494 SCRA 503, 516.

[27] *Rollo*, pp. 13-14.

[28] *People v. Bugarin*, 339 Phil. 570, 584 (1997).

[29] G.R. No. 174060, 25 June 2007, 525 SCRA 488, 508-509.

testify on painful and humiliating incidents, (3) she was sexually abused *several times*, and (4) she was made to recount details and events that happened *several years* before she testified.

The Court is not impressed with Montinola's claim that AAA's testimony is not credible because one part of it is not "in accord with human experience." In his Brief, he stated that:

> It could not be over-emphasized x x x that the testimony of [AAA] was not even totally in accord with human experience and thus inspired disbelief.
>
> During the alleged October 29, 1999 rape x x x, which according to [AAA] was perpetrated when [Montinola] ordered his other children to go out of the house, it must be considered that [AAA] herself revealed that it was raining at that time. Despite that, we are still being made to believe that her other siblings, three (3) of whom were below nine years old x x x at that time, were driven out of the house by [Montinola] so that the latter could perpetuate his bestial desire?[30]

The Court believes AAA. This is a very futile attempt to discredit AAA's testimony. Allowing young children to go outside the house while the rain is pouring is *not* unbelievable, *especially* when one is overcome by lust.

The Court is not impressed with Montinola's claim that AAA's failure to immediately report the incidents to her relatives or to the proper authorities affected her credibility. AAA's failure to report the incidents immediately was justifiable: (1) Montinola threatened her that he would cut her throat, as well as the throats of her siblings, if she told anyone about the incidents; (2) her mother was at work most of the time; (3) Montinola had moral and physical control over her, kept an eye on her, and interrupted her whenever she attempted to report the incidents to her mother; (4) even if she told her mother, her mother would not have believed her; (5) she was overwhelmed by fear and confusion; (6) telling people that one has been raped by her own father is not easy to do; and (7) a 14-year-old child cannot be expected

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[30] CA *rollo*, pp. 122-123.

to know how to go about reporting crimes to the proper authorities. In *People v. Bugarin*,[31] the Court held that:

[**D**]**elay in making a criminal accusation** [**does not**] **impair the credibility of a witness** if such delay is satisfactorily explained. In *People v. Coloma*, x x x **the Court adverted to the father's moral and physical control over the young complainant in explaining the delay** of eight years **before the complaint against her father was made**. In this case, [**complainant**] **must have been overwhelmed by fear and confusion, and shocked that her own father had defiled her**. x x x She also testified that she was afraid to tell her mother because the latter might be angered x x x. Indeed, **a survey conducted by the University of the Philippines Center for Women's Studies showed that victims of rape committed by their fathers took much longer in reporting the incidents to the authorities than did other victims. Many factors account for this difference: the fact that the father lives with the victim and constantly exerts moral authority over her, the threat he might make against her, the victim's fear of her mother and other relatives**. (Emphasis ours)

The Court is not impressed with Montinola's claim that he could not have raped AAA because there were other people in the house when the incidents took place. There is no rule that rape can only be committed in seclusion.[32] AAA's siblings were sleeping when the incidents took place. In *Bugarin*,[33] the Court held that, "Suffice it to state that lust is no respecter of time and place. Our cases record instances of rape committed inside family dwellings when other occupants are asleep." In *People v. Alarcon*,[34] the Court held that:

[The accused's] argument that rape could not have been committed due to the presence of AAA's siblings by her side is x x x bereft of merit. Rape is not a respecter of place or time. It is not necessary that the place where the rape is committed be isolated. **There have**

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[31] *Supra* note 28, at 585-586.

[32] *People v. Abellera*, G.R. No. 166617, 3 July 2007, 526 SCRA 329.

[33] *Supra* at 585.

[34] G.R. No. 174199, 7 March 2007, 517 SCRA 778, 787.

been too many instances when rape was committed under circumstances as indiscreet and audacious as a room full of family members sleeping side by side. Rape is not rendered impossible simply because the siblings of the victim who were with her in that small room were not awakened during its commission. (Emphasis ours)

The Court is not impressed with Montinola's claim that AAA did not adduce evidence "sufficient to pass the test of moral certainty." In rape cases, the credibility of the complainant's testimony is almost always the single most important issue. When the complainant's testimony is credible, it may be the *sole basis* for the accused's conviction.[35]

In the instant case, both the trial court and the Court of Appeals found AAA's testimony credible. The trial court held that, "The Court is impressed with the testimony of [AAA] who testified in *categorical* and *straightforward manner* and *remained consistent throughout her testimony*."[36] On the other hand, the Court of Appeals held that:

The x x x **testimony of the complainant reveals that the same was marked by spontaneity, honesty and sincerity**. It is a cardinal rule that when the testimony of the victim is simple and straightforward, the same must be given full faith and credit. We reiterate the rule that the accused could be convicted solely on the basis of the victim's testimony if credible. **Contrary to appellant's submission that the testimony of complainant is not credible and reasonable in itself, We see no reason to deviate from the trial court's determination as to the credibility of complainant's testimony**.[37] (Emphasis ours)

The evaluation of the witnesses' credibility is a matter best left to the trial court because it has the opportunity to observe

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[35] *People v. Abulon*, G.R. No. 174473, 17 August 2007; *People v. Jalbuena*, G.R. No. 171163, 4 July 2007, 526 SCRA 500; *People v. Bejic*, *supra* note 29; *People v. Suyat*, G.R. No. 173484, 20 March 2007, 518 SCRA 582, 591; *People v. Bugarin*, *supra* note 28, at 580-581.

[36] CA *rollo*, p. 71.

[37] *Rollo*, p. 13.

the witnesses and their demeanor during the trial. Thus, the Court accords great respect to the trial court's findings, unless it overlooked or misconstrued substantial facts which could have affected the outcome of the case.[38] In *People v. Abellano*,[39] the Court held that:

> **The trial court's evaluation of a witness' credibility is accorded the highest respect** because it had the direct and singular opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying. The trial court has the strategic position to determine whether a witness is telling the truth and its findings thereon are accorded finality, unless there appears on record some fact or circumstance of weight which the lower court may have overlooked, misunderstood, or misappreciated and, if properly considered, would alter the results of the case. (Emphasis ours)

The Court finds no reason to disturb the findings of the trial court. The trial court did not overlook or misconstrue any substantial fact which could have affected the outcome of the case. Montinola's claims involve minor or trifling matters that do not affect the outcome of the case. AAA's testimony was clear, positive, convincing, and consistent:

> Q Do you remember what unusual incident that [sic] happened to you last October 29, 1999?
>
> A *'Yon po ang unang panggagahasa sa akin ng Papa ko noong* October 29 *ng hapon. Umuulan pa po noon mga bandang alas tres hanggang alas kuwatro ng hapon. Bigla po siyang lumabas doon sa kuwarto* x x x *tapos naka-*underwear *lang po siya. Pinipilit po niyang ipahubad sa akin 'yong damit ko po at saka 'yong* short [sic] *ko po. Tapos 'yon, wala na po akong magawa kasi sinasakal na po niya ako at saka pinipilipit niya po ang paa ko para hindi ako makagalaw.*
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> x x x x x x x x x

[38] *People v. Fernandez*, G.R. No. 176060, 5 October 2007; *People v. Abulon*, *supra* note 35; *People v. Bejic*, *supra* note 29.

[39] G.R. No. 169061, 8 June 2007, 524 SCRA 388, 399-400.

Q And according to you you were raped by the accused here. Did you not resist?

A x x x *Pumapalag po ako sa kanya pero sinasakal na po niya ako tapos pinipilipit po 'yong paa ko eh.*

Q And after he did that to you, what happened next, if any?

A x x x [*P*]*inasok na po niya 'yong ari niya sa akin, sa ari ko rin po.*

Q Okay, after he inserted his penis in your vagina, what did you feel?

A *Nasaktan po.*

Q And after that, what did he do, if there was any?

A x x x [*S*]*inabi na lang niya sa akin na huwag daw akong magsusumbong. Pag nagsumbong daw ako,* x x x *papatayin daw po niya 'yong mga kapatid ko* x x x — *gigilitan daw po niya ng leeg kami ng mga kapatid ko.*

x x x x x x x x x

Q Did you believe the threat of your father that he will kill these sisters and brothers of yours if you report the incident to your mother?

A x x x [*S*]*a mga kapatid ko pong maliliit* x x x *hindi po ako naniniwala na magagawa po niya sa* [*kanila*] *pero sa amin po ng mga kuya ko, naniniwala po ako kasi grabe po siya kung manggulpi sa amin eh. Halos patayin na po niya kami.*[40]

AAA revealed that her own father raped her, allowed the examination of her vagina, and willingly underwent a public trial where she divulged in detail her painful experiences. She wanted Montinola imprisoned. She wanted to kill him.[41] In *Bejic*,[42] the Court held that:

[N]o young woman, especially of tender age, would concoct a story of defloration at the hands of her own father, allow an

[40] TSN, 18 March 2003, pp. 8-11.

[41] CA *rollo*, p. 50.

[42] *Supra* note 29, at 503.

examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is highly improbable that a girl of tender years, not yet exposed to the ways of the world, would impute to her own father a crime so serious as rape if what she claims is [*sic*] **not true**. This is more true in our society since reverence and respect for the elders is deeply rooted in Filipino children and is even recognized by law. Thus, it is against human nature for a x x x girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father. (Emphasis ours)

In Criminal Case No. 02-723, Montinola was charged of raping AAA in March 2000. The Court notes that Montinola attempted to rape AAA *twice* in March 2000 — once on 28 March 2000 and again on 29 March 2000.[43] The trial court and the Court of Appeals held Montinola liable for the offense committed on 28 March 2000 only. The Court agrees. Since only one information[44] was filed for the period of March 2000, he cannot be held liable for both offenses.

In Criminal Case No. 02-725, both the trial court and the Court of Appeals convicted Montinola for acts of lasciviousness and punished him under Section 10(a) of Republic Act No. 7610. Section 10(a) provides:

SEC. 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.*—

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by

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[43] CA *rollo*, pp. 50-51.

[44] The information provides:

That on or about March, 2000 at West Rembo, Makati City, Philippines, and within the jurisdiction of this Honorable Court, the said accused John Montinola @ Tony Montinola with lewd design and with force and intimidation did then and there willfully, unlawfully and feloniously had [sic] carnal knowledge of minor, AAA, his own daughter, to the latter's damage and prejudice.

Contrary to law.

Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

The Court sustains Montinola's conviction for acts of lasciviousness. However, he should be punished under *Section 5(b)* of Republic Act No. 7610. Section 5(b) covers acts of lasciviousness while Section 10(a) covers *other acts* of abuse. Section 5(b) provides:

> SEC. 5. *Child Prostitution and Other Sexual Abuse*. — **Children**, whether male or female, **who** for money, profit, or any other consideration or **due to the coercion or influence of any adult**, syndicate or group, **indulge in** sexual intercourse or **lascivious conduct**, **are deemed to be children exploited** in prostitution and other sexual abuse.
>
> **The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following**:
>
> x x x x x x x x x
>
> (b) **Those who commit the act of** sexual intercourse or **lascivious conduct with a child** exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period. (Emphasis ours)

In *Navarrete v. People*,[45] the Court held that sexual abuse under Section 5(b) has three elements: (1) the accused commits an act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child is below 18 years old.

Under Section 32 of the Implementing Rules and Regulations of Republic Act No. 7610, lascivious conduct includes the intentional touching, either directly or through clothing, of the

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[45] G.R. No. 147913, 31 January 2007, 513 SCRA 509, 521.

genitalia and inner thigh, with an intent to arouse or gratify the sexual desire of any person. In *Navarrete*,[46] the Court held that a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. In *Amployo v. People*,[47] the Court held that:

> [I]ntimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls who could [sic] not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.

All three elements are present in the instant case: (1) Montinola caressed AAA's right thigh, slipped his hand under her shorts, and touched her vagina; (2) AAA indulged in lascivious conduct under Montinola's coercion; and (3) AAA was below 18 years old.

In *Navarrete*,[48] the Court punished the accused under Section 5(b) for touching the complainant's vagina and poking her vagina with a cotton bud. In *People v. Candaza*,[49] the Court punished the accused under Section 5(b) for kissing the lips, licking the vagina, and mashing the breasts of the complainant. In *Amployo*,[50] the Court punished the accused under Section 5(b) for touching the breasts of the complainant. In keeping with jurisprudence, Montinola is liable under Section 5(b) for caressing the thigh and touching the vagina of AAA.

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[46] *Id.* at 522.

[47] G.R. No. 157718, 26 April 2005, 457 SCRA 282, 295-296.

[48] *Supra* note 45, at 525.

[49] G.R. No. 170474, 16 June 2006, 491 SCRA 280, 299.

[50] *Supra* note 47, at 300.

In Criminal Case No. 02-725, the alternative circumstance of relationship under Article 15 of the Revised Penal Code[51] should be considered against Montinola. In *People v. Fetalino*,[52] the Court held that, "in crimes against chastity, like acts of lasciviousness, relationship is considered aggravating." In that case, the Court considered relationship as an aggravating circumstance since the informations mentioned, and the accused admitted, that the complainant was his daughter. In the instant case, the information[53] expressly states that AAA is Montinola's daughter, and Montinola openly admitted this fact:

Q x x x [D]o you know [AAA]?

A *Opo*.

Q Why do you know her?

A She is my daughter.[54]

Accordingly, the Court modifies the penalty imposed in Criminal Case No. 02-725. Section 5(b) of Republic Act No. 7610 prescribes the penalty of *reclusion temporal* in its medium period

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[51] Article 15 of the Revised Penal Code provides:

Art. 15. *Their Concept*. — Altenative circumstances are those things which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication, and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degree of the offender.

[52] G.R. No. 174472, 19 June 2007, 525 SCRA 170.

[53] The information provides:

That on or about January, 2001 at West Rembo, Makati City, Philippines and within the jurisdiction of this Honorable Court, the said accused John Montinola @ Tony Montinola with lewd design and with force and intimidation did then and there willfully, unlawfully and feloniously had [sic] carnal knowledge of minor, AAA, his own daughter, to the latter's damage and prejudice.

Contrary to law.

[54] TSN, 7 March 2005, p. 3.

to *reclusion perpetua*. Since there is an aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period — *reclusion perpetua*. Also, the Court orders Montinola to indemnify AAA ₱15,000 as moral damages and pay a fine of ₱15,000.[55]

The Court sustains Montinola's conviction for rape in Criminal Case No. 02-720. However, the Court modifies his civil liability. He is ordered to pay AAA ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱25,000 as exemplary damages.[56]

The Court sustains Montinola's conviction for attempted rape in Criminal Case Nos. 02-721, 02-723, and 02-724. However, the Court modifies his civil liability. He is ordered to pay AAA ₱30,000 as civil indemnity, ₱25,000 as moral damages, and ₱10,000 as exemplary damages for each count of attempted rape.[57]

WHEREFORE, the Court *AFFIRMS* the 28 February 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01440 with some *MODIFICATIONS*. The Court finds appellant John Montinola @ Tony Montinola:

(1) *GUILTY* of *RAPE* in Criminal Case No. 02-720. He is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱25,000 as exemplary damages.

(2) *GUILTY* of *ATTEMPTED RAPE* in Criminal Case No. 02-721. He is sentenced to suffer the minimum penalty of 4 years and 2 months of *prision correccional* to the maximum penalty of 10 years of *prision mayor* and ordered to pay AAA ₱30,000 as civil indemnity, ₱25,000 as moral damages, and ₱10,000 as exemplary damages.

(3) *NOT GUILTY* in Criminal Case No. 02-722.

(4) *GUILTY* of *ATTEMPTED RAPE* in Criminal Case No. 02-723. He is sentenced to suffer the minimum penalty

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[55] *Supra* note 49, at 299.

[56] *Supra* note 35.

[57] *People v. Bon*, G.R. No. 166401, 30 October 2006, 506 SCRA 168, 217.

of 4 years and 2 months of *prision correccional* to the maximum penalty of 10 years of *prision mayor* and ordered to pay AAA ₱30,000 as civil indemnity, ₱25,000 as moral damages, and ₱10,000 as exemplary damages.

(5) *GUILTY* of *ATTEMPTED RAPE* in Criminal Case No. 02-724. He is sentenced to suffer the minimum penalty of 4 years and 2 months of *prision correccional* to the maximum penalty of 10 years of *prision mayor* and ordered to pay AAA ₱30,000 as civil indemnity, ₱25,000 as moral damages, and ₱10,000 as exemplary damages.

(6) *GUILTY* of *ACTS OF LASCIVIOUSNESS* in Criminal Case No. 02-725, with relationship as an aggravating circumstance. He is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA ₱15,000 as moral damages and a fine of ₱15,000.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180299. January 31, 2008]

LYNDON D. BOISER, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,**[1] *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT THE PROPER REMEDY AGAINST ORDER

[1] The name of the RTC judge is omitted in the title pursuant to Section 4, Rule 45, Rules of Court. Likewise omitted in the title are the names of the minor and his mother pursuant to Republic Act No. 9262 and the ruling of the Court in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

DENYING A MOTION TO QUASH; PROPER REMEDY, ELUCIDATED.— A petition for *certiorari* under Rule 65 is not the proper remedy against an order denying a motion to quash. The accused should instead go to trial, without prejudice on his part to present the special defenses he had invoked in his motion and, if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law. Based on the findings of the investigating prosecutor and of the trial judge, probable cause exists to indict petitioner for the 3 offenses. Absent any showing of arbitrariness on the part of the investigating prosecutor or any other officer authorized by law to conduct preliminary investigation, courts as a rule must defer to said officer's finding and determination of probable cause, since the determination of the existence of probable cause is the function of the prosecutor.

2. ID.; CRIMINAL PROCEDURE; PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE, ELUCIDATED.— The purpose of a preliminary investigation is merely to determine whether a crime has been committed and whether there is probable cause to believe that the person accused of the crime is probably guilty thereof and should be held for trial. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely; not an evidence establishing absolute certainty of guilt.

APPEARANCES OF COUNSEL

Galido Uy Law Offices for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari*[2] assailing the Decision of the Court of Appeals (CA), dated June 5, 2007 in CA-G.R. CEB-SP. No. 02368.[3]

The main issue in this case is whether the CA committed reversible error in affirming the decision of the RTC which denied petitioner's omnibus motion to quash the informations filed against him.

Based on the findings of the CA, the pertinent facts of the case are as follows:

On June 4, 2004, three (3) Informations were filed against petitioner, charging him with acts of lasciviousness, other acts of child abuse, and rape[4] of minor AAA before the Regional Trial Court (RTC), Branch 1, Tagbilaran, Bohol.

On June 11, 2004, petitioner filed a Motion praying that a hearing be conducted to determine the existence of probable cause and to hold in abeyance the issuance of a warrant of arrest against him. On June 16, 2004, private respondent filed an Opposition thereto.

On June, 18, 2004, the family court issued three (3) separate Orders in the three (3) criminal cases, directing the prosecution to submit additional evidence on the cases along with the transcript of proceedings during the preliminary investigation. On June 20, 2004, the prosecutor filed a Manifestation saying that the prosecution had no additional evidence to present and that due to the non-availability of a stenographer who could take down notes during the preliminary investigation on April 28, 2004 and May 7, 2004, he personally took down notes, and submitted

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[2] RULES OF COURT, Rule 45.

[3] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Antonio L. Villamor and Stephen C. Cruz, concurring; *rollo*, pp. 62-70.

[4] Criminal Case Nos. 12252, 12253, 12254, respectively.

certified photocopies of the same to the court. On July 2, 2004, the family court directed the City Prosecution Office in Tagbilaran City to complete the preliminary investigation in a regular manner with duly recorded proceedings attended by a stenographer. On August 4, 2004, a Reinvestigation Report was submitted by the prosecutor maintaining the existence of probable cause in the three cases.

On August 9, 2004, petitioner filed an Omnibus Motion for Determination of Probable Cause. On September 10, 2004, the family court issued three (3) separate Orders finding probable cause against petitioner in the three (3) cases, issued a warrant of arrest against him and fixed the corresponding bail for each case. On November 19 and 24, 2004, petitioner filed Motions to Inhibit the judge of Branch 1 from hearing the 3 cases. The judge acceded. Thereafter, the cases were raffled to Branch 2 of the same court. On March 1, 2005, petitioner again filed a Motion to Inhibit the judge of Branch 2. The same was granted and the case was raffled to Branch 4 of the same court. Then again, petitioner filed a Motion to Inhibit the Judge of Branch 4. The three (3) cases were then raffled to Branch 49 of the said court.

On August 19, 2005, petitioner filed an Omnibus Motion to Quash the three (3) Informations to which private respondent filed an Opposition. On June 30, 2006, Branch 49 issued a Joint Order denying the aforesaid motion. A Motion for Reconsideration was filed by petitioner citing absence of probable cause and lack of jurisdiction over his person as grounds in support of his motion. However, upon the request of private respondent's parents, the Judge of Branch 49 inhibited himself from hearing the three (3) cases. Finally, the cases were raffled to Branch 3 of the RTC of Tagbilaran City, Bohol, presided over by Judge Venancio J. Amila (Judge Amila).

On November 6, 2006, the lower court issued an Omnibus Order denying petitioner's omnibus motion for reconsideration to quash the informations. On November 22, 2006, petitioner filed anew an Urgent Omnibus Motion to Quash. On November 30, 2006, the RTC issued an Order denying the second omnibus

motion to quash, and set the arraignment on December 15, 2006. A day before the arraignment, petitioner filed a Second Omnibus Motion for Reconsideration of the order denying his motion to quash.

On December 15, 2006, petitioner reminded Judge Amila of his second omnibus motion for reconsideration. Judge Amila, in open court, denied for lack of merit the second omnibus motion for reconsideration. Upon arraignment, petitioner refused to enter a plea for the 3 cases. Accordingly, a plea of not guilty was entered for petitioner for each of the 3 criminal cases.

On January 2, 2007, petitioner filed a Petition for *certiorari*[5] before the CA claiming that the family court acted with grave abuse of discretion in issuing the orders denying his omnibus motions to quash the informations.

On June 5, 2007, the CA rendered a Decision[6] affirming the Orders of the RTC. In denying the petition, the CA ratiocinated that it cannot reverse the RTC orders because: (1) an order denying a motion to quash is interlocutory and not appealable; and (2) the petitioner failed to positively prove grave abuse of discretion on the part of the RTC judge in the issuance of the assailed orders. The *fallo* of the Decision reads:

> WHEREFORE, premises considered, the petition is hereby **DENIED.** The assailed orders of the respondent judge are hereby **AFFIRMED.**
>
> Costs against the petitioner.
>
> SO ORDERED.[7]

A motion for reconsideration was filed by petitioner which the CA denied in a Resolution[8] dated September 19, 2007.

On November 16, 2007, petitioner filed the instant case raising the following arguments:

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[5] RULES OF COURT, Rule 65.

[6] *Rollo*, pp. 62-70.

[7] *Id*. at 70.

[8] *Id*. at 28.

The Honorable Court of Appeals has decided [a] question of substance, not theretofore determined by the Supreme Court, or has decided it in a way not in accord with law or with the applicable decisions of the Supreme Court:

That the Honorable Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by the lower court.[9]

We resolve to deny the petition.

A petition for *certiorari* under Rule 65 is not the proper remedy against an order denying a motion to quash. The accused should instead go to trial, without prejudice on his part to present the special defenses he had invoked in his motion and, if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law.[10] Based on the findings of the investigating prosecutor and of the trial judge, probable cause exists to indict petitioner for the 3 offenses. Absent any showing of arbitrariness on the part of the investigating prosecutor or any other officer authorized by law to conduct preliminary investigation, courts as a rule must defer to said officer's finding and determination of probable cause, since the determination of the existence of probable cause is the function of the prosecutor.[11]

It is obvious to this Court that petitioner's insistent filing of numerous motions to inhibit the judge hearing the 3 criminal cases and of motions to quash is a ploy to delay the proceedings, a reprehensible tactic that impedes the orderly administration of justice. If he is truly innocent, petitioner should bravely go to trial and prove his defense. After all, the purpose of a preliminary investigation is merely to determine whether a crime has been committed and whether there is probable cause to believe that the person accused of the crime is probably guilty

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[9] *Id*. at 46.

[10] *Acharon v. Purisima*, G.R. No. 23731, February 26, 1965, 13 SCRA 309.

[11] *Serapio v. Sandiganbayan*, G.R. No. 148468, January 28, 2003, 396 SCRA 443.

thereof and should be held for trial. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely, not on evidence establishing absolute certainty of guilt.[12]

As to the allegation of petitioner that the RTC has not acquired jurisdiction over his person, this issue has been rendered moot and academic with petitioner's arraignment in the 3 cases and his taking part in the proceedings therein.

WHEREFORE, in view of the foregoing, the petition is *DENIED* for lack of merit. Costs against the petitioner.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. P-02-1605. February 4, 2008]
(Formerly A.M. OCA IPI No. 01-1119-P)

NOEL VITUG, *complainant, vs.* **PERLITO G. DIMAGIBA, Sheriff IV, Regional Trial Court, Branch 16, Malolos, Bulacan,** *respondent.*

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[12] *Id*.

[*] In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 484 dated January 11, 2008.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE RULES; SIMPLE NEGLECT OF DUTY; WHEN COMMITTED; PENALTY.— It appears that the respondent sheriff indeed failed to submit to the court that issued the subject writ of execution, the written report on the service of the notices of garnishment to the banks, and the periodic report every thirty (30) days, required under Sections 9[c] and 14 of Rule 39 of the Revised Rules of Court. His failure to do so constitutes simple neglect of duty. x x x Under the Civil Service Rules and Regulations, simple neglect of duty is punishable by suspension ranging from one (1) month and one (1) day to six (6) months. Considering that this is the only remaining case against the respondent, the other cases against him having been dismissed already, suspending him for one (1) month without pay will do justice to what he did.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

In an affidavit-complaint dated March 23, 2001, Noel Vitug, complainant, charges herein respondent Perlito G. Dimagiba, Sheriff IV of the Regional Trial Court (RTC), Branch 16, Malolos, Bulacan, with dereliction of duty and abuse of authority relative to Civil Case No. 173-M-97.

The complaint alleges, among others, that respondent failed to enforce and implement the writ of execution issued by the trial court in Civil Case No. 173-M-97 in favor of complainant, and to submit a report on the action taken thereon, in violation of the provisions of Sections 9 and 14, Rule 39 of the 1997 Rules of Civil Procedure, as amended.

Upon recommendation of the Office of the Court Administrator (OCA), the Court referred the complaint to the Executive Judge, RTC, Malolos, Bulacan for investigation, report and recommendation.

In his Report dated November 15, 2002, then Executive Judge Oscar C. Herrera, Jr. recommended that respondent be

reprimanded for dereliction of duty, with a warning that a repetition thereof shall merit a more severe penalty.

In a Memorandum dated April 29, 2004, then Court Administrator Presbitero J. Velasco, Jr. (now a Member of this Court) sustained the findings of then Executive Judge Herrera and recommended that the penalty imposed upon respondent be modified, thus:

> After going over with the records of this case, the undersigned finds no reason to disturb the findings of the Executive Judge who conducted the required investigation in the instant case. It appears that the respondent sheriff indeed failed to submit to the court that issued the subject writ of execution, the written report on the service of the notices of garnishment to the banks, and the periodic report every thirty (30) days, required under Sections 9[c] and 14 of Rule 39 of the Revised Rules of Court. His failure to do so constitutes simple neglect of duty. However, the undersigned believes that the penalty recommended by the Investigating Judge is too light for the offense committed by the respondent. Under the Civil Service Rules and Regulations, simple neglect of duty is punishable by suspension ranging from one (1) month and one (1) day to six (6) months. Considering that this is the only remaining case against the respondent, the other cases against him having been dismissed already, suspending him for one (1) month without pay will do justice to what he did.
>
> WHEREFORE, premises considered, the undersigned respectfully recommends to this Honorable Court that respondent Sheriff IV Perlito G. Dimagiba, RTC, Branch 16, Malolos, Bulacan be FOUND GUILTY of Simple Neglect of Duty and that he be SUSPENDED for one (1) month without pay for the said offense with WARNING that a repetition of the same or similar offense in the future shall be dealt with more severely.

After a review of the records, we find no reason to deviate from the findings and recommendation of then Court Administrator Velasco (now a Justice of this Court).

WHEREFORE, respondent Perlito G. Dimagiba is declared *GUILTY* of simple neglect of duty and, as recommended by the OCA, he is *SUSPENDED* from the service for one (1)

month without pay and *WARNED* that a repetition of the same or similar offense in the future shall be dealt with more severely.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

EN BANC

[Adm. Matter No. RTJ-92-822. February 4, 2008]

ROBERTO L. UNTALAN, *complainant, vs.* **JUDGE DEODORO J. SISON, RTC, Branch 40, Dagupan City, Pangasinan,** *respondent.*

SYLLABUS

JUDICIAL EHTICS; JUDGES; WHEN GUILTY OF GROSS IGNORANCE OF THE LAW; PENALTY.— Respondent clearly failed to accord the prosecution the basic and elementary entitlements of due process, such as timely notice and opportunity to be heard. Such failure equally clearly resulted either from ignorance of the law or, worse, partiality in favor of the accused. The recommendation is thus in order. The Court notes that respondent has been dismissed from the service in A.M. No. 99-731-RTJ entitled *Hilario De Guzman, Jr. v. Judge Deodoro J. Sison,* promulgated on March 26, 2001. However, the dismissal of respondent in 2001 does not prevent the Court from imposing a sanction against him for gross ignorance of the law **while in office. WHEREFORE,** former Judge Deodoro J. Sison, RTC, Branch 40, Dagupan City, Pangasinan, is found *GUILTY* of gross ignorance of the law for which he is *FINED* in the amount of Twenty Thousand Pesos (₱20,000.00), to be deducted from any remaining accrued leave credits in his favor.

APPEARANCES OF COUNSEL

Public Attorney's Office for complainant.

D E C I S I O N

AZCUNA, *J.*:

On February 17, 1992, complainant Roberto L. Untalan filed a Complaint against respondent Judge Deodoro J. Sison for gross ignorance of the law and partiality in the granting of bail to the accused in Criminal (Crim.) Case No. D-10678.

In his Comment dated June 15, 1992, respondent stated that the charge against him was malicious, libelous and without factual and legal basis.

On September 22, 1992, the administrative case was referred to the late Justice Luis A. Javellana of the Court of Appeals for investigation, report and recommendation.

The facts of the case are as follows:

On October 24, 1991, an Information for double murder was filed before the Regional Trial Court (RTC) of Dagupan City, Branch 40, docketed as Crim. Case No. D-10678, against Manolo Salcedo, Romulo Salcedo, Ricardo Samuco, Rolando Pingol and one Joel Doe for the death of the brothers Mario and Tito Untalan on October 21, 1991.

On November 8, 1991, the accused filed a petition for reinvestigation, which respondent granted, giving the prosecution until December 23, 1991 to submit the result of the reinvestigation.

On December 21, 1991, a Saturday, the accused filed a petition for bail, and served a copy thereof on the City Prosecutor's Office on the same day, and set the petition for hearing on December 23, 1991 at 1:30 p.m.

On December 23, 1991, respondent granted the petition and fixed the bail bond at ₱40,000 for each of the accused.

On December 24, 1991, the prosecution filed an opposition to the petition for bail on the ground that the sworn statements of several eyewitnesses, on which the Information was based, constituted clear and strong evidence of guilt; and that the accused should await the outcome of the reinvestigation they had requested for.

On January 7, 1992, the prosecution moved for the reconsideration of the Order of December 23, 1991, arguing that due process requires that the prosecution must be given an opportunity to present within a reasonable time all the evidence it may desire to produce before the court resolves the motion for bail.

Respondent denied the motion for reconsideration on January 10, 1992.

On February 17, 1992, the complainant, who is a brother of the deceased in Crim. Case No. D-10678, filed this complaint against respondent.

On March 11, 1992, complainant, assisted by the Fourth Assistant Prosecutor Joven M. Maramba, moved for the inhibition of respondent from the hearing of the case because of respondent's haste in granting the petition for bail and approving the bail bond, and the animosity that had developed between the complainant and respondent.

On March 15, 1992, respondent issued an Order denying the motion, stating:

> Considering that time is of the essence because all the accused except Joel Doe have been under detention at the City Jail since October 21, 1991 and considering that the City Prosecutor has not yet resolved the matter of reinvestigation on December 23, 1991 as ordered by the Court, and considering further that Asst. City Prosecutor Rosita Castro interposed no objection to the granting of bail in the amount of ₱40,000.00 which she considered reasonable, without determining whether or not the proper charge could be double homicide, the Court granted bail for the provisional liberty of each accused in the amount of ₱40,000.00.

In view of the foregoing, the Court finds no legal and factual basis for the Motion to Inhibit.[1]

On April 13, 1992, complainant moved for the reconsideration of the Order of March 15, 1992. Respondent denied the motion in an Order dated June 8, 1992.

On April 3, 1993, complainant and his brother Ritchie Untalan filed a Supplemental Affidavit in the administrative case.

The issue is whether or not respondent committed gross ignorance of the law when he granted bail to the accused in Crim. Case No. D-10678.

In his Report dated May 27, 1993, the Investigating Justice found respondent to be guilty of gross ignorance of the law in granting bail to the accused for the following reasons:

First, there was absence of the required three-day notice which is a violation of Sec. 4, Rule 15 of the Rules of Court. The petition for bail was filed on December 21, 1991, a Saturday, with notice that it will be heard on Monday, December 23, 1991, at 1:30 p.m. A copy of the petition was served on the prosecution on the same day it was filed. Clearly, there was no three-day notice to the prosecution.

Second, respondent granted bail to the accused, who were charged with a capital offense, without giving the prosecution the opportunity to show that the evidence of guilt of the accused was strong.

The Investigating Justice stated:

> . . . The so-called hearing conducted by respondent Judge was limited to a statement from counsel of [the] accused, a query from respondent Judge to the prosecutor as to her view on the petition and the amount of bail. There was no reception of evidence [for] the prosecution to show that the evidence of guilt is strong. There was no inquiry into the character and reputation of the accused, the probability of their appearing at trial, or whether or not they were fugitives from justice. The order granting bail does not contain a

[1] *Rollo*, p. 98.

summary of the evidence of the prosecution and the court's conclusion on whether or not the evidence of guilt is strong.

Respondent contends that the prosecution never requested that it be given the opportunity to demonstrate that the evidence of guilt against the accused is strong although it could have done so in at least two instances. The first was when it filed an opposition to the petition for bail, and the second was when it moved for the reconsideration of his order granting bail.

While the pleadings of the prosecution did not specifically pray for the opportunity to prove that the evidence of guilt against [the] accused is strong, enough appear therein which should have moved respondent Judge, on his own, to require the prosecution to do so. In its opposition to the petition for bail, the prosecution specifically alleged, "That the Information for Murder . . . was filed on the strength of the sworn statement[s] of several eyewitnesses to the incident which constitute a clear and strong evidence of guilt of all the . . . accused." In its motion for reconsideration of the order granting bail, it alleged, "In cases where [the] grant of bail is discretionary, due process requires that the prosecution must be given the opportunity to present within reasonable time all the evidence it may desire to produce before the court should resolve the motion for bail ([*People] vs. Hon. Procopio Donato*, G.R. No. 79269, June 5, 1991)." If these are not specific requests from the prosecution, they are, at least, clear reminders to respondent Judge that he must give the prosecution every opportunity to show the evidence of guilt against the accused is strong. Assuming, however, that such a request could not be read into [the] said statements in the prosecution's pleadings, nevertheless, respondent was duty-bound to require the presentation of proof of the strength of the evidence of guilt against the accused because without it he would have no basis for the exercise of his discretion on whether or not bail should be granted.

It may be pertinent to mention here that the orders of the respondent granting bail to the accused and denying the prosecution's motion for reconsideration thereof were nullified by the Court of appeals in CA-G.R. SP No. 28384, 19 January 1993, for having been issued with grave abuse of discretion . . . .

It is perhaps this lack of observance of the rules on the grant of bail which resulted in accused jumping bail, thus compelling respondent to order their arrest. Up to the time the respondent filed his memorandum on 24 February 1993, there was no report that the

accused had been apprehended. In short, complainants' worst fears were realized.[2]

The Investigating Justice also found respondent guilty of partiality in favor of the accused, thus:

It is quite obvious the bail was granted with undue haste, nay railroaded, to favor the accused.

Despite the absence of the required three-day notice to the prosecution, the petition for bail was considered and granted by the respondent.

Also, at the time, the case was under reinvestigation by the Office of the City Prosecutor precisely upon the request of the accused which was granted by respondent. The deadline for submission of the result of the reinvestigation was 23 December 1992, the very same day the petition for bail was heard and granted. Respondent says that he was compelled to grant the bail because the findings on the reinvestigation were not forthcoming and time was of the essence. However, there is nothing in the record which would show that the prosecution had informed respondent that it would not be able to submit its findings on the date set, or that respondent had asked the prosecution about the status of its reinvestigation. What he should have done was to inquire into the status of the reinvestigation, and impose [a] new deadline, if necessary, instead of precipitately granting bail. Respondent asserts that "time was of the essence" but he does not state the reason why it was so, except that the accused had been in jail since the incident happened on 21 October 1991. Such does not justify the shelving of the required basic procedure in the grant of bail for those accused of a capital offense, because if evidence of guilt is strong, they cannot be released anyway.

The haste with which respondent acted on the matter is reflected in his cryptic order granting bail. No discussion of the evidence of either the prosecution or the accused was made, or a rationalization of the favorable action. The order merely states: "Finding the Petition for Bail filed by all the accused, thru counsel, to be well taken, the same is hereby "Granted," and then proceeds to set the bail bond at ₱40,000.00 for each of the accused. One is left only to speculate as to the bases thereof. Equally cryptic is his denial of the prosecution's motion for reconsideration simply "for lack of merit." It appears

[2] Report of Justice Javellana, pp. 8-10.

that respondent would not have the accused linger in jail even for the length of time it would take him to make a reasonably sound and credible order."[3]

Accordingly, the Investigating Justice recommended that respondent be fined ₱20,000 following *Libaros v. Dabalos*.[4]

In its Memorandum dated August 31, 2005, the Office of the Court Administrator (OCA) concurred with the report and recommendation of the Investigating Justice.

The Court agrees with the recommendation of the OCA. Respondent clearly failed to accord the prosecution the basic and elementary entitlements of due process, such as timely notice and opportunity to be heard. Such failure equally clearly resulted either from ignorance of the law or, worse, partiality in favor of the accused. The recommendation is thus in order.

The Court notes that respondent has been dismissed from the service in A.M. No. 99-731-RTJ entitled *Hilario De Guzman, Jr. v. Judge Deodoro J. Sison*,[5] promulgated on March 26, 2001. However, the dismissal of respondent in 2001 does not prevent the Court from imposing a sanction against him for gross ignorance of the law **while in office**.[6]

WHEREFORE, former Judge Deodoro J. Sison, RTC, Branch 40, Dagupan City, Pangasinan, is found *GUILTY* of gross ignorance of the law for which he is *FINED* in the amount of Twenty Thousand Pesos (₱20,000), to be deducted from any remaining accrued leave credits in his favor.

No costs.

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[3] *Supra* note 2 at 12.

[4] A.M. No. RTJ-89-286, July 11, 1991, 199 SCRA 48 (1991).

[5] *De Guzman, Jr. v. Sison*, A.M. No. RTJ-01-1629, March 26, 2001, 355 SCRA 69.

[6] *Bagano v. Hontanosas*, A.M. No. RTJ-05-1915, May 6, 2005, 458 SCRA 59; *Leonidas v. Supnet*, A.M. No. MTJ-02-1433, February 21, 2003, 398 SCRA 38.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Nachura, Reyes, and *Leonardo-de Castro, JJ.,* concur.

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

Chico-Nazario, J., on official leave.

THIRD DIVISION

[G.R. No. 150824. February 4, 2008]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the Director of Lands,** *respondent.*

SYLLABUS

1. CIVIL LAW; CREDIT TRANSACTIONS; PLEDGE AND MORTGAGE; REQUISITES THEREOF NOT PRESENT IN CASE AT BAR.— Under Article 2085 of the Civil Code, it is essential that the mortgagor be the absolute owner of the thing mortgaged, to wit: ARTICLE 2085. The following requisites are essential to the contracts of pledge and mortgage: (1) That they be constituted to secure the fulfillment of a principal obligation; (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged; (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose. Since Lourdes Farms, Inc. is not the owner of the land, it does not have the capacity to mortgage it to LBP. In *De la Cruz v. Court of Appeals*, the Court declared: "While it is true that the mortgagees, having entered into a contract with petitioner as mortgagor, are estopped from questioning the latter's ownership of the mortgaged

property and his concomitant capacity to alienate or encumber the same, it must be considered that, in the first place, petitioner did not possess such capacity to encumber the land at the time for the stark reason that it had been classified as a forest land and remained a part of the patrimonial property of the State. Assuming, without admitting, that the mortgagees cannot subsequently question the fact of ownership of petitioner after having dealt with him in that capacity, still petitioner was never vested with the proprietary power to encumber the property. In fact, even if the mortgagees continued to acknowledge petitioner as the owner of the disputed land, in the eyes of the law, the latter can never be presumed to be owner. As correctly pointed out by the OSG, mortgagees of non-disposable lands, titles to which were erroneously issued, acquire no protection under the Land Registration Law.

2. ID.; LAND REGISTRATION; CERTIFICATE OF TITLE IS VOID WHEN IT COVERS PROPERTY OF PUBLIC DOMAIN; RATIONALE.— Forest lands cannot be owned by private persons. It is not registerable whether the title is a Spanish title or a Torrens title. It is well settled that a certificate of title is void when it covers property of public domain classified as forest or timber or mineral land. Any title issued covering non-disposable lots even in the hands of an alleged innocent purchaser for value shall be cancelled. x x x Even prescription may not be used as a defense against the Republic. On this aspect, the Court in *Reyes v. Court of Appeals*, citing *Republic v. Court of Appeals*, held: "Petitioners' contention that the government is now estopped from questioning the validity of OCT No. 727 issued to them, considering that it took the government 45 years to assail the same, is erroneous. We have ruled in a host of cases that prescription does not run against the government. In point is the case of *Republic v. Court of Appeals*, wherein we declared: And in so far as the timeliness of the action of the Government is concerned, it is basic that prescription deos not run against the State x x x . The case law has also been: When the government is the real party in interest, and is proceeding mainly to assert its own rights and recover its own property, there can be no defense on the ground of laches or limitation x x x. Public land fraudulently included in patents or certificates of title may be recovered or reverted to the State in accordance with

Section 101 of the Public Land Act. *Prescription does not lie against the State in such cases for the Statute of Limitations does not run against the State. The right of reversion or reconveyance to the State is not barred by prescription.*

3. POLITICAL LAW; STATE; INHERENT POWERS; POLICE POWER ; EXPLAINED.— The State's restraint upon the right to have an interest or ownership over forest lands does not violate the constitutional guarantee of non-impairment of contracts. Said restraint is a valid exercise of the police power of the State: x x x In *Edu v. Ericta,* the Court defined police power as the authority of the state to enact legislation that may interfere with personal liberty or property in order to promote the general welfare. It is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety, and general welfare of the people. It is that inherent and plenary power of the State which enables it to prohibit all things hurtful to the comfort, safety and welfare of society. It extends to all the great public needs and is described as the most pervasive, the least limitable and the most demanding of the three inherent powers of the State, far outpacing taxation and eminent domain. It is a ubiquitous and often unwelcome intrusion. Even so, as long as the activity or the property has some relevance to the public welfare, its regulation under the police power is not only proper but necessary. Preservation of our forest lands entail intrusion upon contractual rights as in this case but it is justified by the Latin maxims *Salus populi est suprema lex* and *Sic utere tuo ut alienum non laedas,* which call for the subordination of individual interests to the benefit of the greater number.

4. REMEDIAL LAW; APPEALS; QUESTIONS OF FACTS ARE NOT ENTERTAINED; REMAND TO THE LOWER COURT; WHEN PROPER.— It bears stressing that in a petition for review on *certiorari,* the scope of this Court's judicial review of decisions of the CA is generally confined only to errors of law. Questions of fact are not entertained. x x x In order for the cross-claim to be equitably decided, the Court, not being a trier of facts, is constrained to remand the case to the RTC for further proceedings. Remand of the case for further proceedings is proper due to absence of a definitive factual determination regarding the cross-claim.

APPEARANCES OF COUNSEL

Miguel M. Gonzales, Rosemarie M. Osoteo and *Danilo B. Beramo* for petitioner.

The Solicitor General for respondent.

D E C I S I O N

REYES, R.T., *J.*:

FOREST lands are outside the commerce of man and unsusceptible of private appropriation in any form.[1]

It is well settled that a certificate of title is void when it covers property of public domain classified as forest, timber or mineral lands. Any title issued covering non-disposable lots even in the hands of an alleged innocent purchaser for value shall be cancelled.[2] The rule must stand no matter how harsh it may seem. *Dura lex sed lex*.[3] ***Ang batas ay maaaring mahigpit subalit ito ang mananaig.***

Before Us is a petition for review on *certiorari* under Rule 45 filed by petitioner Land Bank of the Philippines (LBP) appealing the: (1) Decision[4] of the Court of Appeals (CA), dated August 23, 2001, in CA-G.R. CV No. 64121 entitled "*Republic of the Philippines, represented by the Director of Lands v. Angelito Bugayong, et al.*"; and (2) Resolution[5] of the same Court, dated November 12, 2001, denying LBP's motion for reconsideration.

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[1] *Gordula v. Court of Appeals*, 348 Phil. 670, 684 (1998).

[2] *Republic v. Reyes*, G.R. Nos. L-30263-5, October 30, 1987, 155 SCRA 313, 325; *Republic v. Court of Appeals*, G.R. No. L-40402, March 16, 1987, 148 SCRA 480, 492.

[3] *Reyes v. Court of Appeals*, G.R. No. 94524, September 10, 1998, 295 SCRA 296, 313.

[4] *Rollo*, pp. 33-40. Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Eliezer R. de los Santos, concurring.

[5] *Id.* at 66-67.

The CA affirmed the Decision[6] of the Regional Trial Court (RTC), dated July 9, 1996, declaring null and void Original Certificate of Title (OCT) No. P-2823, as well as other titles originating from it, on the ground that at the time it was issued, the land covered was still within the forest zone.[7]

The Facts

OCT No. P-2823 was issued on September 26, 1969 in favor of one Angelito C. Bugayong. Said mother title emanated from Sales Patent No. 4576 issued in Bugayong's name on September 22, 1969.[8] It covered a parcel of land located in Bocana, Kabacan, Davao City, with an area of 41,276 square meters. It was originally identified and surveyed as Lot No. 4159 under Plan SI-(VIII-1), 328-D. Marshy and under water during high tide, it used to be a portion of a dry river bed near the mouth of Davao River.[9]

The land was initially subdivided into four lots, *viz.*: Lot Nos. 4159-A, 4159-B, 4159-C and 4159-D under Subdivision Plan (LRC) Psd-139511 approved by the Commissioner of Land Registration on April 23, 1971.[10] Consequently, OCT No. P-2823 was cancelled and new Transfer Certificates of Title (TCTs) replaced it, all in the name of Bugayong.

Bugayong sold all of the four lots to different persons. Lot No. 4159-A, which was then under TCT No. T-32769, was sold to spouses Lourdes and Candido Du. Accordingly, said TCT was cancelled and replaced by TCT No. T-42166 in the name of spouses Du.[11]

Afterwards, the spouses Du further caused the subdivision of the land covered by their TCT No. T-42166 into two (2)

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[6] Records, pp. 511-529. Penned by Judge Jesus V. Quitain.

[7] *Rollo,* pp. 38-39.

[8] *Id.* at 33-34.

[9] *Id.* at 33.

[10] *Id.* at 34.

[11] *Id.*

lots. They sold one of said lots to spouses Felix and Guadalupe Dayola, who were issued TCT No. T-45586. The other remaining lot, registered under TCT No. T-45587, was retained by and registered in the names of spouses Du.[12]

Subsequently, Du spouses' TCT No. T-45587 was cancelled and was replaced by TCT No. T-57348 registered in the name of Lourdes Farms, Inc. subject of this case.[13] Lourdes Farms, Inc. mortgaged this property to petitioner LBP on April 14, 1980.[14]

The validity of OCT No. P-2823, as well as its derivative TCTs, remained undisturbed until some residents of the land it covered, particularly those along Bolton Diversion Road, filed a formal petition before the Bureau of Lands on July 15, 1981.[15]

Investigation and ocular inspection were conducted by the Bureau of Lands to check the legitimacy of OCT No. P-2823. They found out that: (1) at the time Sales Patent No. 4576 was issued to Bugayong, the land it covered was still within the forest zone, classified under Project No. 1, LC-47 dated August 6, 1923; it was released as alienable and disposable land only on March 25, 1981, pursuant to BFD Administrative Order No. 4-1585 and to the provisions of Section 13, Presidential Decree (P.D.) No. 705;[16] (2) the land was marshy and covered by sea water during high tide; and (3) Bugayong was never in actual possession of the land.[17]

In view of the foregoing findings, the Bureau of Lands resolved that the sales patent in favor of Bugayong was improperly and illegally issued and that the Director of Lands had no jurisdiction to dispose of the subject land.[18]

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[12] *Id*.

[13] *Id*.

[14] Records, pp. 338-364.

[15] *Rollo,* p. 34.

[16] Revised Forestry Code of the Philippines.

[17] *Rollo,* p. 35.

[18] *Id*.

Upon recommendation of the Bureau of Lands, the Republic of the Philippines represented by the Director of Lands, through the Office of the Solicitor General (OSG), instituted a complaint[19] before the RTC in Davao, Branch 15, for the cancellation of title/patent and reversion of the land covered by OCT No. P-2823 into the mass of public domain. The complaint, as amended,[20] was filed against Bugayong and other present owners and mortgagees of the land, such as Lourdes Farms, Inc. and the latter's mortgagee, petitioner LBP.

In its answer with cross-claim,[21] LBP claimed that it is a mortgagee in good faith and for value. It prayed that should TCT No. T-57348 of Lourdes Farms, Inc. be annulled by the court, Lourdes Farms, Inc. should be ordered to pay its outstanding obligations to LBP or to provide a new collateral security.[22]

RTC Judgment

Eventually, the RTC rendered its judgment[23] on July 9, 1996 determining that:

> x x x The mistakes and the flaws in the granting of the title were made by the Bureau of Lands personnel more particularly the Director of Lands who is the Officer charged with the following the provisions of the Public Land Law. x x x.
>
> It is clear that the mother Title, OCT–P-2823 in the name of defendant Bugayong was issued at a time when the area was not yet released by the Bureau of Forestry to the Bureau of Lands.
>
> The area covered by OCT No. P. 2823 was not yet declared by the Bureau of Lands alienable and disposable when the said OCT was issued. The subdivision of the lot covered by OCT P-2823 into 4 lots covered by TCT Nos. T-32768, 32769, 32756 and 32771 did not cure the defect. x x x.[24]

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[19] Records, pp. 1-7

[20] *Id*. at 69-77.

[21] *Id*. at 102-107.

[22] *Rollo,* p. 35.

[23] Records, pp. 511-529.

[24] *Id*. at 526.

The RTC explained that titles issued to private parties by the Bureau of Lands are void *ab initio* if the land covered by it is a forest land.[25] It went further by stating that if the mother title is void, all titles arising from the mother title are also void.[26] It thus ruled in favor of the Republic with a *fallo* reading:

> IN VIEW WHEREOF, judgment is hereby rendered declaring Original Certificate of Title No. P-2823 issued in the name of defendant Angelito Bugayong null and void. The following Transfer Certificate of Titles which were originally part of the lot covered by O.C.T. No. P-2823 are likewise declared void:
>
> 1. A. TCT No. 57348 in the name of defendant Lourdes Farms mortgaged to defendant Land Bank.
>
> B. TCT No. 84749 in the name of defendants Johnny and Catherine Du mortgaged to defendant Development Bank of the Philippines.
>
> C. TCT No. 37386 in the name of defendants spouses Pahamotang mortgaged to defendant Lourdes Du mortgaged with defendant Allied Bank.
>
> E. TCT Nos. 68154 and 32768 in the names of defendants/spouses Maglana Santamaria.
>
> 2. All private defendants shall give to the Davao City Register of Deeds their titles, who shall cancel the Transfer Certificate of Titles mentioned in paragraph number one.
>
> 3. Lot No. 4159, Plan SI (VIII-1) 328-D covered by O.C.T. P-2823 is hereby REVERTED to the mass of public domain.
>
> SO ORDERED.[27] (Underscoring supplied)

Disagreeing with the RTC judgment, LBP appealed to the CA on October 31, 1996. It asserted in its appellant's brief[28] that it validly acquired mortgage interest or lien over the subject property because it was an innocent mortgagee for value and in

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[25] *Id.* at 527.

[26] *Id.* at 528.

[27] *Id.* at 528-529; *rollo*, p. 36.

[28] CA *rollo*, pp. 29-38.

good faith.[29] It also emphasized that it is a government financial institution.

CA Disposition

In a Decision[30] dated August 23, 2001, the CA ruled against the appellants,[31] disposing thus:

> WHEREFORE, premises considered, the present appeals are hereby DISMISSED and the Decision of the trial court in Civil Case No. 17516 is hereby AFFIRMED.[32]

The CA confirmed that the "evidence for the plaintiff clearly established that the land covered by OCT No. P-2823 issued pursuant to a sales patent granted to defendant Angelito C. Bugayong was still within the forestal zone at the time of the grant of the said patent."[33] It explained:

> Forest lands or forest reserves, are incapable of private appropriation and possession thereof, however long, cannot convert them into private properties. This is premised on the *Regalian Doctrine* enshrined not only in the 1935 and 1973 Constitutions but also in the 1987 Constitution. Our Supreme Court has upheld this rule consistently even in earlier cases. It has also been held that whatever possession of the land *prior* to the date of release of forested land as alienable and disposable cannot be credited to the 30-year requirement (now, since June 12, 1945) under Section 48(b) of the Public Land Act. It is only from that date that the period of occupancy for purposes of confirmation of imperfect or incomplete title may be counted. Since the subject land was declared as alienable and disposable only on March 25, 1981, appellants and their predecessors-in-interest could not claim any vested right thereon prior to its release from public forest zone.

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[29] *Id*. at 31.

[30] *Rollo,* pp. 33-40.

[31] Appellants include the mortgagees, namely: Philippine National Bank and petitioner LBP.

[32] *Rollo,* p. 39.

[33] *Id*. at 38.

The inclusion of forest land in a title, "whether title be issued during the Spanish regime or under the Torrens system, nullifies the title." It is, of course, a well-recognized principle that the Director of Lands (now Land Management Bureau) is bereft of any jurisdiction over public forest or any lands not capable of registration. It is the Bureau of Forestry that has jurisdiction and authority over the demarcation, protection, management, reproduction, occupancy and use of all public forests and forest reservations and over the granting of licenses for the taking of products therefrom. And where the land applied for is part of the public forest, the land registration court acquires no jurisdiction over the land, which is not yet alienable and disposable.

Thus, notwithstanding the issuance of a sales patent over the subject parcel of land, the State may still take action to have the same land reverted to the mass of public domain and the certificate of title covering said forest land declared null and void for having been improperly and illegally issued. Titles issued over non-alienable public lands have been held as void *ab initio*. The defense of indefeasibility of title issued pursuant to such patent does not lie against the State. Public land fraudulently included in patents or certificates of title may be recovered or reverted to the State in accordance with Section 101 of the Public Land Act. In such cases, prescription does not lie against the State. Likewise, the government is not estopped by such fraudulent or wrongful issuance of a patent over public forest land inasmuch as the principle of estoppel does not operate against the Government for the acts of its agents. x x x.[34] (Citations omitted)

With respect to LBP's contention[35] that it was a mortgagee in good faith and for value, the CA declared, citing *Republic v. Reyes*[36] that: "mortgagees of non-disposable lands where titles thereto were erroneously issued acquire no protection under the land registration law. Appellants-mortgagees' proper recourse therefore is to pursue their claims against their respective mortgagors and debtors."[37]

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[34] *Id*. at 38-39.

[35] This is also the contention of the Philippine National Bank.

[36] G.R. Nos. L-30263-5, October 30, 1987, 155 SCRA 313.

[37] *Rollo,* p. 39.

When LBP's motion for reconsideration was denied, it resorted to the petition at bar.

Issues

LBP seeks the reversal of the CA disposition on the following grounds –

A.

THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE PETITIONER LAND BANK OF THE PHILIPPINES' MORTGAGE RIGHT AND INTEREST AS AN INNOCENT PURCHASER (MORTGAGEE) FOR VALUE AND IN GOOD FAITH OVER THE SUBJECT LAND COVERED BY TCT NO. T-57348 IS VALID AND SUBSISTING IN ACCORDANCE WITH THE LAW AND EXISTING JURISPRUDENCE IN OUR COUNTRY.

B.

THE COURT OF APPEALS ERRED IN NOT FINDING PETITIONER LAND BANK OF THE PHILIPPINES' MORTGAGE RIGHT AND INTEREST OVER THE SUBJECT LAND AS VALID AND SUBSISTING UNDER THE CONSTITUTIONAL GUARANTEE OF NON-IMPAIRMENT OF OBLIGATION OF CONTRACTS.

C.

THE COURT OF APPEALS ERRED IN NOT AWARDING TO PETITIONER LAND BANK OF THE PHILIPPINES THE RELIEF PRAYED FOR UNDER ITS CROSS-CLAIM AGAINST CO-DEFENDANT LOURDES FARMS, INC., THAT IS, ORDERING SAID CO-DEFENDANT LOURDES FARMS, INC. TO PAY ITS OUTSTANDING OBLIGATION TO THE LAND BANK COVERED BY THE SUPPOSED NULL AND VOID TCT NO. T-57348, OR TO PROVIDE A SUBSTITUTE COLLATERAL IN LIEU OF SAID TCT NO. T-57348.[38] (Underscoring supplied)

Our Ruling

LBP has no valid and subsisting mortgagee's interest over the land covered by TCT No. T-57348.

[38] *Id*. at 19-20.

It has been established and admitted by LBP that: (1) the subject land mortgaged to it by Lourdes Farms, Inc. is covered by TCT No. T-57348; and (2) the said TCT is derived from OCT No. P-2823 issued to Bugayong.[39]

It was further ascertained by the courts below that at the time OCT No. P-2823 was issued to Bugayong on September 26, 1969, the land it covered was still within the forest zone. It was declared as alienable and disposable only on March 25, 1981.[40]

Despite these established facts, LBP argues that its alleged interest as mortgagee of the subject land covered by TCT No. T-57348 must be respected. It avers that TCT No. T-57348 is a Torrens title which has no written indications of defect or vice affecting the ownership of Lourdes Farms, Inc. Hence, it posits that it was not and could not have been required to explore or go beyond what the title indicates or to search for defects not indicated in it.

LBP cites cases where the Court ruled that a party is not required to explore further than what the Torrens title upon its face indicates in quest of any hidden defect of an inchoate right that may subsequently defeat his right to it; and that a bank is not required before accepting a mortgage to make an investigation of the title of the property being given as security. LBP submits that its right as a mortgagee is binding against the whole world and may not be disregarded.[41]

It further argues that review or reopening of registration is proscribed, as the title has become incontrovertible pursuant to Section 32 of P.D. No. 1529; and that its mortgage rights and interest over the subject land is protected by the constitutional guarantee of non-impairment of contracts.[42]

The contention that LBP has an interest over the subject land as a mortgagee has no merit. The mortgagor, Lourdes Farms,

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[39] *Id*. at 38.

[40] *Id*.

[41] *Id*. at 25.

[42] *Id*. at 24-25.

Inc. from which LBP supposedly obtained its alleged interest has never been the owner of the mortgaged land. Acquisition of the subject land by Lourdes Farms, Inc. is legally impossible as the land was released as alienable and disposable only on March 25, 1981. Even at present, no one could have possessed the same under a claim of ownership for the period of thirty (30) years required under Section 48(b) of Commonwealth Act No. 141, as amended.[43] Hence, LBP acquired no rights over the land.

Under Article 2085 of the Civil Code, it is essential that the mortgagor be the absolute owner of the thing mortgaged, to wit:

ARTICLE 2085. The following requisites are essential to the contracts of pledge and mortgage:

(1) That they be constituted to secure the fulfillment of a principal obligation;

(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

(3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose. (Emphasis ours)

Since Lourdes Farms, Inc. is not the owner of the land, it does not have the capacity to mortgage it to LBP. In *De la Cruz v. Court of Appeals*,[44] the Court declared:

While it is true that the mortgagees, having entered into a contract with petitioner as mortgagor, are estopped from questioning the latter's ownership of the mortgaged property and his concomitant capacity to alienate or encumber the same, it must be considered that, in the first place, petitioner did not possess such capacity to encumber the land at the time for the stark reason that it had been classified as a forest land and remained a part of the patrimonial property of

[43] See *Zarate v. Director of Lands,* G.R. No. 131501, July 14, 2004, 434 SCRA 322, 334, citing *Republic v. Court of Appeals,* G.R. No. 56948, September 30, 1987, 154 SCRA 476.

[44] 349 Phil. 898, 906 (1998).

the State. Assuming, without admitting, that the mortgagees cannot subsequently question the fact of ownership of petitioner after having dealt with him in that capacity, still, petitioner was never vested with the proprietary power to encumber the property. In fact, even if the mortgagees continued to acknowledge petitioner as the owner of the disputed land, in the eyes of the law, the latter can never be presumed to be owner.

As correctly pointed out by the OSG, mortgagees of non-disposable lands, titles to which were erroneously issued, acquire no protection under the Land Registration Law.[45]

Even assuming that LBP was able to obtain its own TCT over the property by means of its mortgage contract with Lourdes Farms, Inc., the title must also be cancelled as it was derived from OCT No. P-2823 which was not validly issued to Bugayong. Forest lands cannot be owned by private persons. It is not registerable whether the title is a Spanish title or a Torrens title.[46] It is well settled that a certificate of title is void when it covers property of public domain classified as forest or timber or mineral land. Any title issued covering non-disposable lots even in the hands of an alleged innocent purchaser for value shall be cancelled.[47]

Moreover, the Court has already addressed the same issue in its Resolution of November 14, 2001 on the petition filed by the Philippine National Bank (PNB) in G. R. No. 149568 entitled "*Philippine National Bank v. Republic of the Philippines represented by the Director of Lands,*" which also appealed the subject CA decision. PNB, like LBP, is also a mortgagee of another derivative TCT of the same OCT No. 2823. Said resolution reads:

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[45] *Rollo,* p. 55.

[46] *Director of Forest Administration v. Fernandez,* G.R. No. L-36827, December 10, 1990, 192 SCRA 121, 138, citing *Director of Lands v. Court of Appeals,* G.R. No. 50340, December 26, 1984, 133 SCRA 701; *Republic v. Court of Appeals,* G.R. No. 56077, February 28, 1985, 135 SCRA 156; *Vallarta v. Intermediate Appellate Court,* G.R. No. 74957, June 30, 1987, 151 SCRA 679.

[47] *Republic v. Reyes, supra* note 2.

On September 22, 1969, Angelito C. Bugayong was issued a sales patent covering a 41,276 square meter parcel of land in Bocana, Barrio Kabacan, Davao City by the Bureau of Lands. On the basis of the sales patent, the Register of Deeds of Davao City issued OCT No. P-2823 to Bugayong. Bugayong later subdivided the land into four lots, one of which (Lot No. 4159-B covered by TCT No. T-32770) was sold by him to the spouses Reynaldo Rogacion and Corazon Pahamotang. After obtaining TCT No. T-37786 in their names, the spouses mortgaged the lot to the Philippine National Bank (PNB). As they defaulted in the payment of their loan, the PNB foreclosed the property and purchased it at the foreclosure sale as the highest bidder. Eventually, the PNB consolidated its title.

Sometime in 1981, upon the petition of the residents of the land, the Bureau of Lands conducted an investigation into the sales patent issued in favor of Angelito C. Bugayong and found the sales patent to have been illegally issued because (1) the land was released as alienable and disposable only on March 25, 1981; previous to that, the land was within the forest zone; (2) the land is covered by sea water during high tide; and (3) the patentee, Angelito C. Bugayong, had never been in actual possession of the land.

Based on this investigation, the government instituted the present suit in 1987 for cancellation of title/patent and reversion of the parcel of land against Angelito C. Bugayong, the Rogacion spouses, and the PNB, among others.

On July 6, 1996, the trial court rendered a decision declaring OCT No. P-2823 and all titles derived therefrom null and void and ordering reversion of the subject property to the mass of the public domain. On appeal, the Court of Appeals affirmed the trial court's decision. Hence, this petition.

First. Petitioner contends that it had a right to rely on TCT No. T-37786 showing the mortgagors Reynaldo Rogacion and Corazon Pahamotang's ownership of the property.

The contention is without merit. It is well settled that a certificate of title is void when it covers property of public domain classified as forest or timber or mineral lands. Any title issued covering non-disposable lots even in the hands of an alleged innocent purchaser for value shall be cancelled (*Republic v. Reyes*, 155 SCRA 313 (1987)).

(*Republic v. Court of Appeals,* 148 SCRA 480 (1987)). In this case, petitioner does not dispute that its predecessor-in-interest, Angelito C. Bugayong, had the subject property registered in his name when it was forest land. Indeed, even if the subject property had been eventually segregated from the forest zone, neither petitioner nor its predecessors-in-interest could have possessed the same under claim of ownership for the requisite period of thirty (30) years because it was released as alienable and disposable only on March 25, 1981.

Second. Petitioner's contention that respondent's action for reversion is barred by prescription for having been filed nearly two decades after the issuance of Bugayong's sales patent is likewise without merit. Prescription does not lie against the State for reversion of property which is part of the public forest or of a forest reservation registered in favor of any party. Public land registered under the Land Registration Act may be recovered by the State at any time (*Republic v. Court of Appeals,* 258 SCRA 223 (1996)).[48]

Contrary to the argument of LBP, since the title is void, it could not have become incontrovertible. Even prescription may not be used as a defense against the Republic. On this aspect, the Court in *Reyes v. Court of Appeals*,[49] citing *Republic v. Court of Appeals*,[50] held:

> Petitioners' contention that the government is now estopped from questioning the validity of OCT No. 727 issued to them, considering that it took the government 45 years to assail the same, is erroneous. We have ruled in a host of cases that prescription does not run against the government. In point is the case of *Republic v. Court of Appeals,* wherein we declared:
>
> > And in so far as the timeliness of the action of the Government is concerned, it is basic that prescription does not run against the State x x x. The case law has also been:
> >
> > > When the government is the real party in interest, and is proceeding mainly to assert its own rights and recover

[48] Second Division Resolution dated November 14, 2001.

[49] *Supra* note 3.

[50] G.R. No. 79582, April 10, 1989, 171 SCRA 721, 734.

> its own property, there can be no defense on the ground of laches or limitation x x x.
>
> Public land fraudulently included in patents or certificates of title may be recovered or reverted to the State in accordance with Section 101 of the Public Land Act. *Prescription does not lie against the State in such cases for the Statute of Limitations does not run against the State. The right of reversion or reconveyance to the State is not barred by prescription.* (Emphasis ours)

There is no impairment of contract but a valid exercise of police power of the State.

The constitutional guarantee of non-impairment of contracts may not likewise be used by LBP to validate its interest over the land as mortgagee. The State's restraint upon the right to have an interest or ownership over forest lands does not violate the constitutional guarantee of non-impairment of contracts. Said restraint is a valid exercise of the police power of the State. As explained by the Court in *Director of Forestry v. Muñoz*:[51]

> The view this Court takes of the cases at bar is but in adherence to public policy that should be followed with respect to forest lands. Many have written much, and many more have spoken, and quite often, about the pressing need for forest preservation, conservation, protection, development and reforestation. Not without justification. For, forests constitute a vital segment of any country's natural resources. It is of common knowledge by now that absence of the necessary green cover on our lands produces a number of adverse or ill effects of serious proportions. Without the trees, watersheds dry up; rivers and lakes which they supply are emptied of their contents. The fish disappear. Denuded areas become dust bowls. As waterfalls cease to function, so will hydroelectric plants. With the rains, the fertile topsoil is washed away; geological erosion results. With erosion come the dreaded floods that wreak havoc and destruction to property – crops, livestock, houses and highways – not to mention precious human lives. Indeed, the foregoing observations should be written down in a lumberman's decalogue.

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[51] 132 Phil. 637, 669-670 (1968).

Because of the importance of forests to the nation, the State's police power has been wielded to regulate the use and occupancy of forest and forest reserves.

To be sure, the validity of the exercise of police power in the name of the general welfare cannot be seriously attacked. Our government had definite instructions from the Constitution's preamble to "promote the general welfare." Jurisprudence has time and again upheld the police power over individual rights, because of the general welfare. Five decades ago, Mr. Justice Malcolm made it clear that the "right of the individual is necessarily subject to reasonable restraint by general law for the common good" and that the "liberty of the citizen may be restrained in the interest of public health, or of the public order and safety, or otherwise within the proper scope of the police power." Mr. Justice Laurel, about twenty years later, affirmed the precept when he declared that "the state in order to promote the general welfare may interfere with personal liberty, with property, and with business and occupations" and that "[p]ersons and property may be subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state." Recently, we quoted from leading American case, which pronounced that "neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm," and that, therefore, "[e]qually fundamental with the private right is that of the public to regulate it in the common interest." (Emphasis ours and citations omitted)

In *Edu v. Ericta*,[52] the Court defined police power as the authority of the state to enact legislation that may interfere with personal liberty or property in order to promote the general welfare. It is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety, and general welfare of the people. It is that inherent and plenary power of the State which enables it to prohibit all things hurtful to the comfort, safety and welfare of society.[53] It extends to all the great public needs and is described as the most pervasive, the least limitable

[52] G.R. No. L-32096, October 24, 1970, 35 SCRA 481.

[53] *Rubi v. Provincial Board*, 39 Phil. 660, 708 (1919).

and the most demanding of the three inherent powers of the State, far outpacing taxation and eminent domain.[54] It is a ubiquitous and often unwelcome intrusion. Even so, as long as the activity or the property has some relevance to the public welfare, its regulation under the police power is not only proper but necessary.[55]

Preservation of our forest lands could entail intrusion upon contractual rights as in this case but it is justified by the Latin maxims *Salus populi est suprema lex* and *Sic utere tuo ut alienum non laedas*, which call for the subordination of individual interests to the benefit of the greater number.[56]

While We sympathize with petitioner, We nonetheless cannot, in this instance, yield to compassion and equity. The rule must stand no matter how harsh it may seem.[57]

We cannot resolve the cross-claim for lack of factual basis. The cross-claim must be remanded to the RTC for further proceedings.

LBP filed a cross-claim against Lourdes Farms, Inc. before the RTC.[58] The cross-claim is for the payment of cross-defendant Lourdes Farms, Inc.'s alleged obligation to LBP or its submission of a substitute collateral security in lieu of the property covered by TCT No. T-57348.

However, the records do not show that Lourdes Farms, Inc. was required by the RTC to file an answer to the cross-claim. Likewise, Lourdes Farms, Inc. was not notified of the proceedings before the CA. It was not also made a party to this petition.

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[54] *Ynot v. Intermediate Appellate Court*, G.R. No. 74457, March 20, 1987, 148 SCRA 659, 670.

[55] *Id*.

[56] *Id*.

[57] *Reyes v. Court of Appeals, supra* note 3.

[58] Records, p. 512.

LPB now contends that the CA erred in not granting its cross-claim against Lourdes Farms, Inc. We are thus confronted with the question: Should We now order Lourdes Farms, Inc. to comply with the demand of LBP?

We rule in the negative. It may be true that Lourdes Farms, Inc. still has an obligation to LBP but We cannot make a ruling regarding the same for lack of factual basis. There is no evidence-taking on the cross-claim. No evidence was adduced before the RTC or the CA regarding it. No factual finding or ruling was made by the RTC or the CA about it.

It bears stressing that in a petition for review on *certiorari*, the scope of this Court's judicial review of decisions of the CA is generally confined only to errors of law. Questions of fact are not entertained.[59]

Moreover, the failure to make a ruling on the cross-claim by the RTC was not assigned as an error in LBP's appellant's brief[60] before the CA. Hence, the CA cannot be faulted for not making a ruling on it.

As held in *De Liano v. Court of Appeals*,[61] appellant has to specify in what aspect of the law or the facts the trial court erred. The conclusion, therefore, is that appellant must carefully formulate his assignment of errors. Its importance cannot be underestimated, as Section 8, Rule 51 of the Rules of Court will attest:

> *Questions that may be decided*. – No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

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[59] *Diokno v. Cacdac,* G.R. No. 168475, July 4, 2007, 526 SCRA 440, 460, citing *Gerlach v. Reuters Limited Phils.,* G.R. No. 148542, January 17, 2005, 448 SCRA 535, 544-545.

[60] CA *rollo*, pp. 29-38.

[61] 421 Phil. 1033, 1043 (2001).

Apparently, the cross-claim was taken for granted not only by the RTC but also by LBP. The cross-claim was not included as a subject or issue in the pre-trial order and instead of asking that the same be heard, LBP filed a motion[62] to submit the main case for resolution. The main case was thus resolved by the RTC without touching on the merits of the cross-claim.

On the other hand, while the CA did not make a categorical ruling on LBP's cross-claim, it pointed out that: (1) as found by the RTC, there is a mortgage contract between LBP and Lourdes Farms, Inc., with LBP as mortgagee and Lourdes Farms, Inc. as mortgagor; and (2) LBP's proper recourse is to pursue its claim against Lourdes Farms, Inc.[63]

The CA thus impliedly ruled that LBP's cross-claim should not be included in this case. Instead of making a ruling on the same, it recommended that LBP pursue its claim against Lourdes Farms, Inc.

All told, although the relationship between LBP and Lourdes Farms, Inc. as mortgagee and mortgagor was established, the cross-claim of LBP against Lourdes Farms, Inc. was left unresolved.

The Court is not in a position to resolve the cross-claim based on the records. In order for the cross-claim to be equitably decided, the Court, not being a trier of facts, is constrained to remand the case to the RTC for further proceedings. Remand of the case for further proceedings is proper due to absence of a definitive factual determination regarding the cross-claim.[64]

WHEREFORE, the appealed Decision of the Court of Appeals is hereby *AFFIRMED* with the *MODIFICATION* that the cross-claim of petitioner Land Bank of the Philippines against Lourdes

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[62] Records, pp. 490-491.

[63] CA *rollo*, p. 187.

[64] See *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals*, G.R. Nos. 143013-14, December 18, 2000, 348 SCRA 565, 580; Cf. *Government Service Insurance System v. Commission on Audit*, G.R. No. 138381, November 10, 2004, 441 SCRA 532, 544.

Farms, Inc. is *REMANDED* to the Regional Trial Court, Branch 15, Davao City, for further proceedings.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 154974. February 4, 2008]

KAUNLARAN LENDING INVESTORS, INC. and LELIA CHUA SY, *petitioners, vs.* **LORETA UY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; CERTIFICATE OF NON-FORUM SHOPPING; IN CASE OF A CORPORATION, THE CERTIFICATE MUST BE SIGNED BY A SPECIFICALLY AUTHORIZED OFFICER OR AGENT; EXCEPTION IN CASE AT BAR.— In case of a corporation, it has long been settled that the certificate [of non-forum shopping] must be signed for and on its behalf by a *specifically authorized officer or agent* who has personal knowledge of the facts required to be disclosed. x x x Consequently, without the needed proof from the board of directors, the certificate would be considered defective. Thus, x x x even the regular officers of a corporation, like the chairman and president, may not even know the details required in a certificate of non-forum shopping; they must therefore be authorized by the board of directors just like any other officer or agent. The merits of the petition, however, justify the relaxation of the rule on

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* Vice Associate Justice Minita V. Chico-Nazario. Justice Nazario is on official leave per Special Order No. 484 dated January 11, 2008.

verification and certificate of non-forum shopping, for from a review of the records Loreta has not proven by preponderance of evidence that she was deceived into signing the documents required for the release of the proceeds of the loan.

2. ID.; EVIDENCE; TESTIMONY OF WITNESSES; RECANTATION OF TESTIMONY NOT FAVORED BY THE COURTS; RATIONALE.— x x x [C]ourts do not generally look with favor on any retraction or recanted testimony, for it could have been secured by considerations other than to tell the truth and would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. A recantation does not necessarily cancel an earlier declaration, but like any other testimony the same is subject to the test of credibility and should be received with caution. x x x The mere fact that a witness says that what he had declared is false and what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credulity. The rule is that a witness may be impeached by a previous contradictory statement (Section 13, Rule 132, Rules of Court): not that a previous testimony is presumed to be false merely because a witness now says that the same is false.

APPEARANCES OF COUNSEL

Decano Law Offices and *Millora & Maningding Law Offices* for petitioners.

*Picazo Buyco Tan Fider and Santo*s for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

From the Court of Appeals' decision reversing that of the trial court which dismissed respondent's complaint, petitioners come to this Court.

Respondent Loreta Uy (Loreta) filed on September 12, 1988 before the Regional Trial Court (RTC) of Dagupan City a complaint,[1] docketed as Civil Case No. D-9136, for annulment

[1] Records, pp. 1-7.

of real estate mortgage and related documents plus damages against petitioners Kaunlaran Lending Investors, Inc. (KLII) and Lelia Chua Sy (Lelia), along with Wilfredo Chua (Wilfredo) and Magno Zareno (Magno).

In Loreta's complaint, she alleged as follows:

Sometime in 1987, her son Jose U. Sim (Jose), her nephew Virgilio Sim (Virgilio), and Wilfredo agreed to establish a business of buy and sell of second-hand motor vehicles in which Virgilio would be the manager, Wilfredo would scout for a financier, and Jose would provide the security for any loan.

Through the efforts of Wilfredo, Lelia, then a Branch Manager of the Far East Bank and Trust Co., Inc. (FEBTC) in Dagupan City who was alleged to be the owner of the controlling interest in KLII, agreed to arrange for the grant of a loan. Wilfredo thus asked Jose in whose favor his mother Loreta issued a Special Power of Attorney reading:

> That I, LORETA Q. UY, of legal age, Filipino, widow and a resident of Dagupan City, by these presents, do hereby NAME, CONSTITUTE and APPOINT my son JOSE U. SIM, likewise of legal age, Filipino, married and a resident of Dagupan City, to be my true and lawful attorney-in-fact, for me in my name, place and stead, to do the following acts, to wit:
>
> 1. To obtain a loan from any bank, financial institutions [*sic*] or person in such amount as may be extended, and to secure the payment thereof by constituting in favor of the creditor a real estate mortgage on the herein-below described parcels of land and all improvements thereon, to wit:
>
> TCT NO. 78622
>
> x x x x x x x x x
>
> TCT NO. 78623
>
> 2. To receive the check and/or cash proceeds of the loan; and,
>
> 3. To sign such documents, papers and other papers [*sic*] relative thereto.[2] (Underscoring supplied),

[2] Exhibit "H", exhibits folder III, exhibits in exhibits folder III start from Exhibits "N" to "P", then start again from Exhibits "A" to "F".

to turn over the land titles of two parcels of land located in Quezon City,[3] covered by Transfer Certificates of Title Nos. 78622 and 78623 in the name of his (Jose's) mother Loreta, to serve as security for the loan.

Jose thus entrusted his mother's land titles and related documents to Wilfredo who in turn delivered them to Lelia. Lelia thereafter sent Jose to Manila, together with a certain Ed and a certain Doc of KLII, to have the lands appraised at the main office of FEBTC.

Wilfredo subsequently brought to Loreta's residence loan forms consisting of a promissory note he had pre-signed as co-maker, a real estate mortgage, and a loan disclosure for Loreta's signature. After Jose examined the forms, Loreta signed them.

Soon Jose and Virgilio went to Manila to canvass prices of second-hand motor vehicles. While the two were in Manila, Magno, then the manager of KLII, brought to Loreta's residence the loan forms she had earlier signed and another set of loan forms, together with a blank Solidbank check drawn from the account of KLII and a check voucher. Magno explained to Loreta, in the presence of her daughter-in-law Arlene A. Sim (Arlene)-wife of Jose, that the new set of loan forms would be sent to Manila and that the proceeds of the loan would be promptly delivered to her residence once she affixes her signature on the said check and voucher.

When Jose returned home and learned about what transpired during his absence, he confronted Magno at the KLII office and was told that the documents bearing on the loan application were already sent to Lelia and that Loreta's signatures on the blank Solidbank check and the check voucher were procured on Lelia's instructions.

Virgilio and Jose later tried to withdraw the loan application and the titles to Loreta's properties but Lelia told them that it was no longer possible.

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[3] Exhibits "A" and "B", exhibits folder III.

In a subsequent conference among Lelia, Jose, Virgilio, and Wilfredo, Lelia admitted having applied the loan proceeds amounting to ₱800,000 to Wilfredo's personal debt to her.

Continuing, Loreta alleged:

A verification from the Register of Deeds of Quezon City[4] revealed that the real estate mortgage in favor of KLII to secure a ₱800,000 loan was annotated on Loreta's titles. The copy of the document on file at the office of the Register of Deeds bore only Loreta's signature and it was notarized in the absence of Loreta.

Loreta and Jose thus sent telegrams to KLII and to the Register of Deeds of Quezon City requesting the setting aside of the transaction and the denial of registration of the mortgage, respectively, but to no avail.

Concluding that the real estate mortgage, promissory note, Solidbank check and "the other documents related thereto" were absolute nullities due to the absence of consideration and vitiated consent, Loreta prayed for their annulment[5] and for damages.[6]

In a related move, Loreta instituted a criminal complaint for estafa against Lelia, Wilfredo, and Magno, docketed as I.S. No. 88-498 at the Office of the City Fiscal of Dagupan City.[7] An Information for Estafa against the three was subsequently filed before the Dagupan City RTC, which was raffled to Branch 41 thereof and docketed as Criminal Case No. D-9840.[8]

In her Answer with Counterclaim,[9] Lelia denied being the owner of the controlling interest of KLII, claiming that she was only the lessor of the building which housed KLII's office.

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[4] Records, p. 4.

[5] *Id*. at 6.

[6] *Id*. at 6-7.

[7] *Id*. at 4.

[8] *Vide* records, p. 181.

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

And she denied knowledge of the ₱800,000 loan of Loreta from KLII, she claiming that

> The instant complaint is baseless and false, and was maliciously instigated by Jose U. Sim, using his mother as the complainant, purposely to harass and embarrass the herein defendant for having been slighted when the lat[t]er rejected his loan application and his request to intercede in his behalf in influencing the Kaunlaran Lending Investors to agree in the restructure of his alleged overdue account with it.[10]

Lelia thus prayed for the award of actual, moral and exemplary damages, attorney's fees, litigation expenses, and the costs of the suit.[11]

In his Answer with Compulsory Counterclaim,[12] Wilfredo claimed that his only participation in the transaction was to introduce Jose to Lelia and to sign as co-maker of the loan application. While he admitted that he had already signed the loan documents when they were brought to Loreta's residence for her signature, he claimed that it was Jose, not he, who brought them to Loreta.

In their joint Answer with Counterclaim,[13] KLII and Magno gave the following version:

After the application for loan was approved, Wilfredo and Loreta signed the promissory note and Loreta signed the real estate mortgage in the presence of Magno, Gonzales, Atty. Teofilo Guadiz III (Atty. Guadiz) who notarized the same, and other employees.

Atty. Guadiz and Rolando Tan, president and treasurer of KLII, respectively, thereupon signed and issued Solid Bank Check No. 0232250 for the amount of ₱800,000 in favor of Loreta who immediately endorsed it to KLII which changed it with cash.

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[10] *Id*. at 23-24.

[11] *Id*. at 25.

[12] *Id*. at 47-49.

[13] *Rollo*, pp. 92-100.

After Wilfredo and Loreta received the cash proceeds of the check, Loreta signed a discount statement and the check as proof of the receipt.

In the meantime, Jose, who had a pending long overdue loan with KLII, requested Magno for a restructuring of his loan account, but Magno informed him that the request could not be granted without Jose paying at least 50% of the principal amount and the interests and penalties in full. It appears that Jose could not comply with the condition; hence, his request was denied.

KLII later filed a petition to extra-judicially foreclose the mortgage executed by Jose.

The three defendants surmised that Loreta filed Civil Case No. D-9136 upon the "malicious instigation"[14] of Jose. They thus counterclaimed for actual, moral and exemplary damages, attorney's fees, litigation expenses, and the costs of the suit.[15]

Magno and KLII corroborated Lelia's denial of being the owner of the controlling interest in the company, she being merely the lessor of the building where KLII holds office.

On joint motion[16] of the prosecution and Loreta, Branch 41 of the Dagupan City RTC, by Order dated March 12, 1991, consolidated Criminal Case No. D-9840 with Civil Case No. D-9136.[17]

By Decision of March 3, 1994, the trial court dismissed the civil case[18] in light of the following findings:

1. That defendant Lelia Chua Sy is a part owner of Kaunlaran Lending Investors, Inc. is negated by the fact that the KLI[I] Board of Directors, were: Atty. Teofilo Guadiz III, Helen

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[14] *Id*. at 98.

[15] *Id*. at 98-99.

[16] Records, pp. 177-178.

[17] *Id*. at 196.

[18] The parties agreed on separate decisions for the criminal case and the civil case. *Id*. at 284.

Siquiat, Joseph Lee, Rolando Tan, Adson Chua and Jose Sy. Kaunlaran Lending Investors, Inc. is a lessee of [Lelia Chua Sy's] property. x x x

2. That Kaunlaran Lending Investors, Inc. had no money for the loan of ₱800,000.00 is negated by the fact that on January 28, 1988, KLI[I] financier Salome Cenidoza extended a loan to KLI[I] in the same amount of ₱800,000.00; and the books of Kaunlaran Lending Investors, Inc. indicated that KLI[I] had ₱1,700,288.10 cash on hand, as testified by Aurelia Lambino, KLI[I] book keeper. Before January 28, 1988, KLI[I] had granted loans of ₱1.5 million to Susan Go; ₱800,000.00 to Maramba; and ₱300,000.00 to Jose Sim.

3. That the check in question was not actually funded; was never encashed to the Solid bank and not a bonafide check; is negated by the fact that said check was encashed with the drawer KLI[I], which is a normal practice[,] and the discount disclosure xxx showing that she received ₱800,000.00 cash.

The evidence is clear that on January 28, 1988, **Loreta Uy and Wilfredo Chua received ₱800,00.00 cash** from Kaunlaran Lending Investors, Inc. What happened to the money after that[,] has not been clarified.

Granting arguendo, that Loreta Uy did not benefit with the amount of ₱800,000.00, then where is the money? **Since defendant Wilfredo Chua was with Loreta Uy when the latter received the loan proceeds, the disputable presumption is that he appropriated the amount for his own benefit**. Thus defraud[ing] Loreta Uy in said amount. But Wilfredo Chua did not testify to refute or dispute the presumption; thus, he can be held [liable] for damages.

x x x x x x x x x

There is no iota of evidence to show that defendant Lelia Chua Sy ever conspired with defendant Wilfredo Chua, so she cannot be liable for damages.[19] (Emphasis and underscoring supplied)

Thus the trial court disposed:

WHEREFORE, judgment is hereby rendered:

1. Dismissing the complaint as against defendants Kaunlaran Lending Investors, Inc., Lelia Chua Sy and Magno F. Zareno;

[19] *Id.* at 283-284.

2. Declaring the Real Estate Mortgage, Promissory Note and related documents in question valid and legal;

3. Ordering the plaintiff to pay to defendant Kaunlaran Lending Investors, Inc. the principal amount of ₱800,000.00, plus interest at 48% per annum starting March 28, 1988 until fully paid;

4. Ordering defendant Wilfredo Chua to pay to plaintiff:

   a. the amount of ₱800,000.00, plus interest at 12% per annum starting March 28, 1988, until fully paid;

   b. ₱100,000.00, as moral damages;

   c. ₱50,000.00, as exemplary damages;

   d. ₱20,000.00, as attorney's fees; and

   e. ₱3,000.00, as litigation expenses.

SO ORDERED.[20] (Underscoring supplied)

Parenthetically, the records of the case before this Court do not show how the trial court decided the criminal case.

All parties, except Magno who died on October 7, 1991,[21] appealed[22] including Lelia. KLII's appeal was only with respect to the non-award to it of damages, litigation expenses, and attorney's fees.

The Court of Appeals, by Decision[23] of April 11, 2002, reversed the trial court's decision, declaring the real estate mortgage and promissory note null and void. Thus it disposed:

WHEREFORE, the appealed decision is REVERSED and SET ASIDE, and another is rendered declaring null and void the promissory note and deed of real estate mortgage in dispute, and ordering the defendants-appellants to pay, jointly and severally, the plaintiff the

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[20] *Id.* at 284-285.

[21] *Id.* at 212.

[22] *Id.* at 286-290.

[23] Penned by Court of Appeals Associate Justice Salvador J. Valdez, Jr. with the concurrence of Associate Justices Mercedes Gozo-Dadole and Juan Q. Enriquez, Jr.; CA *rollo*, pp. 316-346.

amount of ₱100,000.00 for and as attorney's fees, inclusive of expenses of litigation. Costs against the appellants.

SO ORDERED.[24] (Underscoring supplied)

Lelia, Wilfredo, and KLII moved for reconsideration[25] which was denied,[26] prompting KLII and Lelia to file before this Court the present petition which faults the appellate court to have

1. gravely abused its discretion and evidently misappreciated the testimony of Magno Zareno by giving it credence, contrary to the findings of [the trial court] which heard and saw him testify;

2. erred in giving more credence to the witnesses for the private respondent, in direct contrast to the findings of [the trial court] which heard the witnesses and observed their demeanor[;]

3. erred in awarding attorney's fees of ₱100,000.00, when the award of moral and exemplary damages are not awarded. Moreover, the reason for the award was not explained in the decision.

In her Comment,[27] Loreta moves for the dismissal of the petition due to defective verification and certificate of non-forum shopping, adding that the petition raises factual issues.

Meanwhile, Loreta died on September 29, 2002[28] and has been substituted by her heirs Jose and her daughter Rosalia Sim Reate.[29]

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[24] *Id.* at 346.

[25] *Id.* at 355-359.

[26] *Id.* at 376.

[27] *Rollo*, pp. 215-225.

[28] *Id.* at 259-262.

[29] *Id.* at 264-270.

For failure of KLII to present proof that its president, Rolando Tan, was authorized to sign the verification and certificate of non-forum shopping on its behalf, the petition must be denied. Petitioners' argument that

> the certification was made by the President, who is given general supervision and control as chief executive officer from which [it] is to be inferred that contracts or acts done by the President in the ordinary course of business are presumed to be duly authorized, unless the contrary appears. In fact the by-laws of the Petitioner KLI[I] xxx gives him that authority.[30]

fails in light of this Court's ruling that

> In case of a corporation, it has long been settled that the certificate [of non-forum shopping] must be signed for and on its behalf by a *specifically authorized officer or agent* who has personal knowledge of the facts required to be disclosed.
>
> x x x x x x x x x
>
> Consequently, without the needed proof from the board of directors, the certificate would be considered defective. Thus, xxx even the regular officers of a corporation, like the chairman and president, may not even know the details required in a certificate of non-forum shopping; they must therefore be authorized by the board of directors just like any other officer or agent.[31] (Italics in the original)

The merits of the petition, however, justify the relaxation of the rule on verification and certificate of non-forum shopping, for from a review of the records Loreta has not proven by preponderance of evidence that she was deceived into signing the documents required for the release of the proceeds of the loan.

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[30] *Id.* at 227-228. Citation omitted.

[31] *Metro Drug Distribution, Inc. v. Narciso*, G.R. No. 147478, July 17, 2006, 495 SCRA 286, 293.

In overturning the finding of the trial court, the Court of Appeals credited the testimony of Magno, who testified as a hostile witness for Loreta, that Lelia sent him to Loreta's house to secure her signature on the loan documents in blank, and that Loreta did not receive any proceeds of the loan.[32] The Court of Appeals did not proffer any reason, however, for deviating from the trial court's assessment of Magno's credibility,[33] despite the oft-repeated doctrine that "findings of fact of the trial court carry great weight and are entitled to respect on appeal absent any strong and cogent reason to the contrary, since, it is in a better position to decide the question of credibility of witnesses."[34] Furthermore, Magno's testimony should be received with caution because it contradicts the earlier statements he had made under oath, such as the Counter-Affidavit[35] and Rejoinder[36] he filed in I.S. No. 88-498 and his verification of the joint Answer with Counterclaim he and KLII filed in Civil Case No. D-9136.[37]

> x x x [C]ourts do not generally look with favor on any retraction or recanted testimony, for it could have been secured by considerations other than to tell the truth and would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. A recantation does not necessarily cancel an earlier declaration, but like any other testimony the same is subject to the test of credibility and should be received with caution.[38]

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[32] CA *rollo*, pp. 338-341.

[33] *Vide* records, p. 284:

> The testimony of Magno Zareno which is a complete turn about from his counter-affidavit in I.S. No. 88-498, dated May 18, 1988, proved only one thing – [t]hat he was not credible[,] and x x x his testimony, not credible by itself; hence, the same cannot be given weight or credence.

[34] *People v. Atadero*, 435 Phil. 888, 905 (2002).

[35] Exhibit "6", exhibits folder II, pp. 12-14.

[36] Exhibit "3", exhibits folder I, pp. 2-3.

[37] *Rollo*, p. 100.

[38] *Francisco v. National Labor Relations Commission*, G.R. No. 170087, August 31, 2006, 500 SCRA 690, 701-702.

x x x The mere fact that a witness says that what he had declared is false and what he now says is true, is not sufficient ground for concluding that the previous testimony is false. No such reasoning has ever crystallized into a rule of credulity. The rule is that a witness may be impeached by a previous contradictory statement (Section 13, Rule 132, Rules of Court): not that a previous testimony is presumed to be false merely because a witness now says that the same is false.[39] (Underscoring supplied)

The Court of Appeals credited too the testimony of Jacobo Malicdem, a bookkeeper of Solidbank against which the ₱800,000.00 KLII check payable to Loreta was drawn, that KLII did not have the said amount in the bank as of January and February 1988.[40] Gratuitously assuming that to have been the case, it is irrelevant given the factual finding of the trial court that the check was converted to cash by the drawer-KLII itself,[41] which cash was received by Loreta as proven by her signature on the check and on the discount statement acknowledging receipt thereof.[42]

WHEREFORE, the petition is *GRANTED.* The decision of the Court of Appeals dated April 11, 2002 is *SET ASIDE,* and the decision of Branch 41 of the Regional Trial Court of Dagupan City in Civil Case No. D-9136 dated March 3, 1994 is *REINSTATED.*

SO ORDERED.

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

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[39] *People v. Mindac,* G.R. No. 83030, December 14, 1992, 216 SCRA 558, 572.

[40] CA *rollo,* p. 341.

[41] Records, p. 283. *Vide* TSN, March 3, 1992, pp. 10-14; TSN, August 13, 1993, p. 6; TSN; October 19, 1993, pp. 7-10.

[42] Exhibit "E", exhibits folder III.

FIRST DIVISION

[G.R. Nos. 156547-51. February 4, 2008]

MARIANO UN OCAMPO III, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. Nos. 156384-85. February 4, 2008]

ANDRES S. FLORES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; LOAN; A PERSON WHO RECEIVES A LOAN OF MONEY OR ANY OTHER FUNGIBLE THING ACQUIRES OWNERSHIP THEREOF AND IS BOUND TO PAY THE CREDITOR AN EQUAL AMOUNT OF THE SAME KIND AND QUALITY; APPLICATION IN CASE AT BAR.— The release of the funds was covered by a loan document in accordance with the MOA which states that the Province of Tarlac "shall release in lump sum the appropriate funds for the approved projects covered by **individual loan documents** upon signing of **the respective loan agreement…"** x x x It is clear that the funds released by the Province of Tarlac, including the money allegedly malversed by petitioners in Crim. Case Nos. 16794 and 16795, were in the nature of a loan to LTFI. Art. 1953 of the Civil Code provides that "[a] person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality." Hence, petitioner Ocampo correctly argued that the NALGU funds shed their public character when they were lent to LTFI as it acquired ownership of the funds with an obligation to repay the Province of Tarlac the amount borrowed. The relationship between the Province of Tarlac and the LTFI is that of a creditor and debtor. Failure to pay the indebtedness would give rise to a collection suit.

2. CRIMINAL LAW; CRIMES COMMITTED BY PUBLIC OFFICERS; MALVERSATION; DEFINED.— Malversation may be committed by appropriating public funds or property;

by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.

3. ID.; ID.; ID.; ELEMENTS.— The essential elements common to all acts of malversation under Art. 217 of the Revised Penal Code are: (a) That the offender be a public officer; (b) That he had the custody or control of funds or property by *reason of the duties of his office;* (c) That those funds or property were *public* funds or property *for which he was accountable;* (d) That he appropriated, took, misappppropriated or consented or, through abandonment or negligence, permitted another person to take them.

4. ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR. – There can be no malversation of public funds by petitioner Ocampo in the instant cases since the loan of ₱11.5 million transferred ownership and custody of the funds, which included the sum of money allegedly malversed, to LTFI for which Ocampo could no longer be held accountable. Thus, contrary to the allegation of the Office of the Special Prosecutor, petitioner Ocampo cannot be held culpable for malversation committed through negligence in adopting measures to safeguard the money of the Province of Tarlac, since the same were neither in his custody nor was he accountable therefor after the loan to LTFI. Thus, petitioner Flores, as the executive director of LTFI, cannot also be held liable for malversation of public funds in a contract of loan which transferred ownership of the funds to LTFI making them private in character. *Liwanag v. Court of Appeals* held: . . . in a contract of loan once the money is received by the debtor, ownership over the same is transferred. Being the owner, the borrower can dispose of it for whatever purpose he may deem proper. x x x What is controlling in the instant cases is that **the parties entered into a contract of loan for *each* release of NALGU funds.** The second release on October 24, 1988 included the subject funds in controversy. By virtue of the contract of loan, ownership of the subject funds was transferred to LTFI making them private in character, and therefore not subject of the instant cases of malversation of public funds.

5. CIVIL LAW; CONTRACTS; UNENFORCEABLE CONTRACTS; WHEN DEEMED RATIFIED; PRESENT IN CASE AT BAR.— The Court holds that since petitioner Ocampo was not duly authorized by the *Sangguniang Panlalawigan* to enter into the MOA, the agreement is an unenforceable contract under Sec. 1403 of the Civil Code: Art. 403. The following contracts are unenforceable, unless they are ratified: (1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers; x x x Unenforceable contracts are governed by the following provisions of the Civil Code: Art. 1404. **Unauthorized contracts are governed by Article 1317** and the principles of agency in Title X of this Book. Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law or right to represent him. A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, **unless it is ratified, expressly or impliedly,** by the person on whose behalf it has been executed, before it is revoked by the other contracting party. The Court finds that the MOA has been impliedly ratified by the *Sangguniang Panlalawigan* as it has not directly impugned the validity of the MOA despite knowledge of this controversy. Implied ratification is also shown by the following acts: 1) The *Sangguniang Panlalawigan* subsequently recognized the transfer of liabilities of LTFI in favor of the Province of Tarlac to BUILD in the amount of ₱40 million contained in a TMOA. 2) It authorized petitioner Ocampo to sign in behalf of the Province of Tarlac the Deed of Assignment entered into by the Province of Tarlac and LTFI which estinguished the remaining loan obligations of LTFI obtained under the MOA.

APPEARANCES OF COUNSEL

Ongkiko Kalaw Manhit & Acorda Law Offices for M.U. Ocampo III.

Fornier Fornier Saño & Lagumbay for A.S. Flores.

D E C I S I O N

AZCUNA, *J.*:

These are consolidated petitions for review on *certiorari*[1] of the Sandiganbayan's Decision promulgated on March 8, 2002 and its Resolution promulgated on January 6, 2003.

The Decision and Resolution of the Sandiganbayan held petitioners Mariano Un Ocampo III and Andres S. Flores guilty of malversation of public funds in Crim. Case Nos. 16794 and 16795.

The facts are as follows:

During the incumbency of President Corazon C. Aquino, Tarlac Province was chosen as one of the four provinces that would serve as a test case on decentralization of local government administration.

For this purpose, the Department of Budget and Management (DBM) released National Aid for Local Government Units (NALGU) funds in the total amount of ₱100 million to the Province of Tarlac. The NALGU is a fund set aside in the General Appropriations Act to assist local governments in their various projects and services. The distribution of this fund is entirely vested with the Secretary of the DBM.

Petitioner Ocampo, provincial governor of Tarlac from February 22, 1988 up to June 30, 1992, loaned out ₱56.6 million of the ₱100 million to the Lingkod Tarlac Foundation, Inc. (LTFI) for the implementation of various livelihood projects. The loan was made pursuant to a Memorandum of Agreement (MOA) entered into by the Province of Tarlac, represented by petitioner Ocampo, and LTFI, represented by petitioner Flores, on August 8, 1988.

LTFI is a private non-stock corporation with petitioner Ocampo as its first chairperson and petitioner Andres S. Flores as its

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

executive director. The Sandiganbayan, in its Resolution dated January 6, 2000, admitted the annexes[2] submitted by petitioner Ocampo, which annexes proved that petitioner Ocampo resigned as chairperson and trustee of the LTFI prior to August 8, 1988, the date when petitioner Ocampo and LTFI entered into the MOA.

How the ₱56.6 million released to LTFI was utilized became the subject matter of 25 criminal cases. In a Resolution in G.R. Nos. 103754-78 dated October 22, 1992,[3] this Court quashed 19 of the 25 Informations filed against petitioner Ocampo. The Fifth Division of the Sandiganbayan dismissed one case[4] on demurrer to evidence. In its Decision promulgated on March 8, 2002, the Fifth Division of the Sandiganbayan dismissed two[5] of five criminal cases for malversation of public funds against petitioners. On motion for reconsideration, the Sandiganbayan dismissed one[6] more case in a Resolution promulgated on January 6, 2003. The two remaining cases are the subject matters in the instant consolidated petitions.

The Informations of the remaining two cases filed on May 28, 1991 state:

Crim. Case No. 16794

That on or about the periods between November 2, 1988 to February 27, 1989, or sometime subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then the Governor of the province of Tarlac and at the same time President-Chairman of the Board of Trustees of the Lingkod Tarlac Foundation, Inc. (LTFI), a private entity, having received by reason of his position, public funds amounting to more than Fifty Two Million Pesos (₱52,000,000) x x x from the

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[2] Annexes "A", "B", and " C".

[3] *Governor Mariano UN Ocampo III v. The Honorable Sandiganbayan (Second Division) and Office of the Special Prosecutor.*

[4] Criminal Case No. 16786.

[5] Criminal Case Nos. 16796 and 16802.

[6] Criminal Case No. 16787.

National Aid for Local Government Unit (NALGU) funds, which he is accountable by reason of his official duties, did then and there with intent to defraud the government aforethought release out of the aforesaid funds thru the said LTFI, the amount of EIGHT MILLION EIGHT HUNDRED SIXTY THOUSAND PESOS (₱8,860,000) x x x for the payment of the importation of Juki Embroidery Machines which actually cost SEVEN MILLION SIX HUNDRED SEVENTY NINE THOUSAND FIVE HUNDRED THIRTY PESOS AND FIFTY TWO CENTAVOS (₱7,679,530.52) x x x thereby leaving a balance of ₱1,180,463.48 which ought to have been returned, but far from returning the said amount, accused Mariano Un Ocampo III, in connivance with his co-accused, Andres S. Flores and William Uy wilfully, unlawfully and feloniously misapply, misappropriate and convert for their own personal use and benefit the said amount resulting to the damage and prejudice of the government in the aforesaid sum of One Million One Hundred Eighty Thousand Four Hundred Sixty-Three Pesos and Forty- Eight Centavos (₱1,180,463.48).

CONTRARY TO LAW.

Crim. Case No. 16795

That on or about the periods between November 2, 1988 to February 27, 1989, or sometime subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then the Governor of the province of Tarlac, and at the same time President-Chairman of the Board of Trustees of the Lingkod Tarlac Foundation, Inc. (LTFI), a private entity, having received by reason of his position, public funds amounting to more than Fifty Two Million Pesos (₱52,000,000.00) x x x from the National Aid for Local Government Unit (NALGU) Funds, which he is accountable by reason of his official duties, caused the withdrawal by co-accused Andres S. Flores on April 28, 1989, then Executive Officer, LTFI, from the PHILIPPINE NATIONAL BANK LTFI account the sum of FIFTY EIGHT THOUSAND PESOS (₱58,000.00), portion of the said NALGU funds deposited by LTFI under Account No. 490-555744, both accused conniving and confederating with one another, with intent to gain and to defraud the government, did then and there, wilfully, unlawfully and feloniously misappropriate, misapply and convert the same to their own personal use and benefit to the damage and prejudice of the government in the aforesaid amount of ₱58,000.00, Philippine Currency.

CONTRARY TO LAW.[7]

[7] *Rollo* (G.R. Nos. 156547-51), Sandiganbayan Decision, pp. 46-47.

The Prosecution relied mainly on an audit conducted by the Commission on Audit on LTFI from February 12, 1990 up to April 2, 1990. The audit covered the period from July 1, 1988 to December 31, 1989 and was confined to the examination of the loans granted by the Provincial Government of Tarlac for the implementation of its Rural Industrialization Can Happen Program. The result of the audit was embodied in Special Audit Report No. 90-91, offered as Exhibit "B" by the prosecution.

According to the Sandiganbayan, the money trail with respect to the two cases, as proven by the prosecution, is as follows:

(1) Accused Ocampo released ₱11.5 Million to LTFI, **₱7,023,836.00** of which was intended for the purchase of 400 embroidery machines;

(2) The total amount released was deposited by LTFI to the Rural Bank of Tarlac, Inc.;

(3) Within two (2) months from the deposit, a total of **₱5,465,000.00** was withdrawn and given to William Uy (LTFI's broker for the importation of the machines);

(4) This amount (₱5,465,000) was thereafter deposited to the personal account of "Willam Uy and/or Andres Flores" under S/A No. 26127;

(5) Another account (PNB S/A No. 490-555744-6) was opened by "LTFI by Andres Flores," this time with PNB, intended solely for the purchase of the machines;

(6) A check in the amount of **₱3,395,000.00** dated February 27, 1989, was remitted for the payment of the machines;

(7) This amount, together with the **₱5,465,000.00** placed on the personal account of William Uy and/or Andres Flores, made up the cost of the machines or a total of **₱8,860,000.00** as recorded in the books of LTFI;

(8) To the PNB account was added a total of **₱4,332,261.00** deposited on different dates from March 6 to April 17, 1989 which funds came from S/A No. 26127;

(9) Thus, the total amount on deposit with PNB was **₱7,727,261.00** plus interest;

(10) Of this amount, **₱7,679,530.52** was used for the opening of the LC (for the payment of the machines) leaving a balance of **₱47,730,48.00** plus interest;

(11) Between the amount listed in the books of the corporation **(₱8,860,000)** and the amount of the LC **(₱7,679,530)**, a discrepancy of **₱1,180,496.48** existed.

(12) Between the total amount deposited in PNB S/A No. 490-555744-6 **(₱7,727,261.00)** and the total amount withdrawn from the account for the payment of the machines **(₱7,679,530.52)**, a balance of **₱47,730.48** remained. This balance (plus interest), in the amount of **₱58,000.00**, was later withdrawn upon authorization of accused Flores.[8]

Petitioner Ocampo did not testify regarding the subject cases on the ground that he was not competent to testify on the disbursements made by LTFI but only as to the receipt of the NALGU funds from the government.

The Sandiganbayan declared that petitioner Ocampo as governor of Tarlac, who personally received the NALGU funds from the DBM and thereafter released some of them to the LTFI, was duty bound to put up regular and effective measures for the monitoring of the projects approved by him.

According to the Sandiganbayan, Sec. 203(t) of the Local Government Code obligated provincial governors to "adopt measures to safeguard all the lands, buildings, records, monies, credits and other property rights of the province." However, petitioner Ocampo, as governor of Tarlac, neglected to set up safeguards for the proper handling of the NALGU funds in the hands of LTFI which resulted in the disappearance of ₱1,132,739 and ₱58,000 of the said funds. The Sandiganbayan held:

For such gross and inexcusable negligence, accused is liable for malversation. In so ruling, we are guided by the oft-repeated principle that malversation may be committed through a positive act of misappropriation of public funds or passively though negligence by allowing another to commit such misappropriation (*Cabello vs.*

[8] *Id.* at 84-85.

Sandiganbayan, 197 SCRA 94 [1991]). Although accused was charged with willful malversation, he can validly be convicted of malversation through negligence where the evidence sustains the latter mode of committing the offense (*Cabello, supra*).[9]

Further, the Sandiganbayan stated that under Sec. 203(f) of the Local Government Code of 1983,[10] the provincial governor, as chief executive of the provincial government, has the power to "represent the province in all its business transactions and sign on its behalf all bonds, contracts and obligations and other official documents made in accordance with law or ordinance."

Sec. 2 (c) of Rule XI[11] of the Rules and Regulations Implementing the Local Government Code of 1983 provides that the local chief executive of a local government unit shall "[r]epresent the respective local units in all their business transactions and sign on its behalf all bonds, contracts and obligations and other official documents made in accordance with law or ordinance." Sec. 2 of Rule VI[12] states that "[t]he power to sue, to acquire and convey real or personal property, and to enter into contracts shall be exercised by the local chief executive upon authority of the *Sanggunian* concerned." Thus, the Sandiganbayan declared that since the required authority from the *Sangguniang Panlalawigan* was not shown to have been obtained by petitioner Ocampo, the MOA is ineffective as far as the Province of Tarlac is concerned.

Petitioner Flores, as executive director of LTFI, was charged with malversation of public funds in connivance with a public officer. However, the Sandiganbayan found that there was no conspiracy between the petitioners, and held petitioner Flores guilty of malversation through his independent acts under Art. 222 of the Revised Penal Code,[13] since the purpose of

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[9] *Id.* at 89.

[10] Batas Pambansa Blg. 337.

[11] Powers and Duties of Local Executives.

[12] Corporate Powers and Seal.

[13] Art. 222. *Officers included in the preceding provisions.* – The provision of this chapter shall apply to private individuals who, in any capacity whatever,

Art. 222 is to extend the provisions of the Penal Code on malversation to private individuals. According to the Sandiganbayan, petitioner Flores bound himself, as a signatory of the MOA representing LTFI, to receive NALGU funds from the province of Tarlac. In such capacity, he had charge of these funds.

In Crim. Case No. 16794, petitioner Flores was found to have charge of missing NALGU funds deposited in his personal account in the amount of ₱1,132,739, which formed part of the discrepancy of the actual cost of the embroidery machines and the NALGU funds released for payment of the said machines.

In defense, petitioner Flores claimed that the broker for the importation of the machines made an initial payment to the supplier of the machines, which initial payment would explain the discrepancy between the reported cost as stated in the books of the corporation and the letter of credit. However, the Sandiganbayan stated that the explanation was hearsay as the broker was not presented in court, and there was no proof of the initial payment.

In Crim. Case No. 16795, the Sandiganbayan held that petitioner Flores' failure to explain the purpose of the withdrawal on April 28, 1989 of ₱58,000 upon his authorization, considering that he was in charge of the PNB savings account, made him liable for malversation of public funds.

Petitioners presented five documents to show that LTFI's obligations to the Province of Tarlac, in the amount of ₱56.6 million, have been extinguished. The documents are as follows:

1) The Tripartite Memorandum of Agreement (TMOA) dated May 23, 1990 executed by the Province of Tarlac, LTFI and the *Barangay* Unity for Industrial and Leadership Development (BUILD) Foundation whereby the liability of LTFI in favor of the Province of Tarlac was transferred and assumed by BUILD in the total amount of ₱40 million.

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have charge of any insular, provincial or municipal funds, revenues, or property attached, seized, or deposited by public authority even if such property belongs to a private individual.

2) Resolution No. 76 of the *Sangguniang Panlalawigan* of Tarlac dated April 5, 1990 showing that the authority of petitioner Ocampo in entering into the TMOA was with prior approval of the *Sangguniang Panlalawigan*.

3) A Deed of Assignment between Tarlac and LTFI whereby the latter assigned its loan portfolios (including interests and certificates of time deposit), the Juki embroidery machines and other assignable documents to the Province of Tarlac in the total amount of ₱16,618,403.

4) Resolution No. 199 of the *Sangguniang Panlalawigan* of Tarlac dated October 18, 1990 authorizing petitioner Ocampo to enter into the Deed of Assignment with LTFI.

5) A certified photocopy of a document dated June 16, 1992 issued by the OIC provincial treasurer of Tarlac whereby the treasurer affirmed the existence of the above documents.

The Sandiganbayan declared that the documents showing the extinguishment of LTFI's obligations to the Province of Tarlace do not mitigate the liability of petitioners since the crime is consummated as of asportation, akin to the taking of another's property in theft. It held that the return of the amount malversed is neither an exempting circumstance nor a ground for extinguishing the criminal liability of petitioners.

On March 8, 2002, the Fifth Division of the Sandiganbayan rendered a Decision acquitting petitioners of the crime of malversation of public funds in Crim. Case Nos. 16796 and 16802, but finding them guilty of the crime in Crim. Case Nos. 16787, 16794 and 16795. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, accused Mariano Un Ocampo III and Andres S. Flores are hereby found GUILTY beyond reasonable doubt of the crime of malversation of Public Funds under Crim. Case No. 16787 and are sentenced to suffer the indeterminate penalty of (10) years, and one (1) day of *prision mayor*, as minimum, to eighteen (18) years, eight (8) months and one (1) day of *reclusion temporal* as maximum and to pay a fine of sixty-six thousand nine hundred thirty-two pesos and seventy centavos (₱66,932.70). They

shall also suffer the penalty of perpetual special disqualification. Costs against the accused.

For Crim. Case No. 16794, accused Mariano Un Ocampo III and Andres S. Flores are hereby found GUILTY beyond reasonable doubt of the crime of Malversation of Public Funds and are sentenced to suffer the indeterminate penalty of (10) years, and one (1) day of *prision may*or, as minimum, to eighteen (18) years, eight (8) months and one (1) day of *reclusion temporal* as maximum and to pay a fine of one million one hundred thirty-two thousand seven hundred thirty-nine pesos (₱1,132,739.00). They shall also suffer the penalty of perpetual special disqualification. Costs against the accused.

For Crim. Case No. 16795, accused Mariano Un Ocampo III and Andres S. Flores are hereby found GUILTY beyond reasonable doubt of the crime of Malversation of Public Funds and are sentenced to suffer the indeterminate penalty of (10) years, and one (1) day of *prision may*or, as minimum, to eighteen (18) years, eight (8) months and one (1) day of *reclusion temporal* as maximum and to pay a fine of fifty-eight thousand pesos (₱58,000.00). They shall also suffer the penalty of perpetual special disqualification. Costs against the accused.

For Crim. Case No. 16796, on ground that the crime was not committed by the accused, accused Mariano Un Ocampo III and Andres S. Flores are hereby ACQUITTED of the crime charged. The surety bonds posted by them for their provisional liberty are cancelled.

For Crim. Case No. 16802, on ground of reasonable doubt, accused Mariano Un Ocampo III and Andres S. Flores are hereby ACQUITTED of the crime charged. The surety bonds posted by them for their provisional liberty are cancelled.

SO ORDERED.[14]

Petitioners separately filed a motion for reconsideration of the Decision.

In a Resolution promulgated on January 6, 2003, the Sandiganbayan reconsidered its Decision in Crim. Case No. 16787, and acquitted petitioners of the crime charged. In

[14] *Rollo,* (G.R. Nos. 156547-51), pp. 92-93.

that case, the prosecution alleged that ₱5 million of the NALGU funds loaned to LTFI were placed in time deposits with the Rural Bank of Tarlac and earned a total interest of ₱116,932.77, of which amount only ₱50,000.00 was recorded in the books of LTFI. The unrecorded interest of ₱66,932.77 was said to have been withdrawn from December 27, 1988 to February 2, 1989 and allegedly malversed by petitioners. The Sandiganbayan held that as this Court has already labeled the subject agreement as one of loan, the said "interest are private funds, hence, not the proper subject for malversation of public funds." Thus, petitioners were acquitted in Crim. Case No. 16787.

Petitioners thereafter filed their respective petitions, which were consolidated by the Court in a Resolution dated February 20, 2006.

The pertinent issues raised by petitioners may be summarized as follows:

1) Whether or not petitioners Ocampo and Flores are guilty of the crime of malversation of public funds under Art. 217 and Art. 220 respectively of the Revised Penal Code;

2) Whether or not the Sandiganbayan erred in holding that the MOA is void and did not bind the Province of Tarlac on the ground that the MOA was entered into by petitioner Ocampo without authority from the *Sangguniang Panlalawigan* in violation of the Local Government Code of 1983.

First Issue: Whether or not petitioners Ocampo and Flores are guilty of the crime of malversation of public funds under Art. 217 and Art. 220 respectively of the Revised Penal Code?

Crucial to the resolution of the first issue is the nature of the transaction entered into by the Province of Tarlac and LTFI.

Petitioners claim that in the instant cases, the public funds alleged to have been malversed were **loaned** by the Province of Tarlac to LTFI per the MOA; hence, LTFI acquired ownership of the funds which thus shed their public character and became private funds.

Petitioner Ocampo also asserts that the Sandiganbayan impliedly ruled that the funds were private in character and owned by LTFI when it ruled in Crim. Case No. 16787 that since this Court has already labeled the subject agreement as one of loan, the interests from the loan are private funds; hence, not the proper subject for malversation of public funds. Having declared the interests earned by the funds loaned to LTFI as private funds, the Sandiganbayan should have also declared the funds loaned as private.

Petitioners' arguments are meritorious.

The MOA states:

x x x x x x x x x

WHEREAS, the First Party [the Provincial Government of Tarlac], in order to vigorously pursue its livelihood program for rural development, has identified the need to establish a RICH (Rural Industrialization Can Happen) Program;

WHEREAS, the First Party now realizes the effectivity and efficiency of designating a professional private non-profit organization to implement the various livelihood projects under the RICH Program;

WHEREAS, the Second Party [Lingkod Tarlac Foundation], has represented that it has the technical expertise required by the First Party in the implementation of the various livelihood projects under the RICH Program;

WHEREAS, the First Party desires to engage the Second Party and the latter agrees as the implementing arm of the Provincial Government for its livelihood projects;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

ARTICLE I
UNDERTAKINGS OF THE FIRST PARTY

1. The First Party shall provide all the data and information as may be required by [the] Second Party in the implementation of the RICH Program;

ARTICLE III
DESCRIPTION OF THE PRIORITY PROJECTS

A. Program For Lease Purchase Agreements on equipment, machineries, buildings and structures:

x x x x x x x x x

B. Direct Lending Pogram:

Under this scheme, the Lingkod Tarlac Foundation shall engage in direct lending operations to proponents of livelihood activities under the Rural Industrialization Can Happen (RICH PROGRAM) at variable interest rates and loan conditions depending on the viability and nature of the livelihood projects availing of the loan.

C. Direct Borrowing by Lingkod Tarlac Foundation:

The Lingkod Tarlac Foundation shall be allowed <u>to borrow funds</u> directly from the Provincial government to fund Lingkod Tarlac Foundation projects provided the projects are livelihood projects under the Rural Industrialization Can Happen (RICH Program).

D. Other project financing schemes that may be developed for the RICH Program.

ARTICLE IV
CONDITIONS FOR RELEASE OF FUNDS

The First Party shall release in lump sum the appropriate funds for the approved projects **<u>covered by individual loan documents</u>** upon signing of [the] respective loan agreement and approval of the Commission on Audit.

ARTICLE V
TERMS OF REPAYMENT

1. The Second Party shall repay the First Party only the total amount of capital without interest in consideration of the following:

   a) The Second Party shall shoulder all its operating expenses.

   b) The Second Party shall not charge the Province any management fees or whatever fees.

c) The Second Party shall, whenever necessary, assure the beneficiaries of the project interests and management fees at rates lower than the commercial financial rates.

2. The terms of repayment shall be based on the projects' ability to pay without sacrificing on the projects viability.

ARTICLE VI
SUCCESSORS AND ASSIGNEES

Except as may be mutually agreed in writing, neither party can assign, sublet, or transfer its interest or duties under this Agreement.

ARTICLE VII
TERMS OF THE AGREEMENT

This Agreement shall exist for as long as the Program exists or any extension thereof.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on this 8th day of August, 1988 in Tarlac, Tarlac.

LINGKOD TARLAC FOUNDATION	PROVINCE OF TARLAC
Second Party	First Party
(Signed)	(Signed)
ANDRES S, FLORES	MARIANO UN OCAMPO III
Executive Director	Governor

CONCURRED IN BY:
(Signed)
GUILLERMO N. CARAGUE
Secretary of Budget
& Management

The MOA shows that LTFI is "allowed to borrow funds directly from the Provincial Government to fund Lingkod Tarlac Foundation projects provided the projects are livelihood projects under the Rural Industrialization Can Happen Program." Moreover, the agreement stipulates under the "Conditions for Release of Funds" that the Province of Tarlac "shall release in lump sum the appropriate funds for the approved projects covered by **individual loan documents** upon signing of **the respective loan agreement**...."[15]

[15] Emphasis supplied.

In Crim. Case No. 16794, the fund alleged to have been malversed in the amount of ₱1,180,496.48 represents the discrepancy of the cost of the Juki embroidery machines as listed in the books of LTFI and the amount actually paid to open the letter of credit for the payment of the machines. In the books of LTFI, the cost of the Juki embroidery machines was listed as ₱8,860,000, while the amount paid to open the letter of credit for the payment of the machines was ₱7,679,530.52. Petitioner Flores was held liable only up to the amount of ₱1,132,739.

In Crim. Case No. 16795, the fund alleged to have been malversed in the amount of ₱58,000 is the money left (₱47,730) in PNB S/A No. 490-555744-6 after the withdrawal of the purchase price of the Juki embroidery machines, plus interest. The amount of ₱58,000 was withdrawn upon the authorization of petitioner Flores. The withdrawal was neither reflected as deposit in the bank accounts of LTFI nor spent by it.

In both cases, the money trail proven by the prosecution shows that the subject funds or the money used for the purchase of the Juki embroidery machines came from the release of the Province of Tarlac through petitioner Ocampo of NALGU funds in the amount of ₱11.5 million to LTFI on October 24, 1988. The release of the funds was covered by a loan document in accordance with the MOA which states that the Province of Tarlac "shall release in lump sum the appropriate funds for the approved projects covered by **individual loan documents** upon signing of **the respective loan agreement**...."

The Report on the Special Audit of LTFI[16] stated:

. . . For the period July 1988 to December 1989, **LTFI received a total of ₱56.6 million which consisted of six releases and covered by individual loan agreements**, as follows:

Date	Amount
08 30 88	₱7,000,000
10 24 88	11,500,000

[16] Exhibit "B".

12 08 88	1,500, 000
02 22 89	4,000, 000
04 12 89	18,000, 000
06 14 89	12,718, 403
Total	₱56,618, 403

x x x x x x x x x

On October 24, 1988, the Provincial Government of Tarlac approved and released an amount of ₱11,500,000 to Lingkod Tarlac Foundation, Inc. (LTFI) for the Rural Industrialization Can Happen (RICH) Program. Of the amount released, ₱7,023,836 was intended for the purchase of 400 sets embroidery machines for the Embroidery Skills Training Project.[17]

Based on the foregoing, it is clear that the funds released by the Province of Tarlac, including the money allegedly malversed by petitioners in Crim. Case Nos. 16794 and 16795, were in the nature of a loan to LTFI.

Art. 1953 of the Civil Code provides that "[a] person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality."

Hence, petitioner Ocampo correctly argued that the NALGU funds shed their public character when they were lent to LTFI as it acquired ownership of the funds with an obligation to repay the Province of Tarlac the amount borrowed. The relationship between the Province of Tarlac and the LTFI is that of a creditor and debtor. Failure to pay the indebtedness would give rise to a collection suit.

The Sandiganbayan convicted petitioner Ocampo of malversation of public funds under Art. 217 of the Revised Penal Code for his "gross and inexcusable negligence" in not setting up safeguards in accordance with Sec. 203(t) of the Local Government Code [18] for the proper handling of the NALGU

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[17] Exhibit "B-3".

[18] Sec. 203. *Provincial Governor as Chief Executive of the Province; Powers and Duties*.— (1) The governor shall be the chief executive of the

funds in the hands of LTFI which resulted in the disappearance of ₱1,132,739 allegedly malversed in Crim. Case No. 16794 and the disappearance of ₱58,000 in Crim. Case No. 16795.

In his petition, petitioner Ocampo states that he made sure that proper safeguards were in place within LTFI to ensure the proper handling of NALGU funds by LTFI. On August 5, 1988, before the Province of Tarlac and LTFI entered into the MOA, LTFI's Articles of Incorporation were amended to add the following:

> TENTH: That no part of the net income of the Foundation shall inure to the benefit of any member of the Foundation and that at least seventy percent (70%) of the funds shall be used for the projects and not more than thirty percent (30%) of said funds shall be used for administrative purposes.

Petitioner Ocampo argues that since he had resigned from LTFI both as chairperson and as trustee on June 22, 1988, he ceased to become accountable for the handling of the NALGU funds after the same were loaned to LTFI pursuant to the MOA dated August 8, 1988. Consequently, he may not be held criminally liable for disbursements made by LTFI since he had nothing to do with its operations after his resignation.

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.[19]

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provincial government and shall exercise such powers and duties as provided in this Code and other laws.

(2) The governor shall:

x x x x x x x x x

(t) Adopt measures to safeguard all the lands, buildings, records, monies, credits and other property and rights of the province. . . .

[19] *Pondevida v. Sandiganbayan*, G.R. Nos. 160929-31, August 16, 2005, 467 SCRA 219, 241-242.

The essential elements common to all acts of malversation under Art. 217 of the Revised Penal Code[20] are:

(a) That the offender be a public officer;

(b) That he had the custody or control of funds or property *by reason of the duties of his office*;

(c) That those funds or property were *public* funds or property *for which he was accountable*;

(d) That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[21]

There can be no malversation of public funds by petitioner Ocampo in the instant cases since the loan of ₱11.5 million transferred ownership and custody of the funds, which included the sum of money allegedly malversed, to LTFI for which Ocampo could no longer be held accountable. Thus, contrary to the allegation of the Office of the Special Prosecutor, petitioner Ocampo cannot be held culpable for malversation committed through negligence in adopting measures to safeguard the money of the Province of Tarlac, since the same were neither in his

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[20] Art. 217. *Malversation of public funds or property – Presumption of malversation*.—Any public officer, who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

x x x x x x x x x

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

[21] *Supra*, note 19, at 242; Luis B. Reyes, *The Revised Penal Code*, Book 2, Fourteenth Edition, Revised 1998, p. 406.

custody nor was he accountable therefor after the loan to LTFI.

Thus, petitioner Flores, as the executive director of LTFI, cannot also be held liable for malversation of public funds in a contract of loan which transferred ownership of the funds to LTFI making them private in character. *Liwanag v. Court of Appeals*[22] held:

> . . . in a contract of loan once the money is received by the debtor, ownership over the same is transferred. Being the owner, the borrower can dispose of it for whatever purpose he may deem proper.

The Sandiganbayan erred when it stated that the intention of the parties was for the funds to remain public, citing the MOA which allegedly provided, thus:

> The Province shall have the right to have access to all resources and records of either LTF[I] or BUILD and may conduct COA examination or audit on any or all matter affecting the loans or assets covered by this agreement and funds from the Province of Tarlac.

A review of the MOA did not show the presence of such provision. But the cited provision is contained in the TMOA, which was later entered into by the Province of Tarlac, LTFI and BUILD, whereby LTFI transferred part of its obligation to BUILD.

What is controlling in the instant cases is that **the parties entered into a contract of loan for *each* release of NALGU funds.** The second release on October 24, 1988 included the subject funds in controversy. By virtue of the contract of loan, ownership of the subject funds was transferred to LTFI making them private in character, and therefore not subject of the instant cases of malversation of public funds.

The Court notes that the obligation of LTFI to repay the NALGU Funds of ₱56,618,403 obtained by it from the Province of Tarlac pursuant to the MOA was extinguished as follows:

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[22] G.R. No. 114398, October 24, 1997, 281 SCRA 225, 231.

(1) BUILD assumed LTFI's principal loan of ₱40 million;

(2) LTFI ceded, transferred and assigned to the Province of Tarlac all the rights and interests of LTFI in certain loans including interests, certificate of time deposit and certain Juki embroidery machines in the total amount of ₱16,618,403.

Second Issue: Whether or not the Sandiganbayan erred in holding that the MOA is void and did not bind the Province of Tarlac on the ground that the MOA was entered into by petitioner Ocampo without authority from the Sangguniang Panlalawigan in violation of the Local Government Code of 1983?

In its Resolution dated January 6, 2003, the Sandiganbayan concedes that the transaction between the Province of Tarlac through petitioner Ocampo and the LTFI was one of loan. However, it stated that since Ocampo was not authorized by the *Sangguniang Panlalawigan* to enter into the MOA as required by the Local Government Code of 1983, the MOA did not bind the province nor did it give any benefits to the LTFI because a void contract has no effect whatsoever.

Petitioner Ocampo alleges that he had ample authority to enter into the MOA for the following reasons:

1) NALGU funds received by the Province of Tarlac came straight from the national government and were intended for a specific purpose, that is, the implementation of various livelihood projects in the Province of Tarlac, as evidenced by the exchange of correspondence between him (petitioner Ocampo) and DBM Secretary Guillermo N. Carague.[23]

2) On July 15, 1988, the DBM released a revolving fund for the implementation of various livelihood projects in the Province of Tarlac under Advice Allotment No. BCS-0183-88-301.[24] In August 1988, he (petitioner

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[23] See Annex "D" and Annex "E", *rollo* (G.R. Nos. 156547-51), pp. 123-124.

[24] *Ibid.*

Ocampo) informed the DBM that the Province of Tarlac had designated LTFI as the implementing arm for its livelihood projects, and requested authority to extend loans to LTFI, which request was approved by the DBM Secretary.[25]

3) The DBM's approval of petitioner Ocampo's request constituted the authority of petitioner Ocampo to enter into the MOA with LTFI.

4) DBM also approved and concurred with the terms of the MOA as evidenced by the DBM Secretary's signature on the MOA.

Petitioner Ocampo also asserts that Sec. 203(f) of the Local Government Code of 1983,[26] which authorized the provincial governor to enter into business transactions on behalf of the province, did not expressly require the concurrence of the provincial board unlike its counterpart provision in the Local Government Code of 1991.[27]

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[25] Annex "E", *rollo* (G.R. Nos. 156547-51), p. 124.

[26] Sec. 203. *Provincial Governor as Chief Executive of the Province; Powers and Duties*.—(1) The governor shall be the chief executive of the provincial government and shall exercise such powers and duties as provided in this Code and other laws.

(2) The governor shall:

x x x x x x x x x

(a) Represent the province in all its business transactions and sign on its behalf all bonds, contracts and obligations and other official documents made in accordance with law or ordinance.

[27] Sec. 465. *The Chief Executive: Powers, Duties, Functions and Compensation*..— (a) The provincial governor, as the chief executive of the provincial government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

x x x x x x x x x

(1) Exercise general supervision and control over all programs, projects, services, and activities of the provincial government, and in this connection shall:

x x x x x x x x x

Further, petitioner Ocampo states that in any case, the lack of authority of one who enters into a contract in the name of another does not render the contract void under Art. 1409 of the Civil Code,[28] as ruled by the Sandiganbayan, but only unenforceable under Art. 1403(1) of the Civil Code. He points out that unenforceable contracts are susceptible of ratification, and in this case, the Provincial Board of Tarlac can be deemed to have ratified the MOA when it passed the following resolutions:

(1) Resolution No. 76, which confirmed and ratified the TMOA among the Province of Tarlac, LTFI and the BUILD, whereby the liability of LTFI in favor of the Province of Tarlac in the total amount of ₱40 million was transferred to and assumed by BUILD;[29] and

(2) Resolution No. 199, which authorized petitioner Ocampo to sign the Deed of Assignment between the Province of Tarlac and LTFI, whereby LTFI assigned loans, sewing machines and other assignable documents in favor of

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(vi) Represent the province in all its business transactions and sign in its behalf all bonds, contracts and obligations, and such other documents upon authority of the *sangguniang panlalawigan* or pursuant to law or ordinance.

[28] Art. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs,

public order or public policy;

(2) Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time of the transaction;

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[29] Annexes "F" and "G", *rollo*, pp. 147, 150.

the Province of Tarlac to settle the balance of its obligation in the amount of ₱16,618,403.00.[30]

The Court holds that since petitioner Ocampo was not duly authorized by the *Sangguniang Panlalawigan* to enter into the MOA, the agreement is an unenforceable contract under Sec. 1403 of the Civil Code:

Art. 403. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers; x x x.

Unenforceable contracts are governed by the following provisions of the Civil Code:

Art. 1404. **Unauthorized contracts are governed by Article 1317** and the principles of agency in Title X of this Book.

Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law or right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, **unless it is ratified, expressly or impliedly**, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.[31]

The Court finds that the MOA has been impliedly ratified by the *Sangguniang Panlalawigan* as it has not directly impugned the validity of the MOA despite knowledge of this controversy. Implied ratification is also shown by the following acts:

1) The *Sangguniang Panlalawigan* subsequently recognized the transfer of liabilities of LTFI in favor of the Province of Tarlac to BUILD in the amount of ₱40 million contained in a TMOA.[32]

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[30] Annexes "H" and "I", *id.* at 151, 153.

[31] Emphasis supplied.

[32] *Rollo,* p. 147.

2) It authorized petitioner Ocampo to sign in behalf of the Province of Tarlac the Deed of Assignment entered into by the Province of Tarlac and LTFI [33] which extinguished the remaining loan obligations of LTFI obtained under the MOA.

WHEREFORE, the consolidated petitions are *GRANTED*. The Decision of the Sandiganbayan promulgated on March 8, 2002 and its Resolution promulgated on January 6, 2003 are *SET ASIDE*. Petitioner Mariano Un Ocampo III and petitioner Andres S. Flores are hereby *ACQUITTED* of the crime of malversation of public funds in Crim. Case Nos. 16794 and 16795.

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 158557. February 4, 2008]

FERNANDO MONTECILLO, *petitioner, vs.* **IRMA PAMA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT WHEN AFFIRMED BY THE COURT OF APPEALS; EXCEPTIONS.— As a general rule, factual issues are not within the province of this Court. Factual findings of

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[33] *Id.* at 153.

the RTC, when adopted and confirmed by the Court of Appeals, become final and conclusive and may not be reviewed on appeal except (1) when the conclusion is grounded entirely on speculations, surmises or conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when there is no citation of specific evidence on which the factual findings are based; (7) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record; (8) when the findings of the Court of Appeals are contrary to the findings of the RTC; (9) when the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) when the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

2. ID.; ID.; CREDIBILITY OF WITNESSES; ASSESSMENT THEREOF BY THE TRIAL COURT IS ENTITLED TO GREAT WEIGHT AND RESPECT; RATIONALE.— The trial court's assessment of credibility of witnesses and their testimony is entitled to great weight and respect and even finality because of the trial court's unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Unless it is shown that the trial court has overlooked, misunderstood or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case, appellate courts are bound by the findings of facts of the trial court.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

R E S O L U T I O N

QUISUMBING, *J.*:

This petition for review seeks to reverse the Decision[1] dated September 19, 2002 and Resolution[2] dated May 22, 2003 of the Court of Appeals in CA G.R. CV No. 64978.

The instant case arose from a complaint for damages and specific performance that petitioner filed before the Regional Trial Court (RTC) of Makati City, Branch 136, against defendants therein Irma Pama, Librado Sardoma and Henry Balonzo. The complaint,[3] docketed as Civil Case No. 90-2767, alleged that the defendants illegally detained petitioner from March 25 to 27, 1988, and they confiscated his driver's license thereby preventing him from working for two years following the incident.

Petitioner alleged that he was a former driver of a Toyota Corona 4-door sedan co-owned and operated as a taxicab by Pama and Sardoma. On March 24, 1988, while he was in front of the Manila Peninsula Hotel in Makati City, Sardoma instructed him to pick up a lady passenger who had just come out of the hotel. The passenger allegedly directed petitioner to proceed to EDSA towards the direction of Cubao, Quezon City. Near Boni Avenue, Mandaluyong City, however, petitioner noticed a vehicle with its siren on. There were two men inside the vehicle signaling him to stop. When he did as told, the two men, who claimed to be members of the Philippine Constabulary, allegedly instructed him to follow them to Camp Crame, Quezon City.

Somewhere between Shaw Boulevard and Ortigas Avenue, the two men again signaled him to stop. They ordered him at gunpoint to disembark and leave the taxi with them. Then, the two men left with the taxi, with the lady passenger still inside.

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[1] *Rollo*, pp. 70-78. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Rodrigo V. Cosico and Edgardo F. Sundiam concurring.

[2] *Id*. at 80.

[3] *Id*. at 28-32.

Immediately, petitioner returned to the Manila Peninsula Hotel in Makati City to inform Sardoma of the incident. Sardoma, petitioner and other taxi drivers then reported the incident to the Mandaluyong Police.

Petitioner claimed that the defendants suspected him of having conspired in the carnapping. They allegedly restrained him of his liberty and compelled him to accompany them to look for the missing taxi. Petitioner also claimed that he was maltreated and physically abused to make him confess participation in the carnapping. He added that respondent Pama confiscated his driver's license and never returned it despite demands, thereby preventing him from working and earning income for two years. Thus, he prayed for actual as well as moral and exemplary damages.

In their answer with counterclaim,[4] the defendants denied that petitioner was their employee. They alleged that around 5:30 a.m. on March 24, 1988, petitioner drove the subject vehicle without authority from them or its authorized driver Roberto Imperial. After about half an hour, petitioner came back and told them that their taxi had been carnapped. They reported it to the Mandaluyong Police, then to the Anti-Carnapping Task Force at Camp Crame, Quezon City. The defendants denied that they detained petitioner for three days. They claimed that it was petitioner who volunteered to help look for the taxi since he was the only one who could recognize the carnappers. They likewise denied confiscating petitioner's license, averring that it was the authorities at the Anti-carnapping Unit who took petitioner's driver's license for records purposes.

On June 27, 1999, the RTC dismissed petitioner's complaint, as well as defendants' counterclaim.[5] The RTC ruled that petitioner failed to prove by clear and credible evidence that the defendants unlawfully confiscated his license and thereby prevented him from engaging in his usual profession as a driver.

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[4] *Id*. at 33-36.

[5] *Id*. at 37-40-A.

The court noted that petitioner pointed to respondent Pama at the trial as the person solely responsible for confiscating his license, but said that petitioner's bare assertions were insufficient to establish respondent Pama's liability.[6]

The Court of Appeals having dismissed petitioner's appeal on September 19, 2002 and denied the motion for reconsideration on May 22, 2003, petitioner filed the instant petition for review on *certiorari*.

Petitioner raises the sole issue:

WHETHER OR NOT PETITIONER FERNANDO MONTECILLO WAS ABLE TO ESTABLISH BY PREPONDERANCE OF EVIDENCE THE LIABILITY OF RESPONDENT IRMA PAMA AS THE LATTER HAS UNLAWFULLY CONFISCATED HIS DRIVER'S LICENSE, PURSUANT TO SECTION 1, RULE 133 OF THE RULES OF COURT.[7]

Petitioner contends that his testimony, standing alone, was sufficient to establish his claim for damages and that both the RTC and the Court of Appeals erred in not giving credence to his assertions. He stresses that preponderance is not necessarily with the greatest number and that preponderance can be established by the sole, uncorroborated testimony of one witness.

Respondent, for her part, opted to waive the filing of any responsive pleading. Hence, this case was submitted for resolution without comment.

The petition lacks merit.

Clearly, this petition calls for a review of the factual findings of the two lower courts. As a general rule, factual issues are not within the province of this Court. Factual findings of the RTC, when adopted and confirmed by the Court of Appeals, become final and conclusive and may not be reviewed on appeal except (1) when the conclusion is grounded entirely on speculations, surmises or conjectures; (2) when the inference

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[6] *Id*. at 40.

[7] *Id*. at 15.

is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when there is no citation of specific evidence on which the factual findings are based; (7) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record; (8) when the findings of the Court of Appeals are contrary to the findings of the RTC; (9) when the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) when the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[8] None of the said exceptions apply in this case.

In dismissing petitioner's appeal, the Court of Appeals held:

> . . . [T]he *onus probandi* lies on the appellant, who is duty bound to prove the veracity of the affirmative allegations in his complaint by a preponderance of evidence. Thus, appellant must prove that appellees had in fact detained and subjected him to an investigation. More importantly, appellant must prove that he was actually compelled by the appellees to surrender his driver's license, this being the crux of the controversy and the very basis of his complaint. To justify a judgment in his favor, appellant must therefore establish by a preponderance of evidence these essential facts.
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> Sadly though, We find that even the most cursory perusal of the evidence on record reveals the failure of the appellant to prove his complaint by a preponderance of evidence. The appellant merely relied on the strength of his testimony which, however, failed to stand against the test of logic and reason. In the same vein, appellant failed to present documentary evidence sufficient to prove or even corroborate his testimony with regard to the ultimate facts in issue.
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> . . . [A]s correctly ruled by the court *a quo*, appellant's claims have no legal or factual basis. We now quote, with approval, the following ruling made by the court *a quo*, to wit:

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[8] *Cirelos v. Hernandez*, G.R. No. 146523, June 15, 2006, 490 SCRA 625, 635.

> *"In the case at bench, the court observes that other than his bare assertions that Irma Pama confiscated his license, plaintiff failed to present any other evidence to corroborate the same. Plaintiff's sole and uncorroborated testimony is insufficient to establish the liability of the said defendant, Irma Pama. Hence, the court finds her not liable for the damages claimed, and consequently, plaintiff is not entitled to the relief prayed for*."

In fact, this Court, after a thorough examination of the records of this case, cannot ignore the inconsistencies which belie the testimony of the appellant. Implausible and contradictory, the court *a quo* gave no credence to appellant's testimony. [sic] For one, appellant failed to convince this Court that he was forcibly detained by the appellees when he in fact opted to stay with the appellees to look for the carnapped vehicle. Apart from his allegation that he was threatened by the appellees to stay, it is evident from his testimony that he had ample time to go home as there were times when he was left alone with only appellee Balonzo allegedly guarding him. . . .[9]

We find the above ruling supported by the records and find no reason to reverse it. The trial court's assessment of credibility of witnesses and their testimony is entitled to great weight and respect and even finality because of the trial court's unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Unless it is shown that the trial court has overlooked, misunderstood or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case, appellate courts are bound by the findings of facts of the trial court.[10] Petitioner has failed in this regard. He has not shown that the findings of fact below were reached arbitrarily or capriciously. There being no credible evidence to prove the basis for the claim of damages against respondent Pama, the RTC correctly dismissed his complaint.

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[9] *Rollo,* pp. 74-75.

[10] *People v. Sades*, G.R. No. 171087, July 12, 2006, 494 SCRA 716, 724.

WHEREFORE, the petition is *DENIED* for utter lack of merit. The Decision dated September 19, 2002 and the Resolution dated May 22, 2003 of the Court of Appeals in CA G.R. CV No. 64978 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 158848. February 4, 2008]

ESTEBAN YAU, *petitioner, vs.* **RICARDO C. SILVERIO, SR.,** *respondent.*

[G.R. No. 171994. February 4, 2008]

ARTURO MACAPAGAL, *petitioner, vs.* **HON. IRENEO LEE GAKO, JR., in his capacity as Presiding Judge of the Regional Trial Court of Cebu City, Branch 6, ESTEBAN YAU and Deputy Sheriff RUBEN S. NEQUINTO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF; EXECUTION OF JUDGMENT AFTER THE LAPSE OF FIVE YEARS FROM DATE OF ENTRY MAY BE ALLOWED BASED ON MERITORIOUS GROUNDS; SUSTAINED.— Section 6, Rule 39 of the 1997 Rules of Civil Procedure, as amended provides: Section 6. *Execution by motion or by independent action*. – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of

such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. It is clear from the above Rule that a judgment may be executed on motion within five years from the date of its entry or from the date it becomes final and executory. Thereafter, before barred by the statute of limitations, by action. However, there are instances where this Court allowed execution by motion even after the lapse of five years upon meritorious grounds. In *Francisco Motors Corporation v. Court of Appeals*, this Court held that in computing the time limit for enforcing a final judgment, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without *scire facias*. Thus, the time during which execution is stayed should be excluded, and the said time will be extended by any delay occasioned by the debtor. There had been instances where this Court allowed the execution by motion even after the lapse of five years. These exceptions have one common denominator, and that is, the delay is caused of occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage. While a litigant's right to initiate an action in court is fully respected, however, once his case has been adjudicated by a competent court in a valid final judgment, he should not be permitted to initiate similar suits hoping to secure a favorable ruling, for this will result to endless litigations detrimental to the administration of justice.

2. ID.; ID.; ID.; PRINCIPLE OF IMMUTABILITY OF FINAL JUDGMENT, EXPLAINED.— Upon finality of the judgment, the court loses its jurisdiction to amend, modify or alter the same. Except for correction of clerical errors or the making of *nunc pro tunc* entries which causes no prejudice to any party, or where the judgment is void, the judgment can neither be amended nor altered after it has become final and executory. This is the principle of immutability of final judgment. In *Lim v. Jabalde*, this Court further explained the necessity of adhering

to the doctrine of immutability of final judgments, thus: "Litigation must end and terminate sometime and somewhere and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be, not through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them." Every litigation must come to an end once a judgment becomes final, executory and unappealable. For just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment, which is the "life of the law." Any attempt to thwart this rigid rule and deny the prevailing litigant his right to savour the fruit of his victory must immediately be struck down. The statute of limitations has not been devised against those who wish to act but cannot do so, for causes beyond their control.

APPEARANCES OF COUNSEL

Rodriguez Berenguer & Guno for A. Macapagal.
Chuidian Law Office for R. Silverio, Sr.
*Romulo Mabanta Buenaventura Sayoc and Delos Angeles Law Office*s for E. Yau.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Before this Court are two (2) consolidated petitions, the first, docketed as **G.R. No. 158848,** is a petition for review on *certiorari*[1] of the Decision[2] dated September 22, 1999 and Resolution dated June 20, 2003 of the Court of Appeals in CA-G.R. SP No. 72202; and the other, **G.R. No. 171994,** is likewise

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Eliezer R. De Los Santos with Associate Justice Romeo A. Brawner (retired; now Comelec Commissioner) and Associate Justice Regalado E. Maambong concurring; *Rollo*, pp. 55-80.

a petition for review on *certiorari* assailing the Decision[3] dated August 24, 2005 and Resolution dated March 15, 2006 of the Court of Appeals in CA-G.R. SP No. 60106.

The undisputed facts are:

On January 22, 1981, Esteban Yau bought from the Philippine Underwriters Finance Corporation (Philfinance) Promissory Note No. 3447 issued by the Philippine Shares Corporation (PSC). Yau paid the amount of ₱1,600,000 to Philfinance for the note. The latter promised to return to him on March 24, 1981 his investment plus earnings of ₱29,866.67. Philfinance then issued postdated checks to Yau drawn against the Insular Bank of Asia and America, all maturing on March 24, 1981, for ₱1,600,000.00, ₱24,177.78 and ₱5,688.89. But when the checks were deposited in the bank, they were dishonored for insufficiency of funds. When Yau complained to the PSC, it denied having issued the promissory note.

Thus, on March 28, 1984, Yau filed a complaint[4] with the Regional Trial Court (RTC), Branch 6, Cebu City, for recovery of the value of the promissory note and for damages against Philfinance and the members of its board of directors, among whom were Ricardo C. Silverio, Sr., Pablo C. Carlos, Jr., Arturo Macapagal, Florencio Biagan, Jr., and Miguel Angel Cano.

Except for defendant Pablo C. Carlos Jr., all the other defendants failed to file their answers seasonably. Hence, the trial court issued an Order declaring them in default and allowing Yau to present his evidence *ex parte*. Pablo Carlos, Jr., although present during the hearing, did not present evidence in his defense.

Meanwhile, after the trial court denied their motion for reconsideration, Silverio and his co-defendants (except Pablo Carlos, Jr.), filed with the Court of Appeals a petition for *certiorari* and prohibition (docketed as CA-G.R. SP No. 04835), assailing

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[3] Penned by Associate Justice Pampio A. Abarintos with Associate Justice Mercedes Gozo-Dadole and Associate Justice Ramon M. Bato, Jr. concurring; *id.*, pp. 35-42.

[4] Docketed as Civil Case No. CEB-2058.

the Order of default. The appellate court, however, in its Decision dated March 10, 1986, dismissed the petition, holding that summonses were duly served and that defendants' failure to answer the complaint justifies the trial court's Order declaring them in default. Since they did not interpose an appeal, the Decision of the appellate court became final and executory on June 17, 1986. An entry of judgment was made on July 4, 1986.

On March 27, 1991, the trial court rendered its Decision in favor of Esteban Yau. The dispositive portion reads:

> WHEREFORE, judgment is rendered in favor of plaintiff and against defendants Philippine Underwriters Finance Corporation, Ricardo C. Silverio, Sr., Pablo C. Carlos, Jr., Arturo Macapagal, Florencio Biagan, Jr. and Miguel Angel Cano, ordering the latter, jointly and severally, to pay the former the following:
>
> (a) The principal amount of One Million Six Hundred Thousand (₱1,600,000) Pesos, representing the principal amount of the plaintiff's investment;
>
> (b) The amount of Ten Million Three Hundred Ninety-Seven Thousand Four Hundred Ninety-Four Pesos and 03/100 (₱10,397,494.03), representing the earnings which the plaintiff could have made on his investment as of December 31, 1989 and thereafter, legal interest on the principal amount of ₱1,600,000, until fully paid;
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> (c) The amount of One Hundred Thousand (₱100,000) Pesos as, and for moral damages;
>
> (d) The amount of Fifty Thousand (₱50,000) Pesos as, and for exemplary or corrective damages;
>
> (e) The amount of One Hundred Thirty-Seven Thousand Two Hundred Seven Pesos and 28/100 (₱137,207.28) as attorney's fees; Forty-Four Thousand Eighteen Pesos and 33/100 (₱44,018.33) as litigation expenses; and
>
> (f) The costs of the suit.

The Counterclaims interposed by the defendant Pablo C. Carlos, Jr. in his Answer, are dismissed.

SO ORDERED.[5]

Pablo Carlos, Jr. and Philfinance interposed an appeal to the Court of Appeals, docketed therein as CA-G.R. CV No. 33496. With respect to Silverio, Macapagal, Biagan, and Cano, their Notice of Appeal was dismissed for their failure to pay the docket fees. The Order of dismissal became final and executory on December 26, 1991 and an entry of judgment was made on April 21, 1992.

On July 31, 1992, the trial court, upon petitioner Yau's motion, issued an Order directing the execution of its Decision and, on September 17, 1992, issued the corresponding writ of execution.

In December 1992, the defendants' bank deposits were garnished by the sheriff. Also, the shares of Silverio in the Manila Golf and Country Club were sold at public auction for ₱2,000,000. As the judgment was only partially satisfied, the writ of execution was enforced against the other defendants, including Macapagal.

Silverio and Macapagal took separate courses of action. On February 2, 1993, Macapagal filed with this Court a petition for *certiorari* and prohibition, questioning the validity of the Decision of the trial court, its Order of execution and the writ of execution. The petition, however, was referred to the Court of Appeals, where it was docketed as CA-G.R. SP No. 31075 and raffled off to the Fourteenth Division. Eventually, the appellate court dismissed the petition on the ground that the same was barred, under the principle of *res judicata*, by its previous Decision in CA-G.R. SP No. 04835, upholding the validity of the trial court's Order of default.

On other hand, Silverio filed with the Court of Appeals (Special Eleventh Division) a petition for reinstatement of his appeal and annulment of the writ of execution, docketed as CA-G.R.

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[5] *Rollo,* G.R. No. 171994, pp. 52-53.

CV No. 33496. However, the appellate court denied the petition on the ground that the Order of the RTC dismissing the Notice of Appeal had become final and executory.

Macapagal then filed with this Court a petition for review on *certiorari*, docketed as G.R. No. 110610. Silverio likewise filed with this Court a similar petition, docketed as G.R. No. 113851. These petitions were consolidated because they arose out of the same facts. In its Decision dated April 18, 1997, this Court upheld the rulings of the Court of Appeals and dismissed their petitions. Their motions for reconsideration were denied with finality by this Court in its Resolution[6] dated October 8, 1998.

Considering that the judgment was not fully satisfied, the sheriff resumed the implementation of the writ. In 1999, he sent notices of garnishment to several banks in Manila against any existing account of Macapagal. Thereupon, Macapagal filed with the trial court a motion to quash the writ of execution on the ground that its lifetime has expired, contending that the judgment in Civil Case No. CEB- 2058 became final and executory in 1992, hence, can be enforced only within five (5) years therefrom or until 1997. After five (5) years and within ten (10) years from the entry of judgment, it may be enforced only by an independent civil action.

On January 28, 2000, the trial court issued an Order denying Macapagal's motion to quash the writ of execution. His motion for reconsideration was likewise denied in a Resolution dated May 22, 2000. The trial court held that there was an effective interruption or delay in the implementation of the writ of execution because he filed with the Court of Appeals and this Court various petitions.

Macapagal then filed with the Court of Appeals (Eighteenth Division) a petition for *certiorari*, docketed as CA-G.R. SP No. 60106. However, the appellate court, in its Decision dated August 24, 2005, dismissed the petition and denied the motion for reconsideration in its Resolution dated September 15, 2005.

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[6] *Macapagal v. Court of Appeals, et al.,* G.R. No. 110610 and *Silverio, et al. v. Court of Appeals, et al.*, G.R. No. 113851, October 8, 1998, 297 SCRA 429.

Hence, Macapagal filed with this Court the present petition, docketed as **G.R. No. 171994**.

Meanwhile, on October 31, 2000, the Court of Appeals rendered a Decision in CA-G.R. CV No. 33496 (appeal of defendants Philfinance and Pablo Carlos, Jr.). The dispositive portion reads:

"IN VIEW OF ALL THE FOREGOING, the appealed decision as hereby modified in such a way that the award of lost income is deleted and the legal interest to be paid on the principal amount of ₱1,600,000 be computed from the filing of the complaint at twelve (12%) percent until full payment thereof. On all other respect, the judgment stands. Costs against appellants.[7]

The aforesaid Decision became final and executory on March 21, 2001.

Sometime in 2001, the sheriff found that Silverio was a co-owner of three (3) houses located in Forbes Park and Bel-Air Village, Makati City, covered by TCT Nos. (147129)-137156, (436750)-137155 and (337033)-137154 of the Registry of Deeds, same city. Thus, on March 21, 2001, the sheriff served a Notice of Levy on a house and lot in Forbes Park. An auction sale was held on July 26, 2001 wherein Yau was declared the highest bidder, with a bid of ₱11,443,219.64 for the said house and lot covered by TCT No. (436750)-137155. On August 6, 2001, the sheriff issued the corresponding Certificate of Sale.

On December 7, 2001, Silverio filed with the trial court an *omnibus* motion praying that the levy on execution, the notice of auction sale and the certificate of sale be declared void. He contends that the writ of execution has become *functus officio* since more than five (5) years have elapsed from the finality of the judgment sought to be executed.

The trial court, in its Order of March 20, 2002, denied the *omnibus* motion. The trial court also denied his motion for reconsideration in an Order dated June 21, 2002.

Undaunted, Silverio filed with the Court of Appeals (Twelfth Division) a petition for *certiorari*, docketed as CA-G.R. SP

[7] *Rollo,* G.R. No. 158848, p. 60.

No. 72202, challenging the said Orders of the trial court. On April 15, 2003, the appellate court rendered its Decision granting the petition, thus:

> WHEREFORE, premises considered, the petition is GRANTED, and the assailed Orders of public respondent judge are REVERSED and SET ASIDE. The levy by respondent sheriff upon TCT No. (-147129)-137156, TCT No. (-436750)137155, and TCT No. (-337033-)137154, as well as the subsequent auction sale and transfer of the property covered by TCT No. (436750) 137155, are declared NULL and VOID. All annotations upon the titles to aforesaid properties pursuant to the levy are ordered cancelled. Costs against private respondent.
>
> SO ORDERED.[8]

Yau's motion for reconsideration was denied by the appellate court in its Resolution dated June 20, 2003.

Hence, Yau filed the instant petition for review on *certiorari*, docketed as G.R. No. 158848.

In view of the identity of the parties and the issues in G.R. No. 158848 and G.R. No. 171994, we resolved to consolidate the two petitions.

The principal and common issue in both petitions is whether the Decision rendered by the RTC in Civil Case No. CEB-2058 may no longer be enforced against Silverio and Macapagal since more than five (5) years have already lapsed from its finality.

Significantly, the Court of Appeals rendered conflicting Decisions. In the petition for *certiorari* (CA-G.R. SP No. 60106) filed by Macapagal assailing the trial court's Orders denying his motion to quash the writ of execution, the appellate court denied his petition. It sustained the trial court's ruling that its judgment may still be enforced despite the lapse of five years from the date it became final; and held that the delay in the implementation of the writ of execution was due to Macapagal's filing with the Court of Appeals and this Court various petitions.

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[8] *Id.,* p. 80.

Relative to Silverio's petition for *certiorari* (CA-G.R. SP No. 72202) questioning the trial court's Orders denying his *omnibus* motion to declare void the levy on execution, the auction sale and the certificate of sale, the Court of Appeals granted his petition. The appellate court ruled that the writ had become *functus officio* and could no longer be enforced since more than five years have elapsed from the finality of the trial court's judgment.

Section 6, Rule 39 of the 1997 Rules of Civil Procedure, as amended provides:

> Section 6. *Execution by motion or by independent action.* — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

It is clear from the above Rule that a judgment may be executed on motion within five years from the date of its entry or from the date it becomes final and executory. Thereafter, before barred by the statute of limitations, by action. However, there are instances where this Court allowed execution by motion even after the lapse of five years upon meritorious grounds.

In *Francisco Motors Corporation v. Court of Appeals*,[9] this Court held that in computing the time limit for enforcing a final judgment, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without *scire facias.* Thus, the time during which execution

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[9] G.R. Nos. 117622-23, October 23, 2006, 505 SCRA 8, citing *Lancita v. Magbanua,* 7 SCRA 42 (1963).

is stayed should be excluded, and the said time will be extended by any delay occasioned by the debtor.

There had been many instances where this Court allowed the execution by motion even after the lapse of five years. These exceptions have one common denominator, and that is, the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage.[10]

Here, the judgment of the trial court sought to be executed became final and executory on December 26, 1991. The writ of execution was issued on September 17, 1992. It could not be enforced for the full satisfaction of the judgment within the five-year period because Macapagal and Silverio filed with the Court of Appeals and this Court petitions challenging the trial court's judgment and the writ of execution. Such petitions suspended or interrupted the further enforcement of the writ.

As stated earlier, on April 18, 1997, this Court rendered its Decision in G.R. No. 110610 and G.R. No. 113851 dismissing the petitions of Macapagal and Silverio assailing the trial court's judgment in Civil Case No. CEB-2058. In 1998, this Court denied with finality their motions for reconsideration. And in the instant petitions, Macapagal and Silverio are attacking the validity of the writ of execution by the trial court. Because of their maneuvers, there has been a delay of sixteen (16) years in the enforcement of such judgment, reckoned from its finality on December 26, 1991 up to the present. Indeed, the enforcement of the trial court's judgment by motion has been interrupted by the acts of Macapagal and Silverio the judgment debtors.

Every litigation must come to an end. While a litigant's right to initiate an action in court is fully respected, however, once his case has been adjudicated by a competent court in a valid final judgment, he should not be permitted to initiate similar suits hoping to secure a favorable ruling, for this will result to endless litigations detrimental to the administration of justice.[11]

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[10] *Camacho v. Court of Appeals,* G.R. No. 118339, March 19, 1998, 287 SCRA 611, citing *Republic v. Court of Appeals,* 260 SCRA 344 (1996).

[11] *Id.*

Let it be stressed that with respect to Macapagal and Silverio the Decision of the trial court has attained finality. Such definitive judgment is no longer subject to change, revision, amendment or reversal. Upon finality of the judgment, the court loses its jurisdiction to amend, modify or alter the same. Except for correction of clerical errors or the making of *nunc pro tunc* entries which causes no prejudice to any party, or where the judgment is void, the judgment can neither be amended nor altered after it has become final and executory. This is the principle of immutability of final judgment.

In *Lim v. Jabalde*,[12] this Court further explained the necessity of adhering to the doctrine of immutability of final judgments, thus:

> "Litigation must end and terminate sometime and somewhere and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be, not through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them."

Every litigation must come to an end once a judgment becomes final, executory and unappealable. For just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment, which is the "life of the law." Any attempt to thwart this rigid rule and deny the prevailing litigant his right to savour the fruit of his victory must immediately be struck down.[13] The statute of limitations has not been devised against those

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[12] G.R. No. 36786, April 17, 1989, 172 SCRA 211 cited in *Seven Brother Shipping Corporation v. Oriental Assurance Corporation, supra.*

[13] *Seven Brother Shipping Corporation v. Oriental Assurance Corporation, supra,* citing *In Re: Petition for Clarification as to the Validity and Forceful Effect of Two (2) Final and Executory but Conflicting Decisions of the Honorable Supreme Court,* G.R. No. 123780, September 24, 2002, 389 SCRA 493.

who wish to act but cannot do so, for causes beyond their control.[14]

WHEREFORE, we *GRANT* the Petition of Esteban Yau in G.R. No. 158848 and *DENY* the petition of Arturo Macapagal in G.R. No. 171994. The Decision of the Court of Appeals in CA-G.R. SP No. 72202 is *REVERSED*, while the Decision of the Court of Appeals in CA-G.R. SP No. 60106 is *AFFIRMED*. The RTC, Branch 6, Cebu City, is directed to order its sheriff to continue the implementation of the writ of execution issued in Civil Case No. CEB-2058 until the award in favor of petitioner Esteban Yau shall have been fully satisfied.

Costs against Ricardo C. Silverio, Sr. and Arturo Macapagal.

SO ORDERED.

Puno, C.J. (Chairperson), Azcuna, Leonardo-de Castro, and *Reyes,* JJ.,* concur.

Corona, J., no part. Close relation to a party.

SECOND DIVISION

[G.R. No. 159240. February 4, 2008]

GREGORIO SILOT, JR., *petitioner, vs.* **ESTRELLA DE LA ROSA,** *respondent.*

1. LEGAL ETHICS; ATTORNEYS; CLIENT IS BOUND BY THE MISTAKES ARISING FROM NEGLIGENCE OF HIS OWN

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[14] *Lancita v. Magbanua, supra* at footnote 9.

[*] Additional member pursuant to Administrative Circular No. 84-2007.

COUNSEL; EXCEPTION; NOT PRESENT IN CASE AT BAR.— Well-entrenched is the rule that the client is bound by the mistakes arising from negligence of his own counsel. The only exception to this rule is, as the Court of Appeals itself cited in its decision, when the negligence is so gross that the client is deprived of his day in court. In our considered view, however, that exception does not find any application in this case. As the records would plainly show, Silot was not deprived of his day in court. Also, as the appellate court observed, he could have introduced evidence, testimonial or otherwise, in order to controvert or correct the admission made by his counsel. Said the appellate court: . . . As gleaned from the records, defendant-appellant Silot was not deprived of his day in court. He was given every opportunity to be heard through his pleadings and manifestations. He was also presented in open court to testify. As quoted earlier, Atty. Terbio, counsel for plaintiff-appellee de la Rosa, even repeatedly asked Atty. San Jose, defendant-appellant Silot's counsel, if he would admit the purpose for which the witness Ariel Goingo will testify to dispense with his testimony, and Atty. San Jose repeatedly answered that "We will admit that." And when asked by the judge if he will admit it, he answered that they will admit ₱2,504,000.00.

2. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; WHEN PRESENT.— In *People v. Hernandez*, we held that admissions made for the purpose of dispensing with proof of some facts are in the nature of judicial admissions, to wit: A stipulation of facts entered into by the prosecution and defense counsel during trial in open court is automatically reduced into writing and contained in the official transcript of the proceedings had in court. The conformity of the accused in the form of his signature affixed thereto is unnecessary in view of the fact that: "[…] an attorney who is employed to manage a party's conduct of a lawsuit […] has *prima facie* authority to make relevant admissions by pleadings, *by oral* or written *stipulation*, […] which unless allowed to be withdrawn are conclusive." In fact, **"judicial admissions are frequently those of counsel or of the attorney of record, who is, for the purpose of the trial, the agent of his client. When such admissions are made […] for the purpose of dispensing with proof of some fact, […] they bind the client, whether**

> **made during, or even after, the trial.** Worth stressing, in this connection, judicial admissions do not require proof and may not be contradicted in the absence of a prior showing that the admissions had been made through palpable mistake. Furthermore, in the case of *Toh v. Court of Appeals*, this Court emphasized the consequence of admitting and dispensing with the testimony of the proposed witness, thus: The Court sees no cogent reason why the said witness should be examined any further since his testimony as summarized in the offer made by counsel was expressly admitted by opposing counsel. With the said admission, the testimony of said witness is uncontroverted and even admitted as fact by opposing counsel.…

APPEARANCES OF COUNSEL

Esteban R. Abonal for petitioner.
Epifanio Ma. J. Terbio, Jr. for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review of the Decision[1] dated July 9, 2003 of the Court of Appeals in CA-G.R. CV No. 68062 entitled "*Estrella de la Rosa v. Gregorio Silot, Jr.*" The appellate court had affirmed with modification the Joint Decision[2] dated May 24, 2000 of the Regional Trial Court (RTC), Branch 61, Naga City, in Civil Case Nos. 97-3736 and 97-3750, and decreed as follows:

> WHEREFORE, premises considered, the assailed Joint Decision dated May 24, 2000 of the RTC, Branch 61, Naga City in Civil Cases Nos. 97-3736 and 97-3750 is hereby **AFFIRMED WITH MODIFICATION**, deleting the award for nominal damages and

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[1] *Rollo*, pp. 31-45. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Delilah Vidallon-Magtolis and Edgardo F. Sundiam concurring.

[2] *Id*. at 25-30. Penned by Judge Andres B. Rarsaga, Jr.

reducing the award of attorney's fees to Twenty Thousand (₱20,000.00) Pesos.

Other awards not otherwise modified or deleted stand.

SO ORDERED.[3]

As culled from the records by the Court of Appeals, the antecedent facts of this case are as follows:

On January 19, 1996, petitioner Gregorio Silot, Jr. and respondent Estrella de la Rosa entered into a contract for the construction of a dormitory-apartment building on Lot 1-A-9-D, Bagumbayan Sur, Naga City. They expressly agreed that Silot shall supply the labor and de la Rosa shall pay 33% of the total value of the materials purchased for the project. Upon turnover in February 1997 of the completed structure, the total cost of materials actually purchased was ₱2,504,469.65, 33% of which is ₱826,474.98. Silot required de la Rosa to pay a total of ₱1,018,000.00, or ₱191,525.02 more than the amount due. Through her son-in-law, de la Rosa confronted Silot about the overpayment but the latter refused to return the overpayment. After her repeated demands fell on deaf ears, de la Rosa filed a suit against Silot.

Silot, in retaliation, sued de la Rosa for insufficient payment, claiming that he was supposed to receive ₱1,281,872.40[4] but was only paid ₱1,008,000.00, thus still leaving a balance of ₱273,872.40.

The two cases were consolidated by the trial court.

During trial, however, Atty. San Jose, counsel for Silot, dispensed with the testimony of Ariel Goingo, a witness for de la Rosa. Atty. San Jose admitted Goingo's proposed testimony to the effect that in consideration of the 33% as mentioned in the contract, all the material supplies during the making of the additional works mentioned were already accounted for; that

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[3] *Id*. at 45.

[4] *Id*. at 94.

Silot was paid for all works that were performed as well as all materials supplied; that the total sum was ₱2,504,469.65, so that 33% of which is only ₱826,474.98; that de la Rosa paid the amount of ₱1,018,000.00; hence, there was an excess payment of ₱191,525.02; and that de la Rosa never received any demand from nor was she confronted by Silot regarding an alleged balance.[5]

Consequently, after trial, the RTC ruled in favor of de la Rosa and ordered Silot to return the overpaid amount, decreeing as follows:

> WHEREFORE, premises considered, Civil Case No. 3736 is hereby ordered DISMISSED for lack of merit; while in Civil Case No. 97-3750, defendant Gregorio Silot is hereby ordered to return the amount of ₱191,525.02 to the plaintiff, Estrella de la Rosa; to pay ₱100,000.00 for [a]ttorney's fees and ₱50,000.00 as nominal damages.
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> SO ORDERED.[6]

On appeal, the Court of Appeals affirmed the decision of the lower court. Hence, the instant petition wherein Silot assigned the following errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN CONSTRUING THE ADMISSION MA[D]E BY ATTY. SAN JOSE ON THE PURPOSE FOR THE TESTIMONY OF WITNESS ARIEL [GOINGO] AS ADMISSION OF EVIDENCE.

II.

THE HONORABLE COURT OF APPEALS ERRED IN DECIDING AND ORDERING PETITIONER-APPELLANT TO RETURN THE AMOUNT OF ₱191,525.02 TO RESPONDENT APPELLEE AND ALSO TO PAY ₱20,000.00 ATTORNEY[']S FEES.[7]

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[5] *Id*. at 36-37.

[6] *Id*. at 30.

[7] *Id*. at 13.

Simply stated, petitioner is raising the following issues to be resolved: (1) whether the admission by Atty. San Jose, counsel of petitioner Silot, constituted judicial admission of respondent's evidence; and (2) whether the appellate court erred in ruling that Silot should return the claimed amount of ₱191,525.02 to de la Rosa.

Petitioner Silot contends that his counsel Atty. San Jose merely admitted that the subject of Goingo's testimony was that stated in the offer of testimony, but he did not admit the truth or veracity of the testimony. Silot adds that Atty. San Jose could not and should not have admitted the testimony because he had no special power of attorney to enter into such stipulations or to compromise his client's right without the latter's direct intervention.[8]

Respondent de la Rosa counters that clients are bound by the admissions as well as the negligence of their counsel. She enumerates several Court decisions to support her contention, among them the following cases:

(1) *Ongson v. People*,[9] where petitioner was held bound by his unqualified admission that he received private complainant's demand letter with notice of dishonor. The admission binds him considering that he never denied receipt of the notice of dishonor.

(2) *Republic v. Sarabia*,[10] where the Court held that an admission made in the pleading cannot be controverted by the party making such admission and are conclusive as to him.

(3) *People v. Genosa*,[11] *Arroyo, Jr. v. Taduran*,[12] *Carandang v. Court of Appeals*,[13] in which cases the Court held that judicial

[8] *Id*. at 19.

[9] G.R. No. 156169, August 12, 2005, 466 SCRA 656, 677.

[10] G.R. No. 157847, August 25, 2005, 468 SCRA 142, 150.

[11] G.R. No. 135981, January 15, 2004, 419 SCRA 537, 562.

[12] G.R. No. 147012, January 29, 2004, 421 SCRA 423, 427.

[13] G.R. No. 85718, April 16, 1991, 195 SCRA 771, 776.

admissions are conclusive upon the party making it and may not be contradicted in the absence of prior showing that the admission had been made through palpable mistake, or no admission was in fact made.

(4) *People v. Razul*[14] and *Lim v. Jabalde*,[15] where it was held that stipulations are recognized as declarations constituting judicial admissions, hence, binding upon the parties.

Moreover, well-entrenched is the rule that the client is bound by the mistakes arising from negligence of his own counsel.[16] The only exception to this rule is, as the Court of Appeals itself cited in its decision, when the negligence is so gross that the client is deprived of his day in court.[17]

In our considered view, however, that exception does not find any application in this case. As the records would plainly show, Silot was not deprived of his day in court. Also, as the appellate court observed, he could have introduced evidence, testimonial or otherwise, in order to controvert or correct the admission made by his counsel. Said the appellate court:

…As gleaned from the records, defendant-appellant Silot was not deprived of his day in court. He was given every opportunity to be heard through his pleadings and manifestations. He was also presented in open court to testify. As quoted earlier, Atty. Terbio, counsel for plaintiff-appellee de la Rosa, even repeatedly asked Atty. San Jose, defendant-appellant Silot's counsel, if he would admit the purpose for which the witness Ariel Goingo will testify to dispense with his testimony, and Atty. San Jose repeatedly answered that "We will admit that." And when asked by the judge if he will admit it, he answered that they will admit ₱2,504,000.00.[18]

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[14] G.R. No. 146470, November 22, 2002, 392 SCRA 553, 578.

[15] G.R. No. 36786, April 17, 1989, 172 SCRA 211, 222.

[16] *Juani v. Alarcon*, G.R. No. 166849, September 5, 2006, 501 SCRA 135, 153; *Uy v. Adriano*, G.R. No. 159098, October 27, 2006, 505 SCRA 625, 648-649.

[17] *Rollo*, p. 41.

[18] *Id*. at 41-42.

More importantly, Silot's counsel clearly made admissions of the content of the testimony of witness Goingo, whose presentation was dispensed with. In *People v. Hernandez*,[19] we held that admissions made for the purpose of dispensing with proof of some facts are in the nature of judicial admissions, to wit:

> A stipulation of facts entered into by the prosecution and defense counsel during trial in open court is automatically reduced into writing and contained in the official transcript of the proceedings had in court. The conformity of the accused in the form of his signature affixed thereto is unnecessary in view of the fact that: "[…] an attorney who is employed to manage a party's conduct of a lawsuit […] has *prima facie* authority to make relevant admissions by pleadings, *by oral* or written *stipulation*, […] which unless allowed to be withdrawn are conclusive." (Italics supplied.) In fact, **"judicial admissions are frequently those of counsel or of the attorney of record, who is, for the purpose of the trial, the agent of his client. When such admissions are made** […] **for the purpose of dispensing with proof of some fact,** […] **they bind the client, whether made during, or even after, the trial**.[20] (Emphasis supplied.)

Worth stressing, in this connection, judicial admissions do not require proof and may not be contradicted in the absence of a prior showing that the admissions had been made through palpable mistake.[21]

Furthermore, in the case of *Toh v. Court of Appeals*,[22] this Court emphasized the consequence of admitting and dispensing with the testimony of the proposed witness, thus:

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[19] G.R. No. 108028, July 30, 1996, 260 SCRA 25.

[20] *Id*. at 38.

[21] RULES OF COURT, Rule 129, Section 4.

SEC. 4. *Judicial admissions*. — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[22] G.R. No. 140274, November 15, 2000, 344 SCRA 831.

The Court sees no cogent reason why the said witness should be examined any further since his testimony as summarized in the offer made by counsel was expressly admitted by opposing counsel. With the said admission, the testimony of said witness is uncontroverted and even admitted as fact by opposing counsel....[23]

On the issue of insufficient payment, Silot avers that he has rendered or provided labor for the total amount of ₱1,281,872.40, and that de la Rosa has benefited and profited from these labors.[24] Without the labors provided by Silot, the constructed building would not have been painted, provided with electrical works and other works which were additional works on the building, and that to sanction de la Rosa's claim would be to allow unjust enrichment on the part of de la Rosa.[25] However, this claim has been belied by the admission made by his own counsel, as plainly manifest in the transcript:

ATTY. TERBIO

The purpose for which this witness will testify are the following: If admitted, we are willing to dispense the testimony. **He will testify that in consideration of the 33% as mentioned in the contract, all the material supplies during the making of the additional works mentioned were all considered; he will testify that Silot was paid of all works that was performed as well as all materials supplied were considered, and that the sum total of which is ₱2,504,469.65 and 33% of which is ₱826,474.98, and that De la Rosa paid the total amount of ₱1,018,000.00, and therefore, there is an excess payment of ₱191,525.00; he will testify that De la Rosa never received the demand or was confronted by Silot regarding an alleged balance**, now, if the counsel wish to admit this.

ATTY. SAN JOSE

We admit that.

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[23] *Id.* at 837.

[24] *Rollo*, p. 22.

[25] *Id.*

ATTY. TERBIO

Because these are all evidentiary and this has not been adequately covered.

ATTY. SAN JOSE

We will admit that.[26] (Emphasis supplied.)

Clearly, given the circumstances of this case, the Court of Appeals did not err in ordering petitioner to return to respondent the amount of ₱191,525.02 overpayment.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Decision dated July 9, 2003 of the Court of Appeals in CA-G.R. CV No. 68062 is *AFFIRMED*. Petitioner Gregorio Silot, Jr. is hereby ordered to return the amount of ₱191,525.02 to respondent Estrella de la Rosa, and to pay ₱20,000.00 as attorney's fees. Costs against petitioner.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 159489. February 4, 2008]

FILIPINAS LIFE ASSURANCE COMPANY (now AYALA LIFE ASSURANCE, INC.), *petitioner, vs.* **CLEMENTE N. PEDROSO, TERESITA O. PEDROSO and JENNIFER N. PALACIO thru her Attorney-in-Fact PONCIANO C. MARQUEZ,** *respondents.*

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[26] *Id*. at 36; TSN, January 21, 2000, pp. 2-3.

SYLLABUS

CIVIL LAW; CONTRACTS; AGENCY; DEFINED AND CONSTRUED.— By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. The general rule is that the principal is responsible for the acts of its agent done within the scope of its authority, and should bear the damage caused to third persons. When the agent exceeds his authority, the agent becomes personally liable for the damage. But even when the agent exceeds his authority, the principal is still solidarily liable together with the agent if the principal allowed the agent to act as though the agent had full powers. In other words, the acts of an agent beyond the scope of his authority do not bind the principal, unless the principal ratifies them, expressly or impliedly. Ratification in agency is the adoption or confirmation by one person of an act performed on his behalf by another without authority. x x x . Innocent third persons should not be prejudiced if the principal failed to adopt the needed measures to prevent misrepresentation, much more so if the principal ratified his agent's acts beyond the latter's authority. The act of the agent is considered that of the principal itself. *Qui per alium facit per seipsum facere videtur*. "He who does a thing by an agent is considered as doing it himself."

APPEARANCES OF COUNSEL

Benedicto Verzosa Gealogo Burkley & Associates for petitioner.

Engelbert C. Caronan, Jr. for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on certiorari seeks the reversal of the Decision[1] and Resolution,[2] dated November 29, 2002 and

[1] *Rollo*, pp. 43-55. Penned by Associate Justice Renato C. Dacudao, with Associate Justices Eugenio S. Labitoria and Danilo B. Pine concurring.

[2] *Id*. at 56.

August 5, 2003, respectively, of the Court of Appeals in CA-G.R. CV No. 33568. The appellate court had affirmed the Decision[3] dated October 10, 1989 of the Regional Trial Court (RTC) of Manila, Branch 3, finding petitioner as defendant and the co-defendants below jointly and severally liable to the plaintiffs, now herein respondents.

The antecedent facts are as follows:

Respondent Teresita O. Pedroso is a policyholder of a 20-year endowment life insurance issued by petitioner Filipinas Life Assurance Company (Filipinas Life). Pedroso claims Renato Valle was her insurance agent since 1972 and Valle collected her monthly premiums. In the first week of January 1977, Valle told her that the Filipinas Life Escolta Office was holding a promotional investment program for policyholders. It was offering 8% prepaid interest a month for certain amounts deposited on a monthly basis. Enticed, she initially invested and issued a post-dated check dated January 7, 1977 for ₱10,000.[4] In return, Valle issued Pedroso his personal check for ₱800 for the 8%[5] prepaid interest and a Filipinas Life "Agent's Receipt" No. 807838.[6]

Subsequently, she called the Escolta office and talked to Francisco Alcantara, the administrative assistant, who referred her to the branch manager, Angel Apetrior. Pedroso inquired about the promotional investment and Apetrior confirmed that there was such a promotion. She was even told she could "push through with the check" she issued. From the records, the check, with the endorsement of Alcantara at the back, was deposited in the account of Filipinas Life with the Commercial Bank and Trust Company (CBTC), Escolta Branch.

Relying on the representations made by the petitioner's duly authorized representatives Apetrior and Alcantara, as well as having

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[3] *Id*. at 57-63. Penned by Judge Clemente M. Soriano.

[4] Records, p. 246.

[5] TSN, October 7, 1983, pp. 9-10.

[6] Records, p. 248.

known agent Valle for quite some time, Pedroso waited for the maturity of her initial investment. A month after, her investment of ₱10,000 was returned to her after she made a written request for its refund. The formal written request, dated February 3, 1977, was written on an inter-office memorandum form of Filipinas Life prepared by Alcantara.[7] To collect the amount, Pedroso personally went to the Escolta branch where Alcantara gave her the ₱10,000 in cash. After a second investment, she made 7 to 8 more investments in varying amounts, totaling ₱37,000 but at a lower rate of 5%[8] prepaid interest a month. Upon maturity of Pedroso's subsequent investments, Valle would take back from Pedroso the corresponding yellow-colored agent's receipt he issued to the latter.

Pedroso told respondent Jennifer N. Palacio, also a Filipinas Life insurance policyholder, about the investment plan. Palacio made a total investment of ₱49,550[9] but at only 5% prepaid interest. However, when Pedroso tried to withdraw her investment, Valle did not want to return some ₱17,000 worth of it. Palacio also tried to withdraw hers, but Filipinas Life, despite demands, refused to return her money. With the assistance of their lawyer, they went to Filipinas Life Escolta Office to collect their respective investments, and to inquire why they had not seen Valle for quite some time. But their attempts were futile. Hence, respondents filed an action for the recovery of a sum of money.

After trial, the RTC, Branch 3, Manila, held Filipinas Life and its co-defendants Valle, Apetrior and Alcantara jointly and solidarily liable to the respondents.

On appeal, the Court of Appeals affirmed the trial court's ruling and subsequently denied the motion for reconsideration.

Petitioner now comes before us raising a single issue:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR AND GRAVELY ABUSED ITS DISCRETION

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[7] *Id.* at 247.

[8] *Supra* note 5.

[9] Records, pp. 253-264.

IN AFFIRMING THE DECISION OF THE LOWER COURT HOLDING FLAC [FILIPINAS LIFE] TO BE JOINTLY AND SEVERALLY LIABLE WITH ITS CO-DEFENDANTS ON THE CLAIM OF RESPONDENTS INSTEAD OF HOLDING ITS AGENT, RENATO VALLE, SOLELY LIABLE TO THE RESPONDENTS.[10]

Simply put, did the Court of Appeals err in holding petitioner and its co-defendants jointly and severally liable to the herein respondents?

Filipinas Life does not dispute that Valle was its agent, but claims that it was only a life insurance company and was not engaged in the business of collecting investment money. It contends that the investment scheme offered to respondents by Valle, Apetrior and Alcantara was outside the scope of their authority as agents of Filipinas Life such that, it cannot be held liable to the respondents.[11]

On the other hand, respondents contend that Filipinas Life authorized Valle to solicit investments from them. In fact, Filipinas Life's official documents and facilities were used in consummating the transactions. These transactions, according to respondents, were confirmed by its officers Apetrior and Alcantara. Respondents assert they exercised all the diligence required of them in ascertaining the authority of petitioner's agents; and it is Filipinas Life that failed in its duty to ensure that its agents act within the scope of their authority.

Considering the issue raised in the light of the submissions of the parties, we find that the petition lacks merit. The Court of Appeals committed no reversible error nor abused gravely its discretion in rendering the assailed decision and resolution.

It appears indisputable that respondents Pedroso and Palacio had invested ₱47,000 and ₱49,550, respectively. These were received by Valle and remitted to Filipinas Life, using Filipinas Life's official receipts, whose authenticity were not disputed.

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[10] *Rollo*, p. 108.

[11] *Id.* at 109.

Valle's authority to solicit and receive investments was also established by the parties. When respondents sought confirmation, Alcantara, holding a supervisory position, and Apetrior, the branch manager, confirmed that Valle had authority. While it is true that a person dealing with an agent is put upon inquiry and must discover at his own peril the agent's authority, in this case, respondents did exercise due diligence in removing all doubts and in confirming the validity of the representations made by Valle.

Filipinas Life, as the principal, is liable for obligations contracted by its agent Valle. By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.[12] The general rule is that the principal is responsible for the acts of its agent done within the scope of its authority, and should bear the damage caused to third persons.[13] When the agent exceeds his authority, the agent becomes personally liable for the damage.[14] But even when the agent exceeds his authority, the principal is still solidarily liable together with the agent if the principal allowed the agent to act as though the agent had full powers.[15] In other words, the acts of an agent beyond the scope of his authority do not bind the principal, unless the principal ratifies them, expressly or impliedly.[16] Ratification in agency is the adoption or confirmation by one person of an act performed on his behalf by another without authority.[17]

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[12] CIVIL CODE, Art. 1868.

[13] *Lopez, et al. v. Hon. Alvendia, et al.*, 120 Phil. 1424, 1431-1432 (1964).

[14] *BA Finance Corporation v. Court of Appeals*, G.R. No. 94566, July 3, 1992, 211 SCRA 112, 118.

[15] CIVIL CODE, Art. 1911.

[16] *Id*., Art. 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly.

[17] *Manila Memorial Park Cemetery, Inc. v. Linsangan*, G.R. No. 151319, November 22, 2004, 443 SCRA 377, 394.

Filipinas Life cannot profess ignorance of Valle's acts. Even if Valle's representations were beyond his authority as a debit/insurance agent, Filipinas Life thru Alcantara and Apetrior expressly and knowingly ratified Valle's acts. It cannot even be denied that Filipinas Life benefited from the investments deposited by Valle in the account of Filipinas Life. In our considered view, Filipinas Life had clothed Valle with apparent authority; hence, it is now estopped to deny said authority. Innocent third persons should not be prejudiced if the principal failed to adopt the needed measures to prevent misrepresentation, much more so if the principal ratified his agent's acts beyond the latter's authority. The act of the agent is considered that of the principal itself. *Qui per alium facit per seipsum facere videtur*. "He who does a thing by an agent is considered as doing it himself."[18]

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision and Resolution, dated November 29, 2002 and August 5, 2003, respectively, of the Court of Appeals in CA-G.R. CV No. 33568 are *AFFIRMED.*

Costs against the petitioner.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[18] *Prudential Bank v. Court of Appeals,* G.R. No. 108957, June 14, 1993, 223 SCRA 350, 357.

SECOND DIVISION

[G.R. No. 161037. February 4, 2008]

NORMA S. FACTOR, FE S. FACTOR, HONESTO FACTOR DE LEON, MARILYN FACTOR BURGOS, RUEBEN* MA. FACTOR, BEATRIZ F. CHAN and NARCISO S. FACTOR, JR., *petitioners, vs.* **ANTONIO V. MARTEL, JR., represented by his attorney-in-fact, ATTY. NAPOLEON G. RAMA,**** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; WRIT OF POSSESSION; WHEN PROPER.— A writ of possession is employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment. It may be issued under the following instances: (1) land registration proceedings under Section 17 of Act No. 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135 as amended by Act No. 4118; and (4) in execution sales. In land registration proceedings, a writ of possession is an order issued by the RTC directing the sheriff to place the applicant or oppositors, or whoever is the successful litigant, in possession of the property. It is well established that a writ of possession may be issued only pursuant to a decree of registration in original land registration proceedings not only against the person who has been defeated in a registration case but also against anyone adversely occupying the land or any portion thereof during the proceedings up to the issuance of the decree. It is a settled rule that when parties against whom a writ of possession is sought have been in possession of the land for at least 10 years,

* Reuben in some parts of the records.

** The motion for substitution of Pepito L. Ng was noted by the Court in its Resolution dated August 15, 2005.

and they entered into possession apparently after the issuance of the final decree, and none of them had been a party in the registration proceedings, the writ of possession will not issue. A person who took possession of the land after final adjudication of the same in registration proceedings cannot be summarily ousted through a writ of possession secured by a mere motion. Regardless of any title or lack of title of persons to hold possession of the land in question, they cannot be ousted without giving them their day in court in the proper independent proceedings.

2. ID.; ID.; ID.; *ACCION REINVINDICATORIA*; DEFINED AND CONSTRUED.— *Accion reinvindicatoria* is an action to recover ownership over real property, which must be filed in the RTC where the realty is situated. This is so because a writ of possession cannot issue against possessors who claim ownership. Actual possession under claim of ownership raises a disputable presumption of ownership and the true owner must resort to judicial process for the recovery of the property, not summarily through a motion for the issuance of a writ of possession.

APPEARANCES OF COUNSEL

Martinez & Mendoza for petitioners.
Manuel S. Fonacier, Jr. for respondents.
Kapunan Tamano Villadolid and Associates for P. L. Ng.

D E C I S I O N

QUISUMBING, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated October 16, 2003 and Resolution[2] dated December 9, 2003 of the Court of Appeals in CA-G.R. SP No. 73906. The Court of Appeals had affirmed the Resolution[3] dated September 27, 2002

[1] *Rollo*, pp. 29-34. Penned by Associate Justice Eliezer R. De los Santos, with Associate Justices B.A. Adefuin-De la Cruz and Jose C. Mendoza concurring.

[2] *Id*. at 36.

[3] *Id*. at 60-63. Penned by Presiding Judge Elizabeth Yu Guray.

of the Regional Trial Court (RTC) of Las Piñas City, Branch 202, in Land Registration Case (LRC) Case No. 02-0030, and denied petitioners' motion for reconsideration.

The factual antecedents of this case are as follows:

Benito J. Lopez was the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. S-61176,[4] at Barrio Almanza, Las Piñas City. On December 29, 1993, Lopez sold the land to Antonio V. Martel, Jr. for ₱75,000,000.[5] The latter had the land subdivided into five lots for which individual titles were issued including TCT Nos. T-69568[6] and T-69572,[7] subjects of the present controversy.

On May 25, 1995, Martel, Jr. learned of a Decision[8] dated December 8, 1994 of the Pasig RTC,[9] Branch 71 which granted an application for registration and confirmation of title to parcels of land in LRC Case No. N-9049. Said case was filed on December 9, 1975 by Teodorica, Enrique, Beatriz, Rueben, Mario, and the heirs of Ricardo and Narciso, all surnamed Factor, as applicants. Their claim was based on possession since time immemorial of lands, among which was the lot covered by TCT No. T-57471[10] from which the title of Benito J. Lopez emanated.

Aggrieved, Benito J. Lopez and Pepito L. Ng, joined by their spouses as formal parties, filed on May 30, 1995 a motion for leave to admit petition to reopen and review the decree of registration.

On January 27, 1997, the Pasig RTC reversed its earlier Order which directed the issuance of a decree of registration in favor of the Factors, thus:

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[4] Records, pp. 99-100.

[5] *Id.* at 99-102.

[6] *Id.* at 103-105.

[7] *Id.* at 106-108.

[8] *Rollo*, pp. 145-152.

[9] Formerly the RTC of Rizal.

[10] Records, pp. 19-22.

WHEREFORE, premises considered, the Motion for Reconsideration, with Opposition to Motion for Reconsideration is hereby DENIED for lack of merit. The Decision dated December 8, 1994 is RECONSIDERED and SET ASIDE. The case is ordered DISMISSED without pronouncement as to costs.

SO ORDERED.[11]

On the strength of this ruling, Martel, Jr. filed an *ex parte* petition for the issuance of a writ of possession[12] over the lots covered by TCT Nos. T-69568 and T-69572. The case was docketed as LRC Case No. 02-0030 before the RTC of Las Piñas City, Branch 202, on March 15, 2002. In its Decision dated August 26, 2002, said RTC denied relief to Martel, Jr. as follows:

WHEREFORE, in view of all the foregoing, the petition for issuance of a writ of possession over the property covered by Transfer Certificates of Title No. T-69568 and T-69572 of the Registry of Deeds of Las Piñas City is hereby DENIED.

SO ORDERED.[13]

Martel, Jr. moved for reconsideration. The same was granted in a Resolution dated September 27, 2002 as follows:

WHEREFORE, in the light of the foregoing, the motion for reconsideration is hereby GRANTED. The Decision dated August 26, 2002 is set aside.

Let a writ of possession be issued in the favor of petitioner Antonio V. Martel, Jr. and against Teodorica Factor, *et al*., and all persons claiming rights under them and ordering the Deputy Sheriff of this Court to place said petitioner in possession of the subject property.

SO ORDERED.[14]

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[11] *Id.* at 114.

[12] *Rollo,* pp. 38-49.

[13] *Id*. at 54.

[14] *Id*. at 63.

Petitioners Factors brought the case to the Court of Appeals on *certiorari*. On October 16, 2003, the appellate court issued the assailed Decision, the *fallo* of which states:

> WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.
>
> SO ORDERED.[15]

Pending resolution of petitioners' motion for reconsideration, Martel, Jr. sold the lots to Pepito L. Ng for the sum of ₱151,800,000[16] on August 17, 2003. On December 9, 2003, the Court of Appeals denied reconsideration.

Hence, the instant petition raising the following issues:

> I.
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN ISSUING A WRIT OF POSSESSION IN LRC CASE NO. 02-0030.
>
> II.
>
> WHETHER OR NOT A PETITION FOR THE ISSUANCE OF A WRIT OF POSSESSION IS A PROPER ACTION TO TAKE POSSESSION OF THE PROPERTIES SUBJECT OF [THE] CASE.[17]

Simply put, petitioners are asking this Court to resolve the following questions: (1) whether the issuance of the writ of possession was erroneous; and (2) whether respondent had availed of the appropriate remedy to recover possession of the lands. Both questions are inter-related and have to be addressed jointly.

Petitioners contend that a writ of possession may be issued only pursuant to a decree of registration in an original land registration proceeding. They insist that the writ was erroneously issued inasmuch as the *ex parte* petition for its issuance was filed by Martel, Jr. outside the original land registration proceeding which was concluded in 1905. Petitioners stress that LRC Case

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[15] *Id*. at 33.

[16] *Id*. at 282-288.

[17] *Id*. at 382.

No. N-9049 was brought at their instance, and is still pending appeal; thus, no execution can be had. They contend that Martel, Jr.'s successor Ng ought to file an action for ejectment instead.

Ng counters that the right of a successful party in a land registration case to ask for a writ of possession does not prescribe. He adds that the writ may issue not only against the person defeated in the case but also against anyone adversely occupying the land or any part thereof during the proceeding until the final decree of registration has been issued. He relies on petitioners' allegation in LRC Case No. N-9049 that they and their predecessors-in-interest have been in continuous possession of the lots since time immemorial. Consequently, they are among those against whom the writ of possession may issue. Ng negates laches reasoning that his predecessor immediately filed an opposition upon learning of LRC Case No. N-9049, and applied for a writ of possession even while the case was on appeal.

After a thorough consideration of the circumstances in this case, we agree that the petition has merit.

A writ of possession is employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment.[18] It may be issued under the following instances: (1) land registration proceedings under Section 17 of Act No. 496;[19]

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[18] H. BLACK, BLACK'S *LAW DICTIONARY* 1611 (6th ed.).

[19] The Land Registration Act.

SEC. 17. The Court of Land Registration, in all matters over which it has jurisdiction, may enforce its orders, judgments, or decrees in the same manner as orders, judgments, and decrees are enforced in the Courts of First Instance, **including a writ of possession directing the governor or sheriff of any province or of the city of Manila to place the applicant in possession of the property covered by a decree of the court in his favor** and, upon the request of the judge of the Court of Land Registration, the governor or sheriff of any province or of the city of Manila, as the case may be, shall assign a deputy to attend the sittings of the court in that province or city. The governor or sheriff of the province who shall, in person or by his deputy, attend the sittings of the court in any province outside the city of Manila, in

(2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135[20] as amended by Act No. 4118;[21] and (4) in execution sales.

In land registration proceedings, a writ of possession is an order issued by the RTC directing the sheriff to place the applicant or oppositors, or whoever is the successful litigant, in possession of the property.[22]

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accordance with the provisions of this section, shall be allowed three dollars per day, in money of the United States, for each day the courts is in session in his province for attendance by himself and necessary deputies. This allowance shall be in addition to the fees for service of process, and shall be paid from the provincial treasury.

[20] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[21] *Mendoza v. Salinas*, G.R. No. 152827, February 6, 2007, 514 SCRA 414, 420.

[22] A. NOBLEJAS, *REGISTRATION OF LAND TITLES AND DEEDS* 127 (1992 revised ed.).

In this case, Ng advanced two grounds for the allowance of the *ex parte* petition for a writ of possession: (1) a writ has yet to be issued to enforce the decree of registration awarded to his predecessors-in-interest in the original land registration proceedings; and (2) the Court of Appeals favorably resolved Martel, Jr.'s opposition to the registration of the lots in the name of petitioners.

Ng invokes Original Certificate of Title (OCT) No. 25 issued on January 20, 1905 by virtue of Decree No. 428 in the original land registration case. OCT No. 25 is the title from which TCT No. S-61176 in the name of Benito J. Lopez, and thereafter TCT Nos. T-69568 and T-69572 in the name of his predecessor, Martel, Jr., were derived. Ng's invocation rests on petitioners' claim that they and their predecessors-in-interest had continuously possessed the lots since time immemorial; thus, by tacking the latter's possession to petitioners, a writ of possession may issue against petitioners who are considered adverse possessors of the lots even prior to the issuance of the decree in 1905. On this point, however, we are unable to agree with Ng.

It is well established that a writ of possession may be issued only pursuant to a decree of registration in original land registration proceedings not only against the person who has been defeated in a registration case but also against anyone adversely occupying the land or any portion thereof during the proceedings up to the issuance of the decree.[23]

Here, petitioners applied for registration and confirmation of the land covered by TCT No. S-61176 in 1975, long after the decree of registration was issued in 1905. Neither were petitioners parties to the original registration case. Clearly, they are not the adverse occupants contemplated by law against whom a writ of possession may be enforced. Hence, the appellate court erred gravely when it issued a writ of possession in favor of Martel, Jr.

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[23] *Serra Serra v. Court of Appeals*, G.R. Nos. 34080 and 34693, March 22, 1991, 195 SCRA 482, 490.

It is a settled rule that when parties against whom a writ of possession is sought have been in possession of the land for at least 10 years, and they entered into possession apparently after the issuance of the final decree, and none of them had been a party in the registration proceedings, the writ of possession will not issue. A person who took possession of the land after final adjudication of the same in registration proceedings cannot be summarily ousted through a writ of possession secured by a mere motion. Regardless of any title or lack of title of persons to hold possession of the land in question, they cannot be ousted without giving them their day in court in the proper independent proceedings.[24]

Ng's predecessor, Martel, Jr., filed the *ex parte* petition to implement the Order dated January 27, 1997 of the Pasig RTC in LRC Case No. N-9049. The Order confirmed ownership of the lots in Martel, Jr.'s predecessor, Lopez. In a Manifestation dated August 15, 2007, Ng informed this Court that the Court of Appeals had affirmed the decision in LRC Case No. N-9049. Ultimately, he wants us to execute the Pasig RTC decision in LRC Case No. N-9049 through the petition before the Las Piñas RTC in LRC Case No. 02-0030. However, such a procedural short-cut cannot be done.

Noteworthy, Section 34 of Presidential Decree No. 1529 provides:

> SEC. 34. *Rules of procedure*. — The Rules of Court shall, insofar as not inconsistent with the provisions of this Decree, be applicable to land registration and cadastral cases by analogy or in a suppletory character and whenever practicable and convenient.

Thus, Section 1, Rule 39 of the Rules of Court is pertinent:

> **SECTION 1.** *Execution upon judgments or final orders.* Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

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[24] *Bernas v. Nuevo*, G.R. Nos. 58438 and 60423, January 31, 1984, 127 SCRA 399, 402-403.

If the appeal has been duly perfected and *finally resolved*, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion *in the same case*, when the interest of justice so requires, direct the court of origin to issue the writ of execution. (Emphasis supplied).

Nothing in Ng's manifestation indicated that the appellate court's decision has become final and executory. Besides, even if the same has become final, a writ of possession remains unavailing as the motion for its issuance was not filed in the same case for which execution was sought.

Pending the final outcome of LRC Case No. N-9049, the only remedy by which Ng can take possession of the lots is through an *accion reinvindicatoria* against petitioners. *Accion reinvindicatoria* is an action to recover ownership over real property, which must be filed in the RTC where the realty is situated. This is so because a writ of possession cannot issue against possessors who claim ownership. Actual possession under claim of ownership raises a disputable presumption of ownership and the true owner must resort to judicial process for the recovery of the property, not summarily through a motion for the issuance of a writ of possession.[25]

WHEREFORE, the petition is *GRANTED*. The Decision dated October 16, 2003, and Resolution dated December 9, 2003 of the Court of Appeals in CA-G.R. SP No. 73906 are *REVERSED* and *SET ASIDE*. LRC Case No. 02-0030 is hereby *DISMISSED*.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[25] *Serra Serra v. Court of Appeals, supra* note 23, at 491-492.

THIRD DIVISION

[G.R. No. 161803. February 4, 2008]

DY TEBAN TRADING, INC., *petitioner, vs.* **JOSE CHING AND/OR LIBERTY FOREST, INC. and CRESILITO M. LIMBAGA,** *respondents.*

SYLLABUS

1. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; *QUASI-DELICTS*; REQUISITES.— Article 2176 of the Civil Code provides that whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict*. To sustain a claim based on *quasi-delict*, the following requisites must concur: (a) damage suffered by plaintiff; (b) fault or negligence of defendant; and (c) connection of cause and effect between the fault or negligence of defendant and the damage incurred by plaintiff.

2. ID.; ID.; ID.; ID.; NEGLIGENCE; DEFINED.— Negligence is defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. The Supreme Court stated the test of negligence in the landmark case *Picart v. Smith* as follows: The test by which to determine the existence or negligence in a particular case may be stated as follows*:* Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

3. ID.; ID.; ID.; ID.; PROXIMATE CAUSE, CONSTRUED.— Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. More comprehensively, proximate cause is that cause acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom. There is no exact mathematical formula to determine proximate cause. It is based upon mixed considerations of logic, common sense, policy and precedent. Plaintiff must, however, establish a sufficient link between the act or omission and the damage or injury. That link must not be remote or far-fetched; otherwise, no liability will attach. The damage or injury must be a natural and probable result of the act or omission.

4. ID.; ID.; ID.; LIABILITY OF JOINT TORTFEASORS IS JOINT AND SOLIDARY; SUSTAINED.— Due process dictates that the passenger bus must be given an opportunity to present its own version of events before it can be held liable. Any contributory or proportionate liability of the passenger bus must be litigated in a separate action, barring any defense of prescription or laches. Insofar as petitioner is concerned, the proximate cause of the collision was the improper parking of the prime mover. It was the improper parking of the prime mover which set in motion the series of events that led to the vehicular collision. Even granting that the passenger bus was at fault, it's fault will not necessarily absolve private respondents from liability. If at fault, the passenger bus will be a joint tortfeasor along with private respondents. The liability of joint tortfeasors is joint and solidary. This means that petitioner may hold either of them liable for damages from the collision. In *Philippine National Construction Corporation v. Court of Appeals*, this Court held: According to the great weight of authority, where the concurrent or successive negligent acts

or omission of two or more persons, although acting independently of each other, are, in combination, the direct and proximate cause of a single injury to a third person and it is impossible to determine in what proportion each contributed to the injury, either is responsible for the whole injury, even though his act alone might not have caused the entire injury, or the same damage might have resulted from the acts of the other tort-feasor x x x. In *Far Eastern Shipping Company v. Court of Appeals*, the Court declared that the liability of joint tortfeasors is joint and solidary, to wit: It may be said, as a general rule, that negligence in order to render a person liable need not be the sole cause of an injury. It is sufficient that his negligence, concurring with one or more efficient causes other than plaintiff's, is the proximate cause of the injury. Accordingly, where several causes combine to produce injuries, a person is not relieved from liability because he is responsible for only one of them, it being sufficient that the negligence of the person charged with injury is an efficient cause without which the injury would not have resulted to as great an extent, and that such cause is not attributable to the person injured. It is no defense to one of the concurrent tortfeasors that the injury would not have resulted from his negligence alone, without the negligence or wrongful acts of the other concurrent tortfeasors. Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes and recovery may be had against any or all of the responsible persons although under the circumstances of the case, it may appear that one of them was more culpable, and that the duty owed by them to the injured person was not the same. No actor's negligence ceases to be a proximate cause merely because it does not exceed the negligence of other actors. Each wrongdoer is responsible for the entire result and is liable as though his acts were the sole cause of the injury. There is no contribution between joint tortfeasors whose liability is solidary since both of them are liable for the total damage. Where the concurrent or successive negligent acts or omissions of two or more persons, although acting independently, are in combination with the direct and proximate cause of a single injury to a third person, it is impossible to determine in what proportion each contributed to the injury and either of them is responsible for the whole

injury. Where their concurring negligence resulted in injury or damage to a third party, they become joint tortfeasors and are solidarily liable for the resulting damage under Article 2194 of the Civil Code.

APPEARANCES OF COUNSEL

Wilfred D. Asis for petitioner.
Ongkiko Kalaw Manhit & Acorda Law Offices for respondents.

D E C I S I O N

REYES, R.T., *J.*:

THE vehicular collision resulting in damages and injuries in this case could have been avoided if the stalled prime mover with trailer were parked properly and equipped with an early warning device. It is high time We sounded the call for strict enforcement of the law and regulation on traffic and vehicle registration. ***Panahon na para mahigpit na ipatupad ang batas at regulasyon sa trapiko at pagpapatala ng sasakyan*.**

Before Us is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) modifying that[2] of the Regional Trial Court (RTC) in Butuan City finding private respondents Liberty Forest, Inc. and Cresilito Limbaga liable to petitioner Dy Teban Trading, Inc. for damages.

Facts

On July 4, 1995, at around 4:45 a.m., Rogelio Ortiz, with helper Romeo Catamora, was driving a Nissan van owned by petitioner Dy Teban Trading, Inc. along the National Highway in *Barangay* Sumilihon, Butuan City, going to Surigao City. They were delivering commercial ice to nearby *barangays* and municipalities. A Joana Paula passenger bus was cruising on the opposite lane towards the van. In between the two vehicles

[1] *Rollo,* pp. 39-50-A.

[2] *Id*. at 68-108.

was a parked prime mover with a trailer, owned by private respondent Liberty Forest, Inc.[3]

The night before, at around 10:00 p.m., the prime mover with trailer suffered a tire blowout. The driver, private respondent Cresilito Limbaga, parked the prime mover askew occupying a substantial portion of the national highway, on the lane of the passenger bus. He parked the prime mover with trailer at the shoulder of the road with the left wheels still on the cemented highway and the right wheels on the sand and gravel shoulder of the highway.[4] The prime mover was not equipped with triangular, collapsible reflectorized plates, the early warning device required under Letter of Instruction No. 229. As substitute, Limbaga placed a banana trunk with leaves on the front and the rear portion of the prime mover to warn incoming motorists. It is alleged that Limbaga likewise placed kerosene lighted tin cans on the front and rear of the trailer.[5]

To avoid hitting the parked prime mover occupying its lane, the incoming passenger bus swerved to the right, onto the lane of the approaching Nissan van. Ortiz saw two bright and glaring headlights and the approaching passenger bus. He pumped his break slowly, swerved to the left to avoid the oncoming bus but the van hit the front of the stationary prime mover. The passenger bus hit the rear of the prime mover.[6]

Ortiz and Catamora only suffered minor injuries. The Nissan van, however, became inoperable as a result of the incident. After the collision, SPO4 Teofilo Pame conducted an investigation and submitted a police traffic incident investigation report.[7]

On October 31, 1995, petitioner Nissan van owner filed a complaint for damages[8] against private respondents prime mover

[3] *Id*. at 72-73.

[4] *Id*. at 89-90.

[5] *Id*. at 90.

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

[7] *Id*. at 45-46.

[8] *Id*. at 52-57.

owner and driver with the RTC in Butuan City. The Joana Paula passenger bus was not impleaded as defendant in the complaint.

RTC Disposition

On August 7, 2001, the RTC rendered a decision in favor of petitioner Dy Teban Trading, Inc. with a *fallo* reading:

> WHEREFORE, judgment is hereby rendered directing, ordaining and ordering:
>
> a) That defendants Liberty Forest, Inc. and Cresilito M. Limbaga pay, jointly and solidarily, plaintiff Dy Teban Trading, Inc. the amounts of ₱279,832.00 as actual and compensatory damages, ₱30,000.00 as attorney's fees and ₱5,000.00 as expenses of litigation;
>
> b) That all money claims of plaintiff Rogelio C. Ortiz are dismissed;
>
> c) That defendant Jose Ching is absolved from any civil liability or the case against him dismissed;
>
> d) That the counterclaim of all the defendants is dismissed; and
>
> e) That defendants Liberty Forest, Inc. and Cresilito M. Limbaga to pay, jointly and solidarily, the costs.
>
> SO ORDERED.[9]

The RTC held that the proximate cause of the three-way vehicular collision was improper parking of the prime mover on the national highway and the absence of an early warning device on the vehicle, thus:

> The court finds that the proximate cause of the incidents is the negligence and carelessness attributable to the defendants. When the trailer being pulled by the prime mover suffered two (2) flat tires at Sumilihon, the prime mover and trailer were parked haphazardly, as the right tires of the prime mover were the only ones on the sand and gravel shoulder of the highway while the left tires and all the

[9] *Id*. at 107-108.

tires of the trailer were on the cemented pavement of the highway, occupying almost the whole of the right lane on the direction the prime mover and trailer were traveling. The statement of Limbaga that he could not park the prime mover and trailer deeper into the sand and gravel shoulder of the highway to his right because there were banana plants is contradicted by the picture marked Exhibit "F". The picture shows that there was ample space on the shoulder. If defendant Limbaga was careful and prudent enough, he should have the prime mover and trailer traveled more distance forward so that the bodies of the prime mover and trailer would be far more on the shoulder rather than on the cemented highway when they were parked. x x x The court has some doubts on the statement of witness-driver Limbaga that there were banana trunks with leaves and lighted tin cans with crude oil placed 3 strides in front of the prime mover and behind the trailer because the testimonies of witnesses Rogelio C. Ortiz, driver of the ice van, Romeo D. Catamora, helper of the ice van, and Police Traffic Investigator SPO3 Teofilo M. Pame show that there were no banana trunks with leaves and lighted tin cans at the scene of the incident. But even assuming that there were banana trunks with leaves but they were placed close to the prime mover and trailer as they were placed 3 strides away which to the mind of the court is equivalent approximately to 3 meters and with this distance, approaching vehicles would have no sufficient time and space to make a complete stop, especially if the vehicles are heavy and loaded. If there were lighted tin cans, it was not explained by the defendants why the driver, especially driver witness Ortiz, did not see them.

x x x x x x x x x

Defendant Liberty Forest, Inc. did not exercise the diligence of a good father of a family in managing and running its business. The evidence on record shows that it failed to provide its prime mover and trailer with the required "early warning devices" with reflectors and it did not keep proper maintenance and condition of the prime mover and the trailer. The circumstances show that the trailer were provided with wornout tires and with only one (1) piece of spare tire. The pictures marked Exhibit "3" and "4" show that two (2) flat tires suffered by the trailer and these two (2) tires were attached to one of the two (2) I-beams or axles attached to the rear of the trailer which axle is very near but behind the other axle and with the location of the 2 I-beams, it would have the other I-beam that would have suffered the flat tires as it has to bear the brunt of weight of the

D-8 bulldozer. The bulldozer was not loaded directly above the two (2) I-beams as 2 I-beams, as a pair, were attached at the far rear end of the trailer.

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However, defendant Jose Ching should be absolved of any liability as there is no showing that he is the manager or CEO of defendant Liberty Forest, Inc. Although in the answer, it is admitted that he is an officer of the defendant corporation, but it is not clarified what kind of position he is holding, as he could be an officer as one of the members of the Board of Directors or a cashier and treasurer of the corporation. Witness Limbaga in his testimony mentioned a certain Boy Ching as the Manager but it was never clarified whether or not Boy Ching and defendant Jose Ching is one and the same person.[10]

Private respondents appealed to the CA.

CA Disposition

On August 28, 2003, the CA reversed the RTC decision, disposing as follows:

WHEREFORE, premises considered, the decision dated August 7, 2001 of the Regional Trial Court, Branch 2, Butuan City in Civil Case No. 4360 is hereby **PARTLY MODIFIED** by absolving the defendants-appellants/appellees of any liability to plaintiffs-appellants/appellees by reason of the incident on July 4, 1995.

The dismissal of the case against Jose Ching, the counterclaim of defendants-appellants/appellees and the money claim of Rogelio Ortiz **STANDS.**

SO ORDERED.[11]

In partly reversing or partly modifying the RTC decision, the CA held that the proximate cause of the vehicular collision was the failure of the Nissan van to give way or yield to the right of way of the passenger bus, thus:

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[10] *Id.* at 101-107.

[11] *Id.* at 50.

It was stated that the Joana Paula bus in trying to avoid a head-on collision with the truck, sideswept the parked trailer loaded with bulldozer.

Evidently, the driver of the Joana Paula bus was aware of the presence on its lane of the parked trailer with bulldozer. For this reason, it proceeded to occupy what was left of its lane and part of the opposite lane. The truck occupying the opposite lane failed to give way or yield the right of way to the oncoming bus by proceeding with the same speed. The two vehicles were, in effect, trying to beat each other in occupying a single lane. The bus was the first to occupy the said lane but upon realizing that the truck refused to give way or yield the right of way, the bus, as a precaution, geared to its right where the trailer was parked. Unfortunately, the bus miscalculated its distance from the parked trailer and its rear right side hit the protruding blade of the bulldozer then on the top of the parked trailer. The impact of the collision on its right rear side with the blade of the bulldozer threw the bus further to the opposite lane, landing its rear portion on the shoulder of the opposite lane.

x x x x x x x x x

Facts of the case reveal that when Ortiz, the driver of the truck, failed to give the Joana Paula bus the space on the road it needed, the latter vehicle scraped its rear right side on the protruded bulldozer blade and the impact threw the bus directly on the path of the oncoming truck. This made plaintiffs-appellants/appellees conclude that the Joana Paula bus occupied its lane which forced Ortiz, the driver of the truck, to swerve to its left and ram the front of the parked trailer.

x x x x x x x x x

The trailer was parked because its two (2) rear-left tires were blown out. With a bulldozer on top of the trailer and two (2) busted tires, it would be dangerous and quite impossible for the trailer to further park on the graveled shoulder of the road. To do so will cause the flat car to tilt and may cause the bulldozer to fall from where it was mounted. In fact, it appeared that the driver of the trailer tried its best to park on the graveled shoulder since the right-front tires were on the graveled shoulder of the road.

The lower court erred in stating that the Joana Paula bus swerved to the left of the truck because it did not see the parked trailer due to lack of warning sign of danger of any kind that can be seen from a distance. The damage suffered by the Joana Paula bus belied this

assessment. As stated before, the Joana Paula bus, with the intention of passing first which it did, first approached the space beside the parked trailer, veered too close to the parked trailer thereby hitting its rear right side on the protruding bulldozer blade. Since the damage was on the rear right most of the bus, it was clearly on the space which was wide enough for a single passing vehicle but not sufficient for two (2) passing vehicles. The bus was thrown right to the path of the truck by the impact of the collision of its rear right side with the bulldozer blade.[12]

The CA disagreed with the RTC that the prime mover did not have an early warning device. The appellate court accepted the claim of private respondent that Limbaga placed kerosene lighted tin cans on the front and rear of the trailer which, in *Baliwag Transit, Inc. v. Court of Appeals*,[13] may act as substitute early warning device. The CA stated:

> Likewise, it was incorrect for the lower court to state that there was no warning sign of danger of any kind, most probably referring to the absence of the triangular reflectorized plates. The police sketch clearly indicated the stack of banana leaves placed at the rear of the parked trailer. The trailer's driver testified that they placed kerosene lighted tin can at the back of the parked trailer.
>
> A pair of triangular reflectorized plates is not the only early warning device allowed by law. The Supreme Court (in *Baliwag Transit, Inc. v. Court of Appeals)* held that:
>
> > "x x x Col. Dela Cruz and Romano testified that they did not see any early warning device at the scene of the accident. They were referring to the triangular reflectorized plates in red and yellow issued by the Land Transportation Office. However, the evidence shows that Recontique and Ecala placed a kerosene lamp or torch at the edge of the road, near the rear portion of the truck to serve as an early warning device. This substantially complies with Section 34(g) of the Land Transportation and Traffic Code x x x
> >
> > Baliwag's argument that the kerosene lamp or torch does not substantially comply with the law is untenable. The

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[12] *Id*. at 46-48.

[13] G.R. No. 116110, May 15, 1996, 256 SCRA 746.

aforequoted law clearly allows the use not only of an early warning device of the triangular reflectorized plates' variety but also parking lights or flares visible one hundred meters away. x x x."

This Court holds that the defendants-appellants/appellees were not negligent in parking the trailer on the scene of the accident. It would have been different if there was only one flat tire and defendant-appellant/appellee Limbaga failed to change the same and left immediately.

As such, defendants-appellants/appellees are not liable for the damages suffered by plaintiffs-appellants/appellees. Whatever damage plaintiffs-appellants/appellees suffered, they alone must bear them.[14]

Issues

Petitioner raises two issues[15] for Our consideration, to wit:

I.

THE HONORABLE COURT OF APPEALS, WITHOUT ANY AVAILABLE CONCRETE EVIDENCE, ERRONEOUSLY DETERMINED THAT THERE WERE EARLY WARNING DEVICES PLACED IN FRONT OF THE DEFENDANT-APPELLANTS/APPELLEES' TRUCK AND FLAT CAR TO WARN PLAINTIFF-APPELLANT/APPELLEE ROGELIO ORTIZ OF THEIR PRESENCE.

II.

WITH DUE RESPECT, IT IS HIGH TIME TO ENFORCE THE LAW ON EARLY WARNING DEVICES IN THE PUBLIC INTEREST.

Our Ruling

The petition is meritorious.

The meat of the petition is whether or not the prime mover is liable for the damages suffered by the Nissan van. The RTC ruled in the affirmative holding that the proximate cause of the vehicular collision was the negligence of Limbaga in parking

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[14] *Rollo,* pp. 48-50.

[15] *Id*. at 26, 29.

the prime mover on the national highway without an early warning device on the vehicle. The CA reversed the RTC decision, holding that the proximate cause of the collision was the negligence of Ortiz in not yielding to the right of way of the passenger bus.

Article 2176 of the Civil Code provides that whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict*. To sustain a claim based on *quasi-delict*, the following requisites must concur: (a) damage suffered by plaintiff; (b) fault or negligence of defendant; and (c) connection of cause and effect between the fault or negligence of defendant and the damage incurred by plaintiff.[16]

There is no dispute that the Nissan van suffered damage. That is borne by the records and conceded by the parties. The outstanding issues are negligence and proximate cause. Tersely put, the twin issues are: (a) whether or not prime mover driver Limbaga was negligent in parking the vehicle; and (b) whether or not his negligence was the proximate cause of the damage to the Nissan van.

Limbaga was negligent in parking the prime mover on the national highway; he failed to prevent or minimize the risk to oncoming motorists.

Negligence is defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[17] The Supreme Court stated the test of negligence in the landmark case *Picart v. Smith*[18] as follows:

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[16] *Philippine Bank of Commerce v. Court of Appeals*, G.R. No. 97626, March 14, 1997, 269 SCRA 695, 702-703.

[17] *Corliss v. Manila Railroad Company*, G.R. No. L-21291, March 28, 1969, 27 SCRA 674, 680.

[18] 37 Phil. 809, 813 (1918).

The test by which to determine the existence or negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that. (Underscoring supplied)

The test of negligence is objective. We measure the act or omission of the tortfeasor with that of an ordinary reasonable person in the same situation. The test, as applied to this case, is whether Limbaga, in parking the prime mover, used that reasonable care and caution which an ordinary reasonable person would have used in the same situation.

We find that Limbaga was utterly negligent in parking the prime mover askew on the right side of the national highway. The vehicle occupied a substantial portion of the national road on the lane of the passenger bus. It was parked at the shoulder of the road with its left wheels still on the cemented highway and the right wheels on the sand and gravel shoulder of the highway. It is common sense that the skewed parking of the prime mover on the national road posed a serious risk to oncoming motorists. It was incumbent upon Limbaga to take some measures to prevent that risk, or at least minimize it.

We are unable to agree with the CA conclusion "it would have been dangerous and quite impossible to further park the prime mover on the graveled shoulder of the road because the prime mover may tilt and the bulldozer may fall off." The photographs taken after the incident show that it could have been possible for Limbaga to park the prime mover completely on the shoulder of the national road without risk to oncoming motorists. We agree with the RTC observation on this point, thus:

x x x The statement of Limbaga that he could not park the prime mover and trailer deeper into the sand and gravel shoulder of the highway to his right because there were banana plants is contradicted by the picture marked Exhibit "F." The picture shows that there was ample space on the shoulder. If defendant Limbaga was careful and prudent enough, he should have the prime mover and trailer traveled more distance forward so that the bodies of the prime mover and trailer would be far more on the shoulder rather than on the cemented highway when they were parked. Although at the time of the incident, it was about 4:45 in the morning and it was drizzling but there is showing that it was pitch dark that whoever travels along the highway must be extra careful. If the Joana Paula bus swerved to the lane on which the "Nissan" ice van was properly traveling, as prescribed by Traffic Rules and Regulations, it is because the driver of the bus did not see at a distance the parked prime mover and trailer on the bus' proper lane because there was no warning signs of danger of any kind that can be seen from a distance.[19]

Limbaga also failed to take proper steps to minimize the risk posed by the improperly parked prime mover. He did not immediately inform his employer, private respondent Liberty Forest, Inc., that the prime mover suffered two tire blowouts and that he could not have them fixed because he had only one spare tire. Instead of calling for help, Limbaga took it upon himself to simply place banana leaves on the front and rear of the prime mover to serve as warning to oncoming motorists. Worse, Limbaga slept on the prime mover instead of standing guard beside the vehicle. By his own account, Limbaga was sleeping on the prime mover at the time of the collision and that he was only awakened by the impact of the Nissan van and the passenger bus on the prime mover.[20]

Limbaga also admitted on cross-examination that it was his first time to drive the prime mover with trailer loaded with a D-8 caterpillar bulldozer.[21] We find that private respondent Liberty Forest, Inc. was utterly negligent in allowing a novice driver,

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[19] *Rollo,* p. 102.

[20] *Id*. at 90-91.

[21] *Id*. at 93.

like Limbaga, to operate a vehicle, such as a truck loaded with a bulldozer, which required highly specialized driving skills. Respondent employer clearly failed to properly supervise Limbaga in driving the prime mover.

The RTC noted that private respondent Liberty Forest, Inc. also failed to keep the prime mover in proper condition at the time of the collision. The prime mover had worn out tires. It was only equipped with one spare tire. It was for this reason that Limbaga was unable to change the two blown out tires because he had only one spare. The bulldozer was not even loaded properly on the prime mover, which caused the tire blowouts.

All told, We agree with the RTC that private respondent Limbaga was negligent in parking the prime mover on the national highway. Private respondent Liberty Forest, Inc. was also negligent in failing to supervise Limbaga and in ensuring that the prime mover was in proper condition.

The case of Baliwag Transit, Inc. v. Court of Appeals is inapplicable; Limbaga did not put lighted kerosene tin cans on the front and rear of the prime mover.

Anent the absence of an early warning device on the prime mover, the CA erred in accepting the bare testimony of Limbaga that he placed kerosene lighted tin cans on the front and rear of the prime mover. The evidence on records belies such claim. The CA reliance on *Baliwag Transit, Inc. v. Court of Appeals*[22] as authority for the proposition that kerosene lighted tin cans may act as substitute early warning device is misplaced.

First, the traffic incident report did not mention any lighted tin cans on the prime mover or within the immediate vicinity of the accident. Only banana leaves were placed on the prime mover. The report reads:

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[22] *Supra* note 13.

VIII – RESULT OF INVESTIGATION: A Joana Paula Bus, with Body No. 7788, with Plate No. LVA-137, driven by one *Temestocles Relova v. Antero*, of legal age, married and a resident of San Roque, Kitcharao, Agusan del Norte, while traveling along the National Highway, coming from the east going to the west direction, as it moves along the way and upon reaching Brgy. Sumilihon, Butuan City to evade bumping to the approaching Nissan Ice Van with Plate No. PNT-247, driven by one Rogelio Cortez *y* Ceneza. As the result, the Joana Paula Bus accidentally busideswept (*sic*) to the parked Prime Mover with Trailer loaded with Bulldozer **without early warning device**, instead placing only dry banana leaves three (3) meters at the rear portion of the Trailer, while failure to place at the front portion, and the said vehicle occupied the whole lane. As the result, the Joana Paula Bus hit to the left edge blade of the Bulldozer. Thus, causing the said bus swept to the narrow shouldering, removing the rear four (4) wheels including the differential and injuring the above-stated twelve (12) passengers and damaged to the right side fender above the rear wheel. Thus, causing damage on it. While the Nissan Ice Van in evading, accidentally swerved to the left lane and accidentally bumped to the front bumper of the parked Prime Mover with Trailer loaded with Bulldozer. Thus, causing heavy damage to said Nissan Ice Van including the cargoes of the said van.[23]

Second, SPO4 Pame, who investigated the collision, testified[24] that only banana leaves were placed on the front and rear of the prime mover. He did not see any lighted tin cans in the immediate vicinity of the collision.

Third, the claim of Limbaga that he placed lighted tin cans on the front and rear of the prime mover belatedly surfaced only during his direct examination. No allegation to this effect was made by private respondents in their Answer to the complaint for damages. Petitioner's counsel promptly objected to the testimony of Limbaga, thus:

ATTY. ROSALES:

Q. Now you mentioned about placing some **word signs** in front and at the rear of the prime mover with trailer, will you please describe to us what this word signs are?

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[23] *Id.* at 275.

[24] *Id.* at 83.

A. We placed **a piece of cloth on tin cans** and filled them with crude oil. And these tin cans were lighted and they are like torches. These two lights or torches were placed in front and at the rear side of the prime mover with trailer. After each torch, we placed **banana trunk**. The banana trunk is placed between the two (2) torches and the prime mover, both on the rear and on the front portion of the prime mover.

Q. How far was the lighted tin cans with wick placed in front of the prime mover.

ATTY. ASIS:

At this point, we will be objecting to questions particularly referring to the alleged tin cans as some of the warning-sign devices, considering that there is no allegation to that effect in the answer of the defendants. The answer was just limited to the numbers 4 & 5 of the answer. And, therefore, if we follow the rule of the binding effect of an allegation in the complaint, then the party will not be allowed to introduce evidence to attack jointly or rather the same, paragraph 5 states, warning device consisting of 3 banana trunks, banana items and leaves were filed. He can be cross-examined in the point, Your Honor.

COURT:

Q. Put that on record that as far as this tin cans are concerned, the plaintiffs are interposing continuing objections. But the Court will allow the question.[25]

We thus agree with the RTC that Limbaga did not place lighted tin cans on the front and rear of the prime mover. We give more credence to the traffic incident report and the testimony of SPO4 Pame that only banana leaves were placed on the vehicle. *Baliwag Transit, Inc. v. Court of Appeals*[26] thus finds no application to the case at bar.

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[25] *Id.* at 262-263.

[26] *Supra* note 13.

The skewed parking of the prime mover was the proximate cause of the collision.

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. More comprehensively, proximate cause is that cause acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.[27]

There is no exact mathematical formula to determine proximate cause. It is based upon mixed considerations of logic, common sense, policy and precedent.[28] Plaintiff must, however, establish a sufficient link between the act or omission and the damage or injury. That link must not be remote or far-fetched; otherwise, no liability will attach. The damage or injury must be a natural and probable result of the act or omission. In the precedent-setting *Vda. de Bataclan v. Medina*,[29] this Court discussed the necessary link that must be established between the act or omission and the damage or injury, *viz.*:

It may be that ordinarily, when a passenger bus overturns, and pins down a passenger, merely causing him physical injuries, if through some event, unexpected and extraordinary, the overturned bus is set on fire, say, by lightning, or if some highwaymen after looting the

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[27] *Vda. de Bataclan v. Medina,* 102 Phil. 181 (1957), citing 38 Am. Jur. 695-696.

[28] *Mercury Drug v. Baking*, G.R. No. 156037, May 25, 2007.

[29] *Supra*.

vehicle sets it on fire, and the passenger is burned to death, one might still contend that the proximate cause of his death was the fire and not the overturning of the vehicle. But in the present case and under the circumstances obtaining in the same, we do not hesitate to hold that the proximate cause of the death of Bataclan was the overturning of the bus, this for the reason that when the vehicle turned not only on its side but completely on its back, the leaking of the gasoline from the tank was not unnatural or unexpected; that the coming of the men with a lighted torch was in response to the call for help, made not only by the passengers, but most probably, by the driver and the conductor themselves, and that because it was very dark (about 2:30 in the morning), the rescuers had to carry a light with them; and coming as they did from a rural area where lanterns and flashlights were not available, they had to use a torch, the most handy and available; and what was more natural than that said rescuers should innocently approach the overturned vehicle to extend the aid and effect the rescue requested from them. In other words, the coming of the men with the torch was to be expected and was natural sequence of the overturning of the bus, the trapping of some of its passengers' bus, the trapping of some of its passengers and the call for outside help.

The ruling in *Bataclan* has been repeatedly cited in subsequent cases as authority for the proposition that the damage or injury must be a natural or probable result of the act or omission. Here, We agree with the RTC that the damage caused to the Nissan van was a natural and probable result of the improper parking of the prime mover with trailer. As discussed, the skewed parking of the prime mover posed a serious risk to oncoming motorists. Limbaga failed to prevent or minimize that risk. The skewed parking of the prime mover triggered the series of events that led to the collision, particularly the swerving of the passenger bus and the Nissan van.

Private respondents Liberty Forest, Inc. and Limbaga are liable for all damages that resulted from the skewed parking of the prime mover. Their liability includes those damages resulting from precautionary measures taken by other motorist in trying to avoid collision with the parked prime mover. As We see it, the passenger bus swerved to the right, onto the lane of the Nissan van, to avoid colliding with the improperly parked prime

mover. The driver of the Nissan van, Ortiz, reacted swiftly by swerving to the left, onto the lane of the passenger bus, hitting the parked prime mover. Ortiz obviously would not have swerved if not for the passenger bus abruptly occupying his van's lane. The passenger bus, in turn, would not have swerved to the lane of the Nissan van if not for the prime mover improperly parked on its lane. The skewed parking is the proximate cause of the damage to the Nissan van.

In *Phoenix Construction, Inc. v. Intermediate Appellate Court*,[30] this Court held that a similar vehicular collision was caused by the skewed parking of a dump truck on the national road, thus:

> The conclusion we draw from the factual circumstances outlined above is that private respondent Dionisio was negligent the night of the accident. He was hurrying home that night and driving faster than he should have been. Worse, he extinguished his headlights at or near the intersection of General Lacuna and General Santos Streets and thus did not see the dump truck that was parked askew and sticking out onto the road lane.
>
> Nonetheless, we agree with the Court of First Instance and the Intermediate Appellate Court that the legal and proximate cause of the accident and of Dionisio's injuries was the wrongful or negligent manner in which the dump truck was parked – in other words, the negligence of petitioner Carbonel. That there was a reasonable relationship between petitioner Carbonel's negligence on the one hand and the accident and respondent's injuries on the other hand, is quite clear. Put in a slightly different manner, the collision of Dionisio's car with the dump truck was a natural and foreseeable consequence of the truck driver's negligence.
>
> x x x x x x x x x
>
> We believe, secondly, that the truck driver's negligence far from being a "passive and static condition" was rather an indispensable and efficient cause. The collision between the dump truck and the private respondent's car would in all probability not have occurred had the dump truck not been parked askew without any warning lights or reflector devices. The improper parking of the dump truck created

[30] G.R. No. 65295, March 10, 1987, 148 SCRA 353, 365-367.

an unreasonable risk of injury for anyone driving down General Lacuna Street and for having so created this risk, the truck driver must be held responsible. In our view, Dionisio's negligence, although later in point of time than the truck driver's negligence and, therefore, closer to the accident, was not an efficient intervening or independent cause. What the Petitioner describes as an "intervening cause" was no more than a foreseeable consequence of the risk created by the negligent manner in which the truck driver had parked the dump truck. In other words, the petitioner truck driver owed a duty to private respondent Dionisio and others similarly situated not to impose upon them the very risk the truck driver had created. Dionisio's negligence was not of an independent and overpowering nature as to cut, as it were, the chain of causation in fact between the improper parking of the dump truck and the accident, nor to sever the *juris vinculum* of liability. x x x (Underscoring supplied)

We cannot rule on the proportionate or contributory liability of the passenger bus, if any, because it was not a party to the case; joint tortfeasors are solidarily liable.

The CA also faults the passenger bus for the vehicular collision. The appellate court noted that the passenger bus was "aware" of the presence of the prime mover on its lane, but it still proceeded to occupy the lane of the Nissan van. The passenger bus also miscalculated its distance from the prime mover when it hit the vehicle.

We cannot definitively rule on the proportionate or contributory liability of the Joana Paula passenger bus *vis-à-vis* the prime mover because it was not a party to the complaint for damages. Due process dictates that the passenger bus must be given an opportunity to present its own version of events before it can be held liable. Any contributory or proportionate liability of the passenger bus must be litigated in a separate action, barring any defense of prescription or laches. Insofar as petitioner is concerned, the proximate cause of the collision was the improper parking of the prime mover. It was the improper parking of the prime mover which set in motion the series of events that led to the vehicular collision.

Even granting that the passenger bus was at fault, it's fault will not necessarily absolve private respondents from liability. If at fault, the passenger bus will be a joint tortfeasor along with private respondents. The liability of joint tortfeasors is joint and solidary. This means that petitioner may hold either of them liable for damages from the collision. In *Philippine National Construction Corporation v. Court of Appeals*,[31] this Court held:

> According to the great weight of authority, where the concurrent or successive negligent acts or omission of two or more persons, although acting independently of each other, are, in combination, the direct and proximate cause of a single injury to a third person and it is impossible to determine in what proportion each contributed to the injury, either is responsible for the whole injury, even though his act alone might not have caused the entire injury, or the same damage might have resulted from the acts of the other tort-feasor x x x.

In *Far Eastern Shipping Company v. Court of Appeals*, the Court declared that the liability of joint tortfeasors is joint and solidary, to wit:

> It may be said, as a general rule, that negligence in order to render a person liable need not be the sole cause of an injury. It is sufficient that his negligence, concurring with one or more efficient causes other than plaintiff's, is the proximate cause of the injury. Accordingly, where several causes combine to produce injuries, a person is not relieved from liability because he is responsible for only one of them, it being sufficient that the negligence of the person charged with injury is an efficient cause without which the injury would not have resulted to as great an extent, and that such cause is not attributable to the person injured. It is no defense to one of the concurrent tortfeasors that the injury would not have resulted from his negligence alone, without the negligence or wrongful acts of the other concurrent tortfeasors. Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes and recovery may be had against any or all

[31] G.R. No. 159270, August 22, 2005, 467 SCRA 569, 582-583.

of the responsible persons although under the circumstances of the case, it may appear that one of them was more culpable, and that the duty owed by them to the injured person was not the same. No actor's negligence ceases to be a proximate cause merely because it does not exceed the negligence of other actors. Each wrongdoer is responsible for the entire result and is liable as though his acts were the sole cause of the injury.

There is no contribution between joint tortfeasors whose liability is solidary since both of them are liable for the total damage. Where the concurrent or successive negligent acts or omissions of two or more persons, although acting independently, are in combination with the direct and proximate cause of a single injury to a third person, it is impossible to determine in what proportion each contributed to the injury and either of them is responsible for the whole injury. Where their concurring negligence resulted in injury or damage to a third party, they become joint tortfeasors and are solidarily liable for the resulting damage under Article 2194 of the Civil Code. (Underscoring supplied)

All told, all the elements of *quasi delict* have been proven by clear and convincing evidence. The CA erred in absolving private respondents from liability for the vehicular collision.

Final Note

It is lamentable that the vehicular collision in this case could have been easily avoided by following basic traffic rules and regulations and road safety standards. In hindsight, private respondent Limbaga could have prevented the three-way vehicular collision if he had properly parked the prime mover on the shoulder of the national road. The improper parking of vehicles, most especially along the national highways, poses a serious and unnecessary risk to the lives and limbs of other motorists and passengers. Drivers owe a duty of care to follow basic traffic rules and regulations and to observe road safety standards. They owe that duty not only for their own safety, but also for that of other motorists. We can prevent most vehicular accidents by simply following basic traffic rules and regulations.

We also note a failure of implementation of basic safety standards, particularly the law on early warning devices. This

applies even more to trucks and big vehicles, which are prone to mechanical breakdown on the national highway. The law, as crafted, requires vehicles to be equipped with triangular reflectorized plates.[32] Vehicles without the required early warning devices are ineligible for registration.[33] Vehicle owners may also be arrested and fined for non-compliance with the law.[34]

The Land Transportation Office (LTO) owes a duty to the public to ensure that all vehicles on the road meet basic and minimum safety features, including that of early warning devices. It is most unfortunate that We still see dilapidated and rundown vehicles on the road with substandard safety features. These vehicles not only pose a hazard to the safety of their occupants but that of other motorists. The prime mover truck in this case should not have been granted registration because it failed to comply with the minimum safety features required for vehicles on the road.

It is, indeed, time for traffic enforcement agencies and the LTO to strictly enforce all pertinent laws and regulations within their mandate.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals decision dated August 28, 2003 is hereby *SET ASIDE*. The RTC decision dated August 7, 2001 is *REINSTATED IN FULL*.

SO ORDERED.

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

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[32] *Rollo,* pp. 29-30. Letter of Instruction No. 229.

[33] *Id*. at 32-34. Memorandum Circular Nos. 92-146.

[34] *Id.* at 31-32. LTO Memorandum dated October 16, 1995.

* Vice Associate Justice Minita V. Chico-Nazario. Justice Nazario is on official leave per Special Order No. 484 dated January 11, 2008.

SECOND DIVISION

[G.R. No. 163692. February 4, 2008]

ALLIED BANKING CORPORATION, *petitioner, vs.* **SOUTH PACIFIC SUGAR CORPORATION, MARGARITA CHUA SIA, AGOSTO SIA, LIN FAR CHUA, GERRY CHUA, SIU DY CHUA, and ANTONIO CHUA,** *respondents.*

SYLLABUS

REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; ISSUANCE OF WRIT; REQUIREMENT.— In a prayer for a writ of attachment, as already held by this Court: . . . It is not enough for the complaint to ritualistically cite, as here, that the defendants are "guilty of fraud in contracting an obligation." **An order of attachment cannot be issued on a general averment,** such as one ceremoniously quoting from a pertinent rule. **The need for a recitation of factual circumstances that support the application becomes more compelling here considering that the ground relied upon is "fraud in contracting an obligation." The complaint utterly failed to even give a hint about what constituted the fraud and how it was perpetrated. Fraud cannot be presumed.** Likewise, written contracts are presumed to have been entered into voluntarily and for a sufficient consideration. Section 1, Rule 131 of the Rules of Court instructs that each party must prove his own affirmative allegations. To repeat, in this jurisdiction, fraud is never presumed. Moreover, written contracts such as the documents executed by the parties in the present case, are presumed to have been entered into for a sufficient consideration.

APPEARANCES OF COUNSEL

Francisco Gerardo C. Llamas & Bienvenido C. Alde, Jr. for petitioner.

Singson Valdez and Associates for respondents.

D E C I S I O N

QUISUMBING, *J.*:

The instant petition assails the Decision[1] dated February 3, 2004 and the Resolution [2] dated May 13, 2004 of the Court of Appeals in CA-G.R. SP No. 68619. The appellate court had found no grave abuse of discretion on the part of the Regional Trial Court (RTC) of Makati City, Branch 148, in discharging the writ of preliminary attachment it previously granted, and dismissed the petition for *certiorari*. The motion for reconsideration was denied.

The factual antecedents of this case are as follows:

South Pacific Sugar Corporation (South Pacific), on March 23, 1999, issued three promissory notes totaling ₱96,000,000[3] to the petitioner, Allied Banking Corporation (hereafter Allied Bank), to secure payment of loans contracted during the same period. Respondents Margarita Chua Sia, Agosto Sia, Lin Far Chua, Gerry Chua, Siu Dy Chua, and Antonio Chua (guarantors) executed continuing guaranty/comprehensive surety agreements binding themselves solidarily with the corporation. On maturity, South Pacific and its guarantors failed to honor their respective covenants.

On January 26, 2001, Allied Bank filed a complaint for collection of a sum of money with a prayer for the issuance of a writ of preliminary attachment against respondents. Allied Bank prayed in its complaint (1) that upon its filing, a writ of preliminary attachment be issued *ex parte* against all leviable properties of the respondents as may be sufficient to satisfy petitioner's claim; and (2) that the respondents be ordered to pay petitioner ₱90,000,000 plus interest and charges, as well as attorney's fees and costs of suit.

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[1] *Rollo*, pp. 55-65. Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid concurring.

[2] *Id*. at 67.

[3] *Id*. at 99-103.

During the *ex parte* hearing for the issuance of a writ of preliminary attachment, Allied Bank's lone witness, Account Officer Marilou T. Go, testified that Allied Bank approved the corporation's application for credit facilities on the latter's representation that (1) it was in good fiscal condition and had positive business projections as stated in a voluminous Information Memorandum, and that (2) it would use the loan to fund the operations of the sugar refinery. Go further testified that Allied Bank discovered soon after that these representations were false; that the loans were allegedly "diverted to illegitimate purposes"; that as of January 2001, the loan amounted to ₱90 million; that based on a project study by a consulting company, Seed Capital Ventures, Inc., South Pacific was suffering losses and incurring debts in the millions; that there had been no credit investigation to appraise the corporation's business operations; and that Allied Bank relied on the financial statements of the corporation.[4]

Thereafter, the trial court granted the attachment and Allied Bank posted the requisite bond.

The respondents filed a motion to discharge the attachment with an urgent motion to defer further the implementation of the writ, grounded upon the arguments that (1) the evidence of fraud was insufficient and self-serving; and (2) there was no evidence that South Pacific used the loan for other purposes. The respondents pointed out that they have been dealing with Allied Bank since 1995, and had paid a total of ₱210 million out of a maximum exposure of about ₱300 million, and that the ₱90 million subject of the pending suit constitutes merely the balance of their loan.[5]

The trial court granted the respondents' motion to defer the implementation of the writ of attachment. Allied Bank opposed the motion. After hearing, the court granted the motion to discharge[6] and denied the motion for reconsideration.[7]

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[4] *Id*. at 41-42, 63-64, 111-112.

[5] *Id*. at 114.

[6] *Id*. at 129-131.

[7] *Id*. at 154-159.

On *certiorari*, Allied Bank averred that the trial court acted with precipitate haste in deciding the motion to discharge the attachment without its written opposition, and with grave abuse of discretion in dissolving the writ without requiring the guarantors to post a counter-bond. Finally, it asserted that the trial court failed to appreciate evidence of respondents' fraud.

The Court of Appeals, however, affirmed the trial court's order. It ruled that Allied Bank was not denied its day in court since it was allowed to argue its position during the hearing on the motion and was given ample opportunity to file its opposition. However, Allied Bank failed to take advantage of the period given to it. Instead of filing its opposition within the time allowed by the Court, Allied Bank filed a motion for extension of time by registered mail. Then, it filed its opposition also only by registered mail notwithstanding that it was forewarned that the motion to discharge the attachment would be considered submitted for resolution with or without the parties' respective position papers.[8]

On the issue of discharge of the writ notwithstanding fraud, the Court of Appeals held that the inability of respondents to pay does not amount to a fraudulent intent. The Court of Appeals stated that Allied Bank failed to justify the grant of a writ of attachment. Essentially, it found wanting such evidence as would establish fraud as required before a writ of attachment may be granted under Section 1,[9] Rule 57 of the 1997 Rules of Civil

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[8] *Id*. at 61-62.

[9] **SECTION 1**. *Grounds upon which attachment may issue.* — At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

(a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

(b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation,

Procedure. It found that "the core of the prayer for the attachment was the failure of the respondents to pay their obligations on maturity date," not fraudulent intent to evade their commitments; and that the "inability to pay one's creditors is not necessarily synonymous with fraudulent intent not to honor an obligation."[10] The appellate court added that Allied Bank was aware of the corporation's financial standing and capacity to pay its loans when Allied Bank granted credit facilities to it. The appellate court noted that respondents had disclosed their financial standing through the Information Memorandum they submitted. The trial court, therefore, committed no grave error, said the appellate court.

Having failed to obtain a reversal by its motion for reconsideration before the appellate court, Allied Bank now interposes this appeal through a petition for review, raising the following issues:

I.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS NO INTENTION ON [THE] PART OF RESPONDENTS TO DEFRAUD THE PETITIONER.

II.

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT A COUNTER-BOND WAS NECESSARY FOR THE DISCHARGE OF THE WRIT OF PRELIMINARY ATTACHMENT.

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or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;

(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or

(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.

[10] *Rollo,* p. 63.

III.

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT THE COURT *A QUO* COMMITTED GRAVE ABUSE OF DISCRETION IN DISCHARGING THE WRIT OF PRELIMINARY ATTACHMENT WITHOUT AFFORDING THE PETITIONER THE REQUISITE DUE PROCESS OF LAW.[11]

The ultimate issue raised in this petition is whether there was fraud committed by respondents against petitioner bank such that a writ of attachment may be issued against respondents.

Allied Bank contends that respondents were guilty of fraud in contracting for their loan amounting to about ₱90 million and in performing their obligations under said loan, as sufficiently testified to by its lone witness. Respondents counter that they had no fraudulent intent in such contract for loan nor in the performance of obligations thereunder.

A thorough examination of witness Marilou Go's testimony, however, reveals that her testimony did not detail how respondents induced or deceived Allied Bank into granting the loans. She mentioned an Information Memorandum which allegedly misled Allied Bank to grant the loan. She claimed that promising financial projections in said Memorandum guaranteeing South Pacific's present and future capacity to pay convinced Allied Bank to approve the loan. Yet, the Information Memorandum was never presented in evidence. Neither was its existence proved, nor its authorship authenticated, much less its contents shown to explain how the information could have enticed, misinformed or deceived Allied Bank. The alleged content of the document, which was not identified nor formally offered in evidence, is technically pure hearsay. It cannot be admitted or considered as the proof of petitioner's contention.[12]

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

[12] RULES OF COURT, Rule 132.

SEC. 20. *Proof of private document*. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

Next, the witness of petitioner, Marilou Go, cited a project study prepared by a certain consulting firm, Seed Capital Ventures, Inc.. According to petitioner, the project study suggested that only about 60% of South Pacific's mill and refinery was being utilized to capacity, leading Allied Bank to suspect that the loan was being diverted to other purposes. Yet, again, the project study was neither presented nor offered in evidence, hence testimony on it is just hearsay.

The same witness also testified that South Pacific was indebted in millions of pesos to several other banks, but then again, no documentary evidence or other proof was presented to establish such fact. Hence, the witness' testimony remains uncorroborated.

In our considered view, without presenting the documents adverted to by petitioner's lone witness, Allied Bank's allegations of fraud amount to no more than mere conjectures. Yet there is no showing why Allied Bank, being in the business of loans, could not obtain and present the necessary documents in support of its allegations. Thus, we are in agreement that the Court of Appeals was correct in finding that the testimony of Allied Bank's witness failed to show that respondents' indebtedness was incurred fraudulently.

Moreover, even a cursory examination of the bank's complaint will reveal that it cited no factual circumstance to show fraud on the part of respondents. The complaint only had a general statement in the Prayer for the Issuance of a Writ of Preliminary Attachment, reproduced in the attached affidavit of petitioner's witness Go who stated as follows:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

x x x x x x x x x

SEC. 34. *Offer of evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

x x x x x x x x x

4. Defendants committed fraud in contracting the obligations upon which the present action is based and in the performance thereof. Among others, defendants induced plaintiff to grant the subject loans to defendant corporation by wilfully and deliberately misrepresenting that, ***one***, the proceeds of the loans would be used as additional working capital and, ***two***, they would be in a financial position to pay, and would most certainly pay, the loan obligations on their maturity dates. In truth, defendants had no intention of honoring their commitments as shown by the fact that upon their receipt of the proceeds of the loans, they diverted the same to illegitimate purposes and then brazenly ignored and resisted plaintiff's lawful demands for them to settle their past due loan obligations;[13]

x x x x x x x x x

Such general averment will not suffice to support the issuance of the writ of preliminary attachment. It is necessary to recite in what particular manner an applicant for the writ of attachment was defrauded. In a prayer for a writ of attachment, as already held by this Court:

… It is not enough for the complaint to ritualistically cite, as here, that the defendants are "guilty of fraud in contracting an obligation." **An order of attachment cannot be issued on a general averment**, such as one ceremoniously quoting from a pertinent rule. **The need for a recitation of factual circumstances that support the application becomes more compelling here considering that the ground relied upon is "fraud in contracting an obligation**." **The complaint utterly failed to even give a hint about what constituted the fraud and how it was perpetrated. Fraud cannot be presumed**.[14] (Emphasis supplied.)

Likewise, written contracts are presumed to have been entered into voluntarily and for a sufficient consideration. Section 1,[15]

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[13] *Rollo,* p. 97.

[14] *Ting v. Villarin*, G.R. No. 61754, August 17, 1989, 176 SCRA 532, 535.

[15] **SECTION 1.** *Burden of proof.* – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

Rule 131 of the Rules of Court instructs that each party must prove his own affirmative allegations. To repeat, in this jurisdiction, fraud is never presumed. Moreover, written contracts such as the documents executed by the parties in the present case, are presumed to have been entered into for a sufficient consideration.[16]

In this instance, the transaction between the bank and its client appears to have commenced rather regularly and aboveboard. The parties have been transacting business with each other since 1995. Up until the present case, it appears Allied Bank had not complained of any wrongdoing by this client. It also appears that South Pacific had availed of a total of ₱300 million in credit accommodations from Allied Bank, ₱210 million of which has already been paid – a fact Allied Bank did not deny nor object to.[17] Allied Bank even admitted that of the outstanding loan of ₱96 million, ₱6 million had been paid. These facts hardly point to the direction of fraud. Allied Bank claims repeatedly that the fact that ₱210 million out of ₱300 million has been paid does not discount the possibility that respondents indeed committed fraud in their assumption and/or the performance of their obligations. Yet, it never denied such fact of payment of the ₱210 million. As the Court of Appeals pointedly held,

…**The inability to pay one's creditors is not necessarily synonymous with fraudulent intent not to honor an obligation**. There must be factual allegations as to how fraud was committed. Fraud may be gleaned from a preconceived plan or intention not to pay. Unfortunately, this does not appear to be so in the case at bench. **In fact, in its complaint the petitioner alleged that the private respondents had a total obligation of ₱96,000,000.00 covered by three (3) separate promissory notes, out of which, they paid only ₱6,000,000.00 leaving an unpaid outstanding obligation in the sum of ₱90,000,000.00. There was no mention at all that the indebtedness was incurred in consequence of fraud; neither does it show in the testimony of petitioner's witness**, Marilou T. Go, as summarized by the public respondent in the order dated February 20, 2001, that there

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[16] *Filinvest Credit Corporation v. Relova*, G.R. No. 50378, September 30, 1982, 117 SCRA 420, 430-431.

[17] *Rollo*, pp. 116 and 123.

exists a preconceived plan or intention not to pay their obligation in defraudation of the petitioner….[18] (Emphasis supplied.)

We take this opportunity to reiterate that an application for a writ of attachment, being a harsh remedy, is to be construed strictly in favor of the defendant.[19] For by it, the reputation of the debtor may be seriously prejudiced. Thus, caution must be exercised in granting the writ. There must be more compelling reasons to justify attachment beyond a mere general assertion of fraud. This must be so lest we, as *Garcia v. Reyes*[20] puts it, be "spinning tight webs on gossamer filigrees."[21]

We need not tarry further to discuss the other issues raised in the petition for being moot on account of the foregoing pronouncement.

Again, we stress that this Court gives credence to the factual findings of the trial court when supported by the evidence and gives them more weight still when the same are affirmed by the Court of Appeals.[22]

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Decision dated February 3, 2004 and the Resolution dated May 13, 2004 of the Court of Appeals in CA-G.R. SP No. 68619 are *AFFIRMED*. The Order[23] dated May 23, 2001 of the Regional Trial Court of Makati City, Branch 148, discharging the writ of preliminary attachment in Civil Case No. 01-121 is *UPHELD*. No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[18] *Id.* at 63.

[19] *Salgado v. Court of Appeals*, G.R. No. 55381, March 26, 1984, 128 SCRA 395, 400.

[20] G.R. No. L-27419, October 31, 1969, 30 SCRA 162.

[21] *Id.* at 170.

[22] *Valgosons Realty, Inc. v. Court of Appeals*, G.R. No. 126233, September 11, 1998, 295 SCRA 449, 461.

[23] *Rollo*, pp. 129-131. Penned by Judge Oscar B. Pimentel.

SECOND DIVISION

[G.R. No. 164587. February 4, 2008]

ROCKLAND CONSTRUCTION COMPANY, INC., *petitioner, vs.* **MID-PASIG LAND DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; STAGES, EXPLAINED.— A contract has three distinct stages: preparation, perfection, and consummation. Preparation or negotiation begins when the prospective contracting parties manifest their interest in the contract and ends at the moment of their agreement. Perfection or birth of the contract occurs when they agree upon the *essential elements* thereof. Consummation, the last stage, occurs when the parties "fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof." Negotiation is formally initiated by an offer. Accordingly, an offer that is not accepted, either expressly or impliedly, precludes the existence of consent, which is one of the essential elements of a contract. Consent, under Article 1319 of the Civil Code, is manifested by the meeting of the offer and acceptance upon the thing which are to constitute a contract. To produce a contract, the offer must be certain and the acceptance absolute.

2. ID.; ID.; CONTRACTS; ESTOPPEL; CONSTRUED.— The doctrine of estoppel is based on the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. Since estoppel is based on equity and justice, it is essential that before a person can be barred from asserting a fact contrary to his act or conduct, it must be shown that such act or conduct has been intended and would unjustly cause harm to those who are misled if the principle were not applied against him. x x x For estoppel to apply, the action giving rise thereto must be unequivocal and intentional because, if misapplied, estoppel may become a tool of injustice.

APPEARANCES OF COUNSEL

Garayblas Garayblas Dela Cruz Cairme Law Offices for petitioner.
Tan & Concepcion for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review seeks the reversal of the Decision[1] and Resolution[2] dated February 27, 2004 and July 21, 2004, respectively, of the Court of Appeals in CA-G.R. CV No. 76370. The appellate court had reversed and set aside the Decision[3] dated September 2, 2002 of the Regional Trial Court (RTC), Branch 67 of Pasig City, in Civil Case No. 68350; dismissed petitioner's complaint; and held that there was no perfected contract of lease between the parties.

The antecedents facts, culled from the records, are as follows:

Rockland Construction Company, Inc. (Rockland), in a letter[4] dated March 1, 2000, offered to lease from Mid-Pasig Land Development Corporation (Mid-Pasig) the latter's 3.1-hectare property in Pasig City. This property is covered by Transfer Certificate of Title Nos. 469702 and 337158 under the control of the Presidential Commission on Good Government (PCGG). Upon instruction of Mid-Pasig to address the offer to the PCGG, Rockland wrote the PCGG on April 15, 2000. The letter,[5]

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[1] *Rollo*, pp. 24-36. Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Eubulo G. Verzola and Remedios Salazar-Fernando concurring.

[2] *Id.* at 49. Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Remedios Salazar-Fernando and Danilo B. Pine concurring.

[3] *Id*. at 51-65. Penned by Judge Mariano M. Singzon, Jr.

[4] Records, folder no. 1, p. 152.

[5] *Id*. at 153-154.

addressed to PCGG Chairman Magdangal Elma, included Rockland's proposed terms and conditions for the lease. This letter was also received by Mid-Pasig on April 18, 2000, but Mid-Pasig made no response.

Again, in another letter[6] dated June 8, 2000 addressed to the Chairman of Mid-Pasig, Mr. Ronaldo Salonga, Rockland sent a Metropolitan Bank and Trust Company Check No. 2930050168[7] for ₱1 million as a sign of its good faith and readiness to enter into the lease agreement under the certain terms and conditions stipulated in the letter. Mid-Pasig received this letter on July 28, 2000.

In a subsequent follow-up letter[8] dated February 2, 2001, Rockland then said that it presumed that Mid-Pasig had accepted its offer because the ₱1 million check it issued had been credited to Mid-Pasig's account on December 5, 2000.[9]

Mid-Pasig, however, denied it accepted Rockland's offer and claimed that no check was attached to the said letter. It also vehemently denied receiving the ₱1 million check, much less depositing it in its account.

In its letter[10] dated February 6, 2001, Mid-Pasig replied to Rockland that it was only upon receipt of the latter's February 2 letter that the former came to know where the check came from and what it was for. Nevertheless, it categorically informed Rockland that it could not entertain the latter's lease application. Mid-Pasig reiterated its refusal of Rockland's offer in a letter[11] dated February 13, 2001.

Rockland then filed an action for specific performance docketed as Civil Case No. 68350 in the RTC, Branch 67 of Pasig City.

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[6] *Id*. at 155.

[7] *Id*. at 156.

[8] *Id*. at 157.

[9] *Id*. at 3.

[10] Records, folder no. 2, pp. 457-458.

[11] *Id*. at 459-460.

Rockland sought to compel Mid-Pasig to execute in Rockland's favor, a contract of lease over a 3.1-hectare portion[12] of Mid-Pasig's property in Pasig City.

On September 2, 2002, the trial court rendered a decision, the dispositive portion of which reads in part:

> WHEREFORE, is rendered, as follows:
>
> 1. Declaring that the plaintiff and the defendant have duly agreed upon a valid and enforceable lease agreement of subject portions of [defendant's] properties designated in Exh. A as areas "A", "B" and "C", comprising an area of 5,000 square meters, 11,000 square meters and 15,000 square meters, or a total of 31,000 square meters;
>
> 2. Holding that the principal terms and conditions of the aforesaid lease agreement are as stated in plaintiff's June 8, 2000 letter (Exh. D), to wit:
>
> x x x x x x x x x
>
> 3. Ordering the defendant to execute a written lease contract in favor of the plaintiff containing the principal terms and conditions mentioned in the next-preceding paragraph, within sixty (60) days from finality of this judgment, and likewise ordering the plaintiff to pay rent to the defendant as specified in said terms and conditions;
>
> 4. Ordering the defendant to keep and maintain the plaintiff in the peaceful possession and enjoyment of the leased premises during the term of said contract;
>
> 5. Ordering the defendant to pay plaintiff [attorney's] fees in the sum of One Million Pesos (₱1,000,000.00), plus ₱2,000.00 for every appearance made by counsel in court;
>
> 6. The temporary restraining order dated April 2, 2001 is hereby made PERMANENT;
>
> 7. Dismissing defendant's counterclaim.

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[12] Records, folder no. 1, p. 151. Comprising 5,000 square meters, 11,000 square meters and 15,000 square meters.

With costs against the defendant.

SO ORDERED.[13]

On appeal, the Court of Appeals reversed and set aside the trial court's decision on the following grounds: (1) there was no meeting of the minds as to the offer and acceptance between the parties; (2) there was no implied acceptance of the ₱1 million check as Mid-Pasig was not aware of its source at the time Mid-Pasig discovered the existence of the ₱1 million in its account; and (3) Rockland's subsequent acts and/or omissions contradicted its claim that there was already a contract of lease, as it neither took possession of the property, nor did it pay for the corresponding monthly rentals. Accordingly, the Court of Appeals dismissed Rockland's complaint, as well as Mid-Pasig's counterclaim. Rockland sought reconsideration, but it was denied.

Petitioner Rockland now comes before us raising a complex issue:

. . . WHETHER OR NOT RESPONDENT'S ACT OF DEPOSITING INTO ITS CORPORATE BANK ACCOUNT PETITIONER'S ₱1 MILLION CHECK AND COLLECTING THE PROCEEDS THEREOF: (A) PRODUCES THE LEGAL EFFECT OF AN ACCEPTANCE OF PETITIONER'S OFFER AND CONSIDERED AS CONSENT TO THE PAYMENT FOR WHICH IT WAS INTENDED; AND/OR [(B)] CONSTITUTES IN LEGAL CONTEMPLATION ESTOPPEL *IN PAIS*, SUFFICIENT TO APPRECIATE RESPONDENT'S CONSENT TO THE LEASE.[14]

Simply stated, the issue may be rephrased into two questions: Was there a perfected contract of lease? Had estoppel *in pais* set in?

Rockland contends that the contract of lease had been perfected and that Mid-Pasig is in estoppel *in pais* because it impliedly accepted its offer when the ₱1 million check was credited to Mid-Pasig's account.

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[13] *Rollo*, pp. 64-65.

[14] *Id.* at 212.

Mid-Pasig counters that it never accepted Rockland's offer. It avers it immediately rejected Rockland's offer upon learning of the mysterious deposit of the ₱1 million check in its account.

Since the re-stated issues are intertwined, we shall discuss them jointly.

A contract has three distinct stages: preparation, perfection, and consummation. Preparation or negotiation begins when the prospective contracting parties manifest their interest in the contract and ends at the moment of their agreement. Perfection or birth of the contract occurs when they agree upon the *essential elements* thereof. Consummation, the last stage, occurs when the parties "fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof."[15]

Negotiation is formally initiated by an offer. Accordingly, an offer that is not accepted, either expressly or impliedly,[16] precludes the existence of consent, which is one of the essential elements[17] of a contract. Consent, under Article 1319 of the Civil Code, is manifested by the meeting of the offer and acceptance upon the thing which are to constitute a contract. To produce a contract, the offer must be certain and the acceptance absolute.[18]

A close review of the events in this case, in the light of the parties' evidence, shows that there was no perfected contract of lease between the parties. Mid-Pasig was not aware that Rockland deposited the ₱1 million check in its account. It only learned of Rockland's check when it received Rockland's

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[15] *Swedish Match, AB v. Court of Appeals*, G.R. No. 128120, October 20, 2004, 441 SCRA 1, 18.

[16] CIVIL CODE, Art. 1320.

[17] *Id.* at Art. 1318. There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

[18] *Swedish Match, AB v. Court of Appeals, supra* at 19.

February 2, 2001 letter. Mid-Pasig, upon investigation, also learned that the check was deposited at the Philippine National Bank (PNB) San Juan Branch, instead of PNB Ortigas Branch where Mid-Pasig maintains its account. Immediately, Mid-Pasig wrote Rockland on February 6, 2001 rejecting the offer, and proposed that Rockland apply the ₱1 million to its other existing lease instead. These circumstances clearly show that there was no concurrence of Rockland's offer and Mid-Pasig's acceptance.

Mid-Pasig is also not in estoppel *in pais*. The doctrine of estoppel is based on the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon.[19] Since estoppel is based on equity and justice, it is essential that before a person can be barred from asserting a fact contrary to his act or conduct, it must be shown that such act or conduct has been intended and would unjustly cause harm to those who are misled if the principle were not applied against him.[20]

From the start, Mid-Pasig never falsely represented its intention that could lead Rockland to believe that Mid-Pasig had accepted Rockland's offer. Mid-Pasig consistently rejected Rockland's offer. Further, Rockland never secured the approval of Mid-Pasig's Board of Directors and the PCGG to lease the subject property to Rockland. As noted by the Court of Appeals, if indeed Rockland believed that Mid-Pasig impliedly accepted the offer, then it should have taken possession of the property and paid the monthly rentals. But it did not. For estoppel to apply, the action giving rise thereto must be unequivocal and intentional because, if misapplied, estoppel may become a tool of injustice.[21]

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[19] *Philippine National Bank v. Court of Appeals,* G.R. Nos. L-30831 & L-31176, November 21, 1979, 94 SCRA 357, 368.

[20] III J. VITUG, *CIVIL LAW ANNOTATED* 166-167 (2003 ed.).

[21] *La Naval Drug Corporation v. Court of Appeals,* G.R. No. 103200, August 31, 1994, 236 SCRA 78, 87.

WHEREFORE, the instant petition is *DENIED*. The Decision and Resolution dated February 27, 2004 and July 21, 2004, respectively, of the Court of Appeals in CA-G.R. CV No. 76370 are *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 165258. February 4, 2008]

ROSITA L. FLAMINIANO *a.k.a.* ROSE FLAMINIANO, *petitioner, vs.* **HON. ARSENIO P. ADRIANO, Pairing Judge (RTC, Branch 64, Tarlac City), S.Q. FILMS LABORATORIES, INC., ALBERTO Q. SANTOS, SUSAN MANSUETO and ANGELITA LIMSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CONCURRENCE OF JURISDICTION DOES NOT ALLOW AN UNRESTRICTED FREEDOM OF CHOICE OF COURT FORUM; EXPLAINED.— At the outset, pursuant to the doctrine of hierarchy of courts, the instant petition for *certiorari* should have been filed with the Court of Appeals and not with this Court. Disregard of this doctrine warrants the outright dismissal of the petition. While the Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the RTCs and the Court of Appeals in certain cases, we emphasized in *Liga ng mga Barangay National v. Atienza, Jr.* that such concurrence does not allow an unrestricted freedom of choice of court forum, thus – This concurrence of jurisdiction is not, however, to be

taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefore will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard of that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition…. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. In the present case, petitioner adduced no special and important reason why direct recourse to this Court should be allowed. Thus, we reaffirm the judicial policy that this Court will not entertain a direct invocation of its jurisdiction unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances justify the resort to the extraordinary remedy of writ of *certiorari*.

2. ID.; ID.; ID.; *CERTIORARI* CANNOT BE USED AS A SUBSTITUTE FOR THE LOST OR LAPSED REMEDY OF APPEAL.— It is an established doctrine that a petition for *certiorari* is a remedy for the correction of errors of jurisdiction. Errors of judgment involving the wisdom or legal soundness of a decision are beyond the province of a petition for *certiorari*. Since petitioner in this case imputes to public respondent judge errors of judgment, particularly mistakes concerning facts, law and jurisprudence, the proper remedy is an appeal, not a petition for *certiorari*. A petition for *certiorari* cannot be used as a substitute for the lost or lapsed remedy of appeal, especially if such was occasioned by one's own neglect or error in the choice of remedies. Though there are instances where the extraordinary remedy of *certiorari* may be resorted to despite the availability of an appeal, we find no compelling reasons for relaxing the rule in this case, as the issues set forth clearly pertain to the wisdom and soundness of the assailed decision.

3. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, AS A GROUND; DEFINED AND CONSTRUED.— Grave abuse of discretion means such capricious and whimsical exercise of judgment amounting to excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of personal hostility. Public respondent's act of deciding the subject case for damages within a short span of thirteen (13) days cannot be considered grave abuse of discretion. Justice delayed is justice denied as litigants have the right to a speedy disposition of their cases. Judges are thus expected to exercise utmost diligence in dispensing justice.

APPEARANCES OF COUNSEL

Eduardo B. Flaminiano for petitioner.
Sahagun Law Office for private respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for *certiorari* alleges grave abuse of discretion by Judge Arsenio P. Adriano of the Regional Trial Court (RTC), Branch 64, Tarlac City, in rendering the Decision[1] dated March 22, 2004 in Civil Case No. 8830.

The antecedent facts are as follows:

Petitioner Rosita L. Flaminiano is a movie producer. Private respondent S.Q. Films Laboratories, Inc. (SQ Lab) processes film prints for theater and television. Private respondents Alberto Q. Santos, Susan Mansueto, and Angelita Limson are the general manager, production manager, and sales representative, respectively, of SQ Lab.

The present controversy started when SQ Lab charged petitioner with two counts of violation of *Batas Pambansa Bilang 22*

[1] *Rollo*, pp. 23-26.

(B.P. Blg. 22)[2] in the Metropolitan Trial Court (MeTC),[3] Branch 59, Mandaluyong City. The charges were docketed as Criminal Case Nos. 75243-44.

As petitioner remained at large long after the issuance of a warrant for her arrest, Limson called petitioner to set up a meeting for the settlement of the case. The two met at the agreed time and place. After arriving at a compromise agreement, Limson left. Subsequently, Mansueto arrived with agents of the National Bureau of Investigation (NBI). There and then, the NBI agents finally arrested petitioner.

Petitioner asked to be taken to the court that issued the warrant of arrest or before the nearest court in Quezon City. The NBI agents refused. Petitioner requested that she be allowed to pass by her residence to make a call to her lawyer. The NBI agents acquiesced. Then they brought her to the NBI office for photographing and fingerprinting. After an order for her release was issued, petitioner was immediately released from custody.

Petitioner filed against the NBI agents who effected her arrest a complaint[4] for violation of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act, alleging grave coercion, violation of domicile and arbitrary detention. However, the Ombudsman dismissed the said complaint for lack of merit.[5]

Petitioner also filed in the RTC of Tarlac City a complaint[6] for damages against herein private respondents. The case was docketed as Civil Case No. 8830 and was raffled to the sala of Judge Martonino Marcos. Petitioner alleged in her complaint

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[2] AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES.

[3] Erroneously stated as Regional Trial Court (RTC) in other parts of the records.

[4] Records, pp. 331-333.

[5] *Id*. at 309-312.

[6] *Rollo*, pp. 38-46.

that her arrest was carried out in bad faith and was intended to harass her. She asked to be indemnified in the total amount of ₱20 million in damages.

After hearing the case, however, Judge Marcos was suspended for four months. Thus, public respondent Judge Arsenio P. Adriano, the pairing judge, took over the case. Judge Adriano penned the assailed Decision, the decretal part of which reads:

> WHEREFORE, judgment is hereby rendered dismissing the complaint. On the counterclaim, the plaintiffs are ordered to pay the defendants the sum of Php50,000.00 a reasonable amount for moral damages and Php10,000.00 for attorney's fees.
>
> Costs against the plaintiffs.
>
> SO ORDERED.[7]

Petitioner filed a motion for reconsideration of the abovequoted decision, but Judge Adriano denied it for lack of merit. By the time the said decision attained finality, Judge Marcos had resumed his duties; thus, he issued the writ of execution thereon.

The present petition for *certiorari* raises the following issues:

I.

WHETHER THE HONORABLE ARSENIO P. ADRIANO (PAIRING JUDGE OF RTC-BRANCH 64, TARLAC CITY) COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN HE DECIDED THE INSTANT CASE WITHOUT CAREFULLY STUDYING, EVALUATING AND ASCERTAINING THE FACTS OF THE CASE AND THE EVIDENCE PRESENTED ON THE RECORD WHICH NATURALLY LED HIM TO MAKE GRIEVOUS MISTAKES OR ERRORS IN HIS CONCLUSIONS OF FACTS OF LAW AND JURISPRUDENCE APPLICABLE TO THE CASE.

II.

WHETHER IN DOING SO THE HONORABLE ARSENIO P. ADRIANO (PUBLIC RESPONDENT) WHO DECIDED THE INSTANT CIVIL CASE

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[7] *Id*. at 26.

FOR DAMAGES UNDER CIVIL CASE NO. 8830 ASSIGNED TO RTC-BRANCH 64 (TARLAC CITY) PRESIDED BY THE HONORABLE MARTONINO MARCOS OF RTC-BRANCH 64 (TARLAC CITY) ONLY THIRTEEN (13) DAYS AFTER THE SUSPENSION OF THE LATTER DECIDED THE CASE WITH IMPARTIALITY AND FAIRNESS AND WITH THE COLD NEUTRALITY OF AN IMPARTIAL JUDGE THAT HIS ACTUATION IN DECIDING THE CASE IS ABOVE-BOARD AND BEYOND SUSPICION.[8]

Plainly stated, the sole issue is whether respondent Judge Adriano gravely abused his discretion amounting to lack of jurisdiction, or in excess thereof, in deciding the instant case.

Petitioner alleges grave abuse of discretion on the part of Judge Adriano when he decided the instant case allegedly without carefully studying the facts of the case, leading him to commit grave errors in his conclusions of facts, of law and jurisprudence in this case. Petitioner alleges that Judge Adriano decided the case in only thirteen (13) days while it took the suspended Judge Marcos five (5) years to finish and complete hearing the case. Petitioner also contends that the awards of moral damages and attorney's fees in favor of private respondents were without legal basis. Also, petitioner contends that a counterclaim in the pending case for violation of B.P. Blg. 22, as ruled by public respondent, was not the proper course of action.

Private respondents maintain that no grave abuse of discretion was committed by Judge Adriano in deciding the case within only 13 days. Private respondents also claim that petitioner is guilty of forum shopping as the issues raised in the instant petition are the same issues put forth in her opposition to the motion for execution.

Private respondents, moreover, counter that petitioner could not substitute a petition for certiorari for her lost remedy of appeal. They insist that the present petition was filed out of time and, thus, should be dismissed outright.

At the outset, pursuant to the doctrine of hierarchy of courts, the instant petition for *certiorari* should have been filed with

[8] *Id*. at 140.

the Court of Appeals and not with this Court. Disregard of this doctrine warrants the outright dismissal of the petition. While the Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the RTCs and the Court of Appeals in certain cases, we emphasized in *Liga ng mga Barangay National v. Atienza, Jr.*[9] that such concurrence does not allow an unrestricted freedom of choice of court forum, thus –

> This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefore will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard of that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition…. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.

In the present case, petitioner adduced no special and important reason why direct recourse to this Court should be allowed. Thus, we reaffirm the judicial policy that this Court will not entertain a direct invocation of its jurisdiction unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances justify the resort to the extraordinary remedy of writ of *certiorari*.

More importantly, it is an established doctrine that a petition for *certiorari* is a remedy for the correction of errors of jurisdiction. Errors of judgment involving the wisdom or legal soundness of a decision are beyond the province of a petition for *certiorari*.[10]

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[9] G.R. No. 154599, 21 January 2004, 420 SCRA 562, 572.

[10] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, 409 SCRA 455, 482.

Since petitioner in this case imputes to public respondent judge errors of judgment, particularly mistakes concerning facts, law and jurisprudence, the proper remedy is an appeal, not a petition for *certiorari*.

A petition for *certiorari* cannot be used as a substitute for the lost or lapsed remedy of appeal, especially if such was occasioned by one's own neglect or error in the choice of remedies.[11] Though there are instances where the extraordinary remedy of *certiorari* may be resorted to despite the availability of an appeal, we find no compelling reasons for relaxing the rule in this case, as the issues set forth clearly pertain to the wisdom and soundness of the assailed decision.

Considering the circumstances of this case and the contentions of the parties, we are in agreement that no grave abuse of discretion was committed by public respondent. Grave abuse of discretion means such capricious and whimsical exercise of judgment amounting to excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of personal hostility.[12]

Public respondent's act of deciding the subject case for damages within a short span of thirteen (13) days cannot be considered grave abuse of discretion. Justice delayed is justice denied as litigants have the right to a speedy disposition of their cases. Judges are thus expected to exercise utmost diligence in dispensing justice.

WHEREFORE, the petition is *DISMISSED* for lack of merit. The Decision dated March 22, 2004 of Judge Arsenio P. Adriano,

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[11] *Sevilla Trading Company v. Semana*, G.R. No. 152456, April 28, 2004, 428 SCRA 239, 244.

[12] *Zarate v. Maybank Philippines, Inc.*, G.R. No. 160976, June 8, 2005, 459 SCRA 785, 794.

Regional Trial Court of Tarlac City, Branch 64, in Civil Case No. 8830 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 167217. February 4, 2008]

P.I. MANUFACTURING, INCORPORATED, *petitioner, vs.* **P.I. MANUFACTURING SUPERVISORS AND FOREMEN ASSOCIATION and THE NATIONAL LABOR UNION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; WAGES; WAGE DISTORTION, DEFINED.— R.A. No. 6727, otherwise known as the *Wage Rationalization Act*, explicitly defines **"wage distortion"** as: x x x a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation. Otherwise stated, wage distortion means the **disappearance** or **virtual disappearance** of pay differentials between lower and higher positions in an enterprise because of compliance with a wage order.

2. ID.; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT (CBA); NATURE THEREOF, EXPLAINED.— At this juncture, it must be stressed that a CBA constitutes

the **law between the parties** when **freely** and **voluntarily** entered into. Here, it has not been shown that respondent PIMASUFA was **coerced or forced** by petitioner to sign the 1987 CBA. All of its thirteen (13) officers signed the CBA with the assistance of respondent NLU. They signed it fully aware of the passage of R.A. No. 6640. The duty to bargain requires that the parties deal with each other with open and fair minds. A sincere endeavor to overcome obstacles and difficulties that may arise, so that employer-employee relations may be stabilized and industrial strife eliminated, must be apparent. **Respondents cannot invoke the beneficial provisions of the 1987 CBA but disregard the concessions it voluntary extended to petitioner.** The goal of collective bargaining is the making of agreements that will stabilize business conditions and fix fair standards of working conditions. Definitely, respondents' posture contravenes this goal. In fine, it must be emphasized that in the resolution of labor cases, this Court has always been guided by the State policy enshrined in the Constitution that the rights of workers and the promotion of their welfare shall be protected. However, consistent with such policy, **the Court cannot favor one party, be it labor or management, in arriving at a just solution to a controversy if the party concerned has no valid support to its claim, like respondents here.**

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez and Gatmaitan for petitioner.
The Solicitor General for public respondent.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

The Court has always promoted the policy of encouraging employers to grant wage and allowance increases to their employees **higher** than the minimum rates of increases prescribed by statute or administrative regulation. Consistent with this, the Court also adopts the policy that requires **recognition** and **validation** of wage increases given by employers either

unilaterally or as a result of **collective bargaining negotiations** in an effort to correct wage distortions.[1]

Before us is a motion for reconsideration of our Resolution dated April 18, 2005 denying the present petition for review on *certiorari* for failure of the petitioner to show that a reversible error has been committed by the Court of Appeals in its **(a)** Decision dated July 21, 2004 and **(b)** Resolution dated February 18, 2005.

The facts are:

Petitioner *P.I. Manufacturing, Incorporated* is a domestic corporation engaged in the manufacture and sale of household appliances. On the other hand, respondent P.I. Manufacturing Supervisors and Foremen Association (PIMASUFA) is an organization of petitioner's supervisors and foremen, joined in this case by its federation, the National Labor Union (NLU).

On December 10, 1987, the President signed into law **Republic Act (R.A.) No. 6640**[2] providing, among others, an increase in the statutory minimum wage and salary rates of employees and workers in the private sector. Section 2 provides:

> **SEC. 2.** The statutory minimum wage rates of workers and employees in the private sector, whether agricultural or non-agricultural, shall be increased by ten pesos (₱10.00) per day, except non-agricultural workers and employees outside Metro Manila who shall receive an increase of eleven pesos (₱11.00) per day: *Provided*, **That those already receiving above the minimum wage up to one hundred pesos (₱100.00) shall receive an increase of ten pesos (₱10.00) per day**. Excepted from the provisions of this Act are domestic helpers and persons employed in the personal service of another.

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[1] *National Federation of Labor v. National Labor Relations Commission*, G.R. No. 103586, July 21, 1994, 234 SCRA 311.

[2] *An Act Providing for an Increase in the Wage of Public or Government Sector Employees on a Daily Wage Basis and in the Statutory Minimum Wage and Salary Rates of Employees and Workers in the Private Sector and for other Purposes.* Official Gazette, Vol. 84, No. 7, February 15, 1988, pp. 759-761.

Thereafter, on December 18, 1987, petitioner and respondent PIMASUFA entered into a new Collective Bargaining Agreement (1987 CBA) whereby the supervisors were granted an increase of ₱625.00 per month and the foremen, ₱475.00 per month. The increases were made retroactive to **May 12, 1987**, or prior to the passage of R.A. No. 6640, and every year thereafter until **July 26, 1989**. The pertinent portions of the 1987 CBA read:

ARTICLE IV
SALARIES AND OVERTIME

Section 1. The COMPANY shall grant to all regular supervisors and foremen within the coverage of the unit represented by the ASSOCIATION, wage or salary increases in the amount set forth as follows:

A. For FOREMEN

Effective May 12, 1987, an increase of ₱475,00 per month to all qualified regular foremen who are in the service of the COMPANY as of said date and who are still in its employ on the signing of this Agreement, subject to the conditions set forth in sub-paragraph (d) hereunder;

a) Effective July 26, 1988, an increase of ₱475.00 per month/employee to all covered foremen;

b) Effective July 26, 1989, an increase of ₱475.00 per month/per employee to all covered foremen;

c) The salary increases from May 12, 1987 to November 30, 1987 shall be excluding and without increment on fringe benefits and/or premium and shall solely be on basic salary.

B. For SUPERVISORS

a) Effective May 12, 1987, an increase of ₱625.00 per month/employee to all qualified regular supervisors who are in the service of the COMPANY as of said date and who are still in its employ on the signing of the Agreement, subject to the conditions set forth in subparagraph (d) hereunder;

b) Effective July 26, 1988, an increase of ₱625.00 per month/employee to all covered supervisors;

c) Effective July 26, 1989, an increase of ₱625.00 per month/employee to all covered supervisors;

d) The salary increase from May 12, 1987 to November 30, 1987 shall be excluding and without increment on fringe benefits and/or premiums and shall solely be on basic salary.

On January 26, 1989, respondents PIMASUFA and NLU filed a complaint with the Arbitration Branch of the National Labor Relations Commission (NLRC), docketed as NLRC-NCR Case No. 00-01-00584, charging petitioner with violation of R.A. No. 6640.[3] Respondents attached to their complaint a numerical illustration of wage distortion resulting from the implementation of R.A. No. 6640.

On March 19, 1990, the Labor Arbiter rendered his Decision in favor of respondents. Petitioner was ordered to give the members of respondent PIMASUFA wage increases equivalent to **13.5%** of their basic pay they were receiving prior to December 14, 1987. The Labor Arbiter held:

> As regards the issue of wage distortion brought about by the implementation of R.A. 6640 –
>
> It is correctly pointed out by the union that employees cannot waive future benefits, much less those mandated by law. That is against public policy as it would render meaningless the law. Thus, the waiver in the CBA does not bar the union from claiming adjustments in pay as a result of distortion of wages brought about by the implementation of R.A. 6640.
>
> Just how much are the supervisors and foremen entitled to correct such distortion is now the question. Pursuant to the said law, those who on December 14, 1987 were receiving less than ₱100.00 are all entitled to an automatic across- the-board increase of ₱10.00 a day. **The percentage in increase given those who received benefits under R.A. 6640 should be the same percentage given to the supervisors and foremen**.
>
> The statutory minimum pay then was ₱54.00 a day. With the addition of ₱10.00 a day, the said minimum pay raised to ₱64.00 a day. The

[3] *Rollo,* NCR-AC-N0.-00112, p. 2.

increase of ₱10.00 a day is P13.5% of the minimum wage prior to December 14, 1987. The same percentage of the pay of members of petitioner prior to December 14, 1987 should be given them.

Finally, the claim of respondent that the filing of the present case, insofar as the provision of R.A. 6640 is concerned, is premature does not deserve much consideration considering that as of December 1988, complainant submitted in grievance the aforementioned issue but the same was not settled.[4]

On appeal by petitioner, the NLRC, in its Resolution dated January 8, 1991, affirmed the Labor Arbiter's judgment.

Undaunted, petitioner filed a petition for *certiorari* with this Court. However, we referred the petition to the Court of Appeals pursuant to our ruling in *St. Martin Funeral Homes v. NLRC*.[5] It was docketed therein as CA-G.R. SP No. 54379.

On July 21, 2004, the appellate court rendered its Decision affirming the Decision of the NLRC with modification by raising the **13.5%** wage increase to **18.5%**. We quote the pertinent portions of the Court of Appeals Decision, thus:

Anent the fourth issue, petitioner asseverates that the wage distortion issue is already barred by Sec. 2 Article IV of the Contract denominated as "The Company and Supervisors and Foremen Contract" dated December 18, 1987 declaring that it "**absolves, quit claims and releases the COMPANY for any monetary claim they have, if any there might be or there might have been previous to the signing of this agreement."** Petitioner interprets this as absolving it from any wage distortion brought about by the implementation of the new minimum wage law. Since the contract was signed on December 17, 1987, or after the effectivity of Republic Act

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[4] Record, National Labor Relations Commission, pp. 172-173.

[5] G.R. No. 130866, September 16, 1998, 295 SCRA 494, ruling that all references in the amended Section 9 of B.P. No. 129 to supposed appeals from the NLRC to the Supreme Court are interpreted and hereby declared to mean and refer to petitions for *certiorari* under Rule 65. Consequently, all such petitions should henceforth be initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts as the appropriate forum for the relief desired.

No. 6640, petitioner claims that private respondent is deemed to have waived any benefit it may have under the new law.

We are not persuaded.

Contrary to petitioner's stance, the increase resulting from any wage distortion caused by the implementation of Republic Act 6640 is not waivable. As held in the case of *Pure Foods Corporation vs. National Labor Relations Commission, et al.*:

> "Generally, quitclaims by laborers are frowned upon as contrary to public policy and are held to be ineffective to bar recovery for the full measure of the worker's rights. The reason for the rule is that the employer and the employee do not stand on the same footing."

Moreover, Section 8 of the Rules Implementing RA 6640 states:

> No wage increase shall be credited as compliance with the increase prescribed herein unless expressly provided under valid individual written/collective agreements; and provided further that such wage increase was granted in anticipation of the legislated wage increase under the act. But such increases shall not include anniversary wage increases provided in collective bargaining agreements.

Likewise, Article 1419 of the Civil Code mandates that:

> When the law sets, or authorizes the setting of a minimum wage for laborers, and a contract is agreed upon by which a laborer accepts a lower wage, he shall be entitled to recover the deficiency.

Thus, notwithstanding the stipulation provided under Section 2 of the Company and Supervisors and Foremen Contract, we find the members of private respondent union entitled to the increase of their basic pay due to wage distortion by reason of the implementation of RA 6640.

On the last issue, the increase of 13.5% in the supervisors and foremen's basic salary must further be increased to 18.5% in order to correct the wage distortion brought about by the implementation of RA 6640. It must be recalled that the statutory minimum pay before RA 6640 was ₱54.00 a day. The increase of ₱10.00 a day under RA 6640 on the prior minimum pay of ₱54.00 is 18.5% and not 13.5%. Thus, petitioner should be made to pay the amount

equivalent to 18.5% of the basic pay of the members or private respondent union in compliance with the provisions of Section 3 of RA 6640."

Petitioner filed a motion for reconsideration but it was denied by the appellate court in its Resolution dated February 18, 2005.

Hence, the present recourse, petitioner alleging that the Court of Appeals erred:

1) In awarding wage increase to respondent supervisors and foremen to cure an alleged wage distortion that resulted from the implementation of R.A. No. 6640.

2) In disregarding the wage increases granted under the 1987 CBA correcting whatever wage distortion that may have been created by R.A. No. 6640.

3) In awarding wage increase equivalent to 18.5% of the basic pay of the members of respondent PIMASUFA in violation of the clear provision of R.A. No. 6640 excluding from its coverage employees receiving wages higher than ₱100.00.

4) In increasing the NLRC's award of wage increase from 13.5% to 18.5%, which increase is very much higher than the ₱10.00 daily increase mandated by R.A. No. 6640.

Petitioner contends that the findings of the NLRC and the Court of Appeals as to the existence of a wage distortion are not supported by evidence; that Section 2 of R.A. No. 6640 does not provide for an increase in the wages of employees receiving **more than ₱100.00;** and that the 1987 CBA has obliterated any possible wage distortion because the increase granted to the members of respondent PIMASUFA in the amount of ₱625.00 and ₱475.00 per month substantially widened the gap between the foremen and supervisors and as against the rank and file employees.

Respondents PIMASUFA and NLU, despite notice, failed to file their respective comments.

In a Minute Resolution dated April 18, 2005, we denied the petition for petitioner's failure to show that the Court of Appeals committed a reversible error.

Hence, this motion for reconsideration.

We grant the motion.

In the ultimate, the issue here is whether the implementation of R.A. No. 6640 resulted in a wage distortion and whether such distortion was cured or remedied by the 1987 CBA.

R.A. No. 6727, otherwise known as the *Wage Rationalization Act*, explicitly defines "**wage distortion**" as:

> x x x a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

Otherwise stated, wage distortion means the **disappearance** or **virtual disappearance** of pay differentials between lower and higher positions in an enterprise because of compliance with a wage order.[6]

In this case, the Court of Appeals correctly ruled that a wage distortion occurred due to the implementation of R.A. No. 6640. The numerical illustration submitted by respondents[7] shows such distortion, thus:

II WAGE DISTORTION REGARDING RA-6640 (₱10.00 per day increase effective December 31, 1987)

Illustration of Wage Distortion and corresponding wage adjustments as provided in RA-6640

NAME OF SUPERVISOR (S) AND FOREMAN (F)	RATE BEFORE INCREASE OF RA-6640 ₱10.00	RATE AFTER INCREASE OF RA-6640 ₱10.00	₱109.01 OVER-PASSED ₱108.80 RATE AFTER ADJUSTMENT ₱10.00	₱118.80 OVER-PASSED ₱118.08 RATE AFTER ADJUSTMENT ₱10.00	₱128.08 OVER-PASSED ₱123.76 RATE AFTER ADJUSTMENT ₱10.00
1. ALCANTARA, V (S)	₱ 99.01	₱ 109.01			
2. MORALES, A (F)	94.93	104.93			

[6] Azucena, *The Labor Code with Comments and Cases*, Vol. 1, p. 301.

[7] *Rollo*, NCR-AC-No. 00112, p. 120.

3. SALVO, R	**(F)**	**96.45**	**106.45**			
Note: No. 1 to 3 with increase of RA-6640						
4.BUENCUCHILLO, C	**(S)**	**102.38**	**102.38**	₱ 112.38		
5. MENDOZA, D	**(F)**	**107.14**	**107.14**	117.14		
6. DEL PRADO, M	**(S)**	**108.80**	**108.80**	118.80		
7. PALENSO, A	(F)	109.71	109.71		₱ 119.71	
8. OJERIO, E	(S)	111.71	111.71		121.71	
9. REYES, J	(S)	114.98	114.98		124.98	
10. PALOMIQUE, S	(F)	116.79	116.79		126.79	
11. PAGLINAWAN, A	(S)	116.98	116.98		126.98	
12. CAMITO, M	(S)	117.04	117.04		127.04	
13. TUMBOCON, P	(S)	117.44	117.44		127.44	
14. SISON JR., B	(S)	118.08	118.08		128.08	
15. BORJA, R	(S)	119.80	119.80			₱ 129.80
16. GINON, D	(S)	123.76	123.76			133.76
17. GINON, T	(S)	151.49	151.49			
18. ANDRES, M	(S)	255.72	255.72			
Note: No. 4 to 18 no increase in R.A. No. 6640						

Notably, the implementation of R.A. No. 6640 resulted in the increase of **₱10.00** in the wage rates of **Alcantara**, **supervisor**, and **Morales** and **Salvo**, **both foremen**. **They are petitioner's lowest paid supervisor and foremen**. As a consequence, the increased wage rates of **foremen Morales** and **Salvo** exceeded that of **supervisor Buencuchillo**. Also, the increased wage rate of **supervisor Alcantara** exceeded those of **supervisors Buencuchillo** and **Del Prado**. Consequently, the **₱9.79** gap or difference between the wage rate of supervisor Del Prado and that of supervisor Alcantara was eliminated. Instead, the latter gained a **₱.21** lead over Del Prado. Like a domino effect, these gaps or differences between and among the wage rates of all the above employees have been **substantially altered and reduced**. It is therefore undeniable that the increase in the wage rates by virtue of R.A. No. 6640 resulted in wage distortion or the elimination of the **intentional quantitative differences** in the wage rates of the above employees.

However, while we find the presence of wage distortions, we are convinced that the same were **cured or remedied** when respondent PIMASUFA entered into the 1987 CBA with petitioner after the effectivity of R.A. No. 6640. The 1987 CBA increased the monthly salaries of the supervisors by **₱625.00** and the foremen, by **₱475.00, effective May 12, 1987**. These increases **re-established** and **broadened** the gap, not only between the

supervisors and the foremen, but also between them and the rank-and-file employees. Significantly, the 1987 CBA wage increases almost **doubled** that of the ₱10.00 increase under R.A. No. 6640. The **₱625.00/month** means **₱24.03** increase per day for the supervisors, while the **₱475.00/month** means **₱18.26** increase per day for the foremen. These increases were to be observed every year, starting **May 12, 1987** until **July 26, 1989**. Clearly, the gap between the wage rates of the supervisors and those of the foremen was inevitably re-established. It continued to broaden through the years.

Interestingly, such gap as re-established by virtue of the CBA is more than a substantial compliance with R.A. No. 6640. We hold that the Court of Appeals erred in not taking into account the provisions of the CBA *viz-a-viz* the wage increase under the said law. In *National Federation of Labor v. NLRC*,[8] we held:

> We believe and so hold that the re-establishment of a significant gap or differential between regular employees and casual employees by operation of the CBA was more than substantial compliance with the requirements of the several Wage Orders (and of Article 124 of the Labor Code). **That this re-establishment of a significant differential was the result of collective bargaining negotiations, rather than of a special grievance procedure, is not a legal basis for ignoring it**. The NLRC *En Banc* was in serious error when it disregarded the differential of ₱3.60 which had been restored by 1 July 1985 upon the ground that such differential "*represent[ed] negotiated wage increase[s] which should not be considered covered and in compliance with the Wage Orders.* x x x"

In *Capitol Wireless, Inc. v. Bate*,[9] we also held:

> x x x The wage orders did not grant across-the-board increases to all employees in the National Capital Region but limited such increases only to those already receiving wage rates not more than ₱125.00 per day under Wage Order Nos. NCR-01 and NCR-01-A and ₱142.00 per day under Wage Order No. NCR-02. Since the wage

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[8] *Supra,* footnote 1.

[9] 316 Phil. 355 (1995).

orders specified who among the employees are entitled to the statutory wage increases, then the increases applied only to those mentioned therein. **The provisions of the CBA should be read in harmony with the wage orders, whose benefits should be given only to those employees covered thereby**.

It has not escaped our attention that requiring petitioner to pay all the members of respondent PIMASUFA a wage increase of **18.5%, over and above the negotiated wage increases provided under the 1987 CBA,** is highly unfair and oppressive to the former. Obviously, it was not the intention of R.A. No. 6640 to grant an across-the-board increase in pay to all the employees of petitioner. Section 2 of R.A. No. 6640 mandates only the following increases in the private sector: **(1)** ₱10.00 per day for the employees in the private sector, whether agricultural or non-agricultural, who are receiving the statutory minimum wage rates; **(2)** ₱11.00 per day for non-agricultural workers and employees outside Metro Manila; and **(3) ₱10.00 per day for those already receiving the minimum wage up to ₱100.00**. To be sure, only those receiving wages ₱100.00 and below are entitled to the ₱10.00 wage increase. **The apparent intention of the law is only to upgrade the salaries or wages of the employees specified therein**.[10] As the numerical illustration shows, almost all of the members of respondent PIMASUFA have been receiving wage rates above ₱100.00 and, therefore, not entitled to the ₱10.00 increase. Only **three (3)** of them are receiving wage rates **below ₱100.00**, thus, entitled to such increase. Now, to direct petitioner to grant an across-the-board increase to all of them, regardless of the amount of wages they are already receiving, would be harsh and unfair to the former. As we ruled in *Metropolitan Bank and Trust Company Employees Union ALU-TUCP v. NLRC*:[11]

x x x **To compel employers simply to add on legislative increases in salaries or allowances without regard to what is already being paid, would be to penalize employers who grant**

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[10] *Manila Mandarin Employees Union v. National Labor Relations Commission*, G.R. No. 108556, November 19, 1996, 264 SCRA 320.

[11] G.R. No. 102636, September 10, 1993, 226 SCRA 269.

their workers more than the statutory prescribed minimum rates of increases. Clearly, this would be counter-productive so far as securing the interests of labor is concerned.

Corollarily, the Court of Appeals erred in citing *Pure Foods Corporation v. National Labor Relations Commission*[12] as basis in disregarding the provisions of the 1987 CBA. The case involves, not wage distortion, but illegal dismissal of employees from the service. The *Release and Quitclaim* executed therein by the Pure Food's employees were intended to preclude them from questioning the termination of their services, not their entitlement to wage increase on account of a wage distortion.

At this juncture, it must be stressed that a CBA constitutes the **law between the parties** when **freely** and **voluntarily** entered into.[13] Here, it has not been shown that respondent PIMASUFA was **coerced or forced** by petitioner to sign the 1987 CBA. All of its thirteen (13) officers signed the CBA with the assistance of respondent NLU. They signed it fully aware of the passage of R.A. No. 6640. The duty to bargain requires that the parties deal with each other with open and fair minds. A sincere endeavor to overcome obstacles and difficulties that may arise, so that employer-employee relations may be stabilized and industrial strife eliminated, must be apparent.[14] **Respondents cannot invoke the beneficial provisions of the 1987 CBA but disregard the concessions it voluntary extended to petitioner.** The goal of collective bargaining is the making of agreements that will stabilize business conditions and fix fair standards of working conditions.[15] Definitely, respondents' posture contravenes this goal.

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[12] G.R. No. 122653, December 12, 1987, 283 SCRA 133.

[13] *Mactan Workers Union v. Aboitiz*, G.R. No. L-30241, June 30, 1972, 45 SCRA 577, citing *Shell Oil Workers Union v. Shell Company of the Philippines*, 39 SCRA 276 (1971).

[14] Werne, *Law and Practice of the Labor Contract*, Volume 1 Origin and Operation Disputes, 1957, p. 20.

[15] Werne, *Law and Practice of the Labor Contract*, Volume 1 Origin and Operation Disputes, 1957, p. 180.

In fine, it must be emphasized that in the resolution of labor cases, this Court has always been guided by the State policy enshrined in the Constitution that the rights of workers and the promotion of their welfare shall be protected. However, consistent with such policy, **the Court cannot favor one party, be it labor or management, in arriving at a just solution to a controversy if the party concerned has no valid support to its claim, like respondents here.**

WHEREFORE, we *GRANT* petitioner's motion for reconsideration and *REINSTATE* the petition we likewise *GRANT*. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 54379 is *REVERSED*.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

SECOND DIVISION

[G.R. No. 168533. February 4, 2008]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF ANGEL T. DOMINGO, namely MA. ALA F. DOMINGO and MARGARITA IRENE F. DOMINGO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TENANT EMANCIPATION DECREE (PD 27); AMENDMENTS THEREOF, EXPLAINED.— The Tenant Emancipation Decree or PD 27 was anchored upon the fundamental objective of addressing legitimate concerns of land ownership giving rise to social tension in the countryside. PD 27 also recognized

the necessity to encourage a more productive agricultural base of the country's economy. To address these concerns, PD 27 expressly ordered the emancipation of the tenant farmer as of 21 October 1972 and declared that he shall "be deemed the owner" of the portion of the land that he tills. Subsequently, EO 228 declared full land ownership to all qualified farmer beneficiaries as of 21 October 1972 and gave the formula for land valuation. On 15 June 1988, the Comprehensive Agrarian Reform Law (CARL) or RA 6657 was enacted to promote social justice to the landless farmers and provide "a more equitable distribution and ownership of land with due regard to the rights of landowners to just compensation and to the ecological needs of the nation." Section 4 of RA 6657 provides that the CARL shall cover all public and private agricultural lands including other lands of the public domain suitable for agriculture. Section 7 provides that rice and corn lands under PD 27, among other lands, will comprise phase one of the acquisition plan and distribution program. Section 75 states that the provisions of PD 27 and EO 228 and 229, and other laws not inconsistent with RA 6657 shall have suppletory effect. In *Paris v. Alfeche*, the Court ruled that RA 6657 includes PD 27 lands among the properties which the DAR shall acquire and distribute to the landless. In *Land Bank v. Court of Appeals*, the Court added that Sections 16, 17, and 18 of RA 6657 should be followed in the acquisition and distribution of PD 27 lands. Hence, the provisions of RA 6657 apply to the present case with PD 27 and EO 228 having suppletory effect.

2. POLITICAL LAW; CONSTITUTIONAL LAW; PRINCIPLES AND STATE POLICIES; JUST COMPENSATION; DEFINED AND CONSTRUED.— Section 9, Article III of the 1987 Constitution provides that no private property shall be taken for public use without just compensation. As a concept in the Bill of Rights, just compensation is defined as the fair or market value of the property as between one who receives, and one who desires to sell. Section 4, Article XIII of the 1987 Constitution mandates that the redistribution of agricultural lands shall be "subject to the payment of just compensation." The deliberations of the 1986 Constitutional Commission on this subject reveal that just compensation should not do violence to the Bill of Rights but should also not make an insurmountable obstacle to a successful agrarian reform. Hence, the landowners'

right to just compensation should be balanced with agrarian reform. In *Land Bank v. Court of Appeals*, we declared that it is the duty of the court to protect the weak and the underprivileged, but this duty should not be carried out to such an extent as to deny justice to the landowner whenever truth and justice happen to be on his side. In *Land Bank v. Natividad* the Court held that the determination of just compensation "in accordance with RA 6657, and not PD 27 and EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample."

3. ID.; ID.; ID.; ID.; THE DATE OF TAKING OF THE SUBJECT LAND FOR PURPOSES OF COMPUTING JUST COMPENSATION SHOULD BE FROM THE ISSUANCE DATES OF THE EMANCIPATION PATENTS; RATIONALE.— The date of taking of the subject land for purposes of computing just compensation should be reckoned from the issuance dates of the emancipation patents. An emancipation patent constitutes the conclusive authority for the issuance of a Transfer Certificate of Title in the name of the grantee. It is from the issuance of an emancipation patent that the grantee can acquire the vested right of ownership in the landholding, subject to the payment of just compensation to the landowner. When RA 6657 was enacted into law in 1988, the agrarian reform process in the present case was still incomplete as the amount of just compensation to be paid to Domingo had yet to be settled. Just compensation should therefore be determined and the expropriation process concluded under RA 6657. Guided by this precept, just compensation for purposes of agrarian reform under PD 27 should adhere to Section 17 of RA 6657 which states: Sec. 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of the 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 non-payment of taxes or loans secured from any government financing institution

on the said land shall be considered as additional factors to determine its valuation. x x x In sum, we affirm the rulings of the trial court and the appellate court that the provisions of RA 6657 apply to the present case and that the date of taking of Domingo's riceland for purposes of computing just compensation should be reckoned from the issuance dates of emancipation patents. However, the just compensation for the subject land in the present case should be computed in accordance with *Lubrica v. Land Bank*. The partial payment of ₱1,845,999.71 should be deducted from the computation.

APPEARANCES OF COUNSEL

Legal Department (LBP) for petitioner.
Pejo Aquino & Associates for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

The Land Bank of the Philippines (LBP) filed this Petition for Review[1] to reverse the Court of Appeals' Decision[2] dated 30 March 2005 in CA-G.R. SP No. 85510 as well as the Resolution dated 9 June 2005 denying the Motion for Reconsideration. In the assailed decision, the Court of Appeals affirmed the Decision[3] dated 12 April 2004 of the Regional Trial Court, Branch 33 (trial court) in Guimba, Nueva Ecija. The trial court, acting as a Special Agrarian Court, directed LBP and the Department of Agrarian Reform (DAR) to pay ₱15,223,050.91 as just compensation for 262.2346 hectares of

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

[2] Penned by Associate Justice Monina Arevalo-Zeñarosa with Associate Justices Remedios A. Salazar-Fernando and Rosmari D. Carandang, concurring.

[3] Penned by RTC Judge Ismael P. Casabar.

land covered by Presidential Decree No. 27[4] (PD 27) as implemented in Executive Order No. 228[5] (EO 228).

The Facts

Angel T. Domingo (Domingo)[6] is the registered owner of a parcel of land with a total area of 300.4023 hectares covered by Transfer Certificate of Title (TCT) Nos. NT-97436, NT-97437, NT-97438, NT-97439, and NT-97440, situated in Guimba, Nueva Ecija.[7] This parcel of land was tilled by tenant farmers. Pursuant to PD 27 issued on 21 October 1972 and EO 228 dated 17 July 1987, the actual tenant tillers are deemed full owners of the land they till.[8] Of the 300.4023 hectares, 262.2346 hectares of land (subject land) were taken by the government under its agrarian reform program and awarded to the beneficiaries, who are tenant farmers (farmer-beneficiaries).

The subject land is situated about three kilometers from the town proper and accessible by a feeder road. Based on the findings of the Officer-In-Charge, Branch Clerk of Court, Mr. Arsenio S. Esguerra, Jr., who conducted an ocular inspection in compliance with the trial court's order, the subject land is irrigated with the use of water pumps installed by the farmer-beneficiaries.[9] As per certification dated 27 February 1981 by the DAR Team Office of Guimba, Nueve Ecija, the average

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[4] "Decreeing the Emancipation of Tenant's From the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor."

[5] "Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27; Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. No. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner."

[6] Died on 30 September 2007 and substituted in this case by his heirs namely Ma. Ala F. Domingo and Margarita Irene F. Domingo (Manifestation dated 11 December 2007).

[7] *Rollo*, pp. 67 and 112.

[8] *Id*. at 36.

[9] *Id*. at 233.

gross production (AGP) is 91.42 cavans of palay per hectare[10] and the land is capable of 2 ½ harvests in two years.[11] However, as reflected in the records of this case, the AGP of 91.42 cavans is for TCT No. 97155 which is not among the titles covered in this subject land. On the contrary, LBP alleged that the subject land was producing at most only 41.42 cavans of palay per hectare as of 1972.[12]

Several emancipation patents were issued and annotated on the TCTs, to wit:[13]

TCT No.	Number of Emancipation Patents Issued	Year
NT-97436	25	1990
NT-97436	1	2000
NT-97437	21	1988
NT-97437	21	1989
NT-97437	40	1992
NT-97437	22	1994
NT-97437	1	2000
NT-97438	67	1989
NT-97438	60	1993
NT-97438	10	1994
NT-97439	39	1990
NT-97440	42	1990

Using the guidelines for just compensation embodied in PD 27 and implemented in EO 228, the DAR fixed the value of the subject land consisting of 262.2346 hectares at ₱2,086,735.09.[14] The formula used to compute the land value was:

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[10] Records, p. 44.

[11] *Rollo*, p. 68.

[12] *Id*. at 71.

[13] *Id*. at 68-69.

[14] *Id*. at 112

Land value = ***Average Gross Production*** (AGP) ***x 2.5 x Government Support Price*** (GSP)

= 91.42 **x** 2.5 **x** 35

= ₱ 7,999.25

The GSP for one cavan of 50 kilos palay in 21 October 1972 was ₱35.[15]

Based on DAR Administrative Order No. 13 (DAR AO 13),[16] series of 1994, a 6% increment in the amount of ₱627,456.28 was added to the original valuation.[17]

In the Claims Processing Form dated 29 April 2002 and submitted by the LBP, the distribution of payment was as follows:

	Cash	***Bonds***	***Total***
Net Land Value as amended	***208,735.09***	***1,878,000.00***	***2,086,735.09***
Less: Payments	***184,999.71***	***1,661,000.00***	***1,845,999.71***
Net Amount due Landowner	***23,735.38***	***217,000.00***	***240,735.38***
Increment			***627,456.28***
Total Value of Claim			***₱ 868,191.66***

The computation for just compensation as reflected in the Claims Processing Form prepared by LBP:

Just Compensation = 262.2346 hectares x ₱7,999.24
= ₱2,097,677.50 **less** lease rental of ₱10,942.41
= ₱2,086,735.09

[15] EO 228, Sec. 2.

"Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the *Barangay* Committee on Land Production in accordance with Department Memorandum Circular No. 26, Series of 1973, and related issuances and regulations of the Department of Agrarian Reform. The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty-Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of *palay* on October 21, 1972, or Thirty-One Pesos (₱31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner."

Despite receipt of ₱1,845,999.71 as partial payment from LBP, Domingo rejected the final payment of ₱868,191.66. Thus, LBP deposited this amount in cash and bonds and proceeded to distribute the subject land to various farmer-beneficiaries.

On 31 July 2002, Domingo filed a Petition for Determination and Payment of Just Compensation in the trial court of Guimba, Nueva Ecija.

In his Petition, Domingo prayed that the just compensation for the subject land be determined in accordance with the formula in Section 17 of Republic Act No. 6657[18] (RA 6657) which would amount to ₱39,335,190.00 computed at ₱150,000 per hectare.[19]

In its Answer, LBP maintained that Domingo's unirrigated land is covered by PD 27 and EO 228 being primarily devoted to rice and tenanted as of 21 October 1972. LBP stated that the valuation formula found in PD 27 and EO 228 is the applicable formula for computing just compensation.[20]

On 12 April 2004, the trial court, after hearing the case, ruled that the subject land's date of taking is not 21 October 1972 when PD 27 took effect. Instead, the issuance dates of the emancipation patents should determine the date of taking because these are when the ownership of a determinate portion of the subject land was transferred to the farmer-beneficiaries. The trial court further stated that LBP's contention to compute just compensation based on the formula prescribed in PD 27 and EO 228 cannot be sustained. These laws are only suppletory

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[16] "Rules and Regulations Governing the Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by P.D. No. 27 and E.O. No. 228."

[17] *Rollo*, pp. 111-115.

[18] "An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and For Other Purposes."

[19] *Rollo*, p. 123.

[20] *Id.* at 126-128.

to RA 6657 which is the latest law on agrarian reform. The trial court deemed it necessary to apply suppletorily the formula in PD 27 and EO 228. The trial court computed just compensation as follows:

TCT No.	*Year of Issuance*	*No. of Hectares*	*Land Value (AGP x 2.5 x GSP[21])*	*Sub-Total*
NT-97436	1990	18.6291	91.42[22] x 2.5 x 300	1,277,304.24
NT-97436	2000	1.4168	91.42 x 2.5 x 500	161,904.82
NT-97437	1988	2.5631	91.42 x 2.5 x 175	102,514.38
NT-97437	1989	0.8074	91.42 x 2.5 x 175	32,292.97
NT-97437	1992	43.5805	91.42 x 2.5 x 300	2,288,096.98[23]
NT-97437	1993	7.7330	91.42 x 2.5 x 300	530,213.14
NT-97437	1994	4.0186	91.42 x 2.5 x 300	275,535.30
NT-97437	2000	1.8482	91.42 x 2.5 x 450	190,082.74
NT-97438	1989	3.5594	91.42 x 2.5 x 175	142,362.65
NT-97438	1989	49.6899	91.42 x 2.5 x 250	2,839,156.66
NT-97438	1993	2.2853	91.42 x 2.5 x 300	156,691.59

[21] Records, p. 45.

As certified by the Provincial Manager of the National Food Authority in Nueva Ecija, the pertinent GSP for a cavan of palay were as follows:

11 June 1985	₱175	OMF #04 dated 11 June 1985
04 Oct. 1989	₱225	AOJ-004 dated 4 Oct. 1989
01 Nov. 1989	₱250	AOK-012 dated 10 Nov. 1989
01 Oct. 1990	₱300	AOI-050 dated 28 Sept. 1990
01 Feb. 1996	₱400	Memo '96 No. AO-96-04-009 dated 2 April 1996.
01 Feb. '99-31 Aug. '99	₱500	AO-99-01-043 dated 26 Jan. 1999
01 Sept. '99-Feb. 2000	₱450	AO-99-01-043 dated 26 Jan. 1999
01 Mar. '00-31 Aug. '00	₱500	AO-99-01-043 dated 26 Jan. 1999
01 Sept. '00-Feb. 2001	₱450	AO-99-01-043 dated 26 Jan. 1999

[22] *Id*. at 44. The AGP used by the trial court is for a landholding covered by TCT No. 97155. TCT No. 97155 is not among the titles covered by the subject land of this case.

[23] There is a mathematical error in the trial court's computation. The product of 91.42 x 2.5 x 300 x 43.5805 is ₱2,988,096.9825.

NT-97438	1994	1.4511	91.42 x 2.5 x 300	99,494.67
NT-97439	1990	59.6399	91.42 x 2.5 x 250	3,407,674.78
NT-97439	1990	2.5119	91.42 x 2.5 x 250	143,523.68
NT-97440	1990	62.5019	91.42 x 2.5 x 250	3,571,202.31
			Total	5,223,050.91[24]

The trial court issued a decision which disposed of the present case as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff as follows:

1. Fixing the just compensation for plaintiff's 262.2346 hectare land covered by P.D. 27 at ₱15,223,050.91 inclusive of the increment provided for under DAR AO No. 13 computed from the time of taking up to the date of this decision.

2. Directing defendants DAR and LBP to pay the plaintiff the above-mentioned amount of money as the amount of just compensation for his land.

SO ORDERED.[25]

Dissatisfied with the decision, LBP filed a Motion for Reconsideration stating that the trial court erred in adopting an AGP of 91.42 cavans as certified by the DAR's team leader in lieu of 41.67 cavans as established by the *Barangay* Committee on Land Production (BCLP). LBP asserted that the trial court erred in using the issuance dates of the emancipation patents as the date of taking instead of complying with the legal provision in PD 27 that the emancipation of all tenant farmers was on 21 October 1972.

On 8 July 2004, the trial court issued an Order denying the motion for lack of merit. LBP filed a Petition for Review before the Court of Appeals pursuant to Section 60 of RA 6657.

LBP argued that the trial court gravely erred in applying RA 6657 to determine just compensation for the subject land

[24] The sum should be ₱15,918,050.91.

[25] CA *rollo*, p. 47.

acquired under PD 27 and EO 228 on the assumption that the former should prevail being the latest law on agrarian reform. LBP further claimed that the trial court erred in relying on the certification, dated 27 February 1981 and issued by the DAR's Agrarian Reform Team at Guimba, Nueva Ecija, adopting an AGP of 91.42 cavans and disregarding 41.67 cavans as found by the BCLP.

Domingo contended that the trial court was correct in using the AGP of 91.42 cavans and the GSP prevailing as of the years 1988 to 2000, pursuant to settled jurisprudence that just compensation should be reckoned as of the date of taking of the expropriated property.

On 30 March 2005, the Court of Appeals affirmed the trial court's decision and dismissed the petition for lack of merit. LBP filed a Motion for Reconsideration which the Court of Appeals denied.

Hence, the instant petition.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the trial court's decision. It reasoned that RA 6657 covers all public and private agricultural lands as provided in Proclamation No. 131 and Executive Order No. 229.[26] Phase one of RA 6657 includes the acquisition and distribution of rice and corn lands under PD 27. The provisions in RA 6657 show that PD 27 lands are among the properties which DAR shall acquire and distribute to the landless.[27] RA 6657 also states that the provisions of PD 27 and EO 228 shall have suppletory effect.

The Court of Appeals pointed out that 21 October 1972 cannot be considered as the "date of taking" for the purpose of determining just compensation. It ruled that it was only when the emancipation patents were issued to the farmer-beneficiaries that Domingo recognized their ownership of the property. Hence, the issuance

[26] RA 6657, Sec. 4.

[27] *Rollo*, p. 18.

dates of the emancipation patents should be considered as the date of taking.

The Court of Appeals also ruled that the AGP determined by the BCLP cannot prevail over the AGP of 91.42 cavans of palay per hectare as testified by Domingo and his witness Patricio Mendoza, whose testimonies have been confirmed by competent officials: DAR Team Leader, Warehouse Supervisor of National Food Authority, Senior Agrarian Reform Technician, and the Collection Supervisor of the Bureau of Internal Revenue.

Moreover, the appellate court held that since the trial court's decision utilized the higher GSP, Domingo is no longer entitled to the 6% incremental interest provided in DAR AO No. 13.

The Issues

LBP raises two issues[28] in this Petition:

1. Whether the taking of Domingo's riceland should be reckoned from the issuance of emancipation patents or upon the effectivity of PD 27 on 21 October 1972; and
2. Whether RA 6657 should apply in the determination of just compensation of riceland taken under PD 27 and EO 228.

The Ruling of the Court

The Tenant Emancipation Decree or PD 27 was anchored upon the fundamental objective of addressing legitimate concerns of land ownership giving rise to social tension in the countryside. PD 27 also recognized the necessity to encourage a more productive agricultural base of the country's economy.[29] To address these concerns, PD 27 expressly ordered the emancipation of the tenant farmer as of 21 October 1972 and declared that he shall "be deemed the owner" of the portion of the land that he tills. Subsequently, EO 228 declared full land ownership to

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[28] *Id*. at 170-171.

[29] *Pagtalunan v. Tamayo*, G.R. No. 54281, 19 March 1990, 183 SCRA 252, 258.

all qualified farmer beneficiaries as of 21 October 1972 and gave the formula for land valuation.

On 15 June 1988, the Comprehensive Agrarian Reform Law (CARL) or RA 6657 was enacted to promote social justice to the landless farmers and provide "a more equitable distribution and ownership of land with due regard to the rights of landowners to just compensation and to the ecological needs of the nation."[30]

Section 4 of RA 6657 provides that the CARL shall cover all public and private agricultural lands including other lands of the public domain suitable for agriculture. Section 7 provides that rice and corn lands under PD 27, among other lands, will comprise phase one of the acquisition plan and distribution program. Section 75 states that the provisions of PD 27 and EO 228 and 229,[31] and other laws not inconsistent with RA 6657 shall have suppletory effect.

In *Paris v. Alfeche*,[32] the Court ruled that RA 6657 includes PD 27 lands among the properties which the DAR shall acquire and distribute to the landless. In *Land Bank v. Court of Appeals*,[33] the Court added that Sections 16, 17, and 18 of RA 6657 should be followed in the acquisition and distribution of PD 27 lands.

Hence, the provisions of RA 6657 apply to the present case with PD 27 and EO 228 having suppletory effect.

Just Compensation for PD 27 Lands

The crux of this controversy is to determine the proper land valuation to compute the just compensation for purposes of agrarian reform under PD 27.

Section 9, Article III of the 1987 Constitution provides that no private property shall be taken for public use without just compensation. As a concept in the Bill of Rights, just compensation

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[30] RA 6657, Sec. 2.

[31] Both Series of 1987.

[32] 416 Phil. 473, 489 (2001).

[33] 378 Phil. 1248, 1261 (1999).

is defined as the fair or market value of the property as between one who receives, and one who desires to sell.[34]

Section 4, Article XIII of the 1987 Constitution mandates that the redistribution of agricultural lands shall be "subject to the payment of just compensation." The deliberations of the 1986 Constitutional Commission on this subject reveal that just compensation should not do violence to the Bill of Rights but should also not make an insurmountable obstacle to a successful agrarian reform.[35]Hence, the landowners' right to just compensation should be balanced with agrarian reform. In *Land Bank v. Court of Appeals*,[36] we declared that it is the duty of the court to protect the weak and the underprivileged, but this duty should not be carried out to such an extent as to deny justice to the landowner whenever truth and justice happen to be on his side.

In *Land Bank v. Natividad*,[37] the Court held that the determination of just compensation "in accordance with RA 6657, and not PD 27 and EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample." In this same case, this Court also had the occasion to discuss the just compensation for PD 27 lands, thus:

"Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the

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[34] *Republic v. Court of Appeals*, G.R. No. 147245, 31 March 2005, 454 SCRA 516, 534.

[35] JOAQUIN BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY*, p. 1071.

[36] 319 Phil. 246, 249 (1995).

[37] G.R. No. 127198, 16 May 2005, 458 SCRA 38

landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.

Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche*.

Section 17 of RA 6657 which is particularly relevant, providing as it does the guideposts for the determination of just compensation, reads as follows:

> Sec. 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of the 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 non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample."[38]

There is no doubt that Domingo's land was taken by the government under PD 27. However, it was only in 1994 when LBP prepared the Land Transfer Payment Form which was superseded by a Claims Processing Form issued in 2002.

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[38] *Id.* at 451-452.

In *Association of Small Landowners v. Secretary of Agrarian Reform*,[39] the Court held that it is a recognized rule that title to the property expropriated shall pass from the owner to the expropriator only upon full payment of just compensation. The Court further held that:

> "It is true that P.D. No. 27 expressly ordered the emancipation of tenant-farmer as [of] October 21, 1972 and declared that he shall 'be deemed the owner' of a portion of land consisting of a family-sized farm except that 'no title to the land owned by him was to be actually issued to him unless and until he had become a full-fledged member of a duly recognized farmer's cooperative.' It was understood, however, that full payment of just compensation also had to be made first, conformably to the constitutional requirement."[40] (Underscoring supplied)

LBP's contention that the property was taken on 21 October 1972, the date of effectivity of PD 27, thus just compensation should be computed based on the GSP in 1972, is erroneous. The date of taking of the subject land for purposes of computing just compensation should be reckoned from the issuance dates of the emancipation patents. An emancipation patent constitutes the conclusive authority for the issuance of a Transfer Certificate of Title in the name of the grantee.[41] It is from the issuance of an emancipation patent that the grantee can acquire the vested right of ownership in the landholding,[42] subject to the payment of just compensation to the landowner.

When RA 6657 was enacted into law in 1988, the agrarian reform process in the present case was still incomplete as the amount of just compensation to be paid to Domingo had yet to be settled. Just compensation should therefore be determined and the expropriation process concluded under RA 6657.

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[39] G.R. No. 78742, 14 July 1989, 175 SCRA 343, 389.

[40] *Supra* at 390.

[41] *Supra* note 29, at 259.

[42] *Supra*.

Guided by this precept, just compensation for purposes of agrarian reform under PD 27 should adhere to Section 17 of RA 6657 which states:

> Sec. 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of the 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 non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

In *Land Bank v. Natividad*,[43] the Court upheld the trial court's decision valuing the property on account of its nature, location, market value, assessor's value and volume and value of its produce.

In *Land Bank v. Estanislao*,[44] this Court upheld the just compensation of ₱20 per square meter which was determined in accordance with Section 17 of RA 6657.

In *Lubrica v. Land Bank*,[45] the Court mandated that "Land Bank should compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and the LBP or as may be finally determined by the Court as the just compensation."

In sum, we affirm the rulings of the trial court and the appellate court that the provisions of RA 6657 apply to the present case and that the date of taking of Domingo's riceland for purposes of computing just compensation should be reckoned from the issuance dates of emancipation patents. However, the just compensation for the subject land in the present case should be

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[43] *Supra* note 37, at 452-453.

[44] G.R. No. 166777, 10 July 2007, 527 SCRA 181, 188-189.

[45] G.R. No. 170220, 20 November 2006, 507 SCRA 415, 424-425.

computed in accordance with *Lubrica v. Land Bank*.[46] The partial payment of ₱1,845,999.71 should be deducted from the computation.

WHEREFORE, we *AFFIRM with MODIFICATION* the assailed Decision dated 30 March 2005 of the Court of Appeals in CA-G.R. SP No. 85510 and the Resolution dated 9 June 2005 denying the Motion for Reconsideration. We *ORDER* the Regional Trial Court of Guimba, Nueva Ecija, Branch 33, acting as Special Agrarian Court, to proceed with deliberate dispatch on the computation of the final valuation of the subject land in accordance with this Decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 171312. February 4, 2008]

SPS. LINO FRANCISCO & GUIA FRANCISCO, *petitioners, vs.* **DEAC CONSTRUCTION, INC. and GEOMAR A. DADULA,** *respondents.*

SYLLABUS

CIVIL LAW; OBLIGATIONS; RIGHT TO RESCIND MAY BE WAIVED; NOT PRESENT IN CASE AT BAR.— Article 1191 of the Civil Code provides that 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 rescission referred to in this article, more appropriately referred to as

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[46] *Id*.

resolution, is not predicated on injury to economic interests on the part of the party plaintiff, but of breach of faith by the defendant which is violative of the reciprocity between the parties. The right to rescind may be waived, expressly or impliedly. The Spouses Francisco, in their 1 July 1995 letter to respondents, complained, among others, about the belated release of the building permit, the unauthorized corrections in the building plan, the forgery of petitioner Guia Francisco's signature on the building plan, and the deletion of the open space/*patio* in the actual construction of the project. The filing of a criminal case against respondent Dadula and the subsequent filing of this civil case for rescission and damages within a reasonable time after the Spouses Francisco had learned that construction of their building commenced without the necessary building permit and discovered that there were deviations from the building plan demonstrate the vigilance with which they guarded their rights. The appellate court's conclusion that the Spouses Francisco should be deemed to have waived their right to seek rescission is clearly unfounded. Finally, given the fact that the construction in this case is already 75% complete, the trial court was correct in ordering partial rescission only of the undelivered or unfinished portion of the construction. Equitable considerations justify rescission of the portion of the obligation which had not been delivered.

APPEARANCES OF COUNSEL

Acosta Law Office for petitioners.
Sua and Alambra Law Offices for respondents.

D E C I S I O N

TINGA, *J.*:

The Spouses Lino and Guia Francisco (Spouses Francisco) assail the Decision[1] of the Court of Appeals dated 28 July 2005, rendered in favor of respondents DEAC Construction, Inc. (DEAC) and Geomar Dadula (Dadula), upholding the latter's

[1] *Rollo*, pp. 45-60. Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Roberto A. Barrios and Vicente S.E. Veloso.

monetary claims against the Spouses Francisco. The appellate court's decision reversed and set aside the Decision[2] of the Regional Trial Court of Manila, Branch 28, dated 2 February 1998 which ordered the partial rescission of the 13 September 1994 Construction Contract between the parties and awarded moral and exemplary damages and attorney's fees to the Spouses Francisco.

The findings of fact of the trial court and the Court of Appeals are in conflict on the question of whether the Spouses Francisco authorized the deviations on the building plan, particularly with regard to the closing of the open space and the reduction of the setback from the property line. They are, however, in agreement as to the following antecedents quoted from the appellate court's decision:

> Plaintiffs-appellees Lino Francisco and Guia Francisco obtained the services of defendant-appellant DEAC Construction, Inc. (DEAC) to construct a 3-storey residential building with mezzanine and roof deck on their lot located at 118 Pampanga Street, Gagalangin, Tondo, Manila for a contract price of ₱3,500,000.00. As agreed upon, a downpayment of ₱2,000,000.00 should be paid upon signing of the contract of construction, and the remaining balance of ₱1,500,000.00 was to be paid in two equal installments: the first installment of ₱750,000.00 should be paid upon completion of the foundation structure and the ground floor, which amount would be used primarily for the construction of the second floor to the roof deck while the final amount of ₱750,000.00 should be paid upon completion of the second floor up to the roof deck structure to defray the expenses necessary for finishing and completion of the building. To undertake the said project, DEAC engaged the services of a sub-contractor, Vigor Construction and Development Corporation, but allegedly without the plaintiffs-appellees' knowledge and consent.
>
> On September 12, 1994, even prior to the execution of the contract, the plaintiffs-appellees had paid the downpayment of ₱2,000,000.00. The amount of ₱200,000.00 was again paid to DEAC on February 27, 1995 followed by the payment of ₱550,000.00 on April 2, 1995. Plaintiff-appellant Guia Francisco likewise paid the amount of

[2] Records, pp. 289-311.

₱80,000.00 on June 5, 1995 for the requested "additional works" on the project.

The construction of the residential building commenced in October 1994 although DEAC, upon which the obligation pertained, had not yet obtained the necessary building permit for the proposed construction. It was on this basis that the owner Lino Francisco was charged with violation of Section 301, Chapter 3 (Illegal Construction) of [P.D. No.] 1096 otherwise known as the National Building Code of the Philippines with the Metropolitan Trial Court of Manila, Branch 12.

On March 7, 1995, the Office of the Building Official of the City of Manila finally issued the requisite Building Permit. Thus, the complaint against owner Lino Francisco was accordingly dismissed. As admitted by DEAC, the release of the said permit was withheld because of the erroneous designation of the location of the lot in one of the building plans. Thus, DEAC had to make the necessary adjustment. However, before the Office of the Building Official finally approved the amended building plan, it made some necessary corrections therein. And to facilitate the said approval and the subsequent release of the building permit, the signatures of plaintiff-appellee Guia Francisco in the said amended and corrected building plans were forged by DEAC's representative.

But aside from [the] lack of building permit, the building inspector also observed, after periodic inspections of the construction site, that the contractor deviated, on some specifications, from the approved plans. Thus, on April 7, 1995, the Office of the Building Official of Manila issued another Notice of Violation against owner Lino Francisco, while at the same time calling the attention of the contractor, on account of the following deviations and violations, to wit:

1. *The 1.00 mt. setback from the property line instead of 1.45 mts. as per approved plan was not followed in violation [of] Sec. 306, Chapter 3 [PD 1096, otherwise known as the National Building Code (NBC)];*

2. *The [excessive] projection of 0.50 mt. from 3rd floor level to [roof] deck in violation [of] Sec. 306, Chapter 3 of the NBC (PD 1096);*

3. *The required open patio was covered in pursuant (sic) to Sec. 306[,] Chapter 3 [of PD 1096];*

4. *Provision of window opening along the right-side firewall in pursuant (sic) to Sec. 1007 Chapter 10 of [PD 1096];*

5. *Stockpiling of [construction materials] along the street/sidewalk area in violation [of] Sec. 5[,] Rule VI of the IRR;*

6. *Please provide minimum safety and protection in pursuant (sic) 2.3, 2.4, and 2.5 of Rule XX of the IRR.*

The said notice was received on April 11, 1995 by Engr. Mike Marquez of DEAC Construction, Inc. The plaintiffs-appellees, however, denied having received any notice from the Office of the Building Official of Manila regarding the on-going construction.

In a letter dated July 1, 1995, the plaintiffs-appellees, through their counsel, suddenly complained of several infractions emanating from the construction of the project allegedly committed by DEAC, to wit:

a. *Implementation of the project was started immediately after signing of the contract on 15 September 1994 without any building permit and approved plans.*

b. *Building permit was released only on (sic) March 1995 together with the approved plans with necessary corrections made by the Office of the Building Official. You did not inform the owners about the corrections. The signatures of Mrs. Guia Francisco appearing on the building plans were forgeries.*

c. *[The] Approved [C]onstruction [P]lans were not strictly followed during the actual implementation of the project. Open space/ patio which is 20% of lot area (based on National Building Code) for inside lot was deleted.*

d. *No written formal approval from the owners for the alteration of plans.*

e. *Poor workmanship.*

   i. *Marble slabs installed were not approved by the owner.*

   ii. *Beam below the 1st landing at the ground floor is too low.*

   iii. *Ground floor Finish floor line is below the ordinary flood level in the area. The contractor has been repeatedly*

instructed to raise the ground floor finish elevation but insisted on their decision.

f. Poor supervision of the construction works.

The plaintiffs-appellees demanded that DEAC must comply with the approved plan, construction contract, National Building Code, and the Revised Penal Code, otherwise, they would be compelled to invoke legal remedies. In the meantime that the necessary works and construction were demanded to be undertaken, the last and final installment was withheld. DEAC responded, also through a letter prepared by its counsel, that it had faithfully complied with its obligation under the contract, thus, to demand for further compliance would be improper. It said that if somebody had breached the contract, it was the plaintiffs-appellees, because the last installment of ₱750,000.00 which was supposed to have been paid after the second floor and the roof deck structure was completed, which allegedly had long been accomplished, was not yet paid. To settle their differences, DEAC had given the plaintiffs-appellees the option to either pay the full amount of ₱750,000.00, so that the finishing stage of the project would be completed, or just pay the worth of the work already done, which was assessed at ₱250,000.00.

On July 21, 1995, a Work Stoppage Order was issued against the plaintiff-appellee Lino Francisco pursuant to the previous April 7, 1995 Notice of Violations. Having learned of such order, the plaintiffs-appellees allegedly immediately proceeded to the Office of the Building Official of Manila to explain that DEAC was the one responsible for such violations, and that the deviations of the approved plan being imputed against Lino Francisco were unilateral acts of DEAC. They also filed a complaint for "Non-Compliance of the Building Plan, Illegal Construction, abandonment and other violations of the Building Code" against DEAC with the said Office. The said complaint was endorsed to the City Prosecutor of Manila which culminated in the filing of a criminal case against Geomar A. Dadula and DEAC project engineer Leoncio C. Alambra for deviation and violation of specification plan.

The plaintiffs-appellees also filed this civil case for Rescission of Contract and Damages on September 21, 1995 with the Regional Trial Court of Manila, Branch 28, against DEAC and its President Geomar A. Dadula.

After due proceedings, the defendants-appellants were found to have breached their contractual obligation with the plaintiffs-appellees. Among their violations were: (1) the construction of the building without the necessary building permit, which violated Section 3, Article IV of the Construction Contract; and (2) the deviation or revision of the approved building plan in the actual construction. On the other hand, the trial court said that the refusal of the plaintiffs-appellees to pay the final installment of ₱750,000.00 was only justified because of the defendants-appellants' violations of the contract. Thus, on account of such violations, rescission of the contract was warranted. However, since the subject building was already 70% to 75% completed, only partial rescission was ordered. Pursuant thereto, DEAC was ordered to refund the sum of ₱205,000.00 to the plaintiffs-appellees after considering the following computations:

Contract price	-	₱3.5 Million
% of work completed	-	75%
Contract Price x % of work completed x 75%	-	₱3.5 Million
	=	₱2,625,000.[00]
Actual Payment	-	2,830,000.00
Less cost of work completed	-	2,625,000.00
Difference	-	205,000.00

In addition, damages was awarded based on par. 2, Article 1191 of the New Civil Code which provides for the award of damages in case of rescission of contract. Geomar Dadula, being the President of DEAC, was likewise held solidarily liable with the latter.[3]

Ruling that the Spouses Francisco were the ones who initiated and requested the deviations, the appellate court held that respondents fully complied with their obligation under the contract and ordered the Spouses Francisco to pay the balance of the contract price. It also ordered them to pay moral damages, attorney's fees and costs of suit.

Before this Court, the Spouses Francisco question the appellate court's finding that they were the ones who requested the deviations in the building plan, particularly with regard to the closing of the open space and the reduction of the setback from the property

[3] *Rollo*, pp. 46-53.

line. They maintain that they did not waive their right to demand rescission as a result of the disputed deviations and because of the fact that DEAC commenced construction without first securing a building permit as was incumbent upon it under their contract. In fact, apart from the present case, the Spouses Francisco filed a criminal suit against respondent Dadula taking him to task for these violations, of which the latter was found guilty.

Respondents, in their Comment[4] dated 8 June 2006, assert that the deviations in the building plan were done upon the request of the Spouses Francisco. Respondent Dadula had even warned them that building the structure close to the property line could violate the required setback. They also claim that the belated issuance of the building permit was due to neglect in the supervision of a subordinate and does not indicate any bad faith on their part.[5] At any rate, the fact that this issue was raised only after several months had passed from the time construction started allegedly suggests waiver on the part of the Spouses Francisco.

A Reply,[6] dated 30 September 2006 was filed by the Spouses Francisco reiterating their argument that respondent Dadula's conviction in the criminal case should be taken into account in the present case.

As earlier adverted to, the trial court held that respondents deviated from the specifications and terms of the contract, particularly with regard to the open space closing and the setback reduction, without securing the approval of the Spouses Francisco. On the other hand, the appellate court held that the Spouses Francisco were the ones who initiated and requested the deviations. The conflict in these findings warrants a departure from the general rule that this Court shall not entertain petitions for review

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[4] *Id*. at 132-142.

[5] According to respondents, instead of designating the subject property as an interior lot, its sub-contractor designated the property as a corner lot, resulting in the delay in the issuance of the building permit. See RTC Decision, *id*. at 81.

[6] *Id*. at 158-160.

which substantially raise questions of fact.[7] The conflict accounts for the divergence of the decisions of the courts below.[8]

The records reveal that respondents admitted having failed to secure a building permit before construction of the residential building subject of this case commenced. This blunder exposed petitioner Lino Francisco to criminal prosecution as, in fact, an Information[9] dated 5 December 1995 was filed against him with the Metropolitan Trial Court of Manila, Branch 12, for violation of Section 301, Chapter 3 (Illegal Construction) of the National Building Code of the Philippines.[10] It appears that this Information was preceded by several Notices of Illegal Construction sent by the Office of the Building Official of Manila supposedly addressed to petitioner Lino Francisco, but which the latter would not have gotten wind of had he not inquired with the said office about certain documents relative to the construction.

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[7] *Gaw v. Court of Appeals*, G.R. No. 147748, 19 April 2006, 487 SCRA 423, 428.

[8] The RTC disposed of the case as follows:

> In view of all the foregoing, judgment is hereby rendered for the plaintiffs, ordering partial rescission of the contract and for the defendants to jointly and severally pay the former the following: For the return or refund of the sum of ₱205,000.00 representing the excess payment to cover the unfinished work as per contract.
>
> | | | |
> |---|---|---|
> | Moral Damages | - | ₱250,000.00 |
> | Exemplary Damages | - | ₱250,000.00 |
> | Attorney's fees | - | ₱100,000.00 and costs |
>
> Manila, Philippines, February 2, 1998. (Records, pp. 310-311)

while the Court of appeals decided the appeal with the following *fallo*:

> **WHEREFORE,** premises considered, the decision appealed from is **REVERSED** and **SET ASIDE,** and a new one is entered ordering the plaintiffs-appellants the following:
>
> (1) ₱670,000.00, the remaining balance of the contract price;
>
> (2) ₱100,000.00 as moral damages;
>
> (3) ₱50,000.00 as attorney's fees; and
>
> (4) The costs of the suit. (*Rollo*, pp. 59-60)

[9] Exhibit "K", Records.

[10] Presidential Decree No. 1096.

Respondents DEAC and Dadula, to whom the obligation of securing the building permit pertained, should obviously have ensured compliance with the requirements set forth by law. At the very least, good faith and fair dealing ordain that they inform the Spouses Francisco that the building permit had not yet been issued especially that they had already received a substantial amount of money from the latter and had already started the construction of the building.[11]

Parenthetically, the Spouses Francisco disclose that the Metropolitan Trial Court of Manila, Branch 23, found respondent Dadula guilty of violating the National Building Code for his failure to follow the required setback from the property line; the excessive projection of the roof deck of the structure; the deviation in the covering of the required patio; the illegal stockpiling of construction materials; the lack of safety standards in the construction; and his failure to secure a building permit for the construction.[12] This conviction was consistently affirmed by the Regional Trial Court,[13] the Court of Appeals[14] and ultimately this Court.[15] The RTC even noted that "defendants admitted that there were deviations from the plans and that they forged the signature of Mrs. Guia Francisco to ensure early approval of the permit."[16]

The foregoing matters are essential to the propriety of the trial court's ruling that partial rescission is warranted in view of the failure of respondents to comply with what was incumbent upon them under the construction contract and the consequent prejudice and damage caused to petitioners by respondents'

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[11] *Rollo*, p. 47. Respondents commenced construction in October 1994. By the time the building permit was issued on March 7, 1995, petitioners had already paid a total of ₱2,200,000.00.

[12] *Id*. at 98-102; MeTC Decision dated 14 October 1999.

[13] *Id*. at 104-106; RTC Decision dated 16 July 2001.

[14] *Id*. at 110-123; CA Decision dated 13 December 2002.

[15] *Id*. at 128; Resolution dated 5 May 2004.

[16] *Id*. at 106.

actions. Of equal importance, of course, is the correctness of its finding that the deviations from the building plan were not authorized by the Spouses Francisco.

Our own review of the records reveals that the open space was closed by respondents without the approval of the Spouses Francisco and in violation of the National Building Code. During the 27 May 1995 meeting between the parties in which they were called to thresh out their differences, respondents stated that the open space indicated on the plan was omitted in the actual construction "in order to give extra space for the building,"[17] and not because the Spouses Francisco requested such closure, if such was really the case. Respondents also mentioned that the contractor forged petitioner Guia Francisco's signature "in the City Hall in order to process the early approval of plans. Also, alterations were done in the City Hall."[18]

Curiously, the Court of Appeals relied on the same exhibit in arriving at its conclusion that the Spouses Francisco authorized, even requested, the changes in the building plan. Apparently, the appellate court interpreted the agreement between the parties regarding the extension of the second floor balcony as the Spouses Francisco's approval of the closure of the open space and reduction in the required setback from the property line. As pointed out by petitioners, however, the extension of the second floor balcony was entirely distinct from the closure of the open space and reduction of the setback from the property line.

Respondents' mistake in identifying the exact location of the property which led to the delay in the issuance of a building permit and forgery of petitioner Guia Francisco's signature on the building plan exhibits a proclivity for error and taking the easy way out. This aspect does not sit well with the Court. The Spouses Francisco should be allowed to rescind the contract to the extent that this is possible under the circumstances.

Article 1191 of the Civil Code provides that the power to rescind obligations is implied in reciprocal ones, in case one of

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[17] Records, p. 45; Minutes of the Meeting.

[18] *Id*.

the obligors should not comply with what is incumbent upon him. The rescission referred to in this article, more appropriately referred to as resolution, is not predicated on injury to economic interests on the part of the party plaintiff, but of breach of faith by the defendant which is violative of the reciprocity between the parties.[19] The right to rescind may be waived, expressly or impliedly.

The Spouses Francisco, in their 1 July 1995 letter to respondents, complained, among others, about the belated release of the building permit, the unauthorized corrections in the building plan, the forgery of petitioner Guia Francisco's signature on the building plan, and the deletion of the open space/*patio* in the actual construction of the project. The filing of a criminal case against respondent Dadula and the subsequent filing of this civil case for rescission and damages within a reasonable time after the Spouses Francisco had learned that construction of their building commenced without the necessary building permit and discovered that there were deviations from the building plan demonstrate the vigilance with which they guarded their rights. The appellate court's conclusion that the Spouses Francisco should be deemed to have waived their right to seek rescission is clearly unfounded.

Finally, given the fact that the construction in this case is already 75% complete, the trial court was correct in ordering partial rescission only of the undelivered or unfinished portion of the construction.[20] Equitable considerations justify rescission of the portion of the obligation which had not been delivered.

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[19] *Pryce Corporation v. Philippine Amusement and Gaming Corporation*, G.R. No. 157480, 6 May 2005, 458 SCRA 164, 177, citing the Concurring Opinion of Mr. Justice J.B.L. Reyes in *Universal Food Corporation v. Court of Appeals*, 144 Phil. 1 (1970).

[20] In *Tan Guat v. Pamintuan*, C.A. 37 O.G. 2494, the Court of Appeals, through then Associate Justice Sabino Padilla (who later became an Associate Justice of this Court), ordered partial rescission insofar as the undelivered portion of the contract was concerned, and specific performance of the portion of the obligation which had been delivered.

WHEREFORE, the Petition is *GRANTED*. The Decision of the Court of Appeals, dated 28 July 2005 and its Resolution, dated 31 January 2006 are *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court of Manila, Branch 28 in Civil Case No. 95-75430 is hereby *REINSTATED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 172302. February 4, 2008]

PRYCE CORPORATION, *petitioner, vs.* **THE COURT OF APPEALS and CHINA BANKING CORPORATION,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; APPOINTMENT OF RECEIVERS; WHEN PROPER.— Section 6 provides that the petition must be "sufficient in form and substance." In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, this Court held that under Section 6(c) of P.D. No. 902-A, **receivers may be appointed whenever: (1) necessary in order to preserve the rights of the parties-litigants;** and/or (2) protect the interest of the investing public and creditors. **The situations contemplated in these instances are serious in nature. There must exist a clear and imminent danger of losing the corporate assets if a receiver is not appointed.** Absent such danger, such as where there are sufficient assets to sustain the rehabilitation plan and both investors and creditors are amply protected, the need for appointing a receiver does not exist. **Simply put,**

the purpose of the law in directing the appointment of receivers is to protect the interests of the corporate investors and creditors.

2. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE SERIOUS SITUATION TEST; REMAND OF THE CASE TO THE LOWER COURT IS IMPERATIVE.— We agree with the Court of Appeals that the petition for rehabilitation does not allege that there is a clear and imminent danger that petitioner will lose its corporate assets if a receiver is not appointed. In other words, **the "serious situation test" laid down by *Rizal Commercial Banking Corporation* has not been met** or at least substantially complied with. Significantly, the Stay Order dated July 13, 2004 issued by the RTC does not state any serious situation affecting petitioner's corporate assets. We observe that in appointing Mr. Gener T. Mendoza as Rehabilitation Receiver, **the only basis of the lower court was its finding** that **"the petition is sufficient in form and substance."** However, it did not specify any reason or ground to sustain such finding. Clearly, the **petition failed to comply with the "serious situation test."**

APPEARANCES OF COUNSEL

R.R. Toralba & Associates for petitioner.

Lim Vigilia Alcala Dumlao Alameda & Casiding for private respondent.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

For our resolution is a petition for review on *certiorari* seeking to reverse the Decision[1] of the Court of Appeals (Seventh Division) dated July 28, 2005 in CA-G.R. SP No. 88479.

Pryce Corporation, petitioner, was incorporated under Philippine laws on September 7, 1989. Its primary purpose was

[1] *Rollo*, Vol. I, pp. 55-70. Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez.

to develop real estate in Mindanao. It engaged in the development of memorial parks, operated a major hotel in Cagayan de Oro City, and produced industrial gases.

The 1997 Asian financial crisis, however, badly affected petitioner's operations, resulting in heavy losses. It could not meet its obligations as they became due. It incurred losses of ₱943.09 million in 2001, ₱479.05 million in 2002, and ₱125.86 million in 2003.

Thus, on July 12, 2004, petitioner filed with the Regional Trial Court (RTC), Branch 138, Makati City, acting as Commercial Court, a petition for rehabilitation,[2] docketed as Special Proceedings No. M-5901. Petitioner prayed for the appointment of a Rehabilitation Receiver from among the nominees named therein and the staying of the enforcement of all claims, monetary or otherwise against it. Petitioner also prayed that after due hearing, its proposed Rehabilitation Plan be approved. The salient features of the proposed Rehabilitation Plan[3] are:

[1] the bank creditors will be paid through *dacion en pago* of assets already mortgaged to them, to the extent sufficient to pay off the outstanding obligations. The excess assets, if any, will be freed from liens and encumbrances and released to the petitioner.

[2] in case the value of the mortgaged assets for *dacion* is less than the amount of the obligation to be paid, the deficiency shall be settled by way of *dacion* of memorial park lots owned by the petitioner.

[3] pricing of the assets for *dacion* shall be based on the average of two valuation appraisals from independent third-party appraisers accredited with the *Bangko Sentral ng Pilipinas* (BSP) to be chosen by the creditors and acceptable to the petitioner, except for memorial park lots which shall be valued at ₱16,000 per lot.

[4] all penalties shall be waived by the creditors.

[5] interest on the loans shall be accrued only up to June 30, 2003.

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[2] *Rollo,* Vol. II, pp. 1105-1119.

[3] As summarized by the trial court in its Order dated September 13, 2004. See *Rollo,* Vol. I, p. 154.

[6] titles of properties and sales documents held by the bank as additional security but without actual mortgage on the properties will also be released to the petitioner after the *dacion.*

[7] memorial park mother titles mortgaged to a creditor bank shall be priced based on the value of individual memorial lots comprising those titles, the mother titles shall be released to the petitioner.

[8] for purpose of the *dacion*, the foreign currency loan from China Banking Corporation, the only US Dollar-denominated obligation, will be converted to peso based on the average exchange rate for the year 2003 (₱54.2033 to US$1.00), being the mean of 12 monthly averages, as quoted on the statistics web page of the *Bangko Sentral ng Pilipinas.*

[9] the bank creditors will avail of the tax exemption and benefits offered under the Special Purpose Vehicle (SPV) Law or R.A. No. 9182 to minimize the *dacion*-related costs for all parties concerned. Any concerned bank or financial institution which does not avail of said tax exemption through its own fault will shoulder the applicable taxes and related fees for the *dacion* transaction.

[10] trade creditors will be paid through *dacion* of memorial park lots.

[11] any other debt not covered by mortgaged (sic) of assets or not falling under the aforementioned categories shall be paid through *dacion* of memorial park lots.

On July 13, 2004, the RTC issued a "Stay Order"[4] directing that: all claims against petitioner be deferred; the initial hearing of the petition for rehabilitation be set on September 1, 2004; and all creditors and interested parties should file their respective comments/oppositions to the petition. In the same Order, the RTC then appointed Gener T. Mendoza as Rehabilitation Receiver.

The petition was opposed by petitioner's bank-creditors. The Bank of the Philippine Islands claimed that the petition and the proposed Rehabilitation Plan are coercive and violative of the contract. The Land Bank of the Philippines contended, among

[4] *Rollo,* Vol. I, pp. 135-136.

others, that the petition is unacceptable because of the unrealistic valuation of the properties subject of the *dacion en pago.*

The China Banking Corporation, respondent herein, alleged in its opposition that petitioner is solvent and that it filed the petition to force its creditors to accept *dacion* payments. In effect, petitioner passed on to the creditors the burden of marketing and financing unwanted memorial lots, while exempting it (petitioner) from paying interests and penalties.

On September 13, 2004, the RTC issued an Order,[5] the dispositive portion of which reads:

> WHEREFORE, the Petition is given due course. Let the Rehabilitation Plan, Annex J, Petition, be referred to Mr. Gener Mendoza, Rehabilitation Receiver, for evaluation and recommendation to be submitted not later than December 15, 2004.
>
> SO ORDERED.

On December 6, 2004, the Rehabilitation Receiver, in compliance with the above Order, submitted an Amended Rehabilitation Plan, recommending the following:

> 1. Payment of all bank loans and long-term commercial papers (LTCP) through *dacion en pago* of PC's real estate assets;
>
> 2. Payment of all non-bank, trade and other payables amounting to at least ₱500,000 each through a *dacion* of memorial park lots; and
>
> 3. Payment in cash over a three-year period, without interest, of all non-bank, trade and other payables amounting to less than ₱500,000 each. There are 290 of these creditors but their aggregate exposure to PC is only ₱7.64 million.

The Rehabilitation Receiver further proposed the following amendments with respect to the *dacion* payments to petitioner's bank creditors:

> 1. The asset base from which the creditors may choose to be paid has been broadened. Each creditor will no longer be limited to

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[5] *Id.*, pp. 153-155.

assets already mortgaged to it and may elect to be paid from the many other assets of the company, including even those mortgaged to other creditors. Any secured creditor, however, shall have priority to acquire the assets mortgaged to it.

2. A third appraiser has been added to the two proposed by PC to undertake valuation of assets earmarked for *dacion*. With three appraisers, more representative values are likely to be obtained.

3. Valuation of the memorial lots has been configured to dovetail with values approved in the corporate rehabilitation of Pryce Gases, Inc. (PGI), a subsidiary of PC. Thus, any memorial lot ceded to secured creditors shall be valued at ₱13,125 per lot, and ₱17,500/lot for unsecured creditors.

On January 17, 2005, the RTC issued an Order approving the Amended Rehabilitation Plan and finding petitioner eligible to be placed in a state of corporate rehabilitation; and directing that its assets shall be held and disposed of and its liabilities paid and liquidated in the manner specified in the said Order.

Consequently, on February 23, 2005, respondent filed with the Court of Appeals a petition for review, docketed as CA-G.R. SP No. 88479. Respondent alleged that in approving the Amended Rehabilitation Plan, the RTC impaired the obligations of contracts, voided contractual stipulation and contravened the "avowed policy of the State" to maintain a competitive financial system.

On July 28, 2005, the Court of Appeals rendered its Decision granting respondent's petition and reversing the assailed Orders of the RTC, thus:

WHEREFORE, premises considered, petition is hereby GRANTED. The assailed July 13, 2004, September 13, 2004 and January 17, 2005 Orders of the Regional Trial Court of Makati City, Branch 138, are hereby REVERSED and SET ASIDE.

SO ORDERED.

Petitioner herein seasonably filed a motion for reconsideration but it was denied by the appellate court in its Resolution dated April 12, 2006.

Hence, the instant recourse raising the sole issue of whether the Court of Appeals erred in denying the petition for rehabilitation of petitioner Pryce Corporation.

Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation[6] provides:

> SEC. 6. *Stay Order*.— If the court finds the petition to be **sufficient in form and substance**, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) **fixing the initial hearing on the petition not earlier than forty five (45) days but not later than sixty (60) days from the filing thereof**; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) **to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits** and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) **directing the creditors and interested parties to secure from the court copies of the petition and its annexes** within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

Section 6 provides that the petition must be "sufficient in form and substance." In *Rizal Commercial Banking Corporation*

[6] A.M. No. 00-8-10-SC which took effect on December 15, 2000.

v. Intermediate Appellate Court,[7] this Court held that under Section 6(c) of P.D. No. 902-A,[8] **receivers may be appointed whenever: (1) necessary in order to preserve the rights of the parties-litigants;** and/or (2) protect the interest of the investing public and creditors. **The situations contemplated in these instances are serious in nature. There must exist a clear and imminent danger of losing the corporate assets if a receiver is not appointed.** Absent such danger, such as where there are sufficient assets to sustain the rehabilitation plan and both investors and creditors are amply protected, the need for appointing a receiver does not exist. **Simply put, the purpose of the law in directing the appointment of receivers is to protect the interests of the corporate investors and creditors.**

We agree with the Court of Appeals that the petition for rehabilitation does not allege that there is a clear and imminent danger that petitioner will lose its corporate assets if a receiver is not appointed. In other words, **the "serious situation test" laid down by *Rizal Commercial Banking Corporation* has not been met** or at least substantially complied with. Significantly, the Stay Order dated July 13, 2004 issued by the RTC does not state any serious situation affecting petitioner's corporate assets. We observe that in appointing Mr. Gener T. Mendoza as Rehabilitation Receiver, **the only basis of the lower court was its finding** that **"the petition is sufficient in form and substance."** However, it did not specify any reason or ground to sustain such finding. Clearly, the **petition failed to comply with the "serious situation test.**"

As aptly held by the Court of Appeals:

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[7] G.R. No. 74851, December 9, 1999, 320 SCRA 279.

[8] Entitled "Reorganization of the Securities and Exchange Commission with Additional Powers and Placing Said Agency Under the Administrative Supervision of the Office of the President." The Decree was subsequently amended by Presidential Decree Nos. 1653, 1758, and 1799, and by Republic Act No. 8799 (The Securities Regulation Code of 2000), which transferred jurisdiction over rehabilitation cases from the SEC to Regional Trial Courts sitting as Commercial Courts.

There are serious requirements before rehabilitation can be ordered. That is why this stay order is issued only after a management committee or receiver is appointed. Before a management committee or receiver is appointed, the law expressly states the serious requirements that must first exist: (1) an imminent danger (*National Development Company and New Agrix, Inc. v. Philippine Veterans Bank*, G.R. Nos. 84132-33, December 10, 1990, 192 SCRA 257) of dissipation, loss, wastage or destruction of assets or of paralization of business operations of the liquid corporation which may be prejudicial to the interest of minority stockholders, parties-litigants or to the general public, or (2) there is a necessity to preserve the rights and interests of the parties-litigants, of the investing public and of creditors.

In the case at bench, when the commercial court appointed a rehabilitation receiver, the very next day after the filing of the Petition for Rehabilitation, **it is highly doubtful** and well-nigh impossible, that, **without any hearing yet held, the commercial court could have already gathered enough evidence before it to determine whether there was any imminent danger of dissipation of assets or of paralization of business operations to warrant the appointment of a rehabilitation receiver**.[9]

In determining whether petitioner's financial situation is serious and whether there is a clear and imminent danger that it will lose its corporate assets, the RTC, acting as commercial court, should conduct a hearing wherein both parties can present their respective evidence. Hence, a remand of the records of this case to the RTC is imperative.

WHEREFORE, we *DENY* the petition. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 88479 is *AFFIRMED* with the modification discussed above. Let the records of this case be *REMANDED* to the RTC, Branch 138, Makati City, sitting as Commercial Court, for further proceedings with dispatch to determine the merits of the petition for rehabilitation. No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[9] *Rollo,* pp. 66-67.

SECOND DIVISION

[G.R. No. 172409. February 4, 2008]

ROOS INDUSTRIAL CONSTRUCTION, INC. and OSCAR TOCMO, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and JOSE MARTILLOS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEAL FROM THE DECISION OF THE LABOR ARBITER; WHEN THE APPEAL INVOLVES MONETARY AWARD; WHEN DEEMED PERFECTED.— The Court reiterates the settled rule that an appeal from the decision of the Labor Arbiter involving a monetary award is only deemed perfected upon the posting of a cash or surety bond within ten (10) days from such decision. Article 223 of the Labor Code states: ART. 223. *Appeal.*—Decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. … In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. x x x Contrary to petitioners' assertion, the appeal bond is not merely procedural but jurisdictional. Without said bond, the NLRC does not acquire jurisdiction over the appeal. Indeed, non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory. It must be stressed that there is no inherent right to an appeal in a labor case, as it arises solely from the grant of statute.

2. ID.; ID.; ID.; APPEAL BOND; INDISPENSABLE REQUIREMENT, EXPLAINED.— While indeed the Court has relaxed the application of this requirement in cases where the failure to comply with the requirement was justified or where there was substantial compliance with the rules, the

overpowering legislative intent of Article 223 remains to be for a strict application of the appeal bond requirement as a requisite for the perfection of an appeal and as a burden imposed on the employer. As the Court held in the case of *Borja Estate v. Ballad:* The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal may be perfected "only upon the posting of a cash or surety bond." The word "only" makes it perfectly clear that the LAWMAKERS intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be considered completed. The law however does not require its outright payment, but only the posting of a bond to ensure that the award will be eventually paid should the appeal fail. What petitioners have to pay is a moderate and reasonable sum for the premium of such bond. Moreover, no exceptional circumstances obtain in the case at bar which would warrant a relaxation of the bond requirement as a condition for perfecting the appeal. It is only in highly meritorious cases that this Court opts not to strictly apply the rules and thus prevent a grave injustice from being done and this is not one of those cases.

3. POLITICAL LAW; STATUTES; JUDICIAL DOCTRINE DOES NOT AMOUNT TO THE PASSAGE OF A NEW LAW BUT CONSISTS MERELY OF CONSTRUCTION OR INTERPRETATION OF A PRE-EXISTING ONE.— It is well to recall too our pronouncement in *Senarillos v. Hermosisima, et al.* that the judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, as is the situation in this case.

APPEARANCES OF COUNSEL

Abrenica Duque Sicat Law Offices for petitioners.
Public Attorney's Office for private 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, petitioners Roos Industrial Construction, Inc. and Oscar Tocmo assail the Court of Appeals'[2] Decision dated 12 January 2006 in C.A. G.R. SP No. 87572 and its Resolution[3] dated 10 April 2006 denying their Motion for Reconsideration.[4]

The following are the antecedents.

On 9 April 2002, private respondent Jose Martillos (respondent) filed a complaint against petitioners for illegal dismissal and money claims such as the payment of separation pay in lieu of reinstatement plus full backwages, service incentive leave, 13th month pay, litigation expenses, underpayment of holiday pay and other equitable reliefs before the National Capital Arbitration Branch of the National Labor Relations Commission (NLRC), docketed as NLRC NCR South Sector Case No. 30-04-01856-02.

Respondent alleged that he had been hired as a driver-mechanic sometime in 1988 but was not made to sign any employment contract by petitioners. As driver mechanic, respondent was assigned to work at Carmona, Cavite and he worked daily from 7:00 a.m. to 10:00 p.m. at the rate of ₱200.00 a day. He was also required to work during legal holidays but was only paid an additional 30% holiday pay. He likewise claimed that he had not been paid service incentive leave and 13th month pay during the entire course of his employment. On 16 March 2002, his employment was allegedly terminated without due process.[5]

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[1] *Rollo*, pp. 12-49; dated 8 June 2006.

[2] *Id.* at 51-62; penned by Associate Justice Hakim S. Abdulwahid with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Estela M. Perlas-Bernabe.

[3] *Id.* at 64.

[4] *Id.* at 66-77.

[5] *Id.* at 158.

Petitioners denied respondent's allegations. They contended that respondent had been hired on several occasions as a project employee and that his employment was coterminous with the duration of the projects. They also maintained that respondent was fully aware of this arrangement. Considering that respondent's employment had been validly terminated after the completion of the projects, petitioners concluded that he is not entitled to separation pay and other monetary claims, even attorney's fees.[6]

The Labor Arbiter ruled that respondent had been illegally dismissed after finding that he had acquired the status of a regular employee as he was hired as a driver with little interruption from one project to another, a task which is necessary to the usual trade of his employer.[7] The Labor Arbiter pertinently stated as follows:

> x x x If it were true that complainant was hired as project employee, then there should have been project employment contracts specifying the project for which complainant's services were hired, as well as the duration of the project as required in Art. 280 of the Labor Code. As there were four (4) projects where complainant was allegedly assigned, there should have been the equal number of project employment contracts executed by the complainant. Further, for every project termination, there should have been the equal number of termination report submitted to the Department of Labor and Employment. However, the record shows that there is only one termination [report] submitted to DOLE pertaining to the last project assignment of complainant in Carmona, Cavite.
>
> In the absence of said project employment contracts and the corresponding Termination Report to DOLE at every project termination, the inevitable conclusion is that the complainant was a regular employee of the respondents.
>
> In the case of *Maraguinot, Jr. v. NLRC*, 284 SCRA 539, 556 [1998], citing *Capital Industrial Construction Group v. NLRC*, 221 SCRA 469, 473-474 [1993], it was ruled therein that a project employee may acquire the status of a regular employee when the

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[6] *Id*. at 130-134.

[7] *Id*. at 53; NLRC Decision dated 30 October 2003.

following concurs: (1) there is a continuous rehiring of project employees even after the cessation of a project; and (2) the tasks performed by the alleged "project employee" are vital, necessary and indispensable to the usual business or trade of the employer. Both factors are present in the instant case. Thus, even granting that complainant was hired as a project employee, he eventually became a regular employee as there was a continuous rehiring of this services.

x x x x x x x x x

In the instant case, apart from the fact that complainant was not made to sign any project employment contract x x x he was successively transferred from one project after another, and he was made to perform the same kind of work as driver.[8]

The Labor Arbiter ordered petitioners to pay respondent the aggregate sum of ₱224,647.17 representing backwages, separation pay, salary differential, holiday pay, service incentive leave pay and 13th month pay.[9]

Petitioners received a copy of the Labor Arbiter's decision on 17 December 2003. On 29 December 2003, the last day of the reglementary period for perfecting an appeal, petitioners filed a Memorandum of Appeal[10] before the NLRC and paid the appeal fee. However, instead of posting the required cash or surety bond within the reglementary period, petitioners filed a Motion for Extension of Time to Submit/Post Surety Bond.[11] Petitioners stated that they could not post and submit the required surety bond as the signatories to the bond were on leave during the holiday season, and made a commitment to post and submit the surety bond on or before 6 January 2004. The NLRC did not act on the motion. Thereafter, on 6 January 2004, petitioners filed a surety bond equivalent to the award of the Labor Arbiter.[12]

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[8] *Id.* at 169-170.

[9] *Id.* at 170-172.

[10] *Id.* at 173-188; dated 22 December 2003.

[11] *Id.* at 190-192.

[12] *Id.* at 53-54.

In a Resolution[13] dated July 29, 2004, the Second Division of the NLRC dismissed petitioners' appeal for lack of jurisdiction. The NLRC stressed that the bond is an indispensable requisite for the perfection of an appeal by the employer and that the perfection of an appeal within the reglementary period and in the manner prescribed by law is mandatory and jurisdictional. In addition, the NLRC restated that its Rules of Procedure proscribes the filing of any motion for extension of the period within which to perfect an appeal. The NLRC summed up that considering that petitioners' appeal had not been perfected, it had no jurisdiction to act on said appeal and the assailed decision, as a consequence, has become final and executory.[14] The NLRC likewise denied petitioners' Motion for Reconsideration[15] for lack of merit in another Resolution.[16] On 11 November 2004, the NLRC issued an entry of judgment declaring its resolution final and executory as of 9 October 2004. On respondent's motion, the Labor Arbiter ordered that the writ of execution be issued to enforce the award. On 26 January 2005, a writ of execution was issued.[17]

Petitioners elevated the dismissal of their appeal to the Court of Appeals by way of a special civil action of *certiorari*. They argued that the filing of the appeal bond evinced their willingness to comply and was in fact substantial compliance with the Rules. They likewise maintained that the NLRC gravely abused its discretion in failing to consider the meritorious grounds for their motion for extension of time to file the appeal bond. Lastly, petitioners contended that the NLRC gravely erred in issuing an entry of judgment as the assailed resolution is still open for review.[18] On 12 January 2006, the Court of Appeals affirmed the challenged resolution of the NLRC. Hence, the instant petition.

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[13] *Id*. at 116-120.

[14] *Id*. at 118-119.

[15] *Id*. at 214-220; dated 13 August 2004.

[16] *Id*. at 121; Dated 31 August 2004.

[17] *Id*. at 56.

[18] *Id*. at 56-57.

Before this Court, petitioners reiterate their previous assertions. They insist on the application of *Star Angel Handicraft v. National Labor Relations Commission, et al.*[19] where it was held that a motion for reduction of bond may be filed in lieu of the bond during the period for appeal. They aver that *Borja Estate v. Ballad*,[20] which underscored the importance of the filing of a cash or surety bond in the perfection of appeals in labor cases, had not been promulgated yet in 2003 when they filed their appeal. As such, the doctrine in *Borja* could not be given retroactive effect for to do so would prejudice and impair petitioners' right to appeal. Moreover, they point out that judicial decisions have no retroactive effect.[21]

The Court denies the petition.

The Court reiterates the settled rule that an appeal from the decision of the Labor Arbiter involving a monetary award is only deemed perfected upon the posting of a cash or surety bond within ten (10) days from such decision.[22] Article 223 of the Labor Code states:

> ART. 223. *Appeal.*—Decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. …
>
> In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.
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> x x x x x x x x x

Contrary to petitioners' assertion, the appeal bond is not merely procedural but jurisdictional. Without said bond, the

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[19] G.R. No. 108914, 20 September 1994, 236 SCRA 580.

[20] G.R. No. 152550, 8 June 2005, 459 SCRA 657.

[21] *Rollo*, pp. 35-37.

[22] *Borja Estate v. Ballad*, *supra* note 20 at 667.

NLRC does not acquire jurisdiction over the appeal.[23] Indeed, non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory.[24] It must be stressed that there is no inherent right to an appeal in a labor case, as it arises solely from the grant of statute.[25]

Evidently, the NLRC did not acquire jurisdiction over petitioners' appeal within the ten (10)-day reglementary period to perfect the appeal as the appeal bond was filed eight (8) days after the last day thereof. Thus, the Court cannot ascribe grave abuse of discretion to the NLRC or error to the Court of Appeals in refusing to take cognizance of petitioners' belated appeal.

While indeed the Court has relaxed the application of this requirement in cases where the failure to comply with the requirement was justified or where there was substantial compliance with the rules,[26] the overpowering legislative intent of Article 223 remains to be for a strict application of the appeal bond requirement as a requisite for the perfection of an appeal and as a burden imposed on the employer.[27] As the Court held in the case of *Borja Estate v. Ballad:*[28]

> The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal may be perfected "only upon the posting of a cash or surety bond." The word "only" makes it perfectly clear that the LAWMAKERS intended the posting of a cash or surety bond by the employer to be the exclusive means by

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[23] *Sameer Overseas Placement Agency, Inc. v. Levantino*, G.R. No. 153942, 29 June 2005, 462 SCRA 231, 235.

[24] *Computer Innovations Center v. National Labor Relations Commission*, G.R. No. 152410, 29 June 2005, 462 SCRA 193.

[25] *Id*.

[26] See *Borja Estate v. Ballad*, *supra* note 20 at 669-670.

[27] *Sameer Overseas Placement Agency, Inc. v. Levantino*, *supra* note 23 at 236.

[28] *Supra* note 19.

which an employer's appeal may be considered completed. The law however does not require its outright payment, but only the posting of a bond to ensure that the award will be eventually paid should the appeal fail. What petitioners have to pay is a moderate and reasonable sum for the premium of such bond.[29]

Moreover, no exceptional circumstances obtain in the case at bar which would warrant a relaxation of the bond requirement as a condition for perfecting the appeal. It is only in highly meritorious cases that this Court opts not to strictly apply the rules and thus prevent a grave injustice from being done[30] and this is not one of those cases.

In addition, petitioners cannot take refuge behind the Court's ruling in *Star Angel*. Pertinently, the Court stated in *Computer Innovations Center v. National Labor Relations Commission*:[31]

> Moreover, the reference in *Star Angel* to the distinction between the period to file the appeal and to perfect the appeal has been pointedly made only once by this Court in *Gensoli v. NLRC* thus, it has not acquired the sheen of venerability reserved for repeatedly-cited cases. The distinction, if any, is not particularly evident or material in the Labor Code; hence, the reluctance of the Court to adopt such doctrine. Moreover, the present provision in the NLRC Rules of Procedure, that "the filing of a motion to reduce bond shall not stop the running of the period to perfect appeal" flatly contradicts the notion expressed in *Star Angel* that there is a distinction between filing an appeal and perfecting an appeal.
>
> Ultimately, the disposition of *Star Angel* was premised on the ruling that a motion for reduction of the appeal bond necessarily stays the period for perfecting the appeal, and that the employer cannot be expected to perfect the appeal by posting the proper bond until such time the said motion for reduction is resolved. The unduly stretched-out distinction between the period to file an appeal and to perfect an appeal was not material to the resolution of *Star Angel*, and thus could properly be considered as *obiter dictum*.[32]

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[29] *Borja Estate v. Ballad, supra* note 20 at 667-669.

[30] *Sameer Overseas Placement Agency, Inc. v. Levantino, supra* note 23 at 240.

[31] G.R. No. 152410, 29 June 2005, 462 SCRA 183.

[32] *Id.* at 192-193.

Lastly, the Court does not agree that the *Borja* doctrine should only be applied prospectively. In the first place, *Borja* is not a ground-breaking precedent as it is a reiteration, emphatic though, of long standing jurisprudence.[33] It is well to recall too our pronouncement in *Senarillos v. Hermosisima, et al.*[34] that the judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, as is the situation in this case.[35]

At all events, the decision of the Labor Arbiter appears to be well-founded and petitioners' ill-starred appeal untenable.

WHEREFORE, the Petition is *DENIED*. Costs against petitioners.

SO ORDERED.

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

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[33] *Borja Estate v. Ballad, supra* note 19 at 667, citing *Catubay v. National Labor Relations Commission,* 386 Phil. 648, 657; 330 SCRA 440, 447 (2000); *Taberrah v. National Labor Relations Commission,* 342 Phil. 394, 404; 276 SCRA 431, 440 (1997); *Italian Village Restaurant v. National Labor Relations Commission,* G.R. No. 95594, 11 March 1992, 207 SCRA 204, 208 (1992); *Cabalan Pastulan Negrito Labor Association v. National Labor Relations Commission,* 311 Phil. 744; 241 SCRA 643 (1995); *Rosewood Processing, Inc. v. National Labor Relations Commission,* 352 Phil. 1013, 1028; 290 SCRA 408, 420 (1998).

[34] 100 Phil. 501, 504 (1956).

[35] *Columbia Pictures, Inc. v. Court of Appeals,* 329 Phil. 875, 907-908.

FIRST DIVISION

[G.R. No. 175989. February 4, 2008]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **MARIANO A. NOCOM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; INTERVENTION; DEFINED.— Intervention is "a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right of interest, alleged by him to be affected by such proceedings."

2. ID.; ID.; ID.; ID.; PARTIES ALLOWED TO INTERVENE; CLARIFIED.— Section 1, Rule 19 of the 1997 Rules of Civil Procedure, as amended, provides for the parameters before a person, not a party to a case, can intervene, thus: SEC. 1. *Who may intervene*. – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof, may with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. In *Alfelor v. Halasan*, we held that an intervention is valid when a person has: (1) a legal interest in the matter in litigation; (2) or in the success of any of the parties; (3) or an interest against the parties; (4) or when he is so situated as to be adversely affected by a distribution or disposition of property in the custody of the court or an officer thereof. In *Perez v. Court of Appeals*, this Court ruled that the legal interest

which entitles a person to intervene must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by direct legal operation and effect of judgment.

APPEARANCES OF COUNSEL

Chief Legal Counsel (GSIS) for petitioner.
Lorna Imelda M. Suarez for respondent.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Before us is a petition for review on *certiorari* seeking to reverse the Decision[1] of the Court of Appeals (Eleventh Division) promulgated on October 2, 2006 in CA-G.R. SP No. 87698.

The instant case is inextricably linked with two earlier consolidated cases filed with this Court — G.R. No. 137448 (*GSIS v. Bengson Commercial Buildings, Inc.*) and G.R. No. 141454 (*GSIS v. Court of Appeals*). Both were decided by the Court *en banc* on January 31, 2002.[2] Accordingly, we adopt the factual findings in these cases.

Bengson Commercial Buildings, Inc. (BENGSON) obtained loans from the Government Service Insurance System (GSIS), herein petitioner, on August 20, 1965 and November 23, 1971 in the amounts of ₱1.25 million and ₱3 million, respectively, or in the aggregate sum of ₱4.25 million. As security for the payment of these loans, BENGSON executed real estate and chattel mortgages in favor of the GSIS. For BENGSON's failure to settle its arrearages despite due notices, the mortgages were extrajudicially foreclosed. Its properties then were sold at public

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[1] *Rollo*, pp. 59-74. Per Associate Justice Jose Catral Mendoza and concurred in by Associate Justice Elvi John S. Asuncion (left the service) and Associate Justice Sesinando E. Villon.

[2] Reported in 375 SCRA 431 (2002). The opinion of the Court was written by then Chief Justice Hilario G. Davide, Jr.

auction to the highest bidder, the GSIS itself. A certificate of sale and new certificates of title were thereafter issued in its name.

On June 23, 1977, BENGSON filed with the then Court of First of Instance of San Fernando, La Union an action for annulment of the auction sale, docketed as Civil Case No. 2794. Later on, the case was transferred to the Regional Trial Court (RTC), Branch 20, also in San Fernando, La Union. After hearing, it rendered a Decision (1) nullifying the auction sale of BENGSON's mortgaged properties; (2) ordering the cancellation of the titles issued to the GSIS and the issuance of new ones in the name of BENGSON; (3) ordering BENGSON to pay the GSIS ₱900,000 for the debenture bonds; and (4) ordering GSIS to (a) restore to BENGSON full possession of the foreclosed properties; (b) restructure the ₱4.25 million loans with legal rate of interest from the finality of the judgment; (c) pay BENGSON ₱1.9 million representing accrued monthly rentals and ₱20,000 monthly rental until the properties are restored to BENGSON's possession, and (d) pay the costs of the suit.

On appeal, docketed as CA-G.R. CV No. 09361, the Court of Appeals rendered its Decision affirming the RTC judgment with modification. The appellate court ordered the remand of the case to the trial court for reception of evidence to determine the costs of suit. On February 10, 1988, the Decision of the Court of Appeals became final and executory.

On April 6, 1995, the trial court issued an Order awarding BENGSON ₱31 million as costs of suit. While Atty. Rogelio Terrado, counsel for GSIS, received a copy of the Order on the same date, however, he did not file a motion for reconsideration. It turned out that he was absent without official leave since April 6, 1995. Hence, the Order became final and executory. Eventually, BENGSON's *ex parte* motion for the issuance of a writ of execution was granted by the trial court.

On May 4, 1995, the GSIS received a copy of the Order of execution. Hence, on May 15, 1995, the GSIS, through its corporate counsel, Atty. Oscar Garcia, filed with the trial court

an urgent *omnibus* motion. Attached thereto was an affidavit of merit executed by Margarito C. Recto, manager of the GSIS Legal Services Group, praying that the motion should be considered as a petition for relief from the April 6, 1995 Order and that Atty. Terrado's gross negligence should not bind the GSIS, for to do so would result in the deprivation of its properties without due process.

On January 16, 1997, the trial court issued an Order denying the GSIS's urgent *omnibus* motion on the ground, among others, that the questioned Order of April 6, 1995 has attained finality. The GSIS received a copy of the Order on February 4, 1997.

On February 16, 1997, the GSIS filed a motion for reconsideration but the trial court denied the same, prompting the GSIS to file, on June 11, 1998, a petition for *certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 47669.

However, on November 24, 1998, the Court of Appeals dismissed the petition for the following reasons: (1) the petition was filed out of time; (2) the Verification and Certification of Non-Forum Shopping were not signed by an authorized officer of the GSIS; (3) no copy of the questioned writ of execution dated April 24, 1995 was attached to the petition; (4) the copy of the Order dated January 16, 1997 is not a certified true copy; (5) petitioner did not rebut BENGSON's evidence; and (6) the assailed Order of April 6, 1995 has become final and executory.

The GSIS filed a motion for reconsideration, but this was denied by the Court of Appeals in a Resolution dated January 29, 1999. The GSIS then filed a petition for review on *certiorari* with the Supreme Court, docketed as G.R. No. 137448.

Meanwhile, on December 16, 1998, the trial court issued an Order directing the issuance of an *alias* writ of execution for the satisfaction of the award of ₱31 million representing the costs of suit awarded to BENGSON in its Order of April 6, 1995. The sheriff then garnished the 6.2 million Class "A" shares of stock of San Miguel Corporation owned by the GSIS.

They were sold at public auction, with BENGSON as the sole bidder.

The GSIS filed a motion for reconsideration with motion to quash the *alias* writ of execution, but this was denied by the trial court on January 8, 1999. Hence, the GSIS filed with the Supreme Court a petition for *certiorari* docketed as G.R. No. 136874, seeking to annul both the December 16, 1998 and January 8, 1999 Orders of the trial court directing the execution of its April 6, 1995 Order and the issuance of the corresponding writ of execution.

On January 21, 1999, this Court issued a Temporary Restraining Order (TRO) enjoining the implementation of the April 6, 1995 Order (directing the transfer, registration, or issuance of new certificates of stock in the name of BENGSON). Thereafter, this Court referred the petition for *certiorari* in G.R. No. 136874 to the Court of Appeals for adjudication. It was then re-docketed as CA-G.R. SP No. 51131.

In its Decision on January 14, 2000, the trial court dismissed the petition of the GSIS in CA-G.R. SP No. 51131. Consequently, the GSIS filed with this Court a petition for *certiorari* with very urgent motion for the issuance of preliminary injunction and/or TRO, docketed as G.R. No. 141454. Forthwith, this case was consolidated with G.R. No. 137448.

On January 31, 2002, the Supreme Court rendered a Decision in G.R. Nos. 137448 and 141454, granting the petitions. This Court held:

> Similarly, in the higher interest of justice and equity, and the ground for relief from the 6 April 1995 Order of the trial court being evident, we shall reverse and set aside the 24 November 1998 and 8 January 1999 Resolutions of the Court of Appeals, as well as the 16 January 1997 Decision and 23 April 1998 Order of the trial court. We shall then remand the case to the trial court, and pursuant to Section 6 of Rule 38 of the 1997 Rules of Civil Procedure the case shall stand **as if the 6 April 1995 Order has never been issued.** Thereafter, the court shall proceed to hear and determine the case as if a timely motion for a new trial or reconsideration has been granted by it.

The dispositive portion of the decision reads:

WHEREFORE, the petitions at bar are GRANTED. The Resolutions of the Court of Appeals dated 24 November 1998, 8 January 1999, and 14 January 2000, as well as the 16 January 1997 and 23 April 1998 Orders of the Regional Trial Court, Branch 26, San Fernando, La Union, are hereby REVERSED and SET ASIDE. The cases are hereby ordered remanded to the trial court, which shall then proceed to hear and determine the case as if a timely motion for a new trial or reconsideration has been granted by it. Since the issues raised in CA-G.R. SP No. 51131 are irretrievably linked with, or are but a consequence of the 6 April 1995 Order of the trial court, the said case shall be suspended or held in abeyance until after the aforementioned proceedings in the trial court shall have been finally resolved. The Temporary Restraining Order we issued on 7 February 2000 shall remain in effect until further orders from this court.

SO ORDERED.

The records were eventually remanded to the trial court for hearing to determine the merits of the case.

On March 19, 2004, in the course of the proceedings, Mariano A. Nocom, respondent herein, filed a motion for intervention. Attached thereto is his Complaint-in-Intervention.

The GSIS filed its opposition, but in an Order dated June 14, 2004, the trial court denied the same and admitted the Complaint-in-Intervention.

The GSIS then filed a motion for reconsideration, but it was denied in an Order dated September 8, 2004.

On October 27, 2004, the trial court rendered a Partial Decision, the dispositive portion of which reads:

WHEREFORE, and in view of all the foregoing, the Order of this Court dated April 06, 1995, awarding the amount of THIRTY-ONE MILLION PESOS (₱31,000,000.00) as costs of suit to plaintiff is hereby reinstated. Considering, however, that the garnished SIX POINT TWO (6.2) MILLION Class "A" SMC shares of defendant GSIS had already been sold to plaintiff at public auction for the satisfaction of the *Alias* Writ of Execution by virtue of the

above-mentioned Order, the awarded costs of suit is hereby declared paid and satisfied.

In view thereof, let an Entry of Satisfaction of Judgment under Section 44 of Rule 39 of the Revised Rules of Court be entered in the record of the case.

SO ORDERED.

The GSIS moved for reconsideration, but it was denied by the trial court. The GSIS then interposed an appeal to the Court of Appeals, docketed as CA-G.R. CV No. 8462. This case is still pending resolution.

Meanwhile, on November 23, 2004, the GSIS filed a petition for *certiorari* and prohibition with the Court of Appeals, docketed as CA-G.R. SP No. 87698, contending that the trial court gravely abused its discretion in allowing respondent Nocom to intervene. However, the Court of Appeals denied the petition in its Resolution of October 2, 2006.

Hence, the instant petition anchored on the sole issue of whether the Court of Appeals erred in holding that respondent has a right to intervene.

Intervention is "a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right of interest, alleged by him to be affected by such proceedings."[3]

Section 1, Rule 19 of the 1997 Rules of Civil Procedure, as amended, provides for the parameters before a person, not a party to a case, can intervene, thus:

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[3] *Metropolitan Bank & Trust Co. v. Presiding Judge, RTC, Manila, Br. 39,* G.R. No. 89909, September 21, 1990, 189 SCRA 820.

SEC. 1. *Who may intervene*. – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof, may with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

In *Alfelor v. Halasan*,[4] we held that an intervention is valid when a person has: (1) a legal interest in the matter in litigation; (2) or in the success of any of the parties; (3) or an interest against the parties; (4) or when he is so situated as to be adversely affected by a distribution or disposition of property in the custody of the court or an officer thereof.

In *Perez v. Court of Appeals*,[5] this Court ruled that the legal interest which entitles a person to intervene must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by direct legal operation and effect of judgment.

In the instant case, records show that BENGSON transferred and assigned 2,406,666 SMC Class "A" shares to respondent, as evidenced by their Memorandum of Agreement and Deed of Assignment executed on August 24, 1999. We recall that these shares of stock in question were sold to BENGSON to satisfy the costs of suit awarded to it by the trial court in its April 6, 1995 Order. Clearly, respondent has an interest in the outcome of the case before the trial court. The Court of Appeals, therefore, did not err in ruling that respondent's motion for intervention is in order.

WHEREFORE, we *DENY* the petition. The Decision of the Court of Appeals (Eleventh Division) promulgated on October 2, 2006 in CA-G.R. SP No. 87698 is *AFFIRMED*. Costs against the petitioner.

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[4] G.R. No. 165987, March 31, 2006, 486 SCRA 451.

[5] G.R. No. 162580, January 27, 2006, 480 SCRA 411.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

EN BANC

[G.R. No. 176478. February 4, 2008]

LORNA A. MEDINA, *petitioner, vs.* **COMMISSION ON AUDIT (COA), represented by the Audit Team of EUFROCINIA MAWAK, SUSAN PALLERNA, and MA. DOLORES TEPORA,** *respondents.*

SYLLABUS

1. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; WHERE THERE ARE TWO STATUTES APPLICABLE TO A PARTICULAR CASE, THAT WHICH IS SPECIALLY INTENDED FOR THE CASE MUST PREVAIL; APPLICATION IN CASE AT BAR.— Administrative Order No. 07, as amended by Administrative Order No. 17, particularly governs the procedure in administrative proceedings before the Office of the Ombudsman. The Rules of Procedure of the Office of the Ombudsman was issued pursuant to the authority vested in the Office of the Ombudsman under Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989." When an administrative agency promulgates rules and regulations, it "makes" a new law with the force and effect of a valid law. Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partake of the nature of a statute. On the other hand, the provisions in the Administrative Code cited by petitioner in support of her theory that she is entitled to a formal investigation apply only to administrative cases filed

before the Civil Service Commission (CSC). In particular, Section 48(2) and Section 48(3) are subsumed under Subtitle A of Title I, which pertains to the CSC and to the procedure of administrative cases filed before the CSC. The administrative complaint against petitioner was filed before the Office of the Ombudsman, suggesting that a different set of procedural rules govern. And rightly so, the Deputy Ombudsman applied the provisions of Rules of Procedure of the Office of the Ombudsman in ruling that the prerogative to elect a formal investigation pertains to the hearing officer and not to petitioner. On various occasions, the Court has ruled on the primacy of special laws and of their implementing regulations over the Administrative Code of 1987 in settling controversies specifically subject of these special laws. For instance, in *Hon. Joson v. Exec. Sec. Torres*, the Court held that the Local Government Code of 1991, the Rules and Regulations Implementing the Local Government Code of 1991, and Administrative Order No. 23 (A.O. No. 23) govern administrative disciplinary proceedings against elective local officials, whereas the Rules of Court and the Administrative Code of 1987 apply in a suppletory character to all matters not provided in A.O. No. 23. The aforesaid ruling is based on the principle of statutory construction that where there are two statutes applicable to a particular case, that which is specially intended for the said case must prevail. More significantly, in *Lapid v. Court of Appeals*, the Court expressly upheld the applicability of The Ombudsman Act of 1989 and the implementing rules and regulations thereof to the exclusion of the Local Government Code and the Administrative Code of 1989 on the issue of the execution of the Ombudsman's decision pending appeal. The Court noted that petitioner therein was charged before the Office of the Ombudsman and accordingly, The Ombudsman Act of 1989 should apply exclusively. The Court explained, thus: There is no basis in law for the proposition that the provisions of the Administrative Code of 1987 and the Local Government Code on execution pending review should be applied suppletorily to the provisions of the Ombudsman Act as there is nothing in the Ombudsman Act which provides for such suppletory application. xxx And while in one respect, the Ombudsman Law, the Administrative Code of 1987 and the Local Government Code are *in pari materia* insofar as the three laws relate or deal with public officers, the similarity ends there. It is a

principle in statutory construction that where there are two statutes that apply to a particular case, that which was specially designed for the said case must prevail over the other. In the instant case, the acts attributed to petitioner could have been the subject of administrative disciplinary proceedings before the Office of the President under the Local Government Code or before the Office of the Ombudsman under the Ombudsman Act. Considering however, that petitioner was charged under the Ombudsman Act, it is this law alone which should govern his case. Thus, as between the Administrative Code of 1987 and Administrative Order No. 07, as amended, issued by the Office of the Ombudsman, the latter governs in this case which involves an administrative complaint filed with the Office of the Ombudsman and which raises the question of whether petitioner is entitled to a formal investigation as a matter of right.

2. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; DENIAL OF REQUEST TO FORMAL INVESTIGATION IS NOT TANTAMOUNT TO DENIAL OF DUE PROCESS; RATIONALE.— As correctly pointed out by the OSG, the denial of petitioner's request for a formal investigation is not tantamount to a denial of her right to due process. Petitioner was required to file a counter-affidavit and position paper and later on, was given a chance to file two motions for reconsideration of the decision of the deputy ombudsman. The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.

3. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF ADMINISTRATIVE BODY, ENTITLED TO RESPECT AND CAN ONLY BE SET ASIDE ON PROOF OF GRAVE ABUSE OF DISCRETION.— Well-settled is the rule that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. It is settled that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. Administrative decisions on matters within their jurisdiction are entitled to

respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law. Guided by this principle, the appellate court correctly affirmed the finding of guilt for grave misconduct and dishonesty.

4. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULES 45; ONLY QUESTIONS OF LAW MAY BE RAISED BEFORE THE SUPREME COURT THEREIN.— Clear and unmistakable is the rule that the Supreme Court is not a trier of facts. Just as well entrenched is the doctrine that pure issues of fact may not be the proper subject of appeal by *certiorari* under Rule 45 of the Revised Rules of Court as this mode of appeal is generally confined to questions of law. Only questions of law, not questions of fact, may be raised before the Supreme Court in a petition for review under Rule 45. This Court cannot be tasked to go over the proofs presented by the petitioners in the lower courts and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence.

5. POLITICAL LAW; ADMINISTRATIVE LAW; GRAVE OFFENSE; CANNOT BE MITIGATED BY THE FACT THAT THE ACCUSED IS A FIRST TIME OFFENDER OR BY THE LENGTH OF SERVICE OF THE ACCUSED; SUSTAINED.— Jurisprudence is replete with cases declaring that a grave offense cannot be mitigated by the fact that the accused is a first time offender or by the length of service of the accused. In *Civil Service Commission v. Cortez*, the Court held as follows: The gravity of the offense committed is also the reason why we cannot consider the "first offense" circumstance invoked by respondent. In several cases, we imposed the heavier penalty of dismissal or a fine of more than ₱20,000.00, considering the gravity of the offense committed, even if the offense charged was respondent's first offense. Thus, in the present case, even though the offense respondent was found guilty of was her first offense, the gravity thereof outweighs the fact that it was her first offense. Also, in *Concerned Employees v. Nuestro*, a court employee charged with and found guilty of dishonesty for falsification was meted the penalty of dismissal notwithstanding the length of her service in view of the gravity of the offense charged. To end, it must be stressed that dishonesty and grave misconduct have always

been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.

APPEARANCES OF COUNSEL

Efren L. Dizon for petitioner.
The Solicitor General for respondents.

D E C I S I O N

TINGA, *J.*:

While highlighting the interplay between the powers of two constitutional offices, one mandated as the government monitor of public fund expenditures and the other as the sentinel against graft and corruption in government, this case resolves some questions about the extent of their powers.

This is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure seeking the reversal of the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 89539. The Court of Appeals' decision affirmed the two joint orders issued by the Office of the Deputy Ombudsman for Luzon finding herein petitioner Lorna A. Medina guilty of grave misconduct and dishonesty. The Resolution of the same court denied petitioner's motion for reconsideration of the said decision.

The instant petition originated from the audit conducted by respondent Commission on Audit (COA) on the cash and accounts

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[1] *Rollo*, pp. 4-55.

[2] Dated 23 October 2006 and penned by *J*. Mariano C. Del Castillo and concurred in by *JJ*. Conrado M. Vasquez, Jr., Chairperson, Second Division, and Santiago Javier Ranada; *id*. at 58-70.

[3] Dated 30 January 2007; *id*. at 71-72.

handled by petitioner in her official capacity as Municipal Treasurer of General Mariano Alvarez, Cavite. In the Joint Affidavit[4] executed by herein respondents Eufrocinia M. Mawak, head of the audit team, and Susana L. Pallerna, Ma. Dolores C. Tepora and a certain Nelson T. Alvarez, who were all state auditors of the Provincial Auditor's Office of Cavite, they all stated that they had examined petitioner's financial records covering 19 August 1999 to 26 September 2000 and discovered a total cash shortage in the aggregate amount of ₱4,080,631.36. They thus directed petitioner to immediately restitute the shortage within 72 hours from receipt of the demand letter but petitioner allegedly failed to comply. The state auditors submitted a report to the Provincial Auditor's Office and recommended the relief of petitioner from her post as municipal treasurer and the filing of criminal charges against her.

COA, represented by the aforementioned state auditors, filed an administrative case docketed as OMB-L-A-04-0361-F before the Office of the Deputy Ombudsman for Luzon, charging petitioner with grave misconduct and dishonesty. As directed, petitioner filed a Counter-Affidavit[5] and a Position Paper[6] mainly raising the following defenses: (1) the audit team was not independent and competent; (2) the computation of her accountabilities was overstated and erroneous; (3) the audit team failed to verify documents such as bank reconciliation statements, general ledgers and cashbooks presented during the cash count; (4) the documents in support of the audit report were not signed, hence, were self-serving; (5) the cash shortage in the amount of ₱379,646.51 under the SEF and Trust Fund as well as the disallowed amount of ₱585,803.37 had no basis as the same pertained to a previous audit and, thus, should have been excluded from the computation of the total shortage; (6) the cash items amounting to ₱883,952.91 in the form of reimbursement expense receipts should not have been disallowed

[4] *Id*. at 182-183.

[5] *Id*. at 157-167.

[6] *Id*. at 168-179.

because they were actually received by individual payees; (7) petitioner's cash on hand accountability was overstated because a collection was not immediately recorded; and (8) the audit team erroneously credited petitioner's accounts to another cashier.

In a Decision[7] dated 8 November 2004, Deputy Ombudsman Victor C. Fernandez approved the recommendation of the Graft Investigation and Prosecution Officer to dismiss petitioner from service based on the existence of substantial evidence of a discrepancy in petitioner's account totaling ₱4,080,631.36. The said decision noted petitioner's supposed failure to file a counter-affidavit and position paper despite due notice.

On 29 November 2004, petitioner filed an urgent motion[8] stating that she complied with the directive to file a counter-affidavit and position paper and praying that the defenses therein be considered in reversing the 8 November 2004 decision. The motion was treated as a motion for reconsideration of the said decision.

On 31 January 2005, Deputy Ombudsman Fernandez issued the first assailed Joint Order[9] denying petitioner's urgent motion. Although the order acknowledged the erroneous statement in the 8 November 2004 Decision stating that petitioner failed to submit a counter-affidavit, nevertheless, it affirmed the Resolution and Decision both dated 8 November 2004. Deputy Ombudsman Fernandez ruled that petitioner's Counter-Affidavit and Position Paper did not present exculpatory arguments that would negate the allegation of discrepancy on petitioner's accounts. He also held that petitioner's concerns relating to the conduct of the audit should have been raised at the time of the audit or immediately thereafter, and that petitioner's failure to produce the amount of cash shortage despite demand created a presumption that she appropriated public funds under her custody for her own personal use.[10]

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[7] *Id.* at 143-145.

[8] *Id.* at 180-181.

[9] *Id.* at 106-111.

[10] *Id.* at 109.

Petitioner sought reconsideration[11] on grounds of newly discovered and material evidence and grave errors of fact and/or law prejudicial to her own interest. The purported newly discovered evidence consisted of petitioner's request for reconsideration of the audit report filed and still pending before the office of the audit team head, herein respondent Mawak, and letters sent by petitioner's counsel to the provincial auditor of Cavite questioning the audit and requesting a re-audit of petitioner's accounts.

In the second assailed Joint Order dated 22 March 2005,[12] Deputy Ombudsman Fernandez denied petitioner's motion for reconsideration. He reiterated that petitioner's allegations as regards the incompetence of the audit team and the errors in the audit report were matters which may be properly ventilated during trial. He explained that petitioner failed to produce the missing funds despite notice thereof creating a presumption that the same were appropriated for personal use and for the purpose of preliminary investigation, such findings warranted the filing of criminal charges against petitioner. The deputy ombudsman held that petitioner's belated request for re-audit could not be considered newly discovered evidence and denied the request for a formal investigation on the ground that petitioner was afforded due process when she filed her counter-affidavit and position paper.[13]

Petitioner elevated the matter to the Court of Appeals via a Petition for Review[14] questioning the denial of her request for a formal investigation, the penalty of dismissal, and the sufficiency of the evidence against her.

The Court of Appeals dismissed the petition in the assailed Decision dated 23 October 2006.[15] It held that petitioner was

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[11] *Id.* at 113-126.

[12] *Id.* at 102-105.

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

[14] *Id.* at 73-100.

[15] *Supra* note 2.

not entitled to a formal investigation and it affirmed the deputy ombudsman's factual finding that petitioner was guilty of grave misconduct and dishonesty. The appellate court also denied petitioner's motion for reconsideration in a Resolution dated 30 January 2007.

Hence, the instant petition[16] seeking the reversal of the Court of Appeals' decision on the following grounds: (1) the Court of Appeals failed to order a formal reinvestigation, to reopen and review the records of the administrative case, to consider newly discovered evidence attached to petitioner's motion for reconsideration of the deputy ombudsman's Decision and to consider material allegations in the motion for reconsideration of the assailed decision; (2) petitioner was able to overcome the presumption that she appropriated the missing funds for personal use; (3) the filing of the administrative case was baseless; and (4) the penalty of dismissal was unwarranted.

The instant petition reiterates the issues brought up before the Court of Appeals, namely: whether petitioner was deprived of her right to due process, whether the penalty of dismissal is proper and whether petitioner's guilt for grave misconduct and dishonesty is supported by substantial evidence.

Invoking her right to due process, petitioner, on one hand, insists that she is entitled to a formal investigation, citing the Administrative Code of 1987, Book V, Title I, Subtitle A, Section 48 (2)[17] and

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[16] *Supra* note 1.

[17] SEC. 48. *Procedure in Administrative Cases Against Non-Presidential Appointees*. — xxx (2) In the case of a complaint filed by any other persons, the complainant shall submit sworn statements covering his testimony and those of witnesses together with his documentary evidence. If on the basis of such papers a *prima facie* case is found not to exist, the disciplining authority shall dismiss the case. If a *prima facie* case exists, he shall notify the respondent in writing of the charges against the latter, to which shall be attached copies of the complaint, sworn statements and other documents submitted, and the respondent shall be allowed not less than seventy-two hours after receipt of the complaint to answer the charges in writing under oath, together with supporting sworn statements and documents, in which he shall indicate whether or not he elects a formal investigation if his answer is not considered satisfactory. If the answer is found satisfactory, the disciplinary authority shall dismiss the case.

(3).[18] On the other hand, in support of its argument that the propriety of conducting a formal investigation rests on the sound discretion of the hearing officer, respondent COA, through the Office of the Solicitor General (OSG), relies on Administrative Order No. 07, as amended by Administrative Order No. 17, Rule III, Section 5,[19] governing the procedure in administrative cases filed before the Office of the Ombudsman.

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[18] SEC. 48. *Procedure in Administrative Cases Against Non-Presidential Appointees.* — xxx (3) Although a respondent does not request a formal investigation, one shall nevertheless be conducted when from the allegations of the complaint and the answer of the respondent, including the supporting documents, the merits of the case cannot be decided judiciously without conducting such an investigation.

[19] SEC. 5. *Administrative adjudication; How conducted.* — a) If the complaint is **docketed as an administrative case**, the respondent shall be furnished with a copy of the affidavits and other evidence submitted by the complainant, and shall be ordered to file his counter-affidavit and other evidence in support of his defense, within ten (10) days from receipt thereof, together with proof of service of the same on the complainant who may file his reply-affidavit within ten (10) days from receipt of the counter-affidavit of the respondent;

b) If the Hearing Officer finds no sufficient cause to warrant further proceedings on the basis of the affidavits and other evidence submitted by the parties, the complaint may be dismissed. Otherwise, he shall issue an Order (or Orders) for any of the following purposes:

1) To direct the parties to file, within ten (10) days from receipt of the Order, their respective position papers. The position papers shall contain only those charges, defenses and other claims contained in the affidavits and pleadings filed by the parties. Any additional relevant affidavits and/or documentary evidence may be attached by the parties to their position papers. **On the basis of the position papers, affidavits and other pleadings filed, the Hearing Officer may consider the case submitted for resolution.**

2) **If the Hearing Officer decides not to consider the case submitted for resolution after the filing of position papers, affidavits and pleadings, to conduct a clarificatory hearing regarding facts material to the case as appearing in the respective position papers, affidavits and pleadings filed by the parties. At this stage, he may, at his discretion and for the purpose of determining whether there is a need for a formal trial or hearing, ask clarificatory questions to further elicit facts or information;**

In the conduct of clarificatory hearings, the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the party/witness being questioned. The parties may be allowed to raise clarificatory questions and elicit answers from the opposing party/witness, which shall be coursed through

The validity of Administrative Order No. 07, Rule III, Section 5 is not in dispute. However, petitioner argues that said provision is inferior to the provision in the Administrative Code which entitles the respondent to a formal investigation if he so desires.

Petitioner's theory is erroneous.

Administrative Order No. 07, as amended by Administrative Order No. 17, particularly governs the procedure in administrative

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the Hearing Officer who shall determine whether or not proposed questions are necessary and relevant. In such cases, the Hearing Officer shall ask the question in such manner and phrasing as he may deem appropriate;

3) **If the Hearing Officer finds no necessity for further proceedings on the basis of the clarificatory hearings, affidavits, pleadings and position papers filed by the parties, he shall issue an Order declaring the case submitted for resolution.** The Hearing Officer may also require the parties to simultaneously submit, within ten (10) days from receipt of the Order, their Reply Position Papers. The parties, if new affidavits and/or exhibits are attached to the other party's Position Paper, may submit only rebutting evidence with their Reply Position Papers.

4) **If the Hearing Officer finds the need to conduct a formal investigation on the basis of the clarificatory hearings, affidavits, pleadings and position papers filed by the parties, an Order shall be issued for the purpose.** In the same Order, the parties shall be required to file within ten (10) days from the receipt of the Order their respective pre-trial briefs which shall contain, among others, the nature of the charge(s) and defenses, proposed stipulation of facts, a definition of the issues, identification and marking of exhibits, limitation of witnesses, and such other matters as would expedite the proceedings. The parties are allowed to introduce matters in the pre-trial briefs which are not covered by the position papers, affidavits and pleadings filed and served prior to the issuance of the Order directing the conduct of the formal investigation.

c) The conduct of formal proceedings by the Office of the Ombudsman in administrative cases shall be non-litigious in nature. Subject to the requirements of due process in administrative cases, the technicalities of law, procedure and evidence shall not strictly apply thereto. The Hearing Officer may avail himself of all reasonable means to ascertain speedily the facts of the case. He shall take full control of the proceedings, with proper regard to the right of the parties to due process, and shall limit the presentation of evidence to matters relevant to the issue(s) before him and necessary for a just and speedy disposition of the case.

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proceedings before the Office of the Ombudsman. The Rules of Procedure of the Office of the Ombudsman was issued pursuant to the authority vested in the Office of the Ombudsman under Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989." When an administrative agency promulgates rules and regulations, it "makes" a new law with the force and effect of a valid law. Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partake of the nature of a statute.[20]

On the other hand, the provisions in the Administrative Code cited by petitioner in support of her theory that she is entitled to a formal investigation apply only to administrative cases filed before the Civil Service Commission (CSC). In particular, Section 48(2) and Section 48(3) are subsumed under Subtitle A of Title I, which pertains to the CSC and to the procedure of administrative cases filed before the CSC. The administrative complaint against petitioner was filed before the Office of the Ombudsman, suggesting that a different set of procedural rules govern. And rightly so, the Deputy Ombudsman applied the provisions of Rules of Procedure of the Office of the Ombudsman in ruling that the prerogative to elect a formal investigation pertains to the hearing officer and not to petitioner.

On various occasions,[21] the Court has ruled on the primacy of special laws and of their implementing regulations over the Administrative Code of 1987 in settling controversies specifically subject of these special laws. For instance, in *Hon. Joson v. Exec. Sec. Torres*,[22] the Court held that the Local Government Code of 1991, the Rules and Regulations Implementing the Local Government Code of 1991, and Administrative Order No. 23

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[20] *Freedom from Debt Coalition v. Energy Regulatory Commission*, G.R. No. 161113, 15 June 2004, 432 SCRA 157, 192-193, citing *Victoria's Milling Co., Inc. v. Social Security Commission*, 114 Phil 555 (1962).

[21] *Alcantara v. Ponce*, G.R. No. 131547, 15 December 2005, 478 SCRA 27; *Calingin v. Court of Appeals*, 434 SCRA 173, 176 (2004); *Lapid v. Court of Appeals*, 390 Phil. 236 (2000).

[22] 352 Phil. 888 (1998).

(A.O. No. 23)[23] govern administrative disciplinary proceedings against elective local officials, whereas the Rules of Court and the Administrative Code of 1987 apply in a suppletory character to all matters not provided in A.O. No. 23.[24] The aforesaid ruling is based on the principle of statutory construction that where there are two statutes applicable to a particular case, that which is specially intended for the said case must prevail.[25]

More significantly, in *Lapid v. Court of Appeals*,[26] the Court expressly upheld the applicability of The Ombudsman Act of 1989 and the implementing rules and regulations thereof to the exclusion of the Local Government Code and the Administrative Code of 1989 on the issue of the execution of the Ombudsman's decision pending appeal. The Court noted that petitioner therein was charged before the Office of the Ombudsman and accordingly, The Ombudsman Act of 1989 should apply exclusively. The Court explained, thus:

> There is no basis in law for the proposition that the provisions of the Administrative Code of 1987 and the Local Government Code on execution pending review should be applied suppletorily to the provisions of the Ombudsman Act as there is nothing in the Ombudsman Act which provides for such suppletory application.
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> And while in one respect, the Ombudsman Law, the Administrative Code of 1987 and the Local Government Code are *in pari materia* insofar as the three laws relate or deal with public officers, the similarity ends there. It is a principle in statutory construction that where there are two statutes that apply to a particular case, that which

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[23] Entitled "PRESCRIBING THE RULES AND PROCEDURES ON THE INVESTIGATION OF ADMINISTRATIVE DISCIPLINARY CASES AGAINST ELECTIVE LOCAL OFFICIALS OF PROVINCES, HIGHLY URBANIZED CITIES, INDEPENDENT COMPONENT CITIES, AND CITIES AND MUNICIPALITIES IN METROPOLITAN MANILA."

[24] *Supra* note 22 at 908.

[25] *Calingin v. Court of Appeals*, G.R. No. 154616, 12 July 2004, 434 SCRA 173, 176.

[26] *Supra* note 21.

was specially designed for the said case must prevail over the other. In the instant case, the acts attributed to petitioner could have been the subject of administrative disciplinary proceedings before the Office of the President under the Local Government Code or before the Office of the Ombudsman under the Ombudsman Act. Considering however, that petitioner was charged under the Ombudsman Act, it is this law alone which should govern his case.[27]

Thus, as between the Administrative Code of 1987 and Administrative Order No. 07, as amended, issued by the Office of the Ombudsman, the latter governs in this case which involves an administrative complaint filed with the Office of the Ombudsman and which raises the question of whether petitioner is entitled to a formal investigation as a matter of right.

Even assuming the Administrative Code is applicable, still there is a formidable hindrance to petitioner's prayer for a formal investigation. The records show that petitioner sought a reinvestigation only as an afterthought, that is, after the deputy ombudsman had already rendered a decision on the administrative complaint. The reinvestigation should have been requested at the first opportunity but definitely before the rendition of a decision.

As correctly pointed out by the OSG, the denial of petitioner's request for a formal investigation is not tantamount to a denial of her right to due process. Petitioner was required to file a counter-affidavit and position paper and later on, was given a chance to file two motions for reconsideration of the decision of the deputy ombudsman. The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.[28]

Petitioner's assertion that the Court of Appeals refused to reopen and review the case and ignored material issues and

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[27] *Lapid v. Court of Appeals*, *supra* note 21 at 251-252.

[28] *Montemayor v. Bundalian*, 453 Phil. 158, 165 (2003).

arguments in her motion for reconsideration of the 23 October 2006 Decision in violation of her right to due process, is quite hollow.

The appellate court disposed of petitioner's contention that she was able to controvert the accusations against her in this wise:

> Regarding the second, third and fourth assigned errors, We judiciously believe that the issues raised therein are essentially factual in nature. The rule is that the findings of fact in administrative decisions must be respected as long as they are supported by substantial evidence, even if not overwhelming or preponderant. It is not for the reviewing court to weight the conflicting evidence, determine the credibility of the witnesses or otherwise substitute its own judgment for that of the administrative agency on the sufficiency of evidence. It has been consistently held that substantial evidence is all that is needed to support an administrative finding of fact which means such relevant evidence as a reasonable mind might accept to support a conclusion.[29]

Nothing prevents the Court of Appeals from adopting the factual findings and conclusion of the deputy ombudsman on the ground that the findings and conclusions were based on substantial evidence. Well-settled is the rule that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. It is settled that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. Administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law.[30] Guided by this principle, the appellate court correctly affirmed the finding of guilt for grave misconduct and dishonesty.

Unfazed, petitioner now asks this Court to once again review the factual findings and conclusions of the Deputy Ombudsman

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[29] *Rollo*, pp. 65-66.

[30] *Bernardo v. Court of Appeals*, G.R. No. 124261, 27 May 2004, 429 SCRA 285, 299-300.

which had already been affirmed by the Court of Appeals. Whether the finding of petitioner's guilt for grave misconduct and dishonesty is supported by substantial evidence, suffice it to say these are factual issues calling for a review of the records of the case. Clear and unmistakable is the rule that the Supreme Court is not a trier of facts. Just as well entrenched is the doctrine that pure issues of fact may not be the proper subject of appeal by *certiorari* under Rule 45 of the Revised Rules of Court as this mode of appeal is generally confined to questions of law. Only questions of law, not questions of fact, may be raised before the Supreme Court in a petition for review under Rule 45. This Court cannot be tasked to go over the proofs presented by the petitioners in the lower courts and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence.[31]

Anyhow, the Court adopts the following findings of the Court of Appeals which are borne out by the records of the case:

> x x x It is a fact that an examination was conducted on the cash and accounts of respondent and that a shortage was found. While the latter argues that the auditors did not observe the proper procedure in conducting an examination and as a consequence of which, she was not able to justify the alleged shortage, we take note that the latter was given the opportunity to make such explanation when the auditors sent her a demand letter.[32]

On the penalty of dismissal which petitioner claims is too harsh, petitioner argues that the mitigating circumstances of this being her first offense and of the unreasonable length of time in filing the administrative case should be considered in her favor.

Jurisprudence is replete with cases declaring that a grave offense cannot be mitigated by the fact that the accused is a first time offender or by the length of service of the accused. In *Civil Service Commission v. Cortez*,[33] the Court held as follows:

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[31] *JMM Promotions and Management, Inc. v. Court of Appeals*, 439 Phil. 1, 10 (2002).

[32] *Rollo*, pp. 66-67.

[33] G.R. No. 155732, 3 June 2004, 430 SCRA 593.

The gravity of the offense committed is also the reason why we cannot consider the "first offense" circumstance invoked by respondent. In several cases, we imposed the heavier penalty of dismissal or a fine of more than ₱20,000.00, considering the gravity of the offense committed, even if the offense charged was respondent's first offense. Thus, in the present case, even though the offense respondent was found guilty of was her first offense, the gravity thereof outweighs the fact that it was her first offense.[34]

Also, in *Concerned Employees v. Nuestro*,[35] a court employee charged with and found guilty of dishonesty for falsification was meted the penalty of dismissal notwithstanding the length of her service in view of the gravity of the offense charged.

To end, it must be stressed that dishonesty and grave misconduct have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[36]

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. 89539 are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

Chico-Nazario, J., on official leave.

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[34] *Id.* at 607.

[35] 437 Phil. 383 (2002).

[36] *Civil Service Commission v. Cortez, supra* note 31 at 607.

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