PHILIPPINE REPORTS

VOL. 568

FEBRUARY 6, 2008 TO FEBRUARY 13, 2008

VOLUME 568

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 6, 2008 TO FEBRUARY 13, 2008

SUPREME COURT
MANILA
2013

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. P-04-1875. February 6, 2008]
(Formerly OCA IPI No. 03-1699-P)

EMILIANO MALABANAN, *complainant, vs.* **NIÑO R. METRILLO, Clerk III, Regional Trial Court, Tanauan City, Branch 83,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; WHEN GUILTY OF GRAVE MISCONDUCT; RESIGNATION FROM PUBLIC OFFICE DOES NOT SPARE THE PUBLIC OFFICE OF LIABILITY; IMPOSABLE PENALTY.— That respondent tendered his resignation on July 25, 2003 after the complaint against him was filed on June 23, 2003, obviously to evade any sanction which may be imposed upon him for his wrongdoing, does not spare him of liability. Neither does the dismissal of the estafa charge against him, which was based on an affidavit of desistance anyway. It bears noting that the quantum of proof required to successfully prosecute an administrative case is merely substantial evidence, not proof beyond reasonable doubt. At all events, as noted earlier, respondent did not deny the charge. In the recent case of *Rodriguez v. Eugenio* wherein the therein respondent, a process server, was found guilty of grave misconduct for demanding and receiving money from the uncle of a party litigant, this Court dwelt on misconduct in office and its erosion of the respect for law and the courts in this wise. Misconduct has been defined as any unlawful conduct, on the

part of the person concerned with the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior, while "gross" has been defined as "out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused." Respondent's act of demanding and receiving money from the uncle of party litigant constitutes grave misconduct in office. It is this kind of gross and flaunting misconduct, no matter how nominal the amount involved on the part of those who are charged with the responsibility of administering the law and rendering justice quickly, which erodes the respect for law and the courts. In *Rodriguez*, this Court also enumerated the cases of misconduct committed by court employees who demanded money from litigants and were ordered dismissed from the service. The present case must join this litany of cases if this Court's unwavering commitment to cleanse the Judiciary from "bad eggs" is to be consistently enforced. Respondent must be dismissed. As reflected earlier, respondent having resigned, a fine of ₱40,000 is instead imposed upon him. And the forfeiture of all benefits to which he may have been entitled, except earned leave credits, is ordered.

D E C I S I O N

***PER CURIAM*:**

What brings our judicial system into disrepute are often the actuations of a few erring court personnel peddling influence to party-litigants, creating the impression that decisions can be bought and sold, ultimately resulting in the disillusionment of the public. **This Court has never wavered in its vigilance in eradicating the so-called "bad eggs" in the judiciary**. And whenever warranted by the gravity of the offense, the supreme penalty of dismissal in an administrative case is meted to erring personnel.[1] (Emphasis and underscoring supplied)

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[1] *Mendoza v. Tiongson*, 333 Phil. 508, 510 (1996).

Niño Metrillo (respondent), Clerk III[2] of the Regional Trial Court, Tanauan City, Branch 83, was charged with violation of Republic Act (RA) No. 3019 (Anti-graft and Corrupt Practices Act, by letter-complaint dated June 23, 2003[3] of Emiliano Malabanan (complainant).

Complainant, then the incumbent Barangay Chairperson of Barangay Tinurik, Tanauan City, Batangas, was approached by Esmeraldo De Guzman (De Guzman), one of his constituents, relative to the latter's case[4] which was pending before Branch 83 of the Tanauan RTC.

De Guzman was on probation but he violated the conditions thereof, prompting a Probation and Parole Officer II to file a *Motion to Revoke Probation*.[5]

Pending resolution of the motion, respondent summoned the relatives of De Guzman to see him so he could help De Guzman in his case. Obliging, Luis Perez and Rodel[6] Perez, De Guzman's father-in-law and brother-in-law, respectively, together with complainant who was requested to accompany them, met with respondent.

At the meeting, respondent assured them that he could find a way to settle the matter, impressing upon them that the probation officers are his friends and that the presiding judge of Branch 83 is his godfather.[7] Before the Perezes and complainant left, respondent told them that he needed ₱20,000, half of which would be given to the probation officer and the other half to the Presiding Judge.

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[2] He resigned from the service effective August 1, 2003 as shown in the Separation Form dated August 5, 2003 of the Office of the Administrative Services, Office of the Court Administrator.

[3] *Rollo*, p. 1.

[4] Criminal Case No. P-656 for violation of Section 16, Article III of Republic Act No. 6425.

[5] *Rollo*, p. 2.

[6] Ronel in some parts of the records.

[7] *Rollo*, p. 3.

Complainant gave respondent ₱10,000 on September 16, 2002 and another ₱10,000 on October 3, 2002.[8]

Respondent welshed in his undertaking, however, despite the lapse of several months. He even asked for additional amount, but complainant refused to heed and instead filed the complaint at bar against respondent.[9]

In his Comment,[10] respondent **did not deny nor admit** the charge against him. Instead, he informed that the complaint against him for violation of RA No. 3019 was dismissed by the Office of the City Prosecutor on the ground that there was no showing that he took advantage of his position in its commission, albeit his prosecution for estafa under Article 315, paragraph 2 of the Revised Penal Code was recommended.[11]

Respondent was in fact charged with estafa before the Tanauan RTC, which charge was eventually dismissed after the Motion to Dismiss[12] filed by the prosecution, due to the execution of a Joint Affidavit of Desistance by complainant and the Perezes, was granted.

Respondent who had resigned effective August 1, 2003 claims that with the dismissal of the criminal case and his resignation, the present administrative complaint should likewise be dismissed.

In its Report,[13] the Office of the Court Administrator (OCA) states:

> . . . The issues in this case are: (1) Whether the resignation of the respondent will render the administrative complaint filed against him moot and academic; and (2) Whether the dismissal of a related case of estafa based on the Affidavit of Desistance executed by the private

[8] *Id*. at 4.

[9] *Id*. at 4-5.

[10] *Id*. at 8-11.

[11] *Id*. at 9-10.

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

[13] *Id*. at 17-20.

offended party is a ground for the dismissal of the administrative complaint.

The records show that the instant administrative complaint, with the affidavit of the complainant attached thereto, was received by the Office of the Court Administrator on 03 July 2003. Herein respondent tendered his resignation on 25 July 2003, effective 01 August 2003. Therefore, **the filing of the complaint preceded the resignation of the respondent**. Under Memorandum Circular No. 38, Series of 1993, an officer or employee under administrative investigation may be allowed to resign pending decision of the case but it shall be without prejudice to the filing of any administrative / criminal case against him for any act committed while still in the service. The Court therefore, retains its jurisdiction either to pronounce the respondent official innocent of the charge or declare him guilty thereof. In a case, the court said:

If innocent, the respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and penalty proper and imposable under the situation *(Pesole vs. Rodriguez, 81 SCRA 208).*

Administrative investigation is different from criminal proceedings and the prosecution of one is not a bar to the other. In other words, administrative investigation and criminal prosecution may be conducted simultaneously in different for (sic) and the conviction in one will not affect the other.

The information that was filed against herein respondent was estafa committed by means of false pretenses, *i.e*., by pretending to possess power or influence over the Probation Officer and the Presiding Judge of Branch 83, RTC Tanauan City. When the respondent demanded and received the amount of Twenty thousand (₱20,000.00) pesos from the private complainant with intent to gain, through fraudulent representation that he can work for the denial of the opposition to the petition for probation of the accused in Criminal Case No. P-656, in view of his alleged relationship with the Judge and the Probation Officer, he committed grave misconduct. Complainant, parted with the money in the belief that respondent, by reason of his office, can help the accused in his predicament.

x x x [14] (Italics in the original; emphasis and underscoring supplied)

[14] *Id*. at 19.

In view of the resignation of the respondent, the OCA recommended the forfeiture of the benefits he is entitled to receive, with prejudice to re-employment in the Government or any of its agencies including government-owned or controlled corporations.[15]

The Court has re-docketed the case and directed the parties to manifest whether they are willing to submit the case based on the pleadings and records already filed and submitted.[16] Both parties failed to comply with the directive.

The Court finds respondent guilty of gross misconduct, punishable by dismissal even for the first offense.[17]

That respondent tendered his resignation on July 25, 2003 after the complaint against him was filed on June 23, 2003, obviously to evade any sanction which may be imposed upon him for his wrongdoing, does not spare him of liability.[18]

Neither does the dismissal of the estafa charge against him, which was based on an affidavit of desistance anyway. It bears noting that the quantum of proof required to successfully prosecute an administrative case is merely substantial evidence, not proof beyond reasonable doubt.[19] At all events, as noted earlier, respondent did not deny the charge.

In the recent case of *Rodriguez v. Eugenio*[20] wherein the therein respondent, a process server, was found guilty of grave

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[15] *Id*. at 20.

[16] *Id*. at 23.

[17] Section 52 (A) (3), Civil Service Resolution No. 991936, August 31, 1999.

[18] *Vide Faelden v. Lagura,* A.M. No. P-05-1977, October 9, 2007; *Re: (1) Lost Checks Issued to the Late Roderick Roy P. Melliza, Former Clerk II, MCTC, Zaragga, Iloilo; and (2) Dropping from the Rolls of Ms. Esther T. Andres,* A.M. No. 2005-26-SC, November 22, 2006, 507 SCRA 478; *Office of the Court Administrator v. Juan*, A.M. No. P-03-1726, July 22, 2004, 454 SCRA 654.

[19] *Office of the Court Administrator v. Diaz*, 362 Phil. 580, 591 (1999).

[20] A.M. No. RTJ-06-2216, April 20, 2007, 521 SCRA 489.

misconduct for demanding and receiving money from the uncle of a party litigant, this Court dwelt on misconduct in office and its erosion of the respect for law and the courts in this wise.

> Misconduct has been defined as any unlawful conduct, on the part of the person concerned with the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior, while "gross" has been defined as "out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused."
>
> Respondent's act of demanding and receiving money from the uncle of party litigant constitutes grave misconduct in office. It is this kind of gross and flaunting misconduct, no matter how nominal the amount involved on the part of those who are charged with the responsibility of administering the law and rendering justice quickly, which erodes the respect for law and the courts.[21] (Underscoring supplied)

In *Rodriguez*, this Court also enumerated the cases of misconduct committed by court employees who demanded money from litigants and were ordered dismissed from the service.[22]

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[21] *Id*. at 505-506.

[22] The cases were as follows:

In *Frankie N. Calabines v. Luis N.Gnilo, Dolor M. Catoc v. Feliciano Calinga, Evelyn L. Caguitla, Luis N. Gnilo and Atty. Michael P. Musico,* the penalty of dismissal was imposed on four employees of the Court of Appeals for receiving a sum of money from party litigants in exchange for a supposed decision which did not actually exist.

In *Re: Criminal Case No. MC-02-5637 Against Arturo V. Peralta and Larry C. De Guzman, Employees of MeTC, Br. 31, Q.C.,* a clerk of court and a sheriff were dismissed from service for receiving marked money from a litigant in exchange for the execution of a writ.

In *Hidalgo v. Magtibay,* a process server and a jail officer were dismissed from service for asking grease money in the amount of ₱2,000.00 to facilitate the release from detention of a certain Dionisio Catimbang who had a pending case in the Tanuan City RTC-Branch 6.

The present case must join this litany of cases if this Court's unwavering commitment to cleanse the Judiciary from "bad eggs" is to be consistently enforced. Respondent must be dismissed.

As reflected earlier, respondent having resigned, a fine of ₱40,000 is instead imposed upon him.[23] And the forfeiture of all benefits to which he may have been entitled, except earned leave credits, is ordered.

WHEREFORE, the Court finds respondent, Niño R. Metrillo, then Clerk III, Regional Trial Court of Tanauan City, Branch 83, *GUILTY* of *GROSS MISCONDUCT*. Since he had resigned from the service, he is *FINED* in the amount of Forty Thousand (₱40,000) Pesos. The forfeiture of all the retirement benefits he is entitled to, except accrued leave credits, is *ORDERED*, and his reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations is *PROSCRIBED*.

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.

Velasco, Jr., J., no part.
Chico-Nazario, J., on official leave.

In the *Office of the Court Administrator v. Morante,* we ruled that the abominable act of a clerk of court of extorting money in exchange for court orders warrants his dismissal from service and imposition of accessory penalties.

In *Fabian v. Galo,* a court stenographer was dismissed from service when she demanded and received various sums of money on the promise that she would obtain a favorable decision for a litigant.

In *Office of the Court Administrator v. Barron,* a judge was dismissed for demanding and receiving money from a party litigant. The conduct of respondent judge shows that he can be influenced by monetary considerations. (Italics in the original; *id* at 507-508)

[23] Vide *Re: Non-Disclosure before the Judicial and Bar Counsel of the Administrative Case Filed against Judge Jaime V. Quitain,* JBC Case No. 013, August 22, 2007, 530 SCRA 729.

EN BANC

[A.M. No. P-06-2113. February 6, 2008]
(Formerly A.M. No. 05-12-357-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **EFREN F. VARELA,** *respondent.*

[OCA I.P.I. No. 05-2195-P. February 6, 2008]

COMMISSION ON AUDIT represented by ATTY. NAPOLEON MONTEJO, *complainant, vs.* **EFREN F. VARELA, Interpreter and Acting Clerk of Court, Catbalogan, Samar,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; COURT PERSONNEL; CLERK OF COURT; DUTY AS CUSTODIAN OF THE COURT'S FUNDS AND REVENUES, RECORDS, PROPERTIES AND PREMISES; LIABLE FOR ANY LOSS OR SHORTAGE THEREOF.— As Clerk of Court, respondent is entrusted to perform delicate functions with regard to the collection of legal fees. He acts as cashier and disbursement officer of the court and is tasked to collect and receive all monies paid as legal fees, deposits, fines and dues, and controls the disbursement of the same. He is designated as custodian of the court's funds and revenues, records, properties and premises and shall be liable for any loss or shortage thereof. His failure to account for the shortage in the funds he was handling and to turn over money deposited with him and to explain and present evidence thereon constitutes gross neglect of duty, dishonesty, grave misconduct and malversation which all carry the penalty of dismissal even for the first offense. Indeed, failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use. All that is necessary to prove malversation is to show that the defendant received in his possession public funds or property, he could not account for them and did not have them in his possession

when audited, and he could not give a satisfactory or reasonable excuse for the disappearance of said funds or property.

2. ID.; ID.; ID.; ID.; DUTY TO SAFEGUARD FUNDS AND COLLECTIONS AND TO SUBMIT MONTHLY REPORT OF COLLECTION FOR ALL FUNDS ARE ESSENTIAL TO AN ORDERLY ADMINISTRATION OF JUSTICE; DISMISSAL FROM SERVICE, PROPER.— As custodian of court funds and revenues, it is also his duty to immediately deposit the funds received by him to the authorized government depositories and not to keep the same in his custody. Supreme Court Circulars Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court fund. SC Circular No. 13-92 directs that all fiduciary collections be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank. Per SC Circular No. 5-93, LBP is designated as the authorized government depository. Respondent however kept a personal savings account where he deposited the court's collections instead of depositing the same to the official savings account of the court. Moreover, Circular No. 32-93 also requires all Clerks of Court/ Accountable Officers to submit to this Court a monthly report of collections for all funds not later than the 10th day of each succeeding month. The CMO audit team found however that respondent did not submit monthly reports, as the last monthly report of collections and remittances for the JDF was in March 1999. There was also no official cash book maintained anent the General Fund, and no single report was ever made to the OCA regarding the same. The safeguarding of funds and collections, and the submission to this Court of a monthly report of collection for all funds are essential to an orderly administration of justice. Respondent's failure to comply with the Court's circulars and rules designed to promote full accountability for public funds constitutes gross neglect of duty and grave misconduct.

3. ID.; ID.; ID.; ID.; DESIGNATION IN ACTING CAPACITY DOES NOT DIMINISH RESPONSIBILITIES.— While respondent discharged the functions of a Clerk of Court only in an acting capacity, still, the expectation for him to perform all the duties and responsibilities of a Clerk of Court is not diminished. Indeed, the fact that he is only an acting Clerk of Court cannot absolve him from liability. The Court finds that respondent is guilty of gross neglect of duty, dishonesty, grave

misconduct and malversation, for which he should be dismissed from the service.

4. JUDICIAL ETHICS; JUDGES; DISCIPLINE OF JUDGES; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY; PENALTY.— Indeed, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the court's ministerial officers. The safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. While Judge Mabutin claims that he is laden with heavy caseload, such fact cannot exculpate him from liability. A judge should constantly keep a watchful eye on the conduct of his employees as his constant scrutiny of the behavior of his employees would deter any abuse on the part of the latter in the exercise of their duties. His subordinates would then know that any misdemeanor will not remain unchecked. The Court finds Judge Mabutin guilty of simple neglect of duty for which he should be reprimanded and sternly warned that the commission of the same or similar act in the future shall be dealt with more severely.

R E S O L U T I O N

***PER CURIAM*:**

Before the Court is an administrative case which arose from the audit of the Commission on Audit (COA) finding shortages in the accounts of Acting Clerk of Court Efren F. Varela (respondent) of the Municipal Trial Court (MTC) Catbalogan, Samar.

On February 26, 2004, State Auditors Rosario C. Cuña and Ethel R. Mendoza (Auditors) of COA Regional Office No. 8, Government Center, Candahug, Palo, Leyte, examined the cash and accounts of respondent, pursuant to COA Regional Office No. VIII Travel Order No. 2004-002 dated February 23, 2004. Respondent, who is a Court Interpreter of MTC, Catbalogan, was designated as Acting Clerk of Court thereof, effective August 10, 2000. The Auditors initially found that respondent

incurred a shortage of ₱244,523.10 which amount, upon further investigation, increased to ₱459,702.96.[1] The COA sent letters of demand to respondent directing him to produce immediately the missing funds and to explain in writing how his shortage came about, but to no avail.[2] Thus, COA Regional Office No. VIII through Director Napoleon G. Montejo filed a letter/complaint against respondent dated October 12, 2004 with the Ombudsman, which in turn forwarded the same to this Court.[3] Attached to said letter/complaint is the affidavit of the Auditors dated September 20, 2004 stating the findings of their audit.[4]

The Office of the Court Administrator (OCA) directed respondent to comment on the complaint/affidavit of the Auditors, docketed as OCA IPI No. 05-2195-P, through a 1st Indorsement dated May 18, 2005. [5] Respondent did not comply; thus the OCA sent a 1st Tracer to respondent dated October 5, 2005 reiterating its order for him to file a comment.[6]

The OCA also sent a team from the Court Management Office (CMO), OCA, to conduct a financial audit in MTC, Catbalogan. The team later submitted a final report through a Memorandum docketed as Adm. Matter No. 05-12-357-MTC entitled "Final Report on the Financial Audit in the MTC-Catbalogan, Samar," now Adm. Matter No. P-06-2113, entitled "*Office of the Court Administrator v. Efren F. Varela.*"[7] Parenthetically, the Court in a Resolution dated July 26, 2006, consolidated Adm. Matter OCA IPI No. 05-2195-P with Adm. Matter No. P-06-2113.[8]

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[1] Broken down as follows: Fiduciary Fund of ₱215,179.86; Judiciary Development Fund, ₱236,219.00; and General Fund, ₱8,304.00, *rollo*, p. 5.

[2] *Id*. at 4-5.

[3] *Id*. at 7, 11.

[4] *Id*. at 13-14.

[5] *Id*. at 76.

[6] *Id*. at 77.

[7] *Rollo*, OCA IPI No. 05-2195-P, p. 105.

[8] *Id*. at 105.

The Report of the audit team dated November 25, 2005, stated that: there were several official receipts[9] unaccounted for; Judiciary Development Fund (JDF) collections were not properly remitted from September 1, 2000;[10] respondent did not submit monthly reports during his term as Officer-in-Charge (OIC)-Clerk of Court, prompting the Financial Management Office, OCA to withhold his salary effective October 2004 and exclude him from the payroll starting February 2005;[11] no official cash book was maintained anent the General Fund and no single report was ever made to the OCA regarding the same;[12] respondent failed to deposit the cash bond collections to the court's legitimate bank account maintained under Savings Account No. 0601-0739-19 with the Landbank of the Philippines (LBP) Catbalogan; upon inquiry with Presiding Judge Odelon S. Mabutin, it was found out that the court's collections were deposited by respondent into his personal account maintained with the LBP under Savings Account No. 0601-1271-80;[13] said account was opened by respondent on February 21, 2002 and was the sole signatory to the same;[14] interests earned in respondent's personal account were also not transferred to the JDF account.[15]

The audit team then concluded that the total accountability of respondent is as follows:

Judiciary Development Fund	₱ 236,619.10
General Fund	3,465.00
Special Allowance for the Judiciary Fund	4,846.00

[9] Nos. 9291301 to 40, *rollo*, P-06-2113 (formerly No. 05-12-357-MTC), p. 1.

[10] *Id*. at 2.

[11] *Id*. at 3.

[12] *Id*.

[13] *Id*. at 4.

[14] *Id*.

[15] *Id*.

Fiduciary Fund - Subject to refund upon presentation of the appropriate documents	780,489.86
TOTAL	₱ 1,025,419.96

Respondent also failed to remit the interests earned in his personal savings account, in the sum of ₱7,706.63, which amount when added to ₱1,025,419.96 would sum up to ₱1,032,826.59.

On February 8, 2006, the Court issued a Resolution directing respondent to explain the shortages found by the audit team, pay and deposit the same, pay and deposit to the JDF the interests earned from his personal account, submit to the Fiscal Monitoring Division, CMO-OCA the machine validated deposit slips as proof of remittance of the missing funds and to account for the missing Official Receipts.[16] The Court likewise directed Judge Odelon S. Mabutin, Presiding Judge of MTC, Catbalogan Samar to explain why he allowed the Court's Fiduciary Fund collections to be deposited in the personal account of respondent from February 21, 2002 to February 27, 2004.[17]

In his Compliance dated April 4, 2006, Judge Mabutin explained: he designated respondent as acting Clerk of Court from August 2000, with the continued leave of absence of then Clerk of Court Augusto J. Baybay. From that time, respondent performed the functions of both Interpreter and Clerk of Court. He did not allow respondent to deposit the cash collections into respondent's personal account, as he (Judge Mabutin) already had a joint account with Baybay as co-depositor, with LBP Catbalogan where the collections may be deposited. He was surprised to learn sometime in February 2003 that respondent had a personal account where respondent deposited his collections. He gave respondent several opportunities to put his books in order as he trusted him. Respondent, before his designation as Clerk of Court, consistently received Very

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[16] *Rollo*, P-06-2113 (formerly No. 05-12-357-MTC), pp. 44-47.

[17] *Id*. at 47.

Satisfactory rating, discharged his duties well, worked very hard in his two functions, and is known to be a leader in his church. He (Judge Mabutin) thought that respondent would not commit any act that would prejudice his promotion. He issued several memoranda reminding respondent to observe the Court's circulars regarding the proper deposit of accounts and the submission of records to the COA for audit. They held several meetings in order to pressure respondent to reconcile his accounts, and he gave respondent a week off from his chores just to be able to concentrate on his bookkeeping. He believes that he had done his part as respondent's immediate supervisor and whatever shortcoming he committed was not intentional. He allowed respondent to continue acting as Clerk of Court, even after discovering that the latter had a personal account in February 2003, because he believes in giving second chances. He also wanted respondent to rectify whatever lapses he committed. On February 27, 2004, he finally recalled respondent's designation. Judge Mabutin explains that he no longer had time to closely monitor respondent because he has a heavy caseload. He prays for soft-hearted treatment and vows not to allow this to happen again.[18]

On the other hand, respondent submitted a letter dated September 5, 2006 proposing a compromise in order to settle his shortages in the court funds. He is offering his withheld salaries for two years amounting to ₱230,904.00 and the remaining balance of ₱461,041.00 in a personal account. He prays that the combined amount of ₱691,945.00 be considered as full payment for his shortages and that the instant administrative case be dismissed considering that the amount of his proposed payment is already substantial.[19]

In the Resolution dated October 9, 2006, the Court referred the matter to the OCA for its evaluation, report and recommendation.[20]

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[18] *Rollo*, P-06-2113 (formerly No. 05-12-357-MTC), pp. 53-60.

[19] *Id*. at 90.

[20] *Rollo*, P-06-2113 (formerly No. 05-12-357-MTC), p. 97.

In the Memorandum dated July 2, 2007, the OCA submitted the following recommendations:

a) Mr. Efren F. Varela's proposed compromise to settle his shortages be ACCEPTED as partial payment of his shortages in court funds;

b) Atty. Eustacio C. Raga, Jr., Clerk of Court V and Officer-in-Charge, RTC, Catbalogan, Samar be DIRECTED TO WITHDRAW the amount of ₱459,702.96 deposited by Mr. Varela in the OCC, RTC, Catbalogan Samar under Official Receipt No. 2269979 and DEPOSIT the same amount to the Fiduciary Account of MTC, Catbalogan, Samar under LBP SA No. 0601-0739-19 and FURNISH the Fiscal Monitoring Division, CMO, OCA with a copy of the machine validated deposit slip and passbook as proof of transfer thereof. The OIC of OCC, MTC, Catbalogan, Samar on the other hand should be ADVISED not to issue an Official Receipt to acknowledge the transfer of ₱459,702.96 from the RTC to MTC as this is a restitution of a previously recorded collection of MTC, Catbalogan, Samar to avoid double take up of collections;

c) The Financial Management Office, OCA be DIRECTED to facilitate the remittance of the unpaid salaries of Mr. Efren F. Varela, covering the period September 1, 2004 to January 31, 2007 amounting to ₱326,430.86, to the accounts of MTC, Catbalogan, Samar found to have shortages. Of the ₱326,430.86, FMO, OCA be FURTHER DIRECTED to REMIT ₱321,584.86 to the Fiduciary Account of MTC-Catbalogan, Samar and the remaining balance of ₱4,846.00 be REMITTED to the Special Allowance for the Judiciary Fund of MTC-Catbalogan, Samar and to FURNISH the Fiscal Monitoring Division, CMO, OCA of the machine validated deposit slip as proof of such remittance;

d) Mr. Efren F. Varela, Interpreter, MTC, Catbalogan, Samar be DISMISSED FROM THE SERVICE for Malversation of Funds, and that his retirement benefits excluding his accrued leave credits be FORFEITED in favor of the government;

e) Mr. Efren F. Varela be DIRECTED to RESTITUTE the balance of ₱240,084.10 to the Judiciary Development Funds (₱236,619.10) and General Fund (₱3,465.00) accounts of MTC, Catbalogan, Samar, and to SUBMIT PROOF of such remittance to the FMD, CMO, OCA; and

f) Hon. Odelon S. Mabutin, Presiding Judge, MTC, Catbalogan Samar, be SUSPENDED from office without salary and benefits for a period of one (1) month for misconduct.[21]

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[21] *Rollo*, OCA IPI No. 05-2195-P, pp. 115-116.

The OCA further elaborated, thus:

Upon inquiry with the FMO, respondent's withheld salaries from September 1, 2004 to January 1, 2007 is ₱326,430.86. This amount, together with the ₱461,041.00 in his account with Equitable-PCI, totaling ₱787,471.86 should be remitted to the accounts of the MTC-Catbalogan. In the application of payments, priority should be given to the Fiduciary Account as the funds therein are only held in trust by the court and are subject to refund upon presentation of appropriate documents.

The OCA further clarified that the Office of the Ombudsman-Visayas has filed a case for Malversation of Public Funds against respondent in the RTC-Catbalogan, in connection with the missing funds amounting to ₱459,702.96. Respondent then made an offer to enter a plea of guilty to a lesser offense, *i.e.*, Failure of Accountable Officer to Render Accounts, which offer the Prosecutor did not oppose nor reject. The Ombudsman however manifested that in cases involving malversation, it is their policy that first there must be full restitution of the missing funds before any plea bargaining may be entertained. Respondent withdrew the amount of ₱459,702.96 from his Equitable-PCI account and deposited the same with the OCC-RTC Catbalogan Samar on November 22, 2006. The amount of ₱459,702.96 was previously recorded as collection of MTC, Catbalogan; thus, the Clerk of Court of RTC Catbalogan should withdraw the said amount, deposit the same to the Fiduciary Account of MTC Catbalogan under LBP SA No. 0601-1739-19, and furnish the Fiscal Monitoring Division, CMO, OCA, a copy of the machine-validated deposit slip and passbook. The OIC of MTC Catbalogan, meanwhile should not issue an Official Receipt to acknowledge the transfer of ₱459,702.96 from the RTC as this is a restitution of a previously recorded collection of MTC, to avoid double take-up of collections.[22]

The Court agrees with the findings and recommendations of the OCA with certain modifications.

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[22] *Id*. at 114.

As Clerk of Court, respondent is entrusted to perform delicate functions with regard to the collection of legal fees.[23] He acts as cashier and disbursement officer of the court and is tasked to collect and receive all monies paid as legal fees, deposits, fines and dues, and controls the disbursement of the same.[24] He is designated as custodian of the court's funds and revenues, records, properties and premises and shall be liable for any loss or shortage thereof.[25] His failure to account for the shortage in the funds he was handling and to turn over money deposited with him and to explain and present evidence thereon constitutes gross neglect of duty, dishonesty, grave misconduct and malversation which all carry the penalty of dismissal even for the first offense.[26] Indeed, failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use.[27] All that is necessary to prove malversation is to show that the defendant received in his possession public funds or property, he could not account for them and did not have them in his possession when audited, and he could not give a satisfactory or reasonable excuse for the disappearance of said funds or property.[28]

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[23] *Re:Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan,* A.M. No. 01-11-291-MTC, July 7, 2004, 433 SCRA 486, 494; *Gutierrez v. Quitalig*, 448 Phil. 469 (2003).

[24] *Commission on Audit v. Pamposa*, A.M. No. P-07-2291, June 25, 2007, 525 SCRA 471.

[25] *Commission on Audit v. Pamposa, id*. at 475; *Office of the Court Administrator v. Dureza-Aldevera,* A.M. No. P-01-1499, September 26, 2006, 503 SCRA 18; *Concerned Citizen v. Gabral, Jr.*, A.M. No. P-05-2098, December 15, 2005, 478 SCRA 13, 22; *Re:Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan, id*. at 494.

[26] *Office of the Court Administrator v. Dureza-Aldevera, id*. at 46; *Office of the Court Administrator v. Fortaleza,* 434 Phil. 511 (2002).

[27] *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*, A.M. No. P-06-2140, June 26, 2006, 492 SCRA 469, 481.

[28] *Concerned Citizen v. Gabral, Jr.*, *id*.

As custodian of court funds and revenues, it is also his duty to immediately deposit the funds received by him to the authorized government depositories and not to keep the same in his custody.[29] Supreme Court Circulars Nos. 13-92 and 5-93 provide the guidelines for the proper administration of court fund. SC Circular No. 13-92 directs that all fiduciary collections be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank. Per SC Circular No. 5-93, LBP is designated as the authorized government depository.[30] Respondent however kept a personal savings account where he deposited the court's collections instead of depositing the same to the official savings account of the court.

Moreover, Circular No. 32-93 also requires all Clerks of Court/ Accountable Officers to submit to this Court a monthly report of collections for all funds not later than the 10th day of each succeeding month. The CMO audit team found however that respondent did not submit monthly reports, as the last monthly report of collections and remittances for the JDF was in March 1999. There was also no official cash book maintained anent the General Fund, and no single report was ever made to the OCA regarding the same.

The safeguarding of funds and collections, and the submission to this Court of a monthly report of collection for all funds are essential to an orderly administration of justice. Respondent's failure to comply with the Court's circulars and rules designed to promote full accountability for public funds constitutes gross neglect of duty and grave misconduct.[31]

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[29] *Commission on Audit v. Pamposa*, *supra* note 24, at 475; *Office of the Court Administrator v. Dureza-Aldevera, supra* note 25, at 46; *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*, *supra* note 27, at 481; *Re:Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan*, *supra* note 23, at 492.

[30] See *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*, *supra* note 27, at 481; *Cabato-Cortes v. Agtarap*, 445 Phil. 66, 74 (2003).

[31] *Office of the Court Administrator v. Dureza-Aldevera, supra* note 25, at 46.

While respondent discharged the functions of a Clerk of Court only in an acting capacity, still, the expectation for him to perform all the duties and responsibilities of a Clerk of Court is not diminished. Indeed, the fact that he is only an acting Clerk of Court cannot absolve him from liability.[32]

The Court finds that respondent is guilty of gross neglect of duty, dishonesty, grave misconduct and malversation, for which he should be dismissed from the service.

As to Judge Mabutin, the Court quotes with approval the following findings of the OCA:

> More importantly, it is our opinion that Judge Mabutin should have reported the anomaly in court funds the moment he discovered it. It is incumbent on all trial judges to duly apprise the Court or the Office of the Court Administrator of problems they discover or encounter in the day-to-day affairs of their respective courts, so they may receive appropriate guidance and assistance. Judge Mabutin, however, decided to keep the matter to himself and gave Mr. Varela [sic] all the opportunity to clean his mess by allowing him to continue as Acting Clerk of Court.[33]

Although there is no evidence that Judge Mabutin personally benefited from the missing funds, it cannot be denied that he failed to properly monitor his personnel. He also did not call the attention of this Court through the Court Administrator regarding the personal savings account of respondent as soon as he (Judge Mabutin) learned about it in February 2003. It was only in February 2004 or a year after that he recalled respondent's designation as Clerk of Court; and it was only upon the audit of the COA that the discrepancies were discovered and upon the investigation of this Court that it was found out that respondent had a personal savings account.

Judge Mabutin should have taken the necessary steps to ensure that the correct procedure in the collections and deposits of

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[32] *Gutierrez v. Quitalig*, *supra* note 23, at 480-481; *Report on the Financial Audit Conducted on the Books of Accounts of OIC Melinda Deseo, MTC General Trias, Cavite,* 392 Phil. 122, 128 (2000).

[33] Memorandum dated July 2, 2007, p. 4.

court funds were dutifully carried out by his Clerk of Court.[34] As a judge, he should have organized and supervised his court personnel to ensure the prompt and efficient dispatch of business, and required at all times the observance of high standards of public service and fidelity.[35]

Indeed, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the court's ministerial officers. The safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.[36]

While Judge Mabutin claims that he is laden with heavy caseload, such fact cannot exculpate him from liability. A judge should constantly keep a watchful eye on the conduct of his employees as his constant scrutiny of the behavior of his employees would deter any abuse on the part of the latter in the exercise of their duties. His subordinates would then know that any misdemeanor will not remain unchecked.[37]

The Court finds Judge Mabutin guilty of simple neglect of duty[38] for which he should be reprimanded and sternly warned that the commission of the same or similar act in the future shall be dealt with more severely.

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[34] See *Re: Report of Acting Presiding Judge Wilfredo F. Herico on Missing Cash Bonds in Criminal Case Nos. 750 and 812*, A.M. No. 00-3-108-RTC, January 28, 2005, 449 SCRA 407, 432.

[35] *Office of the Court Administrator v. Trocino*, A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262, 276.

[36] *Report on the Financial Audit in RTC, General Santos City and the RTC and MTC of Polomolok, South Cotabato*, 384 Phil. 155, 167 (2000).

[37] *Concerned Litigants v. Araya, Jr.*, A.M. No. P-05-1960, January 26, 2007, 513 SCRA 9, 21 citing *Lacurom v. Magbanua*, 443 Phil. 711, 720-721 (2003) and *Buenaventura v. Benedicto*, 148 Phil. 63, 71 (1971).

[38] *Balderama v. Alagar,* A.M. No. RTJ-99-1449, January 18, 2002, 374 SCRA 59; *Santos v. Silva,* A.M. No. RTJ-00-1579, January 18, 2001.

WHEREFORE, the Court finds respondent Efren F. Varela, Interpreter and Acting Clerk of Court of the Municipal Trial Court-Catbalogan Samar, guilty of gross neglect of duty, dishonesty, grave misconduct and malversation of public funds. He is *DISMISSED* from the service with forfeiture of all his retirement benefits excluding his accrued leave credits with prejudice to re-employment in any branch of the government or in any government-owned or controlled corporation.

As recommended by the Office of the Court Administrator, the Court further resolves as follows:

1. Respondent Efren F. Varela's compromise to settle his shortages is *ACCEPTED* as partial payment of his shortages in court funds;

2. Atty. Eustacio C. Raga, Jr., Clerk of Court V and Officer-in-Charge, RTC, Catbalogan, Samar is *DIRECTED FORTHWITH TO WITHDRAW* the amount of ₱459,702.96 deposited by respondent Efren F. Varela in the OCC, RTC, Catbalogan Samar under Official Receipt No. 2269979 and *DEPOSIT* the same amount to the Fiduciary Account of MTC, Catbalogan, Samar under LBP SA No. 0601-0739-19 and *FURNISH* the Fiscal Monitoring Division, CMO, OCA with a copy of the machine validated deposit slip and passbook as proof of transfer thereof. The Officer-in-Charge of the Office of the Clerk of Court, Municipal Trial Court, Catbalogan, Samar, on the other hand, is *ADVISED* not to issue an official receipt to acknowledge the transfer of ₱459,702.96 from the Regional Trial Court to the Municipal Trial Court as this is a restitution of a previously recorded collection of MTC, Catbalogan, Samar to avoid double take-up of collections;

3. The Financial Management Office of the Office of the Court Administrator is *DIRECTED* further to facilitate the remittance of the unpaid salaries of respondent Efren F. Varela, covering the period September 1, 2004 to January 31, 2007 amounting to ₱326,430.86, to the accounts of MTC, Catbalogan, Samar found to have shortages. Of the

₱326,430.86, FMO, OCA is *FURTHER DIRECTED* to *REMIT* ₱321,584.86 to the Fiduciary Account of the Municipal Trial Court-Catbalogan, Samar and REMIT the remaining balance of ₱4,846.00 to the Special Allowance for the Judiciary Fund of Municipal Trial Court-Catbalogan, Samar and *FURNISH* the Fiscal Monitoring Division, CMO, OCA, the machine-validated deposit slip as proof of such remittance;

4. Respondent Efren F. Varela is *DIRECTED* to *RESTITUTE* within ten (10) days from notice hereof, the balance of ₱240,084.10 to the Judiciary Development Funds (₱236,619.10) and General Fund (₱3,465.00) accounts of MTC, Catbalogan, Samar, and to *SUBMIT PROOF* of such remittance to the FMD, CMO, OCA; and

Hon. Odelon S. Mabutin, Presiding Judge, MTC, Catbalogan Samar, is found guilty of *SIMPLE NEGLECT OF DUTY* for which he is *REPRIMANDED* with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, 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.

THIRD DIVISION

[A.M. No. P-07-2403. February 6, 2008]
(Formerly OCA IPI No. 07-2598-P)

RE: REGIDOR R. TOLEDO, RONALDO TOLEDO, and JOEFFREY TOLEDO* *vs.* ATTY. JERRY RADAM TOLEDO, RTC, BRANCH 259, PARAÑAQUE CITY.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; CLERK OF COURT; GROSSLY IMMORAL CONDUCT TO JUSTIFY SUSPENSION OR DISBARMENT; CASE AT BAR.— This Court has previously defined immoral conduct as "that conduct which is willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community." This Court has held that to justify suspension or disbarment the act complained of must not only be immoral, but grossly immoral and the same must be established by clear and convincing proof, disclosing a case that is free from doubt as to compel the exercise by the Court of its disciplinary power. Likewise, the dubious character of the act done as well as the motivation thereof must be clearly demonstrated. Thus, to warrant disciplinary action, we must examine if respondent's relationship with his common-law wife qualifies as "grossly immoral conduct." In disbarment cases, this Court has ruled that the mere fact of sexual relations between two unmarried adults is not sufficient to warrant administrative sanction for such illicit behavior. Whether a lawyer's sexual congress with a woman not his wife or without the benefit of marriage should be characterized as "grossly immoral conduct" will depend on the surrounding circumstances. This Court has further ruled that intimacy between a man and a woman who are not married, where both suffer from no impediment to marry, voluntarily carried on and devoid of any deceit on the part of respondent, is neither so corrupt as to constitute a criminal act nor so unprincipled as to warrant disbarment or disciplinary action against a member of the Bar.

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* In addition to the three named herein, the Complaint was also signed by one Zenaida Toledo.

2. ID.; ID.; ID.; ID.; ID.; COHABITING WITH A WOMAN AND BEGETTING CHILDREN BY HER WITHOUT THE BENEFIT OF MARRIAGE IS NOT NECESSARILY GROSSLY IMMORAL CONDUCT; CASE AT BAR.— Based on the allegations in the Complaint and in respondent's Comment, we cannot conclude that his act of cohabiting with a woman and begetting children by her without the benefit of marriage falls within the category of "grossly immoral conduct." There is no allegation that the two have been flaunting their status as common-law husband and wife, or that their cohabitation is attended by scandalous circumstances. Thus, the comportment of respondent and his common-law wife cannot be characterized as "willful, flagrant, shameless, or show[ing] a moral indifference to the opinion of the good and respectable members of the community" as to warrant the exercise of this Court's disciplinary power.

3. ID.; ID.; ID.; ID.; ID.; LAWYERS IN THE JUDICIARY REMINDED TO OBSERVE BASIC TENETS OF THE LEGAL PROFESSION.— We take this occasion to remind the respondent of the high standards of conduct imposed upon lawyers in the judiciary. Lawyers in the government service are under an even greater obligation to observe the basic tenets of the legal profession because public office is a public trust. They should be more circumspect in their adherence to their professional obligations under the *Code of Professional Responsibility*, for their disreputable conduct is more likely to be magnified in the public eye. A clerk of court in particular, as an essential and ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and proper administration of justice, must be free from any form of impropriety. The conduct of court personnel must be free from any whiff of impropriety or scandal, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals; it is in this way that the integrity and the good name of the courts of justice shall be preserved.

RESOLUTION

NACHURA, *J.*:

Before this Court is a Complaint[1] for violation of the lawyer's oath, violation of the *Code of Professional Responsibility*, oppression, dishonesty, harassment, and immorality against Atty. Jerry Radam Toledo, Branch Clerk of Court, Regional Trial Court, Branch 259, Parañaque City.

Complainants, all relatives of respondent, allege that the latter is utilizing his profession as a lawyer and his position in the judiciary to harass them and make them agree to an unequal distribution of the estate of the late Florencia R. Toledo.[2]

Florencia Toledo — mother of complainant Regidor, mother-in-law of Zenaida, and grandmother of Ronaldo, Joeffrey, and respondent — was the registered owner of a parcel of land in Tarlac covered by Transfer Certificate of Title (TCT) No. 125017. She died intestate on December 14, 2002.[3]

Complainants claim that respondent, after Florencia's death, never informed them that he was in possession of the Owner's Duplicate Copy of TCT No. 125017. As a result of such concealment, complainants executed an Affidavit of Loss of the document on the basis of which they filed a Verified Petition for the issuance of the Owner's Duplicate Copy before the RTC of Tarlac City. Respondent opposed the petition on the ground that he had the subject document in his possession allegedly because he bought part of the land from Florencia. Thus, complainants withdrew the petition before the Tarlac court.[4]

Subsequently, respondent filed a petition for the settlement of the intestate estate of Florencia before the RTC of Parañaque City, Branch 260. He prayed therein that he be appointed as

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[1] *Rollo*, pp. 6-18.

[2] *Id*. at 6-7.

[3] *Id*. at 7.

[4] *Id*. at 8.

the administrator of the estate. During the conferences to settle the case amicably, respondent proposed that he will give 7,681 sq. m. to complainants, while 8,000 sq. m. will go to him and his sisters. Complainants asked that they be given the bigger part instead because there were more of them who will partition the property. Respondent refused and said that complainants should be grateful for the offer since the land had already been sold to him and his sisters.[5]

Complainants objected to the petition on the ground that the alleged conveyances to respondent and his siblings were "very questionable" and done without the knowledge and consent of complainants who, except for Zenaida, have legitimes over the subject estate.

They allege that the Deed of Sale presented by respondent contains erasures. The Deed of Sale states that the date of the consummation of the transaction is January 17, 2002 but Florencia's community tax certificate is dated July 18, 2002. On the later date also, complainants allege, it was impossible for Florencia to have obtained a CTC because she had been sick and was often in the hospital during that period. They also question the fact that the Deed of Sale was allegedly signed by the parties at complainants Regidor and Zenaida's house at *Barangay* Merville, Parañaque City, when respondent has never been there.

Complainants also point to a *Sinumpaang Salaysay*[6] executed by Florencia attesting to the fact that she was made to sign by respondent's father a document the contents of which were unknown to her and that if any document she purportedly signed conveying her remaining Tarlac property should be presented, the same is not true.

On March 9, 2004, complainants filed a Petition for Annulment of the Deed of Sale before the RTC of Parañaque City, Branch 257. The case is still pending.[7]

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[5] *Id.* at 9.

[6] Annex "I", *rollo*, p. 39.

[7] *Rollo*, p. 10.

On the other hand, on October 28, 2003, respondent filed a criminal complaint for perjury against complainants Regidor, Ronaldo, and Joeffrey, and another relative, Gladdys Toledo, before the Prosecutor's Office in Tarlac for having executed an Affidavit of Loss of Owner's Duplicate Copy of TCT No. T-125017. The case was subsequently dismissed for lack of probable cause. Respondent's Motion for Reconsideration was denied. Respondent appealed the same to the Department of Justice, with the endorsement of the Regional State Prosecutor. Complainants filed their Comment on January 5, 2005. At present, they no longer have any definite information on the status of said appeal.[8]

Meanwhile, on November 28, 2003, respondent filed another case against complainants Regidor and Zenaida, and yet another relative, Cresencia Agduma, this time for violation of Presidential Decree (PD) No. 651. The case arose when Florencia died and was to be buried in San Clemente, Tarlac. Complainants had to secure her death certificate, which they failed to obtain in Parañaque City. Complainants sought advice from respondent, he being the lawyer in the family, who advised them to get a permit from the Local Civil Registrar in San Clemente. They followed his advice. Because of this, a case for violation of PD No. 651 was filed against the three.

On July 27, 2005, the 1st Municipal Circuit Trial Court of Sta. Ignacia-Mayantoc-San Clemente-San Jose rendered its Decision acquitting Regidor and Cresencia, but finding Zenaida guilty of violation of PD No. 651 for signing the application for the death certificate.

Lastly, complainants accuse respondent of immorality. They allege that they have personal knowledge of the fact that respondent is living with his common-law wife, Normita, whom he allegedly treats as a "maid servant."[9] They further allege that during the hearings of their cases, respondent was seen with a woman, not Normita, who was always at his side, and

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[8] *Id*. at 11.

[9] *Id*. at 13.

they were very sweet to each other. They also attribute his unruly and bullying behavior to his being a drunkard with a fondness for the "night life."[10]

The complainants filed the present petition praying that this Court conduct a formal investigation of respondent's actions and impose on him the proper penalty which, they submit, should be the dismissal of respondent from the service as Branch Clerk of Court.

In his Comment,[11] respondent calls the allegations "patently malicious conjectures and surmises."

He states that 15,000 of the 18,681 square meters of the San Clemente property in dispute had already been sold by the decedent herself. Further, what was left of the property, about 2,800 sq.m., had already been sold by complainants to several buyers. In fact, said buyers are now occupying the land. To prevent further dissipation of the estate, he was prompted to file a petition to settle the intestate estate of Florencia.

He alleges that it is the complainants who have shown their propensity for criminal activities as evidenced by their execution of an Affidavit of Loss to obtain a second copy of TCT No. T-125017, and by Zenaida's declaration in Florencia's death certificate that the latter died in San Clemente, Tarlac. He also states that, contrary to complainants' assertion, the courts have painstakingly been trying to have the parties amicably settle their cases.

As to the charges of immorality, he alleges that he has been the sole breadwinner of their family, while Normita is in charge of the household and taking care of their children. They have deferred their "dream wedding" to give Normita the opportunity to advance her career and to give way to the education of their children. In support of this, he attached Normita's Affidavit[12]

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[10] *Id*. at 14.

[11] *Id*. at 56-61.

[12] Annex "4", *rollo*, p. 72.

where she states the underlying reasons for their decision to remain unmarried, thus:

x x x x x x x x x

1. That I am the common-law wife of Jerry R. Toledo by whom I have been blessed with three (3) wonderful children;

2. That we have been happily living together as a family at our home at the above given address for twelve (12) years now and in the length of time, we are extending to each other mutual love, support, respect and understanding;

3. That taking into consideration the financial burdens of having to provide quality and efficient education for our children, Jerry and I have decided to defer our dream wedding until it would already be financially and economically feasible for us to do so;

4. That I also wanted to postpone our marriage to a later date as I have personal plans of seeking employment abroad considering that I used to work with an American computer manufacturer;

5. That it would be easier for me to land a job abroad being single and considering further that my father was a United States Army veteran and also a former United States government employee who used to work at the attached office of the United States Embassy;

[6.] That we have already decided to have our dream wedding (sic) when the time comes that the financial constraints of providing for our children's quality education and support would have already lessened and have save (sic) enough money to do so;

He denies that he uttered malicious words to complainants. He also denies being a drunkard but admits to being a "moderate drinker." He alleges that the complaint was filed merely to harass, malign, and annoy him, and to pressure him to accede to their demands.

Upon evaluation of the records of this case, the OCA submitted the following recommendations:

Complainants' charges against the respondent and the latter's countercharges stem from their dispute over the property left by their deceased relative, Florencia R. Toledo. In fact, an intestate proceeding to settle the estate of the above named deceased among the complainants

and the respondent has been filed in the RTC, Branch 260, Parañaque City. Respondent's claim that he had bought a portion of the land left by the deceased Florencia R. Toledo, which is the basis of his claim in the intestate proceeding, is challenged by the complainants who have filed an action to annul the alleged sale. There is also the perjury case against the complainants for their execution of an Affidavit of Loss of Owner's Duplicate Copy of TCT No. 125017.

The pendency of the aforesaid cases render[s] the charges hurled against respondent Atty. Toledo beyond the ambit of administrative inquiry. The issues raised involve judicial matters which should be addressed by the courts where they are pending.

Anent the charge of immorality ascribed to respondent for maintaining a common-law wife, although both respondent and his partner Normita are single, and do not appear to be suffering from any impediment to marry, it is worth to note, however, that this arrangement was sought by them in order not to prejudice Normita's employment opportunities abroad, as stated in the latter's affidavit. (Annex "4"). In effect, the sacred institution of marriage was sacrificed for the "American Dream[,]" and this shows a personality that is unprincipled and undesirable. It is for this reason, not the relationship *per se*, that we fault him for perpetuating such kind of love affair. While we are not in a position to dictate what his life agenda should be, we can certainly prescribe the character of the personnel to man the frontlines in the dispensation of justice. As it is oft-repeated, a public office is a public trust and the conduct and behavior of all those involved in the administration of justice – from the presiding judge to the lowliest utility worker – should be circumscribed with the heavy burden of responsibility, accountability, integrity, uprightness[,] and honesty (*Violeta R. Villanueva vs. Armando T. Milan, A.M. No. P-02-1642, September 27, 2002*). As oft-stated by this Court:

> "It must be stressed that while every office in the government is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary. Indeed, the image of a court of justice is mirrored in the conduct of the personnel who work thereat from the judge to the lowest of its personnel. Court employees are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice. The conduct of court personnel must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch, but also to their behavior outside the court as private individuals. There is no dichotomy of morality; a court

employee is also judged by his or her private morals. (*Court Employees of the Municipal Circuit Trial Court, Ramon Magsaysay, Zamboanga del Sur vs. Earla C. Sy, A.M. No. P-93-808, November 25, 2005*; *Gamboa vs. Gamboa, A.M. No. P-04-1836, July 30, 2004, 435 SCRA 436)*.["]

By living with a woman and begetting children with her without the benefit of marriage, the respondent has breached the standards of morality and uprightness expected from a court employee. The judiciary cannot afford to keep in its ranks one whose sense of propriety is highly questionable. The respondent herein has to choose between giving up his public position and legalizing his relationship with the mother of his children by the bond of matrimony. He cannot at the same time stay in the service of the judiciary and maintain an illicit relation with a woman who is not his wife.

RECOMMENDATION: We respectfully submit for the consideration of the Honorable Court our recommendation:

1) That the charges of Violation of Attorney's Oath, Code of Professional Responsibility, Oppression, Dishonesty and Harassment against Atty. Jerry Radam Toledo of RTC, branch 259, Parañaque City be **DISMISSED** for being premature;

2) That respondent Atty. Jerry Radam Toledo be **SUSPENDED** for a period of three (3) months for conduct unbecoming a public official and a court employee; and

3) That after serving his suspension, respondent Atty. Toledo be given thirty (30) days to either marry his mistress (sic) and mother of his children or resign his position in the judiciary. If he opts for the former, he should submit to the court a certified xerox copy of his marriage contract.[13]

We find the OCA's report and recommendation partly meritorious.

We agree with the OCA that the charges and counter-charges pertaining to the sale and partition of the property or properties of Florencia's estate would best be ventilated in the cases already pending in the trial courts. Whether respondent's claims are meritorious or frivolous will be determined after judgment on the merits has been rendered in each case.

[13] *Id*. at 4-5.

However, as to the charge of immorality, we find the OCA's recommendations untenable.

This Court has previously defined immoral conduct as "that conduct which is willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community."[14]

This Court has held that to justify suspension or disbarment the act complained of must not only be immoral, but grossly immoral[15] and the same must be established by clear and convincing proof, disclosing a case that is free from doubt as to compel the exercise by the Court of its disciplinary power. Likewise, the dubious character of the act done as well as the motivation thereof must be clearly demonstrated.[16]

Thus, to warrant disciplinary action, we must examine if respondent's relationship with his common-law wife qualifies as "grossly immoral conduct."

In disbarment cases, this Court has ruled that the mere fact of sexual relations between two unmarried adults is not sufficient to warrant administrative sanction for such illicit behavior.[17] Whether a lawyer's sexual congress with a woman not his wife or without the benefit of marriage should be characterized as "grossly immoral conduct" will depend on the surrounding circumstances.[18]

This Court has further ruled that intimacy between a man and a woman who are not married, where both suffer from no impediment to marry, voluntarily carried on and devoid of any

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[14] *Cojuangco, Jr. v. Palma*, A.C. No. 2474, September 15, 2004, 438 SCRA 306, 314, citing 7 C.J.S. 959.

[15] *Figueroa v. Barranco, Jr.*, 342 Phil. 408, 412 (1997).

[16] *Reyes v. Wong*, 159 Phil. 171, 178 (1975), citing *Co v. Candoy*, 21 SCRA 439, 442 (1967).

[17] *Concerned Employee v. Mayor*, A.M. No. P-02-1564, November 23, 2004, 443 SCRA 448, 457.

[18] *Montaña v. Ruado*, 159 Phil. 439 (1975).

deceit on the part of respondent, is neither so corrupt as to constitute a criminal act nor so unprincipled as to warrant disbarment or disciplinary action against a member of the Bar.[19]

Based on the allegations in the Complaint and in respondent's Comment, we cannot conclude that his act of cohabiting with a woman and begetting children by her without the benefit of marriage falls within the category of "grossly immoral conduct."

It is not unwarranted for us to take judicial notice of the fact that more and more Filipinos are finding it necessary to seek employment abroad in order to provide their loved ones with better lives. We find nothing "unprincipled and undesirable" with seeking all means – within the bounds of law and reason – to uplift the lot of one's family. It is not for us to inquire into our personnel's motivations for entering into such an arrangement or to judge how they plan to accomplish their goals in life, unless it is shown that they are violating the law in the process.

While the Court has the power to regulate official conduct and, to a certain extent, private conduct, it is not within our authority to make, for our employees, decisions about their personal lives, especially those that will so affect their and their family's future, such as whether they should or should not be married.

There is no allegation that the two have been flaunting their status as common-law husband and wife, or that their cohabitation is attended by scandalous circumstances. Thus, the comportment of respondent and his common-law wife cannot be characterized as "willful, flagrant, shameless, or show[ing] a moral indifference to the opinion of the good and respectable members of the community" as to warrant the exercise of this Court's disciplinary power.

However, we take this occasion to remind the respondent of the high standards of conduct imposed upon lawyers in the judiciary. Lawyers in the government service are under an even

[19] *Radaza v. Tejano*, 193 Phil. 433, 436 (1981); *Soberano v. Villanueva*, 116 Phil. 1208, 1212 (1962). See also *Figueroa v. Barranco, Jr.*, *supra* note 15, at 412.

greater obligation to observe the basic tenets of the legal profession because public office is a public trust.[20] They should be more circumspect in their adherence to their professional obligations under the *Code of Professional Responsibility*, for their disreputable conduct is more likely to be magnified in the public eye.[21]

A clerk of court in particular, as an essential and ranking officer of our judicial system who performs delicate administrative functions vital to the prompt and proper administration of justice, must be free from any form of impropriety. The conduct of court personnel must be free from any whiff of impropriety or scandal, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals; it is in this way that the integrity and the good name of the courts of justice shall be preserved.[22]

WHEREFORE, the foregoing premises considered, the complaint against Atty. Jerry Radam Toledo is *DISMISSED*. However, he is *REMINDED* to be more circumspect in his public and private dealings. Costs against complainants.

SO ORDERED.

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

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[20] *Pimente, Jr. v. Fabros,* A.C. No. 4517, September 11, 2006, 501 SCRA 346, 352, citing *Pimentel, Sr. v. Llorente*, 339 SCRA 154 (2000).

[21] *Tadlip v. Borres, Jr.*, A.C. No. 5708, November 11, 2005, 474 SCRA 441, 454.

[22] *Salazar v. Limeta*, A.M. No. P-04-1908, August 16, 2005, 467 SCRA 27, 33.

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

FIRST DIVISION

[A.M. No. P-08-2424. February 6, 2008]
(Formerly A.M. OCA IPI No. 05-2211-P)

HEDELIZA GABISON, *complainant, vs.* **MIRA THELMA V. ALMIRANTE, Court Interpreter, Municipal Trial Court, Argao, Cebu,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; REQUIRED DECORUM; MISCONDUCT COMMITTED IN THE ISSUANCE OF A BOUNCING CHECK.—** Issuance of a bouncing check constitutes misconduct, a ground for disciplinary action. Respondent's conduct impairs the integrity and dignity of the courts of justice and interferes in the efficient performance of her duties. This Court has consistently held that the conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them free from any suspicion that may taint the judiciary. All court personnel are expected to exhibit the highest sense of honesty and integrity, not only in the performance of their official duties, but also in their personal and private dealings with other people to preserve the Court's good name and standing. This is because the image of a court of justice is mirrored in the conduct, official or otherwise, of the men and women who work there. Any impression or impropriety, misdeed or negligence must be avoided.

2. **ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; MISCONDUCT AS GRAVE OFFENSE; PENALTY; CASE AT BAR.—** The Uniform Rules on Administrative Cases in the Civil Service provides that misconduct is a grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense. There is no showing that respondent has been found administratively liable for a similar or any offense. Hence, the minimum period of this penalty should be imposed upon her.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

For our resolution is the administrative complaint of Hedeliza Gabison charging Mira Thelma V. Almirante, court stenographer of the Municipal Trial Court, Argao, Cebu with conduct unbecoming a court employee, grave misconduct and gross dishonesty.

Complainant alleged in her complaint that respondent bought pieces of jewelry from her valued at ₱78,132.00. Respondent issued three (3) postdated checks as payment therefor. Subsequently, respondent again bought another set of pieces of jewelry from the complainant valued at ₱68,522.00 and issued postdated checks. When complainant presented the checks for payment, the same were dishonored by the drawee bank for the reason "Account Closed" or "Drawn against Insufficient Funds." Despite complainant's demand, respondent stubbornly refused to pay.

In her comment on the complaint, respondent denied all the allegations therein. She explained that in 2002, she and complainant agreed to engage in business by selling pieces of jewelry, she as the dealer and complainant as her supplier. After selling pieces of jewelry, she would issue complainant post dated checks representing the proceeds of the sale. She would then return to complainant the unsold pieces of jewelry. Her predicament started when her "sub-dealer" returned the pieces of jewelry and when her customers made direct payments to complainant. Thus, she was forced to close her account as she did not have sufficient funds for the checks she issued.

In his Report dated October 10, 2005, then Court Administrator Presbitero J. Velasco, Jr., now a member of this Court, found respondent guilty of misconduct and recommended that she be suspended from the service for one (1) month and one (1) day without pay.

Issuance of a bouncing check constitutes misconduct, a ground for disciplinary action. Respondent's conduct impairs the integrity and dignity of the courts of justice and interferes in the efficient performance of her duties. This Court has consistently held that the conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them free from any suspicion that may taint the judiciary. All court personnel are expected to exhibit the highest sense of honesty and integrity, not only in the performance of their official duties, but also in their personal and private dealings with other people to preserve the Court's good name and standing. This is because the image of a court of justice is mirrored in the conduct, official or otherwise, of the men and women who work there. Any impression or impropriety, misdeed or negligence must be avoided.[1]

The Uniform Rules on Administrative Cases in the Civil Service provides that misconduct is a grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense. There is no showing that respondent has been found administratively liable for a similar or any offense. Hence, the minimum period of this penalty should be imposed upon her.

WHEREFORE, and as recommended by then Court Administrator Velasco, now a Justice of this Court, respondent is found guilty of misconduct and suspended from the service for one (1) month and one (1) day without pay.

SO ORDERED.

Puno, C.J., Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[1] *Hilario Tudtud and Alberto Tudtud v. Atty. Rey D. Caayon, Clerk of Court IV, RTC of Bogos, Cebu*, A.M. No. P-02-1567, March 28, 2005, 454 SCRA 10, citing *Pickard Balajadia v. Mercedita Gatchalian*, A.M. No. P-02-1658, October 21, 2004, 441 SCRA 82.

EN BANC

[A.M. No. RTJ-04-1826. February 6, 2008]

GREENSTAR BOCAY MANGANDINGAN, *complainant, vs.* **JUDGE SANTOS B. ADIONG, Regional Trial Court (RTC), Branch 8, Marawi City; ATTY. CAIRODING P. MARUHOM, Clerk of Court VI and MR. MASBOD M. SYBIL, Cash Clerk II, both of the RTC, Office of the Clerk of Court, Marawi City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; PROPER SERVICE MUST BE SUFFICIENTLY COMPLIED WITH; RULE VIOLATED IN CASE AT BAR.— We find Judge Adiong's justifications for his acts unconvincing. No matter how urgent a case may be, this fact cannot justify the procedural shortcuts employed by respondent judge, *i.e.,* dispensing with the proper service of summons, and the violation of Section 5 of Rule 58 of the Rules of Court. Rule 14 of the Rules of Court provides: RULE 14. SUMMONS x x x SEC. 6. *Service in person on defendant*.— Whenever practicable, the summons shall be served handling a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him. SEC. 7. *Substituted service.*—If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof. It is glaringly obvious from the service return of the sheriff that the proper service as provided for in the rules was not followed. No copy of the summons was handed to any of the defendants who were natural persons. Neither was a copy left at any of their residences or offices. What the sheriff did was to leave a copy of the summons at the *residence* of Datu Hassan Mangondaya, a total stranger to the case. The sheriff also left a copy of the summons for defendant LBP with the manager of the LBP Marawi City Branch, although the latter is not one of

those enumerated in Section 11 of Rule 14 of the Rules of Court upon whom service may be made when the defendant is a corporation. In the face of contrary evidence clearly showing that there was defective service of summons. Judge Adiong could not be justified in assuming that the sheriff regularly performed his duties.

2. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; GROSS IGNORANCE AND GROSS INEFFICIENCY; FAILURE TO COMPLY WITH THE CLEAR PROVISION ON ISSUING TEMPORARY RESTRAINING ORDER (TRO).— Worth stressing, Section 5, Rule 58 of the Rules of Court states that: SEC. 5. *Preliminary injunction not granted without notice; exception.* – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order. However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours

provided herein. In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued. x x x Judge Adiong disregarded these provisions of the Rules. He could not plausibly claim that he issued a 72-hour TRO under the second paragraph of the rule quoted above because, first, he was not the executive judge. Second, his order did not state that the TRO was effective for 72 hours only. On the contrary, the defendants were ordered to desist from releasing the subject funds "until further orders from this Court." Third, there was no showing that the order was being issued because of extreme urgency to justify the issuance of a 72-hour TRO. Judge Adiong only stated in his order that he was "[a]cting on the prayer for the issuance of a Writ of Preliminary Injunction, without finding that the plaintiff was entitled thereto." This Court already ruled that failure to abide by Administrative Circular No. 20-95 constitutes the offense of grave abuse of authority, misconduct and conduct prejudicial to the proper administration of justice. Indeed, a judge is presumed to know this Circular. Judge Adiong's failure to comply with the clear provisions on issuing TROs constitutes gross ignorance and gross inefficiency.

3. ID.; ID.; ID.; GROSS MISCONDUCT; PRESENT IN CASE AT BAR.— We also agree that the presumption of good faith and regularity in the performance of judicial functions on the part of Judge Adiong were negated by the circumstances on record. First, there was no proper notice to the herein complainant and the other defendants in Civil Case No. 1912-03 that an application for the issuance of a TRO had been filed. Second, Judge Adiong did not conduct a summary hearing before granting the TRO. Third, as will be discussed hereafter, he contravened the circular on the raffle of cases. All these systematically deprived complainant and the other defendants of knowledge of and participation in the TRO proceedings and ensured the unchallenged victory of candidate Sangcopan therein. These three points, *taken together,* paint a picture of bias or partiality on the part of Judge Adiong. His acts amount to gross misconduct constituting violations of the following provisions of the Code

of Judicial Conduct: CANON 2-A JUDGE SHOULD AVOID IMPROPRIETY AND APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES. Rule 2.01 – A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. x x x CANON 3-A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE. x x x

4. ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW AND GROSS MISCONDUCT ARE SERIOUS CHARGES; PENALTIES; PROPER PENALTY IN CASE AT BAR.— Gross ignorance of the law or procedure and gross misconduct are classified as serious charges under Section 8 of Rule 140 of the Rules of Court for which any of the following sanctions under Section 11 of Rule 140 may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: *Provided, however,* that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00. The Court notes that Judge Adiong was previously charged and penalized in several cases. This Court cannot countenance the complacence of Judge Adiong manifested in his gross ignorance and his deliberate misapplication or misinterpretation of the very basic procedures subject of the present case to justify his actions that favor certain litigants. Under the circumstances, and considering his propensity for disregarding elementary rules of procedure, the extreme sanction of dismissal is called for.

5. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; VIOLATION OF COURT CIRCULAR IS SIMPLE MISCONDUCT; PROPER PENALTY.— The undue haste of Clerk of Court Maruhom in referring the case to Judge Adiong for action, without a raffle being first conducted, is a blatantly *unjustified* violation of the circulars of the Court which makes him administratively liable. His act was instrumental in the resulting series of anomalous events leading to the issuance of a temporary restraining order by an unauthorized judge. By his act he made a mockery of settled procedure for the orderly dispensation of justice. Time

and again, this Court has emphasized the heavy burden and responsibility of court personnel. They have been constantly reminded that any impression of impropriety, misdeed or negligence in the performance of their official functions must be avoided. The Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the judiciary. For his prejudicial acts in the conduct of his official tasks, we find Maruhom guilty of simple misconduct. The Uniform Rules on Administrative Cases in the Civil Service reveals that simple misconduct carries with it a penalty of suspension from one (1) month and one (1) day to six (6) months for the first offense. In our view, his misconduct calls for the imposition of three (3) months suspension from office.

6. ID.; ID.; ID.; ID.; ID.; DISREGARD OF COURT CIRCULAR IS SIMPLE MISCONDUCT; ABHORRED BY THE COURT.— Supreme Court Circular No. 7 pertinently provides: I. **Raffling of Cases** All cases filed with the Court in stations or groupings where there are two or more branches shall be assigned or distributed to the different branches by raffle. No case may be assigned to any branch without being raffled. The raffle of cases should be regularly conducted at the hour and on the day or days to be fixed by the Executive Judge. . . . The importance of assigning cases by raffle is obvious. Such method of assignment safeguards the right of the parties to be heard by an impartial and unbiased tribunal, while protecting judges from any suspicion of impropriety. For this reason, disregard of Circular No. 7, which requires such raffle of cases, cannot be taken lightly. Employees of the judiciary must be mindful and should tread carefully when assisting other persons. Court employees should maintain a hands-off attitude where dealings with party-litigants are concerned to maintain the integrity of the courts and to free court employees from suspicion of any misconduct. In *Macalua v. Tiu, Jr.*, this Court held: . . . [A court employee] is expected to do no more than what duty demands and no less than what privilege permits. **Though he may be of great help to specific individuals, but when that help frustrates and betrays the public's trust in the system it cannot and should not remain unchecked.** The interests of the individual must give way to

the accommodation of the public – *Privatum incommodum publico bono pensatur.* By not abiding by the rules on raffle, Sybil opened himself to the suspicion that he is biased and that he acted to favor the plaintiff. His highly improper conduct subjected the court's integrity to distrust. For this the Court finds respondent Sybil guilty of simple misconduct.

APPEARANCES OF COUNSEL

Pama L. Muti for Atty. C.P. Maruhom.

R E S O L U T I O N

***PER CURIAM*:**

In his Affidavit-Complaint[1] dated April 15, 2003, complainant Greenstar Bocay Mangandingan charges respondent Judge Santos B. Adiong, presiding judge of the Regional Trial Court (RTC) of Lanao del Sur, Marawi City, Branch 8, with gross ignorance of the law or procedure; manifest unfaithfulness to a basic legal rule as well as injudicious conduct; grave abuse of authority; grave misconduct; conduct prejudicial to the administration of justice; violation of Rules 3.01[2] and 3.02[3] of the Code of Judicial Conduct; knowingly rendering an unjust interlocutory order; and bias and partiality.

Complainant was proclaimed the *Punong Barangay* of Basak-Bangco, Madalum, Lanao del Sur during the special election on August 13, 2002 by virtue of Commission on Elections (COMELEC) *En Banc* Resolution No. 03-0062.

On March 3, 2003, the losing candidate, Alizaman S. Sangcopan, filed with the RTC of Lanao del Sur an action for

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[1] *Rollo*, pp. 2-10.

[2] Rule 3.01.–A judge shall be faithful to the law and maintain professional competence.

[3] Rule 3.02.–In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism.

damages with prayer for preliminary injunction and/or preliminary mandatory injunction and temporary restraining order (TRO) against the seven commissioners of the COMELEC; the winning and duly proclaimed barangay officials of Barangay Basak-Bangco including herein complainant; the Acting Election Officer; the Board of Election Tellers of Precinct No. 68A; the Land Bank of the Philippines (LBP); and the Chief of Barangay Affairs-Department of Interior and Local Government (DILG), Province of Lanao del Sur. Said case was docketed as Civil Case No. 1912-03.[4]

On March 5, 2003, the respondent Clerk of Court Atty. Cairoding P. Maruhom issued the summons.[5] Before these could be served on any of the defendants, however, Judge Adiong issued a TRO without conducting a hearing. He also set the hearing on the application for the issuance of a preliminary injunction on March 20, 2003.[6] Complainant claims that there is no showing in the records that the case was raffled to Branch 8 of the RTC presided by Judge Adiong when said TRO was issued.[7]

On March 7, 2003, the sheriff made a return of service which partly provides that the defendants were served with summons through Datu Hassan Mangondaya at his residence in Madalum, Lanao del Sur.[8]

Complainant claims that there was no valid service of summons on the defendants in accordance with Sections 6 and 7 of Rule 14 of the Rules of Court since the same was given to a certain Datu Hassan Mangondaya of Madalum, Lanao del Sur who had absolutely nothing to do with the case and was not even authorized by the court to receive summons for the defendants.

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[4] *Rollo*, pp. 11-31.

[5] *Id*. at 138.

[6] *Id*. at 3 and 81.

[7] *Id*. at 4.

[8] *Id*. at 69.

Complainant also alleges that on March 11, 2003, or barely six days after issuing the TRO, Judge Adiong, without notice or hearing, issued another order extending the effectivity of the illegally issued TRO for another twenty (20) days, prior to the expiration of the TRO's effectivity and in blatant and open violation of Section 5 of Rule 58 of the Rules of Court and *Batas Pambansa Blg.* 224.[9]

On March 20, 2003, Judge Adiong considered the application for a writ of preliminary injunction submitted for resolution. The following day, he granted plaintiff's application for a writ of preliminary injunction then issued the writ on March 25, 2003.[10]

Complainant avers that it was only on March 28, 2003 when he received a copy of the summons at the Municipal Hall of Madalum, Lanao del Sur.

In his Supplemental Affidavit-Complaint[11] dated May 7, 2003, complainant charges respondents Atty. Cairoding P. Maruhom and Masbod Sybil with dishonesty, grave misconduct in office, conduct prejudicial to the orderly administration of justice, and violation of Section 3, paragraph (e) of Republic Act No. 3019.[12]

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[9] AN ACT REGULATING THE ISSUANCE OF RESTRAINING ORDERS, AMENDING FOR THE PURPOSE, SECTION FIVE OF RULE FIFTY-EIGHT OF THE RULES OF COURT, approved on April 16, 1982.

[10] *Rollo,* pp. 72-79.

[11] *Id*. at 97-100.

[12] Also known as the Anti-Graft and Corrupt Practices Act, approved on August 17, 1960.

Section 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(*e*) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x x x x x x

Complainant claims that Maruhom and Sybil conspired with Judge Adiong and Atty. Edgar Masorong, counsel for the plaintiff, to manipulate the raffle of the case. Based on the record of the raffling proceedings conducted at the Office of the Executive Clerk of Court of Marawi City on April 1, 2003, Civil Case No. 1912-03 was raffled only on said date and to Branch 10, not to Branch 8.[13] Complainant also alleges that instead of immediately notifying and/or summoning the parties pursuant to Supreme Court Administrative Circular No. 20-95,[14] Maruhom delivered the record of the case to Judge Adiong on March 5, 2003. After the Writ of Preliminary Injunction was issued on March 25, 2003, the record of the case was returned to the Office of the Executive Clerk of Court where it was finally raffled to Branch 10 on April 1, 2003.

Complainant avers that he filed his Answer with Special and Affirmative Defenses[15] with Branch 10, on April 3, 2003,

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[13] *Rollo*, p. 101.

[14] RE: SPECIAL RULES FOR TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS, effective October 1, 1995.

1. Where an application for temporary restraining order (TRO) or writ of preliminary injunction is included in a complaint or any initiatory pleading filed with the trial court, such complaint or initiatory pleading **shall be raffled** only after notice to the adverse party and in the presence of such party or counsel.

2. The application for a TRO shall be acted upon only after all parties are heard in a summary hearing conducted within twenty-four (24) hours **after the records are transmitted to the branch selected by raffle**. The records shall be transmitted immediately after raffle.

3. If the matter is of extreme urgency, such that unless a TRO is issued, grave injustice and irreparable injury will arise, the **Executive Judge** shall issue the TRO effective only for seventy-two (72) hours from issuance but shall immediately summon the parties for conference and immediately raffle the case in their presence. Thereafter, before the expiry of the seventy-two (72) hours, the Presiding Judge to whom the case is assigned shall conduct a summary hearing to determine whether the TRO can be extended for another period until a hearing in the pending application for preliminary injunction can be conducted. In no case shall the total period of the TRO exceed twenty (20) days, including the original seventy-two (72) hours, for the TRO issued by the Executive Judge. (Emphasis and underscoring supplied.)

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[15] *Rollo,* pp. 142-152.

but his Most Urgent Motion to Dissolve Writ of Preliminary Injunction,[16] which he scheduled for hearing on April 29, 2003, was not heard on that date because it was not included in the court calendar of Branch 10. Upon inquiry, it was discovered that Sybil had taken the records of the case from Branch 10 without the knowledge and authority of the branch clerk of court and the presiding judge, and replaced the case with Civil Case No. 1916-03 entitled "*Amer D. Bantuas, Jr. v. Felix Taranao, Jr.*" Complainant also alleges that Sybil manipulated which branch of the RTC the case would be assigned for hearing, in conspiracy with Maruhom, Judge Adiong and Atty. Masorong.

The complaint and supplemental complaint having been filed directly with the Office of the Court Administrator (OCA), then Court Administrator[17] Presbitero J. Velasco, Jr. directed respondents, Judge Adiong, Atty. Maruhom and Mr. Sybil, to submit their respective comments.

In his Comment[18] dated June 25, 2003, Judge Adiong claims that there was valid service of summons or if there was any defect the same had been cured when the defendant filed his answer. According to Judge Adiong, the summons were served through Datu Hassan Mangondaya, the former Municipal Vice Mayor of Madalum, Lanao del Sur. As such, he is certainly a man of suitable age and discretion as well as a prominent citizen who literally knows everybody in the community. Judge Adiong claims that he relied upon the belief that the court sheriff had regularly done his job.

Judge Adiong argues that the issuance of the TRO on March 5, 2003 without prior notice and hearing was valid pursuant to Supreme Court Administrative Circular No. 20-95, which authorizes the *ex parte* issuance of a TRO by an executive judge in matters of extreme urgency, in order to prevent grave injustice and irreparable injury. He claims that such circumstance was clearly obtaining at the time he issued the TRO.

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[16] *Id*. at 102-112.

[17] Now an Associate Justice of the Supreme Court.

[18] *Rollo*, pp. 119-136.

He also claims that when he extended the TRO to its maximum duration of twenty (20) days from its issuance, no violation of Section 5 of Rule 58 of the Rules of Court or *B.P. Blg.* 224 was committed. He adds that if indeed notice of the preliminary hearing was not received by complainant before March 11, 2003, that matter should have been brought to the attention of the court by the defendants in Civil Case No. 1912-03 when the latter's counsel appeared at the Office of the Clerk of Court on March 20, 2003 to complain about the improper service of summons. But they did not; hence, the same is considered waived.

Judge Adiong maintains that the grant and issuance of the writ of preliminary injunction were perfectly valid. Complainant's claim that he was not properly served a summons is belied by the appearance of his counsel at the Office of the Clerk of Court in the morning of March 20, 2003, shortly before the hearing of the application for issuance of a writ of preliminary injunction was called.

Sybil in his Comment[19] dated August 5, 2003 admits that sometime in April 2003, plaintiff Sangcopan came to see him and asked if it was possible to have his complaint heard by RTC Branch 8, since the case was already started there. Sangcopan was concerned he might not have an impartial trial at RTC Branch 10 because the presiding judge therein was involved in the political career of his son, Yusoph Pangadapun, Jr., the incumbent Vice Mayor of Marawi City, and especially considering that the principal defendants in the case are the members of the COMELEC.

Because the case had just been raffled and there was no other *sala* to which it can be re-raffled, Sybil told Sangcopan that they will have to ask RTC Branch 10 if said branch is willing to exchange Civil Case No. 1912-03 with a Branch 8 case. He also said that they will have to ask Judge Adiong's permission for the case to be reassigned to his *sala*.

Candidato Dayondong, a court personnel of Branch 10 in charge of civil cases, allegedly agreed subject to the conformity

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[19] *Id*. at 157-162.

of the parties. Upon request, Judge Adiong also agreed to the exchange.

Shortly after the exchange, Dayondong informed Sybil that complainant's counsel had objected to the transfer prompting Sybil to immediately retrieve the complete case file from Branch 8 and return it to Branch 10.

In his Comment[20] dated July 31, 2003, Clerk of Court Maruhom avers that he had no participation or knowledge of what transpired during the court proceedings from the time Civil Case No. 1912-03 was filed, much less did he conspire with the other respondents in the performance of all acts complained of. The alleged switching of cases by Sybil was done without his knowledge, consent or instruction.

Judge Adiong in his Supplemental Comment[21] dated August 4, 2003 admits acquiescing to Sybil and Sangcopan's request because he was satisfied "that no malice could be entertained from the Sangcopan's request" and no prejudice can be inflicted upon the rights of any of the parties since the case would have to be totally heard on its merits. Thereafter, the urgent motion to dissolve the issued injunctive writ was set for hearing. But before that could take place, the case was returned to Branch 10 because the complainant's counsel had allegedly objected to the reassignment of the case to respondent Judge's *sala*.

Upon evaluation of the case, the OCA found the complaint partly meritorious. It found that the summons served through the former vice mayor of Madalum, Lanao del Sur was not the valid substituted service contemplated by law. It also found that "[t]here could be no way to avoid the impression of irregularity when the raffling procedure is circumvented. For which reason, Judge Adiong and Sybil should be held administratively liable."[22] It recommended that the complaint

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[20] *Id*. at 164-167.

[21] *Id*. at 175-182.

[22] *Id*. at 188.

against Maruhom be dismissed for lack of merit and that both Judge Adiong and Sybil be held liable for violation of Supreme Court rules, directives and circulars and each be fined in the amount of twenty thousand pesos (₱20,000).

We agree with the findings of the OCA that respondents Judge Adiong and Sybil should be held administratively liable. However, we find the recommended penalties too light under the circumstances of this case and find it more appropriate to impose heavier penalties. We likewise find that the complaint against respondent Maruhom should not be dismissed because he is also administratively liable.

We start with the determination of the extent of liability of Judge Adiong. We find Judge Adiong's justifications for his acts unconvincing. No matter how urgent a case may be, this fact cannot justify the procedural shortcuts employed by respondent judge, *i.e.* dispensing with the proper service of summons,[23] and the violation of Section 5 of Rule 58 of the Rules of Court.

Rule 14 of the Rules of Court provides:

RULE 14

SUMMONS

x x x x x x x x x

SEC. 6. *Service in person on defendant*.–Whenever practicable, the summons shall be served handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

SEC. 7. *Substituted service*.–If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

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[23] *Re: An Undated Letter with the Heading "Exposé" of a Concerned Mediaman on the Alleged Illegal Acts of Judge Julian C. Ocampo III*, A.M. No. 00-10-230-MTCC, June 20, 2001, 359 SCRA 1, 15.

It is glaringly obvious from the service return[24] of the sheriff that the proper service as provided for in the rules was not followed. No copy of the summons was handed to any of the defendants who were natural persons. Neither was a copy left at any of their residences or offices. What the sheriff did was to leave a copy of the summons at the *residence* of Datu Hassan Mangondaya, a total stranger to the case. The sheriff also left a copy of the summons for defendant LBP with the manager of the LBP Marawi City Branch, although the latter is not one of those enumerated in Section 11[25] of Rule 14 of the Rules of Court upon whom service may be made when the defendant is

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[24] *Rollo*, p. 69.

SERVICE RETURN

This is to certify that on March 06, 2003 the undersigned sheriff had cause the service of order/summons together with the copy of complaint and the annexes issued by this court in the above-entitled case served to the herein defendants GREENSTAR BOCAY MANGANDINGAN, NAIFA B. MANGANDINGAN, AGAKHAN G. MACALUPANG, ABOLKHAIR T. ALAWI, SAIDOMAR A. ALI, SAMSODEN G. MACADATO, NORAIN A. MACMOD, MACAPUNDAG G. MACMOD all are thru DATU HASSAN MANGONDAYA at his residence in Madalum, Lanao del [S]ur he acknowledge the copies of order but he r[e]fused to sign the original copy of said order. [sic]

Further certify, that defendant Land Bank of the Phil. Marawi City Branch was serve the same date thru the Manager he refused to receive the copy of summons but he acknowledge the copy of order and noted that all summons are to be address to LBP-Legal Department, Manila pursuant to [S]ec. 11[,] [R]ule 14, of the [R]ules of [C]ourt. [sic]

WHEREFORE, that the original copy of said order is hereby respectfully returned, DULY SERVED.

Marawi City, March 07, 2003.

(SGD.)
OTTO B. GOMAMPONG
Sheriff IV

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[25] SEC. 11. *Service upon domestic private juridical entity*.–When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, **general** manager, corporate secretary, treasurer, or in-house counsel. (Emphasis supplied.)

a corporation. In the face of contrary evidence clearly showing that there was defective service of summons, Judge Adiong could not be justified in assuming that the sheriff regularly performed his duties.

Worth stressing, Section 5, Rule 58 of the Rules of Court states that:

SEC. 5. *Preliminary injunction not granted without notice; exception*. – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial

declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

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Judge Adiong disregarded these provisions of the Rules. He could not plausibly claim that he issued a 72-hour TRO under the second paragraph of the rule quoted above because, first, he was not the executive judge. Second, his order did not state that the TRO was effective for 72 hours only. On the contrary, the defendants were ordered to desist from releasing the subject funds "until further orders from this Court." Third, there was no showing that the order was being issued because of extreme urgency to justify the issuance of a 72-hour TRO. Judge Adiong only stated in his order that he was "[a]cting on the prayer for the issuance of a Writ of Preliminary Injunction, without finding that the plaintiff was entitled thereto."[26]

Judge Adiong's violations of the Rules in issuing the TRO are patent and inexcusable.

This Court already ruled that failure to abide by Administrative Circular No. 20-95[27] constitutes the offense of grave abuse of authority, misconduct and conduct prejudicial to the proper administration of justice. Indeed, a judge is presumed to know this Circular. Judge Adiong's failure to comply with the clear provisions on issuing TROs constitutes gross ignorance and gross inefficiency.[28]

We also agree that the presumptions of good faith and regularity in the performance of judicial functions on the part of Judge Adiong were negated by the circumstances on record. First, there was no proper notice to the herein complainant and the other defendants in Civil Case No. 1912-03 that an application for the issuance of a TRO had been filed. Second,

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[26] *Rollo*, p. 67.

[27] The pertinent provisions of which were incorporated in Section 5 of Rule 58 of the Rules of Court.

[28] *Marcos-Manotoc v. Agcaoili*, A.M. No. RTJ-98-1405, April 12, 2000, 330 SCRA 268, 276.

Judge Adiong did not conduct a summary hearing before granting the TRO. Third, as will be discussed hereafter, he contravened the circular on the raffle of cases. All these systematically deprived complainant and the other defendants of knowledge of and participation in the TRO proceedings and ensured the unchallenged victory of Sangcopan therein. These three points, *taken together*, paint a picture of bias or partiality on the part of Judge Adiong. His acts amount to gross misconduct[29] constituting violations of the following provisions of the Code of Judicial Conduct:

CANON 2–A JUDGE SHOULD AVOID IMPROPRIETY AND APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.

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

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CANON 3–A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE.

x x x x x x x x x

Gross ignorance of the law or procedure and gross misconduct are classified as serious charges under Section 8[30] of Rule 140

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[29] To constitute grave misconduct, the acts complained of should be corrupt or inspired by an intention to violate the law, or constitute a flagrant disregard of well-known legal rules (*Aquino, Jr. v. Miranda*, A.M. No. P-01-1453, May 27, 2004, 429 SCRA 230, 240, citing *Amosco v. Magro*, A.M. No. 439-MJ, September 30, 1976, 73 SCRA 107, 109). It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not a mere error in judgment. (*Baquerfo v. Sanchez*, A.M. No. P-05-1974, April 6, 2005, 455 SCRA 13, 21.)

[30] SEC. 8. *Serious charges*. – Serious charges include:

x x x x x x x x x

3. Gross misconduct constituting violations of the Code of Judicial Conduct;

x x x x x x x x x

9. Gross ignorance of the law or procedure;

x x x x x x x x x

of the Rules of Court for which any of the following sanctions under Section 11 of Rule 140 may be imposed:

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

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

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

The Court notes that Judge Adiong was previously fined ₱20,000 for ignorance of the law in *Bantuas v. Pangadapun*[31] and ₱5,000 for gross ignorance of the law in *Mutilan v. Adiong*.[32] He was also warned in the latter case that repetition of the same or similar acts in the future will be dealt with most severely. In *Gomos v. Adiong*,[33] Judge Adiong was again found guilty of gross ignorance of the law for issuing a writ of preliminary injunction in violation of Section 21(1)[34] of *B.P. Blg.* 129[35] and Sections 4(c)[36] and 5, Rule 58 of the Rules of Court and

[31] A.M. No. RTJ-98-1407, July 20, 1998, 292 SCRA 622, 630.

[32] A.M. No. RTJ-00-1581 (Formerly OCA IPI No. 98-635-RTJ), July 2, 2002, 383 SCRA 513, 519.

[33] A.M. No. RTJ-04-1863, October 22, 2004, 441 SCRA 162, 171-172.

[34] SEC. 21. *Original jurisdiction in other cases.*–Regional Trial Courts shall exercise original jurisdiction:

(1) In the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction which may be enforced in any part of their respective regions; and

x x x x x x x x x

[35] Also known as "The Judiciary Reorganization Act of 1980."

[36] SEC. 4. *Verified application and bond for preliminary injunction or temporary restraining order.*–A preliminary injunction or temporary restraining order may be granted only when:

x x x x x x x x x

(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the

for citing FAPE employees in contempt of court in disregard of Section 3,[37] Rule 71. Accordingly, he was suspended from

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case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

x x x x x x x x x

[37] SEC. 3. *Indirect contempt to be punished after charge and hearing.*– After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.

office without salary and other benefits for six (6) months with a warning that a repetition of the same or similar acts shall be dealt with more severely. In *De la Paz v. Adiong*,[38] Judge Adiong was found guilty of gross ignorance of the law and abuse of authority and was suspended for a period of six (6) months without pay, with a warning that the commission of a similar act in the future will warrant his dismissal from the service.

This Court cannot countenance the complacence of Judge Adiong manifested in his gross ignorance and his deliberate misapplication or misinterpretation of the very basic procedures subject of the present case to justify his actions that favor certain litigants. Under the circumstances, and considering his propensity for disregarding elementary rules of procedure, the extreme sanction of dismissal is called for.

Next, we discuss the liability of respondent Maruhom, the Clerk of Court of RTC, Marawi City. In his Comment, he states that the complaint in Civil Case No. 1912-03 was filed on March 3, 2003 at 2:30 p.m. He referred it to Judge Adiong on March 5, 2003.[39] He alleges that Judge Adiong was the only available RTC Judge at that time. We find such referral unjustified. The case had already waited for more than a day after being filed in court. From all indications, the case was not so urgent that irreparable injury would be caused if the case was not acted upon in the first hours of March 5, 2003. It could have waited some hours more for the arrival of the proper official, the Executive Judge, to act on it. The undue haste of Maruhom in referring the case to Judge Adiong for action, without a raffle being first conducted, is a blatantly *unjustified* violation of the circulars of the Court which makes him administratively liable. His act was instrumental in the resulting series of anomalous events leading to the issuance of a temporary restraining order by an unauthorized judge. By his act he made a mockery of settled procedure for the orderly dispensation of justice. Time and again, this Court has emphasized the heavy burden and responsibility of court

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[38] A.M. No. RTJ-04-1857, July 29, 2005, 465 SCRA 34, 36.

[39] *Rollo*, p. 164.

personnel. They have been constantly reminded that any impression of impropriety, misdeed or negligence in the performance of their official functions must be avoided. The Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the judiciary.[40]

For his prejudicial acts in the conduct of his official tasks, we find Maruhom guilty of simple misconduct.[41] The Uniform Rules on Administrative Cases in the Civil Service reveals that simple misconduct carries with it a penalty of suspension from one (1) month and one (1) day to six (6) months for the first offense. In our view, his misconduct calls for the imposition of three (3) months suspension from office.

Finally, we now consider the acts of Sybil.

Supreme Court Circular No. 7[42] pertinently provides:

I. **Raffling of Cases**

All cases filed with the Court in stations or groupings where there are two or more branches shall be assigned or distributed to the different branches by raffle. No case may be assigned to any branch without being raffled. The raffle of cases should be regularly conducted at the hour and on the day or days to be fixed by the Executive Judge.…

The importance of assigning cases by raffle is obvious. Such method of assignment safeguards the right of the parties to be heard by an impartial and unbiased tribunal, while protecting judges from any suspicion of impropriety. For this reason,

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[40] *Ito v. De Vera*, A.M. No. P-01-1478, December 13, 2006, 511 SCRA 1, 11.

[41] *Aquino v. Israel*, A.M. No. P-04-1800 (Formerly OCA-IPI No. 01-1243-P), March 25, 2004, 426 SCRA 266, 269. Misconduct is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer.

[42] Effective September 23, 1974.

disregard of Circular No. 7, which requires such raffle of cases, cannot be taken lightly.[43]

Parenthetically, Judge Adiong apparently sees nothing wrong with Sybil's highly irregular act of exchanging the records of two cases in violation of the rules on raffle. This is a reflection of moral obtuseness which further renders respondent judge unfit to continue in the judicial office.

Going back to Sybil, he should bear in mind that employees of the judiciary must be mindful and should tread carefully when assisting other persons.[44] Court employees should maintain a hands-off attitude where dealings with party-litigants are concerned to maintain the integrity of the courts and to free court employees from suspicion of any misconduct.[45]

In *Macalua v. Tiu, Jr.*,[46] this Court held:

> …[A court employee] is expected to do no more than what duty demands and no less than what privilege permits. **Though he may be of great help to specific individuals, but when that help frustrates and betrays the public's trust in the system it cannot and should not remain unchecked**. The interests of the individual must give way to the accommodation of the public – *Privatum incommodum publico bono pensatur*.[47] (Emphasis supplied.)

By not abiding by the rules on raffle, Sybil opened himself to the suspicion that he is biased and that he acted to favor the plaintiff. His highly improper conduct subjected the court's integrity to distrust. For this, the Court finds respondent Sybil guilty of simple misconduct.

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[43] *Re: An Undated Letter with the Heading "Exposé" of a Concerned Mediaman on the Alleged Illegal Acts of Judge Julian C. Ocampo III*, *supra* note 23, at 16.

[44] *Prak v. Anacan*, A.M. No. P-03-1738, July 12, 2004, 434 SCRA 110, 116.

[45] *Office of the Court Administrator v. Bucoy*, A.M. No. P-93-953, August 25, 1994, 235 SCRA 588, 593.

[46] 341 Phil. 317 (1997).

[47] *Id*. at 323-324.

WHEREFORE, the Court finds:

1. Judge Santos B. Adiong *GUILTY* of gross ignorance of the law as well as gross misconduct constituting violation of the Code of Judicial Conduct. He is *DISMISSED* from the service with forfeiture of all benefits except his accrued leave credits, if any. He is further disqualified from reinstatement or appointment to any public office, including government-owned or controlled corporations.

2. Atty. Cairoding P. Maruhom *GUILTY* of simple misconduct. He is *SUSPENDED* from office for three (3) months, effective immediately.

3. Mr. Masbod M. Sybil *GUILTY* of simple misconduct. He is *SUSPENDED* from office for three (3) months, effective immediately.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, 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.

SECOND DIVISION

[G.R. No. 159302. February 6, 2008]

CITIBANK, N.A., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and ROSITA TAN PARAGAS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; THAT TECHNICAL RULES MAY BE RELAXED IN LABOR CASES; LIMITATION.—** While it is established that technical rules of procedure may be relaxed in labor cases, *Mañebo v. NLRC* instructs: We wish, however, to stress some points. Firstly, while it is true that the Rules of the NLRC must be liberally construed and that the NLRC is not bound by the technicalities of law and procedure, the Labor Arbiters and the NLRC itself must not be the first to arbitrarily disregard **specific provisions of the Rules** which are precisely **intended to assist the parties in obtaining just, expeditious, and inexpensive settlement of labor disputes.** One such provision is Section 3, Rule V of the New Rules of Procedure of the NLRC which requires the submission of verified **position papers** within fifteen days from the date of the last conference, with proof of service thereof on the other parties. The position papers "shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's testimony." **After the submission thereof,** the parties "shall. . . not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents.

2. **ID.; ID.; PLEADINGS; PRAYER FOR "OTHER JUST AND EQUITABLE RELIEF"; LIMITATION.—** Respondent indeed prayed for "other just and equitable relief," but the same may not be interpreted so broadly as to include even those which are not warranted by the factual premises alleged by a party. Thus the January 24, 2003 Decision of the Court of Appeals correctly stated: "It has been ruled in this jurisdiction that the general prayer for 'other reliefs' is applicable to such other reliefs which are warranted by the law and facts alleged by the respondent in her basic pleadings and not on a newly created issue." Particularly in *People v. Lacson*, this Court held: x x x Case law has it that a prayer for equitable relief is of no avail, unless the petition states **facts which will authorize the court to grant such relief.** A court cannot set itself in motion, nor has it power to decide questions except as presented by the parties in

their pleadings. Anything that is resolved or decided beyond them is *coram non judice* and void.

3. ID.; APPEALS; FACTUAL FINDINGS IN ADMINISTRATIVE DECISIONS RESPECTED AS LONG AS SUPPORTED BY SUBSTANTIAL EVIDENCE.— While findings of fact in administrative decisions such as those rendered by the NLRC are to be accorded not only great weight and respect, but even finality, the rule only applies for as long as these findings are supported by substantial evidence. In the present case, the NLRC was absolutely silent on why it did not give credence to petitioner's evidence on respondent's misconduct. It was content merely to state that "the separation is not for reasons of misconduct but for other grounds" without any substantiation and in total disregard of the evidence proffered by petitioner. *Colegio de San Juan de Letran-Calamba v. Villas* instructs: Likewise, 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.**

4. LABOR LAW AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; SERIOUS MISCONDUCT; PRESENT IN CASE AT BAR.— When an employee, despite repeated warnings from the employer, obstinately refuses to curtail a bellicose inclination such that it erodes the morale of co-employees, the same may be a ground for dismissal for serious misconduct. As this Court held in *National Service Corp. v. Leogardo, Jr.*, "[a] series of irregularities when put together may constitute serious misconduct, which under Article 283 of the Labor Code, is a just cause for termination." And as it held in *Asian Design and Manufacturing Corporation v. Deputy Minister of Labor,* acts destructive of the morale of one's co-employees may be considered serious misconduct. It is respondent's obstinate refusal to reform herself which ultimately persuades this Court to find that her dismissal on the ground of serious misconduct was valid. Having been validly dismissed on the ground of serious misconduct, respondent is thus disqualified from receiving her

retirement benefits pursuant to the provision of petitioner's "Working Together" Manual quoted earlier.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for petitioner.
The Solicitor General for public respondent.
M.M. Lazaro & Associates for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Subject of this petition for review is the National Labor Relations Commission (NLRC) Resolution dated October 24, 2001 granting the MOTION FOR PARTIAL RECONSIDERATION of respondent Rosita Tan Paragas (Rosita) relative to her appeal in an illegal dismissal case, which the Court of Appeals affirmed *in toto* by Decision of January 24, 2003 and Resolution of July 29, 2003.[1]

Rosita was found by Labor Arbiter Geobel Bartolabac to be an employee of petitioner Citibank, N.A. for around eighteen (18) years from August 8, 1979 to September 4, 1997. At the time her employment was terminated by petitioner for serious misconduct, willful disobedience, gross and habitual neglect of duties and gross inefficiency, she was occupying the position of filing clerk.

The relevant facts pertaining to respondent's employment history may be gleaned from the following salient portions of the labor arbiter's Decision of June 29, 1998:

On 8 August 1979, complainant Paragas joined respondent Citibank as Secretary to the Premises Administration (up to 1981): Corporate Teller (1981-1982): Secretary to Assistant Vice Presidents Ed Katigbak and Z.P. Molina (up to 1987); Secretary to Vice-President-Legal

[1] Both penned by Court of Appeals Associate Justice Eugene S. Labitoria, with the concurrence of Associate Justices Renato C. Dacudao and Danilo B. Pine. CA *rollo*, pp. 281-287 and 325-326, respectively.

Counsel, Atty. Renato J. Fernandez (up [to] 1988); Secretary to the Employer/Employee Relations Officer, Atty. Beatriz Alo and later to the Public Affairs Director Vice President, Maximo J. Edralin, Jr. When the latter retired in 1992, complainant was assigned to Cash Management Services as Remittance Processor.

Sometime in the early part of 1993, as a result of the reorganization, respondent bank declared certain officers and employees, or their positions/functions, redundant. Among these affected was complainant Paragas. However, to accommodate the union officers' request, complainant's employment was not terminated but was assigned to Records Management Unit of the Quality Assurance Division as bank statement retriever, a filing clerk job described by complainant as "non-brainer job."

In the latter part of July 1994, complainant was assigned to file Universal Account Opening Forms (UAOF) in file boxes and retrieving such UAOFs from the file boxes upon internal customers' request from time to time. In the same month, she was also assigned to process or develop microfilms. However, on 20 February 1995, she complained that the processing of microfilms was proving to be harmful to her health. Thus, the job was reassigned to another clerk. Accordingly, beginning 21 February 1995, complainant's job in the bank was to file and retrieve UAOFs. x x x

x x x x x x x x x

On 11 December 1996, complainant was assigned to undertake the special project of reorganizing the UAOF's from 13 December 1996 to 15 May 1997. The work to be done are as follows:

a. Review of existing files in order to verify misfiles

b. Pull-out of misfiles and file them in their proper places

c. Interfile new/incoming UAOFs received for the day

d. Add new file boxes and make an allowance of at least ¾ inch for each file box for incoming UAOFs and for future explasion [*sic*]

e. Labelling of all file boxes and Corporate UAOFs and their actual contents

f. Transfer of the UAOFs from the Citicenter basement to the new compactors at the third floor

g. Submit a status report (accomplishment for the week) every Monday

On 10 January 1997, AVP Narciso Ferrera issued a Memo to complainant calling her attention on the following, to wit:

10 January 1997

TO Rosita T. Paragas
CC: Randy J. Uson
SUBJECT: REORGANIZATION OF THE UNIVERSAL ACCOUNT OPENING FORMS (UAOF's)

In connection with the Reorganization of the Universal Account Opening Forms (UAOF's), I would like to call your attention on the following, *viz*:

a. Various misfiling on the reorganized UAOF file I had the reorganized file counter-checked by your co-employees and they came out with the following misfiling, *e.g*.

1. Belo, Jose; Belo, Matilde, Belo William interfiled with BELLO
2. BARRAGER, RAYMOND misfiled with BARANGAN and BARANUELO Box (BARBARO)
3. EUGENIO BARAOIDANs interfiled with BARNUEVO AND BARRAMEDA
4. VICTOR AGIUS filed with the AGUIRREs
5. Several AGUILAs interfiled with File box ALF-ALI
6. LETICIA AMANSEC filed with AMAR and AMARGO
7. Several BARON interfiled between BARROGA AND BARRON
8. AMANDA CAMELLO interfiled between CAMERO and CAMERON
9. PETER CARSON interfiled between CARR and CARRAD

They went thru 9 files boxes only and found 9 misfiles. This level of errors is not acceptable. Remember a misfiled document is considered LOST and you will have to go through the file one by one to be able to retrieve it.

b. Submission of a weekly status report every Monday. As per our agreement, report every Monday effective January 6, 1997. As of February 10, 1997; I have not received a single report from you.

c. Trimming/cutting of edges of attached documents like xerox copies of Ids, Passports, Drivers license, *etc*. I would like to reiterate my previous instructions to do away with the trimming and cutting of attached documents as it only consumes valuable time and will prolong the reorganization process. We started the reorganization last December 13, 1996 and as today 10 February 1997, you are still in letter C for a total of 163 file boxes. There are still 348 file boxes to reorganize

d. Accumulation of incoming newly received UAOFs. I have noticed that you have accumulated two (2) boxes full of personal UAOFs at the basement and at the third floor. Arce and Sammy are complaining on the retrieval of these files. It is taking them more time and efforts. In the monthly meeting we had last December, 1996, interfiling incoming UAOFs is your responsibility.

In view of the above, please concentrate on the filing process and stop trimming the attachments. Our goal in the reorganization of the UAOFs is ACCURATE FILING so that these documents could be located when requested. I hope you exhaust all means and efforts to finish the project within the given time frame.

Please be guided accordingly.

(Sgd.) Narciso M. Ferrera
Assistant Vice President

Again, on 2 April 1997, complainant received another memo from AVP Ferrera called her attention (a) to the same nine (9) cases misfiled UAOF's in Annex 16, (b) to three (3) other cases of misfiled UAOFs (c) her persistent failure to submit weekly report on the progress of her work under the Special Project, and (d) that despite the lapse of three (3) months, she was still in letter D (or UAOFs covering clients whose surnames begin with letter D).

As she failed to complete the project on 30 May 1997, complainant was given another 30 days to complete it. However, by the end of June 1997, her accomplishment was only 30% of the total work to be done.

On 25 July 1997, AVP Ferrera directed complainant to explain in writing why her employment should not be terminated on the ground of serious misconduct, willful disobedience, gross and habitual neglect of

her duties and gross inefficiency. Correspondingly, complainant was placed under Preventive suspension. Complainant submitted her written explanation on 31 July 1997.

On 29 August 1997, an administrative conference took place with the complainant, her counsel and the Union President in attendance.

Finally, on 4 September 1997, the respondent bank thru AVP Ferrera notified complainant that her written explanation and those which she ventilated during the administrative conference held on 29 August 1997 were found self-serving, and consequently, terminating her employment on the ground of serious misconduct, willful disobedience, gross and habitual neglect of duties and gross inefficiency.[2]

Following the termination of her services, respondent filed a complaint for illegal dismissal, praying for **reinstatement, backwages, damages and attorney's fees**.[3] By the aforementioned Decision of June 29, 1998, the labor arbiter dismissed the complaint for lack of merit, finding that her dismissal on the ground of work inefficiency was valid.

On appeal, the NLRC, by Resolution of October 24, 2000, affirmed the decision of the labor arbiter with the modification

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[2] *Rollo*, pp. 130-133.

[3] WHEREFORE, in view of the foregoing consideration, it is most respectfully prayed that judgment be rendered against Respondents/Citibank, N.A., Suresh Maharaj, Narciso M. Ferrera, Beatriz C. Alo, Raul (Randy) J. Uson, Atul R. Patel jointly and severally as follows:

1. Ordering the immediate reinstatement of complainant to her original or equivalent position without loss of seniority, with backwages from the time she was suspended and terminated from the services until reinstatement.

2. Ordering the payment to complainant the sum of ₱50,754.00 representing Christmas bonus and 13th month pay.

3. Ordering respondents to pay complainant all the monetary benefits accruing to her under the Collective Bargaining Agreement (CBA).

4. Ordering the respondents to pay actual damages in the sum of One Hundred Forty Six Thousand Four Hundred Ninety Four & 50/100 (₱146,494.50) and medical bills of Twenty Thousand Pesos (₱20,000).

5. Ordering respondent to pay moral damages in the sum Two Million Pesos ₱2,000,000.00.

6. Ordering respondent to pay the sum of Two Hundred Thousand ₱200,000 by way of exemplary damages.

that respondent should be paid **separation pay** "as a form of equitable relief" in view of her length of service with petitioner.

Respondent filed a MOTION FOR PARTIAL RECONSIDERATION of the NLRC Resolution. She no longer challenged her dismissal on the ground of work inefficiency, but prayed that petitioner be ordered to pay her the "Provident Fund" benefits under its **retirement plan** for which she claimed to be qualified pursuant to petitioner's "Working Together" Manual, specifically the provision on page 12.5 thereof which states:

> Should you (employee) resign or be discharged **for reasons other than misconduct** prior to your earliest retirement date, you will be paid a percentage of your share in the Fund according to the following schedule:
>
> | Completed Years of Continuous Service | Vesting |
> |---|---|
> | 20 or more years | 100% |
> | 19 years | 95% |
> | **18 years** | **90%** |
>
> x x x x x x x x x[4]
>
> (Emphasis and underscoring supplied)

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7. Ordering respondent to pay the sum of Fifty Thousand Pesos ₱50,000.00 by way of nominal damages.

8. Ordering the respondent to pay the sum of ₱50,000 by way of temperate or moderate damages.

9. Ordering respondents to pay complainant the sum of Two Hundred Thousand Pesos only (₱200,000.00) by way of attorney's fees.

10. Enjoining respondents from declaring complainant's housing loan due and payable and ordering it to cease and desist from foreclosing the real estate mortgage of complainant should respondents planned to do so, until the termination of instant case;

11. Ordering respondents to cease and desist from declaring due and payable all the company loans extended to complainant by reason of her employment, until final termination of instant case.

Complainant further prays for such other reliefs as may be just and equitable. (*Rollo*, pp. 81-82)

[4] Annex "A" of Motion for Partial Reconsideration, NLRC records (Vol. II), no page number indicated.

Respondent, claiming that the labor arbiter upheld her dismissal on the ground of merely "work inefficiency" and not for any misconduct on her part, asserted that she is entitled to 90% of the retirement benefits.

Petitioner did not move to reconsider the NLRC October 24, 2000 Resolution.

Finding that respondent's dismissal was "for causes other than misconduct," the NLRC, by the above-mentioned October 24, 2001 Resolution granted respondent's motion for partial reconsideration.[5] Petitioner moved to reconsider this Resolution, but the same was denied by the NLRC.

Petitioner thereupon filed a petition for *certiorari* with the Court of Appeals to set aside and nullify the October 24, 2001 NLRC Resolution. The appellate court, by Decision dated January 24, 2003, dismissed petitioner's petition for lack of merit and affirmed *in toto* the challenged NLRC Resolution. Its motion for reconsideration having been denied by the appellate court by Resolution of July 29, 2003, the present petition[6] was filed, petitioner asserting as follows:

1. The NLRC has no authority to pass upon and resolve issues and grant claims not pleaded and proved before the Labor Arbiter.

2. The NLRC acted without authority or without or in excess of jurisdiction when it granted the entirely new/subsequent claim (for payment of retirement benefits) of Paragas.

3. In any case, (a) the actuations of Paragas narrated in petitioner's motion for reconsideration [of the NLRC Resolution dated

[5] The NLRC disposed as follows:

WHEREFORE, the Resolution dated October 24, 2000 is PARTIALLY RECONSIDERED and the respondents are further ORDERED to pay the complainant her retirement benefits equivalent to 90% of the total retirement benefits had she completed twenty years of service to respondent Bank pursuant to the Citibank N.A. Retirement Plan for Philippine Branches and consistent with the existing guidelines and regulations of respondent Bank. (*Rollo*, p. 158)

[6] The petition was earlier denied by this Court's Resolution dated September 24, 2003 (*rollo*, p. 237) on procedural grounds, but was reinstated on petitioner's motion by Resolution dated August 17, 2005 (*rollo*, p. 311).

October 24, 2001] for which petitioner had dismissed her on the ground of Serious Misconduct, among other grounds and (b) the decision of the Labor Arbiter dismissing Paragas' complaint for illegal dismissal for lack of merit, which the NLRC affirmed, show that Paragas is not entitled to her new claim for retirement benefits; for as Paragas herself has shown in her motion for partial reconsideration, under the Retirement Plan of the bank a bank employee who has been dismissed for misconduct is not entitled to retirement benefit.

4. In any event, even assuming that Paragas was entitled to retirement benefit, her claim therefor is already time-barred.

5. Thus, the Court of Appeals erred when it dismissed petitioner's petition in CA-G.R. No. SP 69642.[7]

The petition is impressed with merit.

That respondent did not expressly claim retirement benefits in the proceedings before the labor arbiter is not disputed. Indeed, she admits that the first time she explicitly prayed for such benefits was in her Motion for Partial Reconsideration filed with the NLRC. She argues, nonetheless, that the grant thereof by the NLRC was warranted based on the principle that rules of procedure and evidence should not be applied rigidly and technically in labor cases. Moreover, she alleges that her claim for retirement benefits was implicit in her general prayer in her position paper for "such other reliefs as may be just and equitable."

While it is established that technical rules of procedure may be relaxed in labor cases, *Mañebo v. NLRC*[8] instructs

We wish, however, to stress some points. Firstly, while it is true that the Rules of the NLRC must be liberally construed and that the NLRC is not bound by the technicalities of law and procedure, the Labor Arbiters and the NLRC itself must not be the first to arbitrarily disregard **specific provisions of the Rules** which are precisely **intended to assist the parties in obtaining just, expeditious, and inexpensive settlement of labor disputes**. One such provision is Section 3, Rule V of the New Rules of Procedure of the NLRC which requires the

[7] *Rollo*, p. 36.

[8] G.R. No. 107721, January 10, 1994, 229 SCRA 240, 248.

submission of verified **position papers** within fifteen days from the date of the last conference, with proof of service thereof on the other parties. The position papers "shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's testimony." **After the submission thereof**, the parties "shall…not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents." (Emphasis and underscoring supplied)

Respondent indeed prayed for "other just and equitable relief," but the same may not be interpreted so broadly as to include even those which are not warranted by the factual premises alleged by a party. Thus the January 24, 2003 Decision of the Court of Appeals correctly stated: "It has been ruled in this jurisdiction that the general prayer for 'other reliefs' is applicable to such other reliefs which are warranted by the law and facts alleged by the respondent in her basic pleadings and not on a newly created issue."[9] (Underscoring supplied) Particularly in *People v. Lacson,*[10] this Court held:

> x x x Case law has it that a prayer for equitable relief is of no avail, unless the petition states **facts which will authorize the court to grant such relief**. A court cannot set itself in motion, nor has it power to decide questions except as presented by the parties in their pleadings. Anything that is resolved or decided beyond them is *coram non judice* and void. (Emphasis supplied)

Respondent's assertion that she mentioned the matter regarding the Provident Fund even prior to her Motion for Partial Reconsideration – on page 14 of her position paper and again on pages 2 and 7 of her "Notice of Appeal and Appeal Memorandum" – is unavailing.

Her "Notice of Appeal and Appeal Memorandum" was filed **after** she had already submitted her position paper. Thus, any mention of the Provident Fund therein would fail to adhere to

[9] *Rollo*, p. 61.

[10] 459 Phil. 330, 366 (2003).

the above-ruling in *Mañebo*, the thrust of which was precisely that all facts, evidence, and causes of action should already be proffered in the position papers and the supporting documents thereto, not in any later pleading.

As to respondent's position paper, there was only the mere mention of "Provident A & C," with the corresponding amount of ₱1,086,335.43, among the actual damages that she was allegedly suffering from her continued severance from employment.[11] Respondent made no attempt to define what this "Provident A & C" was, nor offer any substantiation for including it to be among her actual damages. She did not even hint how "Provident A & C" had a bearing on retirement benefits. Thus, while respondent did refer to the Provident Fund in her position paper, such reference was too vague to be a basis for any court or administrative body to grant her retirement benefits.

Respondent justifies her failure to claim for retirement benefits before the labor arbiter by alleging that it would be inconsistent with her prayer for reinstatement. Respondent, however, could have easily claimed such benefits as an alternative relief.

In any event, respondent is not entitled to retirement benefits as this Court finds that she was validly dismissed for serious misconduct and not merely for work inefficiency.

While findings of fact in administrative decisions such as those rendered by the NLRC are to be accorded not only great weight and respect, but even finality, the rule only applies for as long as these findings are supported by substantial evidence.[12] In the present case, the NLRC was absolutely silent on why it did not give credence to petitioner's evidence on respondent's misconduct. It was content merely to state that "the separation is not for reasons of misconduct but for other grounds"[13] without any substantiation and in total disregard of the evidence proffered

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[11] Page 14 of Position Paper of respondent-complainant, NLRC records (Vol. I), p. 40.

[12] *Agoy v. NLRC*, 322 Phil. 636, 644-645 (1996).

[13] Page 5 of NLRC Resolution dated October 24, 2001, *rollo*, p. 154.

by petitioner. *Colegio de San Juan de Letran-Calamba v. Villas*[14] instructs:

> Likewise, 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**. (Emphasis and underscoring supplied)

True, the NLRC adopted the findings of the labor arbiter, but **the labor arbiter did not expressly rule on the issue of respondent's alleged misconduct** – which is not surprising, for a ruling thereon was not then strictly necessary. At that stage, the main issue which had to be resolved was only whether respondent's dismissal was valid, and not whether she was qualified for retirement benefits. Only when respondent raised the claim of retirement benefits did it become crucial to determine whether she was validly dismissed on the specific ground of serious misconduct, not only on the ground of poor work performance.

As reflected above, this Court, after a review of the NLRC finding that respondent did not commit serious misconduct, finds otherwise.

While the labor arbiter did not explicitly rule that respondent committed serious misconduct, his decision leads to that conclusion, for the documentary evidence which it cites as basis to prove her work inefficiency shows, upon close examination, also her commission of serious misconduct.

In support of its ruling that respondent's dismissal was valid, the labor arbiter relied on the performance appraisals of respondent from **July to December 1994**, from **January to June 1995**, and from **July to December 1996**, all of which were submitted by petitioner's Assistant Vice-President, Narciso M. Ferrera. The labor arbiter noted that Ferrera's evaluation of respondent was not lacking in objectivity.

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[14] 447 Phil. 692, 700 (2003).

These performance appraisals, however, did not merely show that respondent was not able to meet performance targets. More relevantly, they also **consistently** noted significant behavioral and attitudinal problems in respondent. In particular, respondent was found to be very argumentative;[15] she had difficulty working with others;[16] she was hard to deal with;[17] and she never ceased being the subject of complaints from co-workers.[18]

Moreover, beyond the documents referred to in the labor arbiter's decision, there are other pieces of evidence on record which further establish that respondent was validly dismissed not only for work inefficiency but for serious misconduct. The Court sees no reason why these should not be accorded credibility along with those cited by the labor arbiter.

The assessment of respondent's performance by Randy Uson, another superior of respondent, was given weight by the labor arbiter who noted that Uson was "described as [a] very professional and fair person by complainant [herein-respondent] herself."[19] Significantly, Uson later commented on respondent's behavior as follows:

> "Less tangible but none the less real, are **the common concerns raised by her peers and supervisor, on the stress and tension created when Rose is around. The conscious effort to 'get out of her way' and avoid conflict, hinders productivity and efficiency and has adversely affected the morale of the entire unit**. x x x"[20] (Emphasis and underscoring supplied)

More. For the appraisal period from **June to December 1995**, respondent's performance appraisal report stated that her attitude towards her work, the bank, and superiors needed reformation.[21]

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[15] NLRC records (Vol. I), pp. 118, 123.

[16] *Id*. at 118, 123.

[17] *Id*. at 134.

[18] *Ibid*.

[19] *Rollo*, p. 100.

[20] NLRC records (Vol. I), p. 140.

[21] *Id*. at 127.

The report for **January to June 1996** made the same observation,[22] indicating that there was no improvement on her part.

The performance appraisal report of respondent for the period of **January to June 1997**, besides stating that she was still "hard to deal with," described her as "belligerent," one who had "a negative presence which affects the morale of the entire unit," and who "pick[ed] fights with peers and other employees even without provocation."[23]

The evaluation of respondent cited above finds corroboration in her admission that "she may have been tactless and insolent in dealing with her superior but it does not allegedly warrant the supreme penalty of dismissal."[24]

Finally, even the NLRC, its later ruling that respondent was not guilty of misconduct notwithstanding, was aware that the problem with respondent was not merely her poor work output, but her unreasonable behavior and unpleasant deportment. Thus, as its Resolution of October 24, 2000 drew to a close, it stated that petitioner was "correct" in invoking *Cathedral School of Technology v. NLRC*,[25] specifically the following portion of this Court's decision therein:

> An evaluative review of the records of this case nonetheless supports a finding of a just cause for termination. The reason for which private respondent's services were terminated, namely, her **unreasonable behavior** and **unpleasant deportment** in dealing with the people she closely works with in the course of her employment, is analogous to the other "just causes" enumerated under the Labor Code. (Emphasis supplied)

It bears noting that petitioner cited *Cathedral School of Technology* in its Comment/Reply to Complainant-Appellant's Appeal Memorandum precisely to show that its dismissal of

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[22] *Id*. at 130.

[23] *Id*. at 54.

[24] *Id*. at 258.

[25] G.R. No. 101438, October 13, 1992, 214 SCRA 551, 559.

complainant on the ground of "gross inefficiency **and unreasonable behavior**" (emphasis supplied) was correctly upheld by the labor arbiter.[26]

When an employee, despite repeated warnings from the employer, obstinately refuses to curtail a bellicose inclination such that it erodes the morale of co-employees, the same may be a ground for dismissal for serious misconduct.

As this Court held in *National Service Corp. v. Leogardo, Jr.*,[27] "[a] series of irregularities when put together may constitute serious misconduct, which under Article 283 of the Labor Code, is a just cause for termination." And as it held in *Asian Design and Manufacturing Corporation v. Deputy Minister of Labor,* acts destructive of the morale of one's co-employees may be considered serious misconduct.[28]

It is respondent's obstinate refusal to reform herself which ultimately persuades this Court to find that her dismissal on the ground of serious misconduct was valid. Clearly, the following statement of Jaime R. Paraiso, head of petitioner's Records Management Unit, quoted with approval both by the labor arbiter and the NLRC, relates not only to respondent's inefficiency but also to her admittedly tactless and insolent dealings with her superior.

> While we all have strengths and good points we also have weaknesses and shortcomings. However, **the first step towards self-improvement is acknowledging and accepting one's weaknesses and shortcomings. This is followed by a resolve to change for the better, in turn followed by appropriate action. These elements are not evident in the responses given [by respondent to the performance appraisal report] and there is no clear indication of a desire for self-improvement or any plans in that direction.** There continues to be a need to address this situation.[29] (Emphasis supplied)

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[26] CA *rollo*, p. 167.

[27] 215 Phil. 450, 457 (1984).

[28] 226 Phil. 20, 23 (1986).

[29] *Rollo,* p. 138.

Having been validly dismissed on the ground of serious misconduct, respondent is thus disqualified from receiving her retirement benefits pursuant to the provision of petitioner's "Working Together" Manual quoted earlier.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision of January 24, 2003 and Resolution of July 29, 2003 are *SET ASIDE*. The NLRC Resolution dated October 24, 2001 granting private respondent's *MOTION FOR PARTIAL RECONSIDERATION* is thus *VACATED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172834. February 6, 2008]

JUN MUPAS and GIL MUPAS, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT MUST BE ESTABLISHED IN CRIMINAL CASES.— The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required. In addition, the prosecution must rest on its own merits and must not rely on the weakness of the defense. In fact, if the prosecution fails to meet the required quantum of evidence, the defense may logically not even present evidence on its own behalf. In which case, the

presumption of innocence shall prevail and hence, the accused shall be acquitted. However, once the presumption of innocence is overcome, the defense bears the burden of evidence to show reasonable doubt as to the guilt of the accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest each upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a criminal charge, but moral certainty is required as to every proposition of proof requisite to constitute the offense.

2. **ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONY OF ONE WITNESS SUFFICIENT TO CONVICT IF IT ESTABLISHES GUILT BEYOND REASONABLE DOUBT.—** The trial court solely hinged its judgment of conviction on the victim Rogelio's lone and uncorroborated testimony. While it is true that the testimony of one witness is sufficient to sustain a conviction if such testimony establishes the guilt of the accused beyond reasonable doubt, the Court rules that the testimony of one witness in this case is not sufficient for this purpose.

3. **CRIMINAL LAW; HOMICIDE; ELEMENTS; INTENT TO KILL; NOT ESTABLISHED IN CASE AT BAR.—** Assuming that Gil *alias* Banjo had any participation, there is likewise no evidence that he or Jun had intent to kill Rogelio. Intent to kill is the principal element of homicide or murder, in whatever stage of commission. Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor. Although it can be fairly assumed that the injuries suffered by Rogelio were sustained during the fistfight, it is not conclusive that the same were inflicted purposely to kill him. For one, if Jun in fact had been carrying a bolo with intent of killing Rogelio, and if indeed Banjo had conspired with Jun, it is no small wonder why the wounds inflicted were more superficial than mortal, more mild than grave. That Rogelio was able to go home shortly after the tricycle incident without being pursued by his aggressor also shows that Jun and Banjo were not intent on beating him to death or even leaving him for dead. It is thus wrong to infer that the intent to kill was present in the absence of circumstances sufficient to prove this fact beyond reasonable doubt. Moreover, Rogelio's suggested motive for killing him, *i.e.,* his previous altercation with Jun, was too weak and shallow a reason to kill under the circumstances.

4. ID.; LESS SERIOUS PHYSICAL INJURIES; CRIME THEREOF COMMITTED IN THE ABSENCE OF INTENT TO KILL.— Taken in its entirety, there is a dearth of medical evidence on record to sustain the claim that petitioners had any intention to kill Rogelio. When such intent is lacking but wounds were inflicted, the crime is not frustrated homicide but physical injuries only and in this case, less serious physical injuries considering the attending physician's opinion that the wounds sustained by Rogelio would take two (2) weeks to heal.

5. ID.; ID.; CRIME THEREOF COMMITTED IN CASE AT BAR ALTHOUGH INFORMATION CHARGES FRUSTRATED HOMICIDE; PROPER PENALTY.— Although the Information charged petitioners with frustrated homicide, a finding of guilt for the lesser offense of less serious physical injuries may be made considering that the latter offense is necessarily included in the former, and since the essential ingredients of physical injuries constitute and form part of those constituting the offense of homicide. The Court sustains the appellate court's award of ₱4,000.00 as temperate damages. Having suffered actual injuries, Rogelio is likewise entitled to moral damages. The award of ₱5,000.00 as moral damages is sufficient under the circumstances.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

TINGA, *J.*:

Petitioners Jun and Gil[1] Mupas were found guilty of frustrated homicide in Criminal Case No. 2314 in the Decision[2] dated 22 November 2002 rendered by the Regional Trial Court of Malaoan, La Union, Branch 34. The dispositive portion of the decision reads:

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[1] Interchangeably referred to as Gil or Banjo.

[2] *Rollo*, pp. 18-21; penned by Hon. Senecio O. Tan.

WHEREFORE, in light of the foregoing, the Court hereby renders judgment declaring both accused JUN MUPAS and GIL MUPAS @ "Banjo" guilty beyond reasonable doubt of the crime of FRUSTRATED HOMICIDE as defined and penalized in Art. 249 in relation with Art. 6 of the Revised Penal Code, and thereby sentenced EACH of the accused to suffer an indeterminate penalty of imprisonment from FOUR (4) YEARS and TWO (2) MONTHS *PRISION CORRECCIONAL* as Minimum to TEN (10) years *PRISION MAYOR* as maximum and the accessory penalties provided for by law and to indemnify jointly the private complainant the reasonable amount of ₱5,000.00 for hospital expenses and other miscellaneous expenses.

The preventive imprisonment suffered by the accused is counted in his favor.

SO ORDERED.[3]

The relevant antecedents are as follows:

The Information[4] for frustrated homicide alleged:

That on or about the 18th day of February 1993, in the Municipality of Bangar, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another and with intent to kill, did then and there willfully, unlawfully and feloniously attack, maul with fist and stones and stab with a knife Rogelio Murao *y* Sibayan hitting the latter and inflicting injuries on his face and head thus performing all the acts of execution which would have produced the crime of Homicide as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the accused, that was the timely and able medical assistance rendered to the offended party which saved his life to his damage and prejudice.

CONTRARY TO LAW.[5]

During the arraignment, petitioners, assisted by counsel, pleaded not guilty to the charge.[6] Thereafter, trial ensued.

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[3] *Id*. at 21.

[4] Records, pp. 1-2.

[5] *Id*. at 1; dated 25 May 1993.

[6] *Id*. at 40.

The prosecution presented three witnesses, namely: Rogelio Murao (Rogelio), Flaviano Murao (Flaviano) and Dr. Arsenio B. Martinez (Dr. Martinez).

Rogelio testified that at around 7:30 in the morning of 18 February 1993, he was walking to school with his companion Eduardo Murao, Jr. when Jun suddenly stopped and stabbed him using a 29-inch Batangas knife. Meantime, Banjo bodily restrained him but luckily Rogelio was able to avoid the blow. Next, Banjo and Jun hurled stones at him and hit him on the leg while Rogelio was running eastward. Rogelio then flagged down a motorized tricycle but the two assailants continued to pursue him. While inside the tricycle, Banjo held Rogelio by his neck and punched him while Jun stabbed him several times. Then, Rogelio alighted from the tricycle and ran home. Afterwards, his father and mother accompanied him to the hospital.[7] There, Dr. Martinez attended to Rogelio and issued a medical certificate containing the following findings:

> Cut wound, 2-3 cm. parietal area
> Abrasion, maxiliary area, (L)
> Contusion, maxiliary area, (L)
> Abrasion, lumbar area, (L)
>
> HEALING PERIOD: It may take two weeks to heal.[8]

Prior to the incident, Rogelio recalled that in January of the same year, he had a misunderstanding with Jun where he and the latter hurled invectives at each other. Rogelio suspected that this event gave rise to the subject incident.[9]

Flaviano, Rogelio's father, testified that on 18 February 1993, Rogelio came home bleeding from head injuries. Immediately, he brought Rogelio to the Martinez Clinic in Bangar, La Union. Flaviano reported that he has spent ₱2,000.00 for Rogelio's

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[7] *Id*. at 169. Sworn Statement of Rogelio Murao dated 23 February 1993, TSN, 4 December 1994, pp. 2-4.

[8] *Id*. at 168; dated 22 February 1993.

[9] TSN, 4 December 1994, pp. 4-5, 7-9.

medical treatment and ₱3,000.00 for attorney's fees and transportation.[10]

For the defense, Jun testified that on 18 February 1993, at around 7:30 in the morning, he was watering the plants in front of Gil's house when he accidentally sprayed water on Rogelio who was passing by. Rogelio scolded him and Jun immediately apologized. Rogelio then challenged Jun to a fistfight which Jun accepted. After that, Rogelio ran away, picked up big stones and threw them at Gil's house. Jun gave chase and was able to catch up with Rogelio. They both boarded a tricycle and continued their fighting inside. One of the passengers of the tricycle, Josefina Mendoza, pacified the two men. Banjo arrived only when the fighting ceased.[11]

Afterwards, Jun went home. Then, Rogelio and Flaviano, each armed with a bolo, arrived and challenged Jun to a fight. However, the two could not enter the house as the gate was locked.[12]

Gil testified that in the morning of 18 February 1993, at around 7:00, somebody threw a stone at their house. He went outside the house and saw Jun chasing Rogelio. He went near them and saw that they had already been pacified by one Ms. Monis. Afterward, he sent the two men home. Gil also went home and thereat, Rogelio, who had a stone with him, arrived with his father Flaviano who was carrying a bolo. Rogelio then challenged Gil and Jun to a fight.[13]

Danilo Olpindo testified that between 7:00 and 8:00 in the morning of 18 February 1993, he was buying soap from Banjo's store when a fistfight transpired between Rogelio and Jun. Rogelio then ran away, picked up a stone and threw it at Jun. After Rogelio threw another stone at Banjo's house, Jun chased him and had a fistfight with him again. Banjo then came out

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[10] TSN, 4 April 1995, pp. 2, 6.

[11] TSN, 14 March 2000, pp. 2-5.

[12] *Id*. at 6.

[13] TSN, 20 June 2001, pp. 3-5; 21 June 2001, p. 5.

of the house and asked the two to go home. Danilo also saw Teresita Monis at the scene trying to pacify the two.[14]

Teresita Monis testified that on that fateful day, she was riding a tricycle when suddenly, somebody from outside punched one of her co-passengers. She saw an arm reach inside the tricycle and hit the passenger. Blood started to ooze from the fellow's forehead. Shortly, she had to alight from the tricycle to attend the flag ceremony at her school.[15]

Josefina Mendoza testified that on said day, she saw Jun box Rogelio. Subsequently, Banjo went near the two and dispersed them.[16]

Jun and Gil were found guilty as charged and the judgment of conviction was elevated to the Court of Appeals.

Before the Court of Appeals, Jun and Gil argued that the trial court erred in: (1) finding Gil guilty of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt; and (2) finding Jun guilty of the crime of frustrated homicide instead of physical injuries only.[17]

Jun and Gil contended that Rogelio had failed to identify with moral certainty that Gil had been one of those who inflicted the injury on him. They pointed out that Rogelio had failed to categorically state that Gil and Banjo Mupas are one and the same person. Moreover, they asserted that in Jun's case, the prosecution had failed to prove intent to kill and as such, he should be convicted only of the crime of physical injuries.[18]

The Court of Appeals in a Decision[19] dated 23 January 2006, in CA-G.R. CR. No. 27768, affirmed with modifications the

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[14] TSN, 16 August 2001, pp. 2-3.

[15] TSN, 4 June 2002, pp. 3-4.

[16] TSN, 20 August 2002, pp. 3-4.

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

[18] *Rollo*, p. 57.

[19] *Id*. at 52-65; penned by Associate Justice Japar B. Dimaampao with the concurrence of Associate Justices Martin S. Villarama, Jr. and Edgardo F. Sundiam.

decision of the trial court. The dispositive portion of the decision reads:

> WHEREFORE, the *Decision* appealed from convicting accused-appellants **JUN MUPAS** and **GIL MUPAS *alias* BANJO MUPAS** of the crime of Frustrated Homicide is **AFFIRMED with MODIFICATION** in that appellants are ordered to pay **ROGELIO MURAO** in the amount of ₱4,000 as temperate damages.
>
> SO ORDERED.[20]

After a review of the records of the case, the Court of Appeals concluded that Banjo Mupas and Gil Mupas are one and the same person. The Court of Appeals observed that when Banjo posted a bail bond in the case entitled "*People of the Philippines v. Jun Mupas and Banjo Mupas,"* he had made no objection to the caption of the case and he had even signed his name as Gil Mupas. Secondly, when the Information was amended to include Gil's *alias*, Banjo did not interpose any objection to the correction. Lastly, Rogelio had not been able to identify Banjo in court due to the latter's absence at the time of his testimony.[21]

The Court of Appeals likewise held that Jun already performed all the acts of execution necessary to bring about the death of Rogelio which would have transpired had it not been for the timely medical intervention. As such, the trial court correctly found him liable for the crime of frustrated homicide.[22]

Jun and Gil are now before the Court reiterating their assertion that the prosecution failed to establish Gil's identity as one of the perpetrators of the crime and that his defense of denial was duly supported by clear and convincing evidence.[23] They also contend that on the assumption that Jun is guilty of having committed a crime, he should only be convicted of the crime of physical injuries.[24]

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[20] *Id*. at 65.

[21] *Id*. at 57-58.

[22] *Id*. at 62-63.

[23] *Id*. at 11-12.

[24] *Id*. at 13.

There is merit in the petition.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required. In addition, the prosecution must rest on its own merits and must not rely on the weakness of the defense. In fact, if the prosecution fails to meet the required quantum of evidence, the defense may logically not even present evidence on its own behalf. In which case, the presumption of innocence shall prevail and hence, the accused shall be acquitted. However, once the presumption of innocence is overcome, the defense bears the burden of evidence to show reasonable doubt as to the guilt of the accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest each upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a criminal charge, but moral certainty is required as to every proposition of proof requisite to constitute the offense.[25]

The trial court solely hinged its judgment of conviction on the victim Rogelio's lone and uncorroborated testimony. While it is true that the testimony of one witness is sufficient to sustain a conviction if such testimony establishes the guilt of the accused beyond reasonable doubt, the Court rules that the testimony of one witness in this case is not sufficient for this purpose.[26] Apart from Rogelio's testimony, the Court observes that the prosecution's version of events has no leg to stand on.

In his Sworn Statement[27] dated 23 February 1993, Rogelio admitted that he had a companion with him on that fateful incident named Eduardo Murao, Jr. He also stated that there were other persons who may have witnessed the assault namely, "Josephine Mendoza, Terisita Mico and one Mario Olpindo, the driver of the tricycle." On the witness stand, Rogelio likewise

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[25] *People v. Uy*, 392 Phil. 773, 782-783 (2000).

[26] See *United States v. Sy Quingco and De Jesus*, 16 Phil. 418 (1910).

[27] Records, p. 169.

testified that there had been others who may have witnessed the incident including Eduardo Murao, Jr. and Teresita Monis.[28] Interestingly, Josephine Mendoza testified for the defense that she had only witnessed a fistfight between Jun and Rogelio while Teresita Monis, also for the defense, testified that she had only seen a hand reach inside the tricycle to hit Rogelio.

It appears then that Rogelio had at his disposal many witnesses who could have supported his allegations but curiously and without any explanation, none of these so-called witnesses were presented. It is thus Rogelio's word against the attestations of others. Such omission already raises a reasonable doubt as to the guilt of the petitioners.

In contrast, the defense was able to present three (3) other witnesses than the petitioners themselves. In the Court's view, Danilo Olpindo, one of the defense witnesses, could hardly be called a biased witness contrary to the appellate court's opinion. He may indeed be Jun's second cousin but the appellate court failed to consider that Danilo is likewise Rogelio's third cousin[29] which fact, in the Court's estimation, cancels the supposed partiality based on kinship.

Danilo Olpindo, Josefina Mendoza together with Jun and Gil are in agreement that a fistfight occurred between Jun and Rogelio. In addition, Jun admitted that the fighting continued inside a tricycle. Teresita Monis attested that this latter detail did occur but was not able to identify whose hand it was that reached in the tricycle and hit Rogelio.

Juxtaposing the testimonies of the witnesses, it can be safely deduced that a fistfight occurred only between Jun and Rogelio which continued inside a tricycle. Rogelio's allegations of Banjo's participation in the incident and that Jun carried with him a bolo are uncorroborated and bereft of any proof. Absent proof of Gil *alias* Banjo's involvement in the incident, his acquittal is in order.

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[28] TSN, 4 December 1994, p. 2.

[29] TSN, 16 August 2001, p. 4.

Assuming that Gil *alias* Banjo had any participation, there is likewise no evidence that he or Jun had intent to kill Rogelio. Intent to kill is the principal element of homicide or murder, in whatever stage of commission. Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor.[30]

Although it can be fairly assumed that the injuries suffered by Rogelio were sustained during the fistfight, it is not conclusive that the same were inflicted purposely to kill him. For one, if Jun in fact had been carrying a bolo with intent of killing Rogelio, and if indeed Banjo had conspired with Jun, it is no small wonder why the wounds inflicted were more superficial than mortal, more mild than grave. That Rogelio was able to go home shortly after the tricycle incident without being pursued by his aggressor also shows that Jun and Banjo were not intent on beating him to death or even leaving him for dead.[31] It is thus wrong to infer that the intent to kill was present in the absence of circumstances sufficient to prove this fact beyond reasonable doubt.[32] Moreover, Rogelio's suggested motive for killing him, *i.e.*, his previous altercation with Jun, was too weak and shallow a reason to kill under the circumstances.[33]

Notably, Dr. Martinez, Rogelio's attending physician, opined that if Rogelio's wound was left untreated it could lead to his death, **but at the same time** he also testified that such wound merely required suturing. He also testified that the wound, which was only 2-3 cm long and whose depth he did not indicate, could have been caused by a rough or sharp object not necessarily a knife. And in the medical certificate he issued, he reported that the wounds sustained by Rogelio would take two (2) weeks to heal.[34] Dr. Martinez stated as follows:

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[30] *Aradillos v. Court of Appeals*, 464 Phil. 650, 669-670 (2004).

[31] TSN, 4 December 1994, p. 4.

[32] *People v. Pagador*, 409 Phil. 338, 351 (2001).

[33] TSN, 4 December 1994, p. 5.

[34] Records, p. 168.

Q And what did you do when you noticed the wounds on the patient Rogelio Murao?
A I gave the necessary injections and medicines preliminary in suturing the wound and treating the wound, sir.

Q What particular kind of injections did you make on the patient?
A Regularly a patient who will undergo the kind of operation [*sic*] we gave novaine injection[.] [T]hen after ten minutes we gave the local anesthesia for suturing, sir.

Q You said that you conducted surgery, what exactly did you do?
A After rushing and preparing the operative area and after giving the novaine injection [*sic*] and I will now examine the kind of wound, it was a two to three cms. long on the parietal area and partially cut and after cleaning the wound, we put anesthesia and suture the wound, sir.

x x x x x x x x x

Q Particularly this cut wound which you mentioned as the wound on the parietal area of the patient, what particularly [*sic*] did you do when you said you applied surgery, did you do surgery only on the cut wound?
A I referred to injuries, damages tissues, we removed unnecessary tissues, sir.

Q After removing the unnecessary tissues, and cut wound, what did you do?
A I have to suture, sir.

Q And in layman's language, what is meant by suture?
A We used the chromic sutures and followed by the skin suture which is made of silk, sir.

Q Now, this cut would as you have said doctor, what would be the result of this cut wound if it was not treated by you?
A Death, sir.

Q How come it would result to death, if you did not treat the cut wound?
A In the first place according to the legal ethics made by Dr. Solis even if there is slight wound on the head, it is considered serious because the wound on the head is proximal to the brain, sir. Meaning, usually, it gets in when the injuries were on the head, sir.[35]

[35] TSN, 19 August 1993, pp. 5-7.

x x x x x x x x x

Q You also stated that it is a cut wound which must have been caused by a sharp instrument or bladed edge?
A Sharp edge, sir.

x x x x x x x x x

Q Because it is a cut wound, the tendency was not penetrating wound?
A No, not penetrating wound, sir.

Q The wound is possible to have been caused by a knife or it might have been caused by any sharp object not necessarily a knife or by any rough or sharp object?
A Yes, sir.[36]

Taken in its entirety, there is a dearth of medical evidence on record to sustain the claim that petitioners had any intention to kill Rogelio. When such intent is lacking but wounds were inflicted, the crime is not frustrated homicide but physical injuries only and in this case, less serious physical injuries considering the attending physician's opinion that the wounds sustained by Rogelio would take two (2) weeks to heal.[37]

Although the Information charged petitioners with frustrated homicide, a finding of guilt for the lesser offense of less serious physical injuries may be made considering that the latter offense is necessarily included in the former, and since the essential ingredients of physical injuries constitute and form part of those constituting the offense of homicide.[38]

In sum, absent competent proof, Jun should be held liable only for the crime of less serious physical injuries under Article 265[39] of the Revised Penal Code, as amended. Gil, *alias* Banjo, must be absolved from any liability for failure of the prosecution to

[36] *Id*. at 9-10.

[37] *People v. Pagador*, 409 Phil. 338, 351-352 (2001).

[38] See *People v. Vicente*, 423 Phil. 1065, 1078 (2001).

[39] ART. 265. *Less serious physical injuries* — Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more,

conclusively prove that he had conspired with Jun in the commission of the crime or that he had any participation in it.

The Court sustains the appellate court's award of ₱4,000.00 as temperate damages. Having suffered actual injuries, Rogelio is likewise entitled to moral damages.[40] The award of ₱5,000.00 as moral damages is sufficient under the circumstances.[41]

WHEREFORE, the Petition is GRANTED IN PART and the Decision dated 23 January 2006 of the Court of Appeals in CA- G.R. CR. No. 27768 is MODIFIED. Petitioner Jun Mupas is found GUILTY beyond reasonable doubt of the crime of Less Serious Physical Injuries, and sentenced to suffer a straight prison term of four (4) months and ten (10) days of *arresto mayor* in its maximum period, and to pay Rogelio Murao the amount of Four Thousand Pesos (₱4,000.00) as temperate damages, and Five Thousand Pesos (₱5,000.00) as moral damages.

Petitioner Gil Mupas is ACQUITTED and the bail bond posted for his provisional liberty is cancelled and released.

SO ORDERED.

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

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or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor.*

x x x x x x x x x

[40] CIVIL CODE, Art. 2219.

[41] *Aradillos v. Court of Appeals*, 464 Phil. 650, 679 (2004).

SECOND DIVISION

[G.R. No. 173594. February 6, 2008]

SILKAIR (SINGAPORE) PTE. LTD., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CHANGE OF ATTORNEYS; WITHDRAWAL OF LAWYER AS COUNSEL IN CASE; IN THE ABSENCE OF NOTICE OF WITHDRAWAL OR SUBSTITUTION OF COUNSEL, COUNSEL ON RECORD IS TO BE SERVED COPIES OF ORDERS AND PLEADINGS.—** In case of failure to comply with the procedure established by Section 26, Rule 138 of the Rules of Court re the withdrawal of a lawyer as a counsel in a case, the attorney of record is regarded as the counsel who should be served with copies of the judgment, orders and pleadings. Thus, where no notice of withdrawal or substitution of counsel has been shown, notice to counsel of record is, for all purposes, notice to the client. The court cannot be expected to itself ascertain whether the counsel of record has been changed.

2. **TAXATION; TAX CREDIT; MUST BE CLAIMED BY STATUTORY TAX PAYER; CASE AT BAR.—** Silkair bases its claim for refund or tax credit on Section 135 (b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore (Air Transport Agreement between RP and Singapore). The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another. Section 130 (A) (2) of the NIRC provides that "[u]nless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production." Thus, Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport

Agreement between RP and Singapore. Even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.

3. ID.; TAX EXEMPTION; STRICTLY CONSTRUED.— Silkair nevertheless argues that it is exempt from indirect taxes because the Air Transport Agreement between RP and Singapore grants exemption "from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party." It invokes *Maceda v. Macaraig, Jr.* which upheld the claim for tax credit or refund by the National Power Corporation (NPC) on the ground that the NPC is exempt even from the payment of indirect taxes. Silkair's argument does not persuade. In *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, this Court clarified the ruling in *Maceda v. Macaraig, Jr., viz:* It may be so that in *Maceda vs. Macaraig, Jr.,* the Court held that an exemption from ***"all taxes"*** granted to the National Power Corporation (NPC) under its charter includes both direct and indirect taxes. But far from providing PLDT comfort, *Maceda* in fact supports the case of herein petitioner, the correct lesson of *Maceda* being that an exemption from "*all taxes*" excludes indirect taxes, unless the exempting statute, like NPC's charter, is so couched as to include indirect tax from the exemption. Wrote the Court: x x x However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. 380, made even more specific the details of the exemption of NPC to cover, among others, *both direct and indirect taxes* on all petroleum products used in its operation. Presidential Decree No. 938 [NPC's amended charter] amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "all forms of taxes, duties[,] fees. . ." The use of the phrase "all forms" of taxes demonstrates the intention of the law to give NPC all the tax exemptions it has been enjoying before. . . x x x It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from ***all forms*** of taxes including indirect taxes as provided under R.A. No. 6395 and P.D. 380 if it is to attain its goals. The exemption granted under Section 135 (b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore cannot, without a clear showing of legislative intent, be

construed as including indirect taxes. Statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, and if an exemption is found to exist, it must not be enlarged by construction.

APPEARANCES OF COUNSEL

Pastrana Fallar for petitioner.
Litigation Division (BIR) for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner, Silkair (Singapore) Pte. Ltd. (Silkair), a corporation organized under the laws of Singapore which has a Philippine representative office, is an online international air carrier operating the Singapore-Cebu-Davao-Singapore, Singapore-Davao-Cebu-Singapore, and Singapore-Cebu-Singapore routes.

On December 19, 2001, Silkair filed with the Bureau of Internal Revenue (BIR) a written application for the refund of ₱4,567,450.79 excise taxes it claimed to have paid on its purchases of jet fuel from Petron Corporation from January to June 2000.[1]

As the BIR had not yet acted on the application as of December 26, 2001, Silkair filed a Petition for Review[2] before the CTA following *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*[3]

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[1] CTA 2nd Division records, pp. 12-16.

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

[3] 130 Phil. 12, 16 (1968).

x x x [T]he claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. "If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector."

Opposing the petition, respondent Commissioner on Internal Revenue (CIR) alleged in his Answer that, among other things,

> Petitioner failed to prove that the sale of the petroleum products was directly made from a domestic oil company to the international carrier. The excise tax on petroleum products is the direct liability of the manufacturer/producer, and **when added to the cost** of the goods sold to the buyer, it is no longer a tax but **part of the price** which the buyer has to pay to obtain the article.[4] (Emphasis and underscoring supplied)

By Decision of May 27, 2005, the Second Division of the CTA denied Silkair's petition on the ground that as the excise tax was imposed on Petron Corporation as the manufacturer of petroleum products, any claim for refund should be filed by the latter; and where the burden of tax is shifted to the purchaser, the amount passed on to it is no longer a tax but becomes an added cost of the goods purchased. Thus the CTA discoursed:

> The liability for excise tax on petroleum products that are being removed from its refinery is imposed on the manufacturer/producer *(Section 130 of the NIRC of 1997)*. x x x
>
> x x x x x x x x x
>
> While it is true that in the case of excise tax imposed on petroleum products, the seller thereof may shift the tax burden to the buyer, the latter is the proper party to claim for the refund in the case of exemption from excise tax. **Since the excise tax was imposed upon Petron Corporation as the manufacturer of petroleum products**, pursuant to Section 130(A)(2), and that the corresponding excise taxes were indeed, paid by it, . . . **any claim for refund of the subject excise taxes should be filed by Petron Corporation** as the taxpayer contemplated under the law. Petitioner cannot be considered as the taxpayer because it merely shouldered the burden of the excise tax and not the excise tax itself.
>
> Therefore, the right to claim for the refund of excise taxes paid on petroleum products lies with Petron Corporation who paid and remitted the excise tax to the BIR. Respondent, on the other hand, may only claim from Petron Corporation the reimbursement of the tax burden

[4] CTA 2nd Division records, p. 20. Citation omitted.

shifted to the former by the latter. The excise tax partaking the nature of an indirect tax, is clearly the liability of the manufacturer or seller who has the option whether or not to shift the burden of the tax to the purchaser. **Where the burden of the tax is shifted to the [purchaser], the amount passed on to it is no longer a tax** but becomes an **added cost on the goods purchased** which constitutes a part of the purchase price. The incidence of taxation or the person statutorily liable to pay the tax falls on Petron Corporation though the impact of taxation or the burden of taxation falls on another person, which in this case is petitioner Silkair.[5] (Italics in the original; emphasis and underscoring supplied)

Silkair filed a Motion for Reconsideration[6] during the pendency of which or on September 12, 2005 the Bengzon Law Firm entered its appearance as counsel,[7] without Silkair's then-counsel of record (Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez or "JGLaw") having withdrawn as such.

By Resolution[8] of September 22, 2005, the CTA Second Division denied Silkair's motion for reconsideration. A copy of the Resolution was furnished Silkair's counsel JGLaw which received it on October 3, 2005.[9]

On October 13, 2005, JGLaw, with the conformity of Silkair, filed its Notice of Withdrawal of Appearance.[10] On even date, Silkair, through the Bengzon Law Firm, filed a Manifestation/ Motion[11] stating:

Petitioner was formerly represented xxx by JIMENEZ GONZALES LIWANAG BELLO VALDEZ CALUYA & FERNANDEZ (JGLaw).

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[5] *Id*. at 281-283.

[6] *Id*. at 286-293.

[7] *Id*. at 312-313.

[8] Penned by CTA Associate Justice Olga Palanca-Enriquez, with the concurrence of Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy. *Id*. at 314-315.

[9] *Id*. at 316.

[10] *Id*. at 318-319. The records do not show what action the CTA took on the notice.

[11] *Id*. at 320-322.

1. On 24 August 2005, petitioner served notice to JGLaw of its decision to cease all legal representation handled by the latter on behalf of the petitioner. Petitioner also requested JGLaw to make arrangements for the transfer of all files relating to its legal representation on behalf of petitioner to the undersigned counsel. x x x

2. The undersigned counsel was engaged to act as counsel for the petitioner in the above-entitled case; and thus, filed its entry of appearance on 12 September 2005. x x x

3. The undersigned counsel, through petitioner, has received information that the Honorable Court promulgated a Resolution on petitioner's Motion for Reconsideration. To date, the undersigned counsel has yet to receive an official copy of the above-mentioned Resolution. In light of the foregoing, undersigned counsel hereby respectfully requests for an official copy of the Honorable Court's Resolution on petitioner's Motion for Reconsideration x x x.[12] (Underscoring supplied)

On October 14, 2005, the Bengzon Law Firm received its requested copy of the September 22, 2005[13] CTA Second Division Resolution. Thirty-seven days later or on October 28, 2005, Silkair, through said counsel, filed a Motion for Extension of Time to File Petition for Review[14] before the CTA *En Banc* which gave it until November 14, 2005 to file a petition for review.

On November 11, 2005, Silkair filed another Motion for Extension of Time.[15] On even date, the Bengzon Law Firm informed the CTA of its withdrawal of appearance as counsel for Silkair with the information, that Silkair would continue to be represented by Atty. Teodoro A. Pastrana, who used to be with the firm but who had become a partner of the Pastrana and Fallar Law Offices.[16]

The CTA *En Banc* granted Silkair's second Motion for Extension of Time, giving Silkair until November 24, 2005 to

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[12] *Id*. at 320-321.

[13] *Id*. at 317.

[14] CTA *En Banc* records, pp. 3-5.

[15] *Id*. at 8-9.

[16] *Id*. at 11.

file its petition for review. On November 17, 2005, Silkair filed its Petition for Review[17] before the CTA *En Banc*.

By Resolution of May 19,2006, the CTA *En Banc* dismissed[18] Silkair's petition for review for having been filed out of time in this wise:

> A petitioner is given a period of fifteen (15) days from notice of award, judgment, final order or resolution, or denial of motion for new trial or reconsideration to appeal to the proper forum, in this case, the CTA *En Banc*. This is clear from both **Section 11 and Section 9 of Republic Act No. 9282** x x x.
>
> x x x x x x x x x
>
> The petitioner, through its counsel of record Jimenez, Gonzalez, L[iwanag], Bello, Valdez, Caluya & Fernandez Law Offices, received the Resolution dated September 22, 2005 on October 3, 2005. At that time, the petitioner had two counsels of record, namely, Jimenez, Gonzales, L[iwanag], Bello, Valdez, Caluya & Fernandez Law Offices and The Bengzon Law Firm which filed its Entry of Appearance on September 12, 2005. However, as of said date, Atty. Mary Jane B. Austria-Delgado of Jimenez, Gonzales, L[iwanag], Bello, Valdez, Caluya & Fernandez Law Offices was still the counsel of record considering that the Notice of Withdrawal of Appearance signed by Atty. Mary Jane B. Austria-Delgado was filed only on October 13, 2005 or ten (10) days after receipt of the September 22, 2005 Resolution of the Court's Second Division. This notwithstanding, **Section 2 of Rule 13 of the Rules of Court** provides that if any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the Court. Where a party is represented by more than one counsel of record, "notice to any one of the several counsel on record is equivalent to notice to all the counsel (***Damasco vs. Arrieta, et. al.***, *7 SCRA 224*)." Considering that petitioner, through its counsel of record, had received the September 22, 2005 Resolution as early as October 3, 2005, it had

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[17] *Id*. at 14-24.

[18] Decision penned by CTA Presiding Justice Ernesto D. Acosta, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez. *Id*. at 63-72.

only until October 18, 2005 within which to file its Petition for Review. Petitioner only managed to file the Petition for Review with the Court *En Banc* on November 17, 2005 or [after] thirty (30) days had lapsed from the final date of October 18, 2005 to appeal.

The argument that it requested Motions for Extension of Time on October 28, 2005 or ten (10) days from the appeal period and the second Motion for Extension of Time to file its Petition for Review on November 11, 2005 and its allowance by the CTA *En Banc* notwithstanding, the questioned Decision is no longer appealable for failure to timely file the necessary Petition for Review.[19] (Emphasis in the original)

In a Separate Concurring Opinion,[20] CTA Associate Justice Juanito C. Castañeda, Jr. posited that Silkair is not the proper party to claim the tax refund.

Silkair filed a Motion for Reconsideration[21] which the CTA *En Banc* denied.[22] Hence, the present Petition for Review[23] which raises the following issues:

I. WHETHER OR NOT THE PETITION FOR REVIEW FILED WITH THE HONORABLE COURT OF TAX APPEALS *EN BANC* WAS TIMELY FILED.

II. APPEAL BEING AN ESSENTIAL PART OF OUR JUDICIAL SYSTEM, WHETHER OR NOT PETITIONER SHOULD BE DEPRIVED OF ITS RIGHT TO APPEAL ON THE BASIS OF TECHNICALITY.

III. ASSUMING THE HONORABLE SUPREME COURT WOULD HOLD THAT THE FILING OF THE PETITITON FOR REVIEW WITH THE HONORABLE COURT OF TAX APPEALS *EN BANC* WAS TIMELY, WHETHER OR NOT THE PETITIONER IS THE PROPER PARTY TO CLAIM FOR REFUND OR TAX CREDIT.[24] (Underscoring supplied)

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[19] *Id*. at 68-69.

[20] *Id*. at 73-83.

[21] *Id*. at 84-90.

[22] *Id*. at 99-100.

[23] *Rollo*, pp. 9-38.

[24] *Id*. at 18.

Silkair posits that "the instant case does not involve a situation where the petitioner was represented by two (2) counsels on record, such that notice to the former counsel would be held binding on the petitioner, as in the case of *Damasco v. Arrieta, etc., et al.*[25] x x x heavily relied upon by the respondent";[26] and that "the case of *Dolores De Mesa Abad v. Court of Appeals*[27] has more appropriate application to the present case."[28]

In *Dolores De Mesa Abad*, the trial court issued an order of November 19, 1974 granting the therein private respondents' Motion for Annulment of documents and titles. The order was received by the therein petitioner's counsel of record, Atty. Escolastico R. Viola, on November 22, 1974 prior to which or on July 17, 1974, Atty. Vicente Millora of the Millora, Tobias and Calimlim Law Office had filed an "Appearance and Manifestation." Atty. Millora received a copy of the trial court's order on December 9, 1974. On January 4, 1975, the therein petitioners, through Atty. Ernesto D. Tobias also of the Millora, Tobias and Calimlim Law Office, filed their Notice of Appeal and Cash Appeal Bond as well as a Motion for Extension of the period to file a Record on Appeal. They filed the Record on Appeal on January 24, 1975. The trial court dismissed the appeal for having been filed out of time, which was upheld by the Court of Appeals on the ground that the period within which to appeal should be counted from November 22, 1974, the date Atty. Viola received a copy of the November 19, 1974 order. The appellate court held that Atty. Viola was still the counsel of record, he not having yet withdrawn his appearance as counsel for the therein petitioners. On petition for *certiorari*,[29] this Court held

x x x [R]espondent Court reckoned the period of appeal from the time petitioners' original counsel, Atty. Escolastico R. Viola, received

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[25] 117 Phil. 246 (1963).

[26] *Rollo*, p. 103.

[27] G.R. No. L-42225, July 9, 1985, 137 SCRA 416.

[28] *Rollo,* p. 108.

[29] *Supra* note 27.

the Order granting the Motion for Annulment of documents and titles on November 22, 1974. But as petitioners stress, Atty. Vicente Millora of the Millora, Tobias and Calimlim Law Office had filed an "Appearance and Manifestation" on July 16, 1974. Where there may have been no specific withdrawal by Atty. Escolastico R. Viola, for which he should be admonished, by the appearance of a new counsel, it can be said that Atty. Viola had ceased as counsel for petitioners. In fact, Orders subsequent to the aforesaid date were already sent by the trial Court to the Millora, Tobias and Calimlim Law Office and not to Atty. Viola.

Under the circumstances, December 9, 1974 is the controlling date of receipt by petitioners' counsel and from which the period of appeal from the Order of November 19, 1974 should be reckoned. That being the case, petitioner's x x x appeal filed on January 4, 1975 was timely filed.[30] (Underscoring supplied)

The facts of *Dolores De Mesa Abad* are not on all fours with those of the present case. In any event, more recent jurisprudence holds that in case of failure to comply with the procedure established by Section 26, Rule 138[31] of the Rules of Court re the withdrawal of a lawyer as a counsel in a case, the attorney of record is regarded as the counsel who should be served with copies of the judgments, orders and pleadings.[32]

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[30] *Id*. at 422.

[31] RULES OF COURT, Rule 138, Sec. 26:

Change of Attorneys – An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from any action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in the place of the former one, and written notice of the change shall be given to the adverse party.

Vide Arambulo v. Court of Appeals, G.R. No. 105818, September 17, 1993, 226 SCRA 589, 597: "Under the first sentence of [Section 26 of Rule 138 of the Rules of Court], the retirement is complete once the withdrawal is filed in court."

[32] *Aquino v. Court of Appeals*, G.R. No. 109493, July 2, 1999, 309 SCRA 578, 584.

Thus, where no notice of withdrawal or substitution of counsel has been shown, notice to counsel of record is, for all purposes, notice to the client.[33] The court cannot be expected to itself ascertain whether the counsel of record has been changed.[34]

In the case at bar, JGLaw filed its Notice of Withdrawal of Appearance on October 13, 2005[35] after the Bengzon Law Firm had entered its appearance. While Silkair claims it dismissed JGLaw as its counsel as early as August 24, 2005, the same was communicated to the CTA only on October 13, 2005.[36] Thus, JGLaw was still Silkair's counsel of record as of October 3, 2005 when a copy of the September 22, 2005 resolution of the CTA Second Division was served on it. The service upon JGLaw on October 3, 2005 of the September 22, 2005 resolution of CTA Second Division was, therefore, for all legal intents and purposes, service to Silkair, and the CTA correctly reckoned the period of appeal from such date.

TECHNICALITY ASIDE, on the merits, the petition just the same fails.

Silkair bases its claim for refund or tax credit on Section 135 (b) of the NIRC of 1997 which reads

Sec. 135. **Petroleum Products sold to International Carriers and Exempt Entities of Agencies.** — Petroleum products sold to the following are exempt from excise tax:

x x x x x x x x x

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[33] Vide *Arambulo v. Court of Appeals*, G.R. No. 105818, September 17, 1993, 226 SCRA 589, 597; *Rinconada Telephone Company, Inc. v. Buenviaje*, G.R. Nos. L-49241-42, April 27, 1990, 184 SCRA 701, 704-705; *UERM Employees Union-FFW v. Minister of Labor and Employment,* G.R. No. 75838, August 21, 1989, 177 SCRA 165, 177; *Tumbagahan v. Court of Appeals*, G.R. No. L-32684, September 20, 1988, 165 SCRA 485, 488-489; *Lee v. Romillo, Jr.*, G.R. No. 60937, May 28, 1988, 161 SCRA 589, 599-600.

[34] Vide *Lee v. Romillo, Jr.*, G.R. No. 60937, May 28, 1988, 161 SCRA 589, 600.

[35] CTA 2nd Division records, pp. 318-319.

[36] *Id*. at 320-322.

(b) Exempt entities or agencies covered by tax treaties, conventions, and other international agreements for their use and consumption: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; x x x

x x x x x x x x x,

and Article 4(2) of the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore (Air Transport Agreement between RP and Singapore) which reads

Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting party by, or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territories of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are introduced into or taken on board. The materials referred to above may be required to be kept under customs supervision and control.

The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another.[37] Section 130 (A) (2) of the NIRC provides that "[u]nless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production." Thus, Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.

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[37] *Vide Philippine Geothermal, Inc. v. Commissioner of Internal Revenue,* G.R. No. 154028, July 29, 2005, 465 SCRA 308, 317-318.

Even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.[38]

Silkair nevertheless argues that it is exempt from indirect taxes because the Air Transport Agreement between RP and Singapore grants exemption "from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party."[39] It invokes *Maceda v. Macaraig, Jr.*[40] which upheld the claim for tax credit or refund by the National Power Corporation (NPC) on the ground that the NPC is exempt even from the payment of indirect taxes.

Silkairs's argument does not persuade. In *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*,[41] this Court clarified the ruling in *Maceda v. Macaraig, Jr., viz*:

> It may be so that in *Maceda vs. Macaraig, Jr.*, the Court held that an exemption from "***all taxes***" granted to the National Power Corporation (NPC) under its charter includes both direct and indirect taxes. But far from providing PLDT comfort, *Maceda* in fact supports the case of herein petitioner, the correct lesson of *Maceda* being that an exemption from "*all taxes*" excludes indirect taxes, unless the exempting statute, like NPC's charter, is so couched as to include indirect tax from the exemption. Wrote the Court:
>
> > x x x However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently, P.D. 380, made even more specific the details of the exemption of NPC to cover, among others, *both direct and indirect taxes* on all petroleum products used in its operation. Presidential Decree No. 938 [NPC's amended charter] amended the tax

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[38] Vide *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue,* 127 Phil. 461, 470 (1967).

[39] Air Transport Agreement between RP and Singapore, Article 4(2). Vide *Rollo*, p. 28.

[40] G.R. No. 88291, May 31, 1991, 197 SCRA 771.

[41] G.R. No. 140230, December 15, 2005, 478 SCRA 61.

> exemption by simplifying the same law in general terms. It succinctly exempts NPC from "all forms of taxes, duties[,] fees…"
>
> The use of the phrase "all forms" of taxes demonstrates the intention of the law to give NPC all the tax exemptions it has been enjoying before…
>
> x x x x x x x x x
>
> It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from ***all forms*** of taxes including indirect taxes as provided under R.A. No. 6395 and P.D. 380 if it is to attain its goals. (Italics in the original; emphasis supplied)[42]

The exemption granted under Section 135 (b) of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore cannot, without a clear showing of legislative intent, be construed as including indirect taxes. Statutes granting tax exemptions must be construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority,[43] and if an exemption is found to exist, it must not be enlarged by construction.[44]

WHEREFORE, the petition is *DENIED*.

Costs against petitioner.

SO ORDERED.

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

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[42] *Id*. at 76-77, citing *Maceda v. Macaraig, Jr.,* G.R. No. 88291, May 31, 1991, 197 SCRA 771, 798, 800-801.

[43] *Id*. at 74. Citation omitted.

[44] *Id*. at 77.

SECOND DIVISION

[G.R. No. 175332. February 6, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DAMASO GANDIA *y* CASTRO,[1] JERRY[2] RAMIREZ *y* RECIO,[3] RENATO OLLERES *y* RIVERA, DANTE GANDIA *y* SANTOS,[4] JOEL GONZALES *y* TODIO and ERNESTO CALARIPIO *y* MORALES (Acquitted),** *appellants.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; EFFECT OF APPEAL BY ANY OF SEVERAL ACCUSED; APPLICATION IN CASE AT BAR.— From the March 16, 2006 Decision of the Court of Appeals in CA-G.R. H.C. No. 01648 which ***affirmed with modification*** the September 28, 1995 Decision of the Regional Trial Court, Branch 33, Siniloan, Laguna, finding them – six accused guilty beyond reasonable doubt of murder, Damaso Gandia (Damaso), Jerry Ramirez (Ramirez), Renato Olleres (Olleres), Dante Gandia (Dante), Joel Gonzales (Gonzales) and Ernesto Calaripio (Calaripio) appealed to this Court. x x x By Decision of September 28, 1995, the trial court convicted all the accused and disposed as follows: WHEREFORE, premises considered, judgment is hereby rendered, finding accused, namely: DAMASO GANDIA *Y* CASTRO, JERRY RAMIREZ *Y* RECIO, RENATO OLLERES *Y* RIVERA, DANTE GANDIA *Y* SANTOS, JOEL GONZALES *Y* TODIO and ERNESTO CALARIPIO *Y* MORALES guilty

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[1] Filed his Urgent Motion to Withdraw Appeal, CA *rollo*, p. 73, which this Court granted by Resolution of December 8, 1999, CA *rollo*, pp. 75-76. An entry of judgment had been made on January 27, 2000, CA *rollo*, p. 81.

[2] Also spelled Gerry in some parts of the records.

[3] Filed his Urgent Motion to Withdraw Appeal, CA *rollo*, p. 139, which this Court granted by Resolution of July 22, 2002, CA *rollo,* p. 143. An entry of judgment had been made on September 11, 2002, CA *rollo*, p. 226.

[4] Filed his Urgent Motion to Withdraw Appeal, *id*. at 106, which this Court granted by Resolution of June 18, 2001, *id*. at 111-112. An Entry of Judgment had been made on July 27, 2001, *id*. at 225.

beyond reasonable doubt of the crime of MURDER, qualified by treachery. On accused DAMASO GANDIA *Y* CASTRO, JERRY RAMIREZ *Y* RECIO, RENATO OLLERES *Y* RIVERA, DANTE GANDIA *Y* SANTOS AND JOEL GONZALES *Y* TODIO, without the presence of any aggravating or mitigating circumstance, hereby sentences them to *Reclusion Perpetua*. x x x Damaso, Dante and Ramirez, who had filed a Notice of Appeal, subsequently filed separate motions to withdraw appeal which this Court granted. Pursuant to *People v. Mateo*, this Court, by Resolution of September 15, 2004, referred the case with respect to appellants Olleres, Gonzales and Calaripio to the Court of Appeals. By Decision of March 16, 2006, the appellate court affirmed the conviction of the accused-appellants including Damaso, Dante and Ramirez who had withdrawn their respective appeals. It modified the trial court's decision, however, by acquitting Calaripio and imposing exemplary damages to the five accused. x x x The Court finds the affirmance by the Court of Appeals of the guilt of appellants Olleres and Gonzales well-taken. It finds the appellate court, however, to have erred in ordering Damaso, Ramirez and Dante who had, it bears repeating, withdrawn their appeal, to pay the heirs of the victim, jointly and severally, along with the two remaining appellants Olleres and Gonzales ₱25,000 in exemplary damages. The trial court's decision in so far as Damaso, Ramirez and Dante are concerned had before become final and executory after they withdrew their appeal. Separate entries of judgment with respect to them had in fact been made. As such, the appellate court is bereft of the power to modify the trial court's judgment as to them. Even if the trial court erred in not awarding exemplary damages in the first place in light of the established presence of an aggravating circumstance, the award thereof by the appellate court cannot affect Damaso, Ramirez and Dante as, in effect, they did not appeal and it is not favorable to them. So Section 11, Rule 122 of the Rules of Court directs: SEC. 11. *Effect of appeal by any of several accused.* – (a) An appeal taken by one or more of several accused **shall not affect those who did not appeal,** except insofar as the judgment of the appellate court is favorable and applicable to the latter.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

From the March 16, 2006 Decision[5] of the Court of Appeals in CA-G.R. H.C. No. 01648 which **affirmed with modification** the September 28, 1995 Decision of the Regional Trial Court, Branch 33, Siniloan, Laguna, finding them – six accused guilty beyond reasonable doubt of murder, Damaso Gandia (Damaso), Jerry Ramirez (Ramirez), Renato Olleres (Olleres), Dante Gandia (Dante), Joel Gonzales (Gonzales) and Ernesto Calaripio (Calaripio) appealed to this Court.

Appellants were, along with Eduardo Bagolbagol *y* Esplana, indicted for murder in an Information dated September 1, 1993 reading:

"That on or about June 28, 1993 at G. Redor St., Municipality of Siniloan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, while conveniently armed with deadly weapons (firearm & balisongs) with intent to kill, conspiring, confederating and mutually helping one another, with treachery and evident premeditation and taking advantage of superior strength did then and there wil[l]fully, unlawfully and feloniously attack, assault and stab several times one Louie Albuero *y* Ser[r]ano by the said weapons thereby inflicting upon him stab wounds in the vital parts of his body which directly caused his death, to the damage and prejudice of the surviving heirs of the victim.

That the qualifying and aggravating circumstances of treachery, evident premeditation and abuse of superior strength attended the commission of the crime."[6]

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[5] *Id*. at 281-304. Penned by Justice Juan Q. Enriquez, Jr. with the concurrence of Justices Godardo A. Jacinto and Vicente Q. Roxas.

[6] Records, p. 44.

From the records of the case, the following version established by the prosecution is culled:

At around 12 midnight of June 27, 1993, while Louie Albuero (the victim) and his companions including Francisco Serrano[7] (Francisco) were at a drinking spree at the Ruby Disco Pub[8] located on G. Redor Street, Siniloan, Laguna, Francisco pressed for the service to them of more beer, but as the pub was about to close, it was denied. A club bouncer thereupon approached Francisco and pub owner Damaso. Pedro Serrano (Pedro), sensing trouble, intervened to calm down the parties.[9]

The victim and company thereupon settled their bill and left in the course of which empty bottles were thrown at them. Irritated, Francisco and the victim returned at which Damaso, who was standing at the main door of the pub, tried to play down the incident. The victim boxed Damaso, however,[10] drawing Pedro to restrain Damaso and apologize for what the victim did. Not mollified, Damaso instructed his men to run after the victim as he himself took his gun at the upper floor of the pub and thereafter fired it.[11]

The victim, Francisco and Elpidio Serrano immediately fled but Damaso and his men chased them.

Damaso and his men caught up with the victim who stumbled down. As the victim lay in a prone position, Gonzales, Dante, Ramirez and Olleres stabbed him several times as Calaripio and Bagolbagol watched.

The victim was pronounced dead on arrival at the General Cailles Memorial Hospital[12] due to "*hemorrhage, severe,*

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[7] Also referred to as Frankie.

[8] Also spelled Robie.

[9] TSN, December 8, 1993, pp. 6-7.

[10] TSN, February 10, 1994, pp. 4-6.

[11] TSN, December 8, 1993, pp. 7-8 and February 10, 1004, pp. 5-6.

[12] TSN, December 8, 1993, pp. 11-13; TSN, June 21, 1994, pp. 9-13; TSN, January 17, 1994, pp. 45-46.

secondary to stab wound-chest and abdomen." The Necropsy Report[13] showed that he obtained nine stab wounds and abrasions in different parts of his body.

Gonzales and Calaripio were arrested not long after the incident. Bagolbagol surrendered to the police the following day or on June 29, 1993. Damaso went to Bicol but surrendered a year after or on June 28, 1994. Dante went to Cardona, Rizal, Olleres to San Pablo City, and Ramirez to Pasig City where they were respectively arrested.

All of the accused invoked alibi.

By Decision of September 28, 1995,[14] the trial court convicted all the accused and disposed as follows:

> WHEREFORE, premises considered, judgment is hereby rendered, finding accused, namely: DAMASO GANDIA *Y* CASTRO, JERRY RAMIREZ *Y* RECIO, RENATO OLLERES *Y* RIVERA, DANTE GANDIA *Y* SANTOS, JOEL GONZALES *Y* TODIO and ERNESTO CALARIPIO *Y* MORALES guilty beyond reasonable doubt of the crime of MURDER, qualified by treachery. On accused DAMASO GANDIA *Y* CASTRO, JERRY RAMIREZ *Y* RECIO, RENATO OLLERES *Y* RIVERA, DANTE GANDIA *Y* SANTOS AND JOEL GONZALES *Y* TODIO, without the presence of any aggravating or mitigating circumstance, hereby sentences them to *Reclusion Perpetua*.
>
> Accused ERNESTO CALARIPIO with the presence of the privileged mitigating circumstance of minority, he being born on April 11, 1979, applying the Indeterminate Sentence Law, hereby sentences him to undergo imprisonment ranging from six (6) years and one (1) day of *prision mayor* as minimum to eight (8) years of *prision mayor* as maximum.
>
> To indemnify the heirs of the victim Louie Albuero, jointly and severally: (a) For the death of the victim – ₱50,000.00; (b) Funeral expenses actually incurred and paid – ₱30,844, without subsidiary imprisonment in case of insolvency, and to pay the costs.
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> x x x x x x x x x

Considering that all the accused are detention prisoners, they should be credited with "full time during which the[y] underwent preventive

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[13] Records, pp. 16-17.

[14] *Id*. at 202-230.

imprisonment", if they had voluntarily agreed in writing to abide by the same disciplinary rules imposed on convicted prisoners; otherwise, they will be credited in the service of their sentence with 4/5 of their preventive imprisonment.[15]

Damaso, Dante and Ramirez, who had filed a Notice of Appeal, subsequently filed separate motions to withdraw appeal which this Court granted.[16]

Pursuant to *People v. Mateo,*[17] this Court, by Resolution of September 15, 2004,[18] referred the case with respect to appellants Olleres, Gonzales and Calaripio to the Court of Appeals.

Appellants faulted the trial court in finding them guilty beyond reasonable doubt. In any event, they posited that they should only be held liable for homicide as the aggravating circumstance of treachery was not alleged with specificity so as to qualify the killing to murder, pursuant to Sections 8 and 9 of the Revised Rules on Criminal Procedure that took effect on December 31, 2000.[19]

By Decision of March 16, 2006,[20] the appellate court affirmed the conviction of the accused-appellants including Damaso, Dante and Ramirez who had withdrawn their respective appeals. It modified the trial court's decision, however, by acquitting Calaripio and imposing exemplary damages to the five accused. Thus it disposed:

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[15] *Id*. at 229-230.

[16] *Vide* notes 1, 3 and 4.

[17] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, and Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

[18] CA *rollo*, p. 279.

[19] *Id*. at 147-180.

[20] *Id*. at 281-304.

WHEREFORE, premises considered, the assailed Decision dated September 28, 1995 is **AFFIRMED** with **MODIFICATION.** Damaso Gandia, Jerry Ramirez, Renato Olleres, Dante Gandia and Joel Gonzales [are] ordered to pay, jointly and severally, the heirs of Louie Albuero the additional amount of ₱25,000.00 as exemplary damages. Ernesto Calaripio is **ACQUITTED** of the charge of murder. His immediate release from custody is hereby ordered unless he is being held for other lawful causes.

x x x[21] (Emphasis in the original; underscoring supplied)

With Calaripio's acquittal, Partial Entry of Judgment relative to his appeal was entered on March 16, 2006[22] and Order of Release was issued by the appellate court on March 17, 2006.[23]

In view of the Notice of Appeal[24] from the appellate court's decision filed by the remaining appellants Olleres and Gonzales,[25] the records of this case were forwarded to this Court. By Resolution of February 5, 2007,[26] this Court required the parties to file their supplemental briefs if they so desire within 30 days from notice. Both parties manifested that they were no longer filing any supplemental briefs.[27]

The Court finds the affirmance by the Court of Appeals of the guilt of appellants Olleres and Gonzales well-taken. It finds the appellate court, however, to have erred in ordering Damaso, Ramirez and Dante who had, it bears repeating, withdrawn their appeal, to pay the heirs of the victim, jointly and severally, along with the two remaining appellants Olleres and Gonzales ₱25,000 in exemplary damages.

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[21] *Id*. at 303.

[22] *Id*. at 306.

[23] *Id*. at 305.

[24] *Id*. at 309-310.

[25] Although the names of all accused except Calaripio were still included in the title of the case and were designated as accused-appellants, it is understood that there were only two appellants left: Renato Olleres and Joel Gonzales.

[26] *Rollo*, p. 27.

[27] *Id*. at 28-30 for the appellee and pp. 31-34 for the appellants.

The trial court's decision in so far as Damaso, Ramirez and Dante are concerned had before become final and executory after they withdrew their appeal. Separate entries of judgment with respect to them had in fact been made. As such, the appellate court is bereft of the power to modify the trial court's judgment as to them. Even if the trial court erred in not awarding exemplary damages in the first place in light of the established presence of an aggravating circumstance, the award thereof by the appellate court cannot affect Damaso, Ramirez and Dante as, in effect, they did not appeal and it is not favorable to them. So Section 11, Rule 122 of the Rules of Court directs:

SEC. 11. *Effect of appeal by any of several accused.* –

(a) An appeal taken by one or more of several accused **shall not affect those who did not appeal**, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

x x x (Emphasis and underscoring supplied)[28]

WHEREFORE, the March 16, 2006 Decision of the Court of Appeals in CA-G.R. H.C. No. 01648 is hereby *AFFIRMED* with *MODIFICATION*, the dispositive portion to read as follows:

WHEREFORE, the assailed Decision dated September 28, 1995 is **AFFIRMED** with **MODIFICATION.** Renato Olleres, and Joel Gonzales [are] ordered to pay, jointly and severally, the heirs of Louie Albuero the additional amount of ₱25,000.00 as exemplary damages. Ernesto Calaripio is **ACQUITTED** of the charge of murder. His immediate release from custody is hereby ordered unless he is being held for other lawful causes.

SO ORDERED.

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

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[28] *Vide People v. Medrano,* 207 Phil. 516 (1983), where the therein accused Gilbert Medrano did not file any appeal but he was erroneously included as an appellant along with his three co-accused. This Court amended the dispositive portion of the Decision by deleting any reference to him.

SECOND DIVISION

[G.R. No. 175940. February 6, 2008]
(Formerly G.R. Nos. 155361-62)

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANSON ONG *a.k.a.* ALLAN CO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT (R.A. NO. 6425); ILLEGAL SALE OF DRUGS; ELEMENTS.— For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, GENERALLY RESPECTED.— The innocence or culpability of appellant hinges on the issue of credibility. It is an oft-repeated rule that findings of facts of the trial court, as affirmed by the appellate court, are conclusive on this Court, absent any evidence that both courts ignored, misconstrued, or misinterpreted cogent facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case.

3. CRIMINAL LAW; DANGEROUS DRUGS ACT (R.A. NO. 6425); BUY-BUST OPERATION; OBJECTIVE TEST FOR THE DETERMINATION OF WITNESS' CREDIBILITY THEREIN.— In determining the credibility of prosecution witnesses regarding the conduct of buy-bust operation, the "objective test," as laid down in *People v. Doria*, is utilized. It has been held that it is the duty of the prosecution to present a complete picture detailing the buy-bust operation—from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, until the consummation of the sale by the delivery of the illegal subject of sale. The manner by which the initial contact was made, the offer to purchase the drug, the payment of the buy-

bust money, and the delivery of the illegal drug must be the subject of strict scrutiny by courts to ensure that law-abiding citizens are not unlawfully induced to commit an offense.

4. ID.; ID.; ID.; WHEN FAILURE TO PRESENT PIECES OF EVIDENCE CAST DOUBT ON THE VERACITY OF THE BUY-BUST OPERATION.— While the presentation of the boodle money, as a general rule, is not indispensable in the prosecution of a drug case, the material inconsistencies in the testimonies of the prosecution witnesses and the non-presentation of the buy-bust money raise reasonable doubts on the occurrence of a buy-bust operation. It is indeed suspicious that vital pieces of evidence, such as the boodle money and the driver's license were lost while in the custody of Coballes who unfortunately passed away during trial. Certainly, the failure to present vital pieces of these evidence cast doubt on the veracity of the buy-bust operation.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; THAT ACCUSED IS PRESUMED INNOCENT UNTIL PROVEN OTHERWISE; REQUIRED PROOF BEYOND REASONABLE DOUBT, NOT ESTABLISHED IN CASE AT BAR.— The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. While appellant's defense engenders suspicion that he probably perpetrated the crime charged, it is not sufficient for a conviction that the evidence establish a strong suspicion or probability of guilt. It is the burden of the prosecution to overcome the presumption of innocence by presenting the quantum of evidence required. In the case at bar, the basis of acquittal is reasonable doubt, the evidence for the prosecution not being sufficient to sustain and prove the guilt of appellant with moral certainty. By reasonable doubt is not meant that which of possibility may arise but it is that doubt engendered by an investigation of the whole proof and an inability, after such an investigation, to let the mind rest easy upon the certainty of guilt. An acquittal based on reasonable doubt will prosper even though the appellant's innocence may be doubted, for a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the evidence of the defense. Suffice it to say, a slightest doubt should be resolved in favor of the accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

In dubio pro reo.[1]

Subject of this automatic review is the Decision[2] of the Court of Appeals dated 7 August 2006 which affirmed the Judgment[3] of the Regional Trial Court of Pasay City, Branch 110, convicting appellant Anson Ong *alias* Allan Co of illegal sale and possession of *shabu*.

Two separate Informations were filed before the trial court. In Criminal Case No. 97-0017, appellant was accused of illegal sale of *shabu*, thus:

> That on or about the 21st day of [April] 1997, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver **989.05** grams of Methamphetamine Hydrochloride (*shabu*), a regulated drug.
>
> Contrary to law.[4]

In Criminal Case No. 97-0018, appellant was charged with illegal possession of *shabu* allegedly committed as follows:

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[1] This Latin legal maxim literally means "when in doubt, for the accused." The earliest historical root of this rule is from the Roman Emperor Trajan (AD 98-117) when he gave the legal advice that "it is better not to punish the act of a culprit than to sentence an innocent."

[2] *Rollo,* pp. 3-24; penned by Associate Justice Normandie Pizarro and concurred in by Associate Justices Josefina Guevara-Salonga and Aurora Santiago-Lagman.

[3] CA *rollo,* pp. 32-43; presided by Judge Porfirio G. Macaraeg.

[4] *Id*. at 13.

That on or about the 21st day of April 1997, Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **Anson Ong** *alias* "**Allan Co**," did then and there willfully, unlawfully and feloniously have in his possession, custody and control **988.85** grams of Methamphetamine Hydrochloride (*shabu*), a regulated drug without the corresponding license.

Contrary to law.[5]

Upon arraignment, appellant pleaded not guilty to both charges. A joint trial of the two cases ensued.

The operative facts are narrated by prosecution witnesses who comprised members of the buy-bust team. Sometime in April 1997, Col. Zoila Lachica (Lachica) was tipped off by a female walk-in informant that a group, led by a Chinese national, was engaged in drug trafficking in Pasay City. Upon verification of said information, a meeting took place between Lachica and the informant where the latter was able to arrange a drug deal with appellant in the vicinity of Heritage Hotel.[6] Lachica then instructed Investigator Oscar Coballes (Coballes) to prepare the boodle money consisting of four ₱500.00 bills and five ₱100.00 bills placed on top of nine (9) bundles of paper cut to the size of the peso bills. These bills were then submitted to the PNP Crime Laboratory for ultraviolet powder dusting.[7] Before lunchtime on 21 April 1997, Lachica organized a team and planned the conduct of a buy-bust operation. The twelve-man team was composed of Lachica, Coballes, Police Supt. Edgar Danao (Danao), P/Inspector Rolando Montes (Montes), PO3 Manuelito Lagradilla (Lagradilla), SPO2 Wilfredo Saballa (Saballa), SPO3 Pardo, SPO2 Pedro Tan, the confidential informant, and other civilian agents. Danao acted as the team leader with Montes assisting him. Saballa was designated as the poseur-buyer and the other members of the team were tasked to secure the area.[8]

[5] *Id*. at 15.

[6] TSN, 29 July 1999, pp. 4-9.

[7] TSN, 3 March 1998, p. 13.

[8] *Id*. at 16-17.

After lunch, the group proceeded to the parking lot of San Juan de Dios Hospital onboard four (4) vehicles, including a motorcycle driven by Lagradilla. At about 3:00 p.m., they reached the parking lot where Danao conducted the final briefing and then deployed his men strategically between the premises of Heritage Hotel and Copacabana Hotel.[9] At 4:00 pm, Saballa and the informant went to Heritage Hotel while the other team members strategically posted themselves within the hotel premises.[10]

Fifteen minutes later, Saballa and the informant left Heritage Hotel and proceeded to the adjacent Copacabana Hotel where he waited at the main entrance of the lobby. Suddenly, a black Honda Civic car with Plate No. ULN 766 arrived and parked along the driveway near the front entrance.[11] The informant approached the car while Saballa was left behind holding the black bag containing the boodle money.[12] Upon signal by the informant, Saballa came up to the right front door. Saballa showed the contents of the bag to the driver of the car, who was later identified as appellant. He then handed the bag to him.[13] Instantaneously, a man approached the car, took the boodle money from appellant and ran away.[14] Coballes ran towards the driver's side and poked his gun at appellant. Appellant tried moving the car but Coballes stood in front and blocked it. Appellant was then ordered to open the door. Coballes saw a red bag containing white crystalline substance inside the car and took it into custody.[15] Meanwhile, Lagradilla chased the man who took the boodle money around the parking area of Copacabana Hotel.[16] While on the run, Lagradilla saw the man

[9] *Id*. at 17-20.

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

[11] TSN, 26 November 1999, p. 44.

[12] TSN, 3 March 1998, pp. 30-34.

[13] TSN, 17 October 2000, pp. 44-47.

[14] TSN, 3 March 1998, pp. 36-37.

[15] *Id*. at 41-43.

[16] *Id*. at 40.

throw the money inside a passing white Toyota car driven by a certain Chito Cua (Cua). Instead of pursuing the man, Lagradilla blocked the white Toyota car and arrested Cua.[17]

Appellant presented an entirely different account of the incident on 21 April 1997. Appellant, who apparently does not know English and Tagalog was assisted by an interpreter, narrated that he is a resident of Chuan Chow, People's Republic of China. Upon the suggestion of Lau Chan, appellant decided to go to the Philippines to start a clothing business. In the morning of 21 April 1997, appellant told Lau Chan that he wanted to go to Baclaran. Lau Chan, who himself was planning to go to the casino at Heritage Hotel, asked appellant to meet up with him. Appellant tried calling Lau Chan on his cellphone but the latter was not answering. This prompted appellant to go to Heritage Hotel to look for Lau Chan. At around 4:00 p.m., appellant was walking along Epifanio Delos Santos Avenue towards the direction of the Light Rail Transit when he noticed a commotion in front of the hotel and saw some men carrying guns. Fearing for his safety, appellant decided to walk faster but someone stopped him and poked a gun at him. He was made to board a white car in which he met Cua for the first time. They were then brought to Camp Crame for questioning. It was Cua who translated the questions propounded by the police officers to appellant. He was informed by Cua that he was arrested for failure to show any document regarding his stay in the country. During arraignment however, he learned that he was being charged of possession and sale of *shabu*.

Finding the testimonies of the prosecution witnesses credible as against the bare and self-serving assertions of appellant, the trial court rendered a decision finding appellant guilty as charged. The dispositive portion of the 11 February 2002 Decision reads:

WHEREFORE, in view of the foregoing, the Court finds the herein accused ONG POK PIW *a.k.a.* ANSON ONG *a.k.a.* ALLAN CO, GUILTY beyond reasonable doubt of two (2) offenses for Violations of Section 15 and 16, Article III of Republic Act [No.] 6425, as amended

[17] TSN, 26 November 1999, p. 54.

in relation to Section 20 and 21 of Article IV of said law and hereby imposes on him the penalty of two (2) *RECLUSION PERPETUAS* in these cases and a fine in the total amount of ₱200,000.00 in these cases without subsidiary imprisonment in case of insolvency.

The Methamphetamine Hydrochloride or "*shabu*" in Criminal Case No. 97-0017 for Violation of Section 15 of Republic Act [No.] 6425, as amended, weighing 989.05 grams and the Methamphetamine Hydrochloride or "*shabu*" in Criminal Case No. 97-0018 weighing 988.85 grams are hereby declared confiscated in favor of the government. The PNP Crime Laboratory at Camp Crame, Quezon City or its duly authorized representative which has custody and possession of said regulated drugs are hereby directed to immediately cause the delivery and transportation thereof to the Dangerous Drugs Board for proper disposition in accordance with law. The Chief of said office is further directed to inform this Court within 20 days from receipt hereof of the action taken thereon.

The period during which the herein accused was under detention during the pendency of these cases shall be credited to him in full provided he agreed to abide by strictly with the rules and regulations of the City Jail.

SO ORDERED.[18]

An appeal was directed to this Court. However, in a Resolution[19] dated 20 February 2006, the case was transferred to the Court of Appeals in light of our pronouncement in *People v. Mateo*.[20]

On 7 August 2006, the Court of Appeals rendered the assailed decision affirming with modification the trial court's ruling, to wit:

WHEREFORE, premises considered, the judgment rendered by the Regional Trial Court, Branch 110, Pasay City, in Criminal Case Nos. 97-0017 and 97-0018 is hereby **AFFIRMED with modification**. As modified, the fine is increased to Five Hundred Thousand Pesos (₱500,000.00) for each offense or a total of ONE MILLION PESOS (₱1,000,000.00).

SO ORDERED.[21]

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[18] CA *rollo*, pp. 42-43.

[19] *Rollo*, p. 2.

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

[21] *Rollo*, p. 23.

In finding appellant guilty, the appellate court strongly relied on the testimonies of the police officers and dismissed the imputed inconsistencies in their statements as being minor.

At the core of this appeal is the issue of whether the prosecution was able to prove beyond reasonable doubt the guilt of appellant.

Appellant primarily questions the credibility of the prosecution witnesses. He claims that their testimonies were tainted with inconsistencies which even the trial court had noted in its decision. Appellant relies on said observation to support his acquittal based on reasonable doubt. He asserts that his conviction must rest on the strength of the prosecution's own evidence and not on the weakness of the evidence for the defense.

The Office of the Solicitor General (OSG), in its Brief,[22] insists that all the elements of sale and illegal possession of *shabu* were duly established by the prosecution. It avers that appellant was caught in *flagrante delicto* selling *shabu* to the poseur-buyer in a legitimate buy-bust operation.[23] Moreover, when the poseur-buyer and Coballes opened the door of appellant's car, they saw a red bag on the floor containing white crystalline substances which were later tested and found positive for the presence of *shabu*.[24] The OSG contends that the opinion of the trial court with respect to the actuations of the prosecution witnesses on the stand did not affect its judgment of conviction because the trial court lent full faith and credence to the collective testimonies of the police officers who are presumed to have performed their duties in accordance with law.[25]

For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is

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[22] CA *rollo,* pp. 108-128.

[23] *Id*. at 118.

[24] *Id*. at 120.

[25] *Id*. at 123.

the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*.[26]

The prosecution seeks to establish the presence of these elements through the testimonies of the police officers involved in the buy-bust operation. The innocence or culpability of appellant thus hinges on the issue of credibility. It is an oft-repeated rule that findings of facts of the trial court, as affirmed by the appellate court, are conclusive on this Court, absent any evidence that both courts ignored, misconstrued, or misinterpreted cogent facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case.[27] This case falls under the exception.

In determining the credibility of prosecution witnesses regarding the conduct of buy-bust operation, the "objective test," as laid down in *People v. Doria*,[28] is utilized. It has been held that it is the duty of the prosecution to present a complete picture detailing the buy-bust operation—from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, until the consummation of the sale by the delivery of the illegal subject of sale. The manner by which the initial contact was made, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug must be the subject of strict scrutiny by courts to ensure that law-abiding citizens are not unlawfully induced to commit an offense.[29]

In *People v. Ong*[30] and *Cabugao v. People*[31] where the "objective test" was also applied, chasmic deficiencies that similarly marked

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[26] *People v. Quiaoit*, G.R. No. 175222, 27 July 2007; *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547; *People v. Del Mundo*, G.R. No. 169141, 6 December 2006, 510 SCRA 554, 562.

[27] *People v. Dilao*, G.R. No. 170359, 27 July 2007.

[28] 361 Phil. 595 (1999).

[29] *Cabugao v. People*, G.R. No. 158033, 30 July 2004, 435 SCRA 624; *People v. Ong,* G.R. No. 137348, 21 June 2004, 432 SCRA 471, 485*; People v. De Guzman*, G.R. No. 151205, 9 June 2004, 431 SCRA 516, 523; *People v. Padasin*, 445 Phil. 448, 456 (2003).

[30] G.R. No. 137348, 21 June 2004, 432 SCRA 471.

[31] G.R. No. 158033, 30 July 2004, 435 SCRA 624.

the prosecution evidence led to the absolution of the accused. In *Ong*, also involving Chinese nationals as accused, the prosecution evidence on the buy-bust operation was outrageously complete as the confidential informant who had sole knowledge of how the alleged illegal sale of *shabu* was initiated and how it was carried out was not presented as a witness.[32] In *Cabugao*, the prosecution witnesses could not agree on the reason that prompted them to conduct the buy-bust operation. While the first witness testified that the tip came from their informants, the second witness maintained that no informer was involved in the operation.[33]

In the case at bar, the evidence for the prosecution failed to prove all the material details of the buy-bust operation. The details of the meeting with the informant, the alleged source of the information on the sale of illegal drugs, appear hazy. Lachica declared that he met the informant for the first time a week before the buy-bust operation:

Q Do you recall Mr. Witness when that walk-in informant visited your office?

A I cannot recall the exact date but as far as I can remember she visited before the operation was conducted.

FISCAL

And you are referring to the operation on April 21, 1997?

A Yes, sir.

COURT

How many days prior to the date of operation did that alleged walk-in informant go to your office?

A I cannot remember the exact date but I think more or less one week before. More or less 1 week.[34]

But Coballes testified that the informant reports to their office every now and then, thus:

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[32] *Supra* note 30.

[33] *Supra* note 31 at 634.

[34] TSN, 29 July 1999, pp. 4-5.

COURT

A moment counsel, this informant, was he an employee of your office or an informant working for your office?

WITNESS

A He is an informant working from our office.

COURT

When you say informant working in your office, is he receiving salary from your office as a regular employee or he reports or he goes to your office every now and then?

A He reports in our office every now and then.[35]

Coballes related that the informant was present during the briefing held before lunch on 21 April 1997:

Q Now when Col. Lachica called you, aside from you and some members of your office, are there any other persons present?

A Yes sir, our informant.

Q Now how do you know that this person is an informant?

A He was introduced to us by our chief, Col. Lachic[a], sir.[36]

while Lagradilla denied seeing the informant at the meeting:

COURT

In that briefing, was there a mention of an informant or an asset?

WITNESS

A Col. Lachica mentioned of a certain asset.

COURT

Was that asset present during the briefing at the headquarters?

A Asset was not present[,] sir.[37]

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[35] TSN, 14 December 1998, p. 19.

[36] TSN, 3 March 1998, p. 9.

[37] TSN, 26 November 1999, pp. 12-13.

Despite being the designated poseur-buyer, Saballa testified that he had no knowledge of how much *shabu* he was going to buy.

Q How much *shabu* are you going to purchase?
A One (1) kilo, Your Honor.

Q How much is one kilo worth?
A I am not aware of the price, Your Honor.

Q How much is one kilo worth?
A I do not know the price they have agreed, Your Honor.

Q You are supposed to be the poseur buyer and you do not know how much *shabu* you are going to buy?
A I do not know, Your Honor.[38]

The actual exchange of the bags containing *shabu* and the boodle money was not clearly established. The presentation of *shabu* before the Court could have shed light on the identity of the object of the sale. Unfortunately, the presentation of the *shabu* purportedly confiscated from appellant was dispensed with at the instance of the defense counsel.[39]

Coballes testified that he saw Saballa hand the boodle money to appellant in exchange for a wrapped object presumed to be *shabu*.[40] On the contrary, the ultraviolet dusting of the boodle money was conducted but appellant was found negative for fluorescent powder.[41]

As between the prosecution witnesses' account that it was appellant to whom the boodle money was passed and who was driving the black Honda Civic car during the alleged buy-bust operation and appellant's denial that he owned and drove said car, we are inclined to believe appellant. The prosecution failed to present the purported driver's license confiscated from

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[38] TSN, 17 October 2000, p. 18.

[39] TSN, 3 March 1998, p. 34.

[40] *Id*.

[41] TSN, 22 August 2000, p. 7.

appellant. In fact, they reasoned that it was missing.[42] On the other hand, the defense presented a certification from the Land Transportation Office (LTO) and the Philippine Motor Association stating that appellant's name does not exist in the LTO's file of licensed drivers and has not been issued a Philippine International Driving Permit[43] by the Automobile Association of the Philippines.

Further rendering the prosecution's version dubious is the escape of another alleged cohort of appellant. Lagradilla, who was specifically tasked to block or run after any escaping suspect, failed in this regard. During the alleged buy-bust operation, he was positioned in such a manner that a firewall was blocking his vantage point.[44] Instead of using his motorcycle, he chased the suspect on foot.[45] Moreover, it is quite difficult to imagine how one suspect can easily escape notwithstanding the presence of at least twelve (12) police operatives in the vicinity.

The witnesses' hesitation in answering questions on the stand, as aptly observed by the trial court,[46] only compounded their lack of credibility.

Lachica, who was the Chief of the Criminal Investigation Division of the NCR-CIDG, cannot seem to recall the vital parts of the buy-bust operation such as the composition of the buy-bust team, the strategic location of the team members, the presence of the name of the other accused, Cua,[47] and how much of the boodle money was recovered.[48]

Moreover, he denied any participation in the conduct of the buy-bust operation:

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[42] TSN, 12 February 1999, p. 3.

[43] Records, pp. 299-300.

[44] TSN, 26 November 1999, p. 48.

[45] *Id*. at 51.

[46] TSN, 29 July 1999, p. 8; 26 November 1999, p. 19.

[47] TSN, 29 July 1999, p. 18.

[48] *Id*. at 30.

Q You said you supervised the planning of this operation. Did you not say that?

A No Your Honor[,] what I said is that I gave instruction to Col. Danao and we planned out the operation and our procedure, the [over-all] team leader will be the one to provide or make some arrangement[s] pertaining to the police operation.[49]

However, Coballes insisted that Lachica was present all throughout the operation, thus:

ATTY. ZULUETA

And so, in your testimony February 13, 2000[,] you narrated to the Court that Col. Lachica led this operation?

A Yes, sir.

Q He was with you on the parking lot to brief you on your operation?

A Yes.

Q And he was with you all throughout the operation?

A He was at the Heritage Hotel. Yes.

Q Mr. Witness[,] you as police officer[,] do you know the penalty for perjury?

A I know that perjury is punishable but I don't know the penalty.

Q Did you know that Col. Lachica appeared before this Court and testified in this Hon. Court on July 29, 1999 and he testified that he did not conduct the actual operation but it was Col. Danao?

A He was with us and Col. Danao at the Heritage Hotel at the time.

Q Will you still maintain that, who is lying now, Col. Lachica or you?

A Col. Lachica and the rest stayed at the Heritage Hotel considering that the buy-bust operation was at the Heritage Hotel.

Q And yet, Col. Lachica said that as lone Chief of the Criminal Investigation Division he only gave instruction to Col. Danao.

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[49] *Id*.

The question is[:] do you still maintain despite that [*sic]* testimony that Col. Lachica was present during the operation?

A I do.[50]

Lachica denied having heard of the name of appellant until he was arrested:

Q Will you tell the Court[,] do you know a certain Anson Ong *alias* Allan Co?

A During April?

Q Before April?

A No, I don't remember that I encountered a name Anson Ong but after the operation conducted by Edgar Danao[,] I read the name of Anson Ong as the arrested person.[51]

On the other hand, Montes alleged that the name of appellant was mentioned during the briefing held in the office:

FISCAL VIBANDOR

Q Mr. Witness, on April 21, 1997, you said that you will conduct a buy-bust operation against whom?

WITNESS

A Against Anson Ong.

FISCAL VIBANDOR

Q Now, when for the first time did you come to know that you are going to conduct [buy-bust] operation against Anson Ong?

A During our briefing at the office.

x x x x x x x x x

Q And who were present during that briefing?

A All of us except for Lagradilla because he was sent out to get his motor bike, it was only Col. Danao, myself, Coballes, Saballa, Tan and [a] civilian asset.[52]

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[50] TSN, 25 April 2000, p. 12.

[51] TSN, 29 July 1999, p. 4.

[52] TSN, 15 February 2000, pp. 7-8.

According to Coballes, he was instructed by Lachica to prepare the boodle money to be submitted to the PNP Crime Laboratory for powder dusting:

Q You want to impress us Mr. Witness, that a week or before the day that you first met the informant you were instructed by Colonel Lachica to prepare buy-bust money?

WITNESS

A Yes, sir.[53]

Lachica's million-peso estimate of the drug deal is certainly higher than the ₱250,000.00 amount stated by Coballes. Ironically, Lachica cannot recall the exact amount or denomination of the boodle money he himself had provided for the operation:

Q According to you[,] there will be a drug deal. Do you know how much *shabu* is involved in this drug deal as arranged by your lady informant?
A I cannot recall the exact amount or quantity but the deal is more than one million. x x x[54]

Q Who provided the buy bust money for this buy-bust operation?
A I was the one who provided the buy-bust money, the boodle money.

FISCAL

How much money did you provide?
A I cannot remember the exact amount because the money used in that operation is boodle money.

Q And to whom did you give this money that will be used in this [buy-bust] operation?
A I think Agent Coballes.

Q Do you recall in what denomination were these [buy-bust] money given?
A I cannot remember.[55]

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[53] TSN, 3 March 1998, pp. 12-13.

[54] TSN, 29 July 1999, p. 8.

[55] *Id*. at 14.

While the presentation of the boodle money, as a general rule, is not indispensable in the prosecution of a drug case, the material inconsistencies in the testimonies of the prosecution witnesses and the non-presentation of the buy-bust money raise reasonable doubts on the occurrence of a buy-bust operation.[56] It is indeed suspicious that vital pieces of evidence, such as the boodle money and the driver's license were lost while in the custody of Coballes who unfortunately passed away during trial. Certainly, the failure to present vital pieces of these evidence cast doubt on the veracity of the buy-bust operation.

Another baffling point is the dismissal of the criminal case against Cua, the alleged accomplice of appellant. The prosecution witnesses testified that the boodle money was found in his possession. This fact was confirmed by the presence of fluorescent powder on Cua's hands.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. While appellant's defense engenders suspicion that he probably perpetrated the crime charged, it is not sufficient for a conviction that the evidence establish a strong suspicion or probability of guilt. It is the burden of the prosecution to overcome the presumption of innocence by presenting the quantum of evidence required.

In the case at bar, the basis of acquittal is reasonable doubt, the evidence for the prosecution not being sufficient to sustain and prove the guilt of appellant with moral certainty. By reasonable doubt is not meant that which of possibility may arise but it is that doubt engendered by an investigation of the whole proof and an inability, after such an investigation, to let the mind rest easy upon the certainty of guilt. An acquittal based on reasonable doubt will prosper even though the appellant's innocence may be doubted, for a criminal conviction rests on the strength of the evidence of the prosecution and

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[56] *People v. Balag-Ey*, G.R. No. 141532, 14 April 2004, 427 SCRA 384, 406.

not on the weakness of the evidence of the defense.[57] Suffice it to say, a slightest doubt should be resolved in favor of the accused.[58]

With the failure of the prosecution to present a complete picture of the buy-bust operation, as highlighted by the disharmony and incoherence in the testimonies of its witnesses, acquittal becomes ineluctable.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02256 is *REVERSED* and *SET ASIDE*. Anson Ong *a.k.a*. "Allan Co" is *ACQUITTED* of the crime charged against him on the ground of reasonable doubt. His immediate release from prison is ordered unless he is being held for some other valid or lawful cause.

The Director of the Bureau of Corrections is ORDERED to implement this Decision forthwith and to INFORM this Court, within five (5) days from receipt hereof, of the date appellant was actually released from confinement. Costs *de oficio.*

SO ORDERED.

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

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[57] *People v. Pabiona*, G.R. No. 145803, 30 June 2004, 433 SCRA 301, 323, citing *People v. Morada*, 307 SCRA 362, 380 (1999), *People v. Cañete*, G.R. No. 128321, 11 March 2004, 425 SCRA 353, and *People v. Leaño*, 366 SCRA 774, 792 (2001).

[58] *People v. Milan*, 370 Phil. 493, 506 (1999).

SECOND DIVISION

[G.R. No. 178066. February 6, 2008]
(Formerly G.R. Nos. 150420-21)

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROLANDO ZAMORAGA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREON, RESPECTED.— At the heart of almost all of rape cases is the issue of credibility of witnesses. This is primarily because the conviction or acquittal of the accused depends entirely on the credibility of the victim's testimony as only the participants therein can testify to its occurrence. The manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the witnesses and assess their credibility by the various *indicia* available but not reflected on record. The demeanor of the person on the stand can draw the line between fact and fancy, or evince if the witness is lying or telling the truth. Thus, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of trial courts is generally given the highest degree of respect if not finality.

2. ID.; ID.; ID.; GUIDING PRINCIPLES IN RAPE CASES; APPLICATION IN CASE AT BAR.— Conviction for rape therefore may lie based solely on the testimony of the victim if the latter's testimony is credible, natural, convincing and consistent with human nature and the normal course of things. In scrutinizing such credibility, jurisprudence has established the following doctrinal guidelines: (1) the reviewing court will not disturb the findings of the lower court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that could affect the result of the case; (2) the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect and even finality as it had the opportunity to examine their demeanor

when they testified on the witness stand; and (3) a withness who testified in a clear, positive and convincing manner and remained consistent on cross-examination is a credible witness. Applying these guidelines to the case at bar, we note that AAA's account of her harrowing experience is trustworthy and convincing as there is nary an indication in the records that her testimony should be seen in a suspicious light. On the contrary, the records do reveal that AAA testified in a candid and straightforward manner and in fact remained resolute and unswerving even on cross-examination, able as she was to withstand all the rigors of the case including the medical examination and the trial that followed. Indeed, it is inconceivable for a child to concoct a sordid tale of so serious a crime as rape at the hands of a close kin and subject herself to the stigma and embarrassment of a public trial, if her motive were other than an earnest desire to seek justice.

3. **ID.; ID.; ALIBI; WEAK DEFENSE THAT CANNOT PREVAIL ABSENT THE PHYSICAL IMPOSSIBILITY FOR ACCUSED TO BE AT THE PLACE OF THE CRIME AT THE TIME OF THE CRIME AND PRESENT THE POSITIVE TESTIMONY AGAINST THE ACCUSED.—** Appellant offers an alibi to evade liability. While he claims the impossibility of his having committed the rapes on the ground that he was on those dates employed in faraway places, he nevertheless admits—and so does his witness, BBB—that the place where he retired after work and the place where the rapes occurred were only two or three kilometers away from each other. No other principle in criminal law jurisprudence is more settled than that alibi is the weakest of all defenses as it is prone to facile fabrication. It is therefore received in court with much caution and for it to prevail, the accused must establish by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime when it happened, and not merely that he was somewhere else. The records show that such is not the case here as appellant failed to adduce an iota of satisfactory evidence that it was physically impossible for him to be in AAA's house at or about the same time the rape occurred. What stands out therefore is that the evidence for the defense has failed to negate appellant's presence at the *locus criminis* at the time of the commission of the offense. Suffice to say, denial and alibi, being negative self-serving defenses, cannot prevail over the

affirmative allegations of the victim, AAA, and the latter's categorical and positive identification of appellant as her assailant. On this score, the imputation of ill motives to AAA's mother and to AAA herself must likewise be dismissed as a last-ditch attempt on the part of appellant to exonerate himself from an inevitable guilty verdict. With respect to the monetary award, civil indemnity and moral damages, being based on different jural foundations, are separate and distinct from each other.

4. CRIMINAL LAW; RAPE; CIVIL PENALTIES; PROPER CIVIL INDEMNITY AND MORAL DAMAGES.— In *People v. Biong*, we held that upon a finding of the fact of rape the award of civil indemnity is mandatory in the amount of ₱50,000.00, or ₱75,000.00 if death penalty is involved; whereas moral damages in the amount of ₱50,000.00 is automatically granted in addition without need of further proof inasmuch as it is assumed that a victim of rape has actually suffered moral injuries that entitles her to such an award. Hence, the award of the Court of Appeals in the amount of ₱50,000.00 as civil indemnity is proper in the case at bar.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

For consideration is the Court of Appeals Decision[1] dated 26 January 2007 that affirmed the judgment of conviction[2] of the Regional Trial Court of Panabo City, Davao Del Norte, Branch 4 involving appellant Rolando Zamoraga for the crime of rape.

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[1] *Rollo,* pp. 4-12. In CA G.R. CR-HC No. 00181; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Mario V. Lopez and Michael P. Elbinias.

[2] Records, pp. 130134. In Criminal Case Nos. 98-84 and 98-85; penned by Hon. Jesus L. Grageda.

Appellant was charged with violation of Article 335 of the Revised Penal Code, as amended by Section 2 of Republic Act (R.A.) No. 7659[3] and R.A. No. 8353[4] in two informations, the inculpatory portions of which read—

Criminal Case No. 98-84:

That on or about November 7, 1997, in the Municipality of x x x, Province of x x x, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the uncle of the victim, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], his niece, a nine (9)-year old girl, against her will.

CONTRARY TO LAW.[5]

Criminal Case No. 98-85:

That sometime in the month of June 1996, in the Municipality of x x x, Province of x x x, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the uncle of the victim, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], his niece, a nine (9)-year old girl, against her will.

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[3] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL CODE, AS AMENDED, OTHER SPECIAL LAWS, AND FOR OTHER PURPOSES.

[4] AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES.

[5] CA *rollo,* p. 5. Purusant to Sec. 29 of Republic Act (R. A.) No. 7610, Sec. 4 of R.A. No. 9262 and Sec. 40 of A.M. No. 04-10-11-SC, and our ruling in *People v. Cabalquinto,* G.R. No. 167693, 19 September 2006, 502 SCRA 419, the personal circumstances of the victims or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims and of their immediate family members other than accused shall appear as "AAA", "BBB", and so on. Address shall appear as "x x x."

CONTRARY TO LAW.[6]

Appellant entered a negative plea to both charges.[7] Joint trial of the cases ensued which culminated in the judgment of guilt, based on the following statement of facts:

Appellant, who was positively identified in open court by AAA as her assailant,[8] is the second cousin of AAA's mother who frequented, and on occasions spent the night in, their house.[9] AAA recounted that the first rape occurred sometime in June 1996—a date of which AAA was certain because it was the opening of school. At 9:00 that night, while she was fast asleep in her room with her seven-year old sister, she was surprised to find that appellant was already on top of her.[10] It was dark but she was able to recognize appellant because the moon beams filtered through the gaps in the bamboo wall of the house.[11] In that instant, she realized that appellant had no more clothes on and that he had already removed her own short pants and panties. Appellant inserted his finger and then his penis in her vagina and started pumping. AAA felt pain in her genitalia. After gratifying his lust, appellant warned AAA not to tell the incident to anyone or appellant would kill her if she did. AAA soon discovered that there was blood in her genitalia. Appellant kept on abusing her many times more since then.[12] The last time appellant wantonly gave bent to his carnality on her, under the same circumstances as the first one, was on 7 November 1997, a date that she likewise could not forget because it was the eve of her ninth birthday.[13] On 30 November 1997, AAA confessed

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[6] CA *rollo,* p. 6. See note 5.

[7] Records, pp. 4, 33.

[8] TSN, 15 October 1998, pp. 6-7.

[9] *Id*. at 7.

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

[11] *Id*. at 11.

[12] *Id*. at 11-14.

[13] *Id*. at 14.

her ordeal to her mother who in turn lost no time in reporting the incident to the barangay authorities and then submitting her daughter for medical examination.[14]

Eleanor Salva, the doctor who administered the examination on AAA, testified that she found two (2) hymenal lacerations in the victim's vagina at the 1:00 and 5:00 o'clock positions, at least three weeks to one year old, possibly caused by the alleged rapes. She pointed out that the victim was possibly subjected to forcible sexual intercourse within the past three weeks to one year.[15] Furthermore, to prove that AAA was eight (8) and nine (9) years old, respectively, at the time of the first and last rapes, the prosecution submitted to the trial court her certificate of birth.[16]

Appellant denied the charges. He argued that he could not have committed the rapes because on the alleged dates thereof, he was far away from AAA's residence as he was then employed either as a laborer in Davao Central Chemical Corporation in Davao City, or as a construction worker in Tagum City.[17] He claimed that at the time he was so employed, he stayed at the house of BBB, his aunt and AAA's maternal grandmother, located two or three kilometers away from AAA's residence.[18] BBB's testimony, which corroborated appellant's alibi in material respects, was offered in court to fortify the defense.[19]

Giving more credence to the evidence for the prosecution, the trial court dismissed appellant's alibi and accordingly sentenced him to suffer the penalty of *reclusion perpetua* for each of the two rapes alleged and proved, as well as to indemnify

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[14] *Id*. at 17; TSN, 15 December 1999, pp. 6-7.

[15] Records, p. 90; TSN, 11 May 1999, pp. 5-6.

[16] Records, p. 89.

[17] TSN, 12 April 2000, p. 6.

[18] *Id*. at 9; TSN, 28 June 2000, pp. 3-5.

[19] TSN, 4 January 2001, pp. 8-9, 11.

AAA, likewise for each count, in the amount of seventy-five thousand pesos (₱75,000.00).[20]

The case was directly appealed to the Court pursuant to Section 3 and Section 10 of Rule 122, Section 13 of Rule 124 and Section 3 of Rule 125 of the Rules on Criminal Procedure. Pursuant to *People v. Mateo,*[21] the case was transferred to the Court of Appeals for intermediate review per Resolution[22] dated 20 September 2004. However, finding no sufficient basis to overturn the lower court, the Court of Appeals, on 26 January 2007, rendered the assailed decision affirming the findings and conclusion of the court *a quo* but modifying the award of damages as per recommendation of the Office of the Solicitor General (OSG), thus:

> FOR THE REASONS STATED, the assailed joint Decision dated 16 August 2001 of the Regional Trial Court, Branch 4, Panabo, Davao del Norte so far as it held appellant guilty beyond reasonable doubt of two (2) counts of rape is **AFFIRMED** with the **MODIFICATIONS** that he shall pay the victim, [AAA,] ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages, for each and every count of rape. *Costs against appellant.*
>
> SO ORDERED.[23]

Undeterred, appellant filed a Notice of Appeal[24] and the records of the case were thereafter elevated to the Court. The parties were then required to file their respective supplemental briefs,[25] but they manifested instead that they were adopting their respective briefs filed with the appellate court.[26]

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[20] CA *rollo,* p. 19.

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

[22] CA *rollo,* p. 94.

[23] *Rollo,* p. 11.

[24] *Id*. at 13-14.

[25] *Id*. at 16.

[26] *Id*. at 17-18, 20-21.

Thus, appellant once again raises before the Court the lone issue that the trial court gravely erred in establishing his guilt for two counts of statutory rape beyond reasonable doubt.[27] He challenges the credibility of the testimony of AAA in that the latter's almost perfect and highly detailed narration of the incidents of rape was rehearsed and that it was possible that she was coached by her mother to testify falsely against him. He suspects that AAA, induced by no sincere desire to obtain justice, was merely influenced by her mother to point to him as the assailant in order that AAA's father could get even with him and resolve the ill feelings between them.[28] Capitalizing on the fact that BBB, AAA's maternal grandmother, took his side and testified in his favor, he concludes that it was indeed unimaginable for BBB to controvert the allegations of her own granddaughter unless the charges were false.[29]

There is no merit in the appeal.

At the heart of almost all of rape cases is the issue of credibility of witnesses. This is primarily because the conviction or acquittal of the accused depends entirely on the credibility of the victim's testimony as only the participants therein can testify to its occurrence. The manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the witnesses and assess their credibility by the various *indicia* available but not reflected on record. The demeanor of the person on the stand can draw the line between fact and fancy, or evince if the witness is lying or telling the truth. Thus, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of trial courts is generally given the highest degree of respect if not finality.[30]

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

[28] *Id*. at 33-40.

[29] *Id*. at 37.

[30] *People v. Fernandez*, G.R. No. 172118, 24 April 2001, 522 SCRA 189, 199.

Conviction for rape therefore may lie based solely on the testimony of the victim if the latter's testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[31] In scrutinizing such credibility, jurisprudence has established the following doctrinal guidelines: (1) the reviewing court will not disturb the findings of the lower court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that could affect the result of the case; (2) the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect and even finality as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testified in a clear, positive and convincing manner and remained consistent on cross-examination is a credible witness.[32]

Applying these guidelines to the case at bar, we note that AAA's account of her harrowing experience is trustworthy and convincing as there is nary an indication in the records that her testimony should be seen in a suspicious light. On the contrary, the records do reveal that AAA testified in a candid and straightforward manner and in fact remained resolute and unswerving even on cross-examination, able as she was to withstand all the rigors of the case including the medical examination and the trial that followed. Indeed, it is inconceivable for a child to concoct a sordid tale of so serious a crime as rape at the hands of a close kin and subject herself to the stigma and embarrassment of a public trial, if her motive were other than an earnest desire to seek justice.[33]

Appellant offers an alibi to evade liability. While he claims the impossibility of his having committed the rapes on the ground that he was on those dates employed in faraway places, he nevertheless admits—and so does his witness, BBB—that the

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[31] *Id*.; *People v. Medina*, 360 Phil. 281, 290 (1998).

[32] *People v. Comanda*, G.R. No. 175880, 6 July 2007, 526 SCRA 689, 699.

[33] *People v. Alarcon*, G.R. No. 174199, 7 March 2007, 517 SCRA 718, 786; *People v. Melivo*, 323 Phil. 412 (1996); *People v. Abellera*, 526 SCRA 329.

place where he retired after work and the place where the rapes occurred were only two or three kilometers away from each other.[34] No other principle in criminal law jurisprudence is more settled than that alibi is the weakest of all defenses as it is prone to facile fabrication. It is therefore received in court with much caution and for it to prevail, the accused must establish

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[34] Appellant admitted in court that the house where he was staying at the time of the rapes was only two or three kilometers away from AAA's residence:

DIRECT EXAMINATION

Q: How far is the house of the parents of the complainant from the house where you were staying in the farm?
A: More or less two (2) kilometers.

Q: Can you go there by the road, or walking?
A: If I will take the road, it will reach about three kilometers, but if I will take a short-cut way, it will just [be] about 2 kilometers (TSN, 12 April 2000, p. 9).

CROSS-EXAMINATION

Q: Now Mr. Zamoraga, you mentioned that you arrived in Davao in October of 1993?
A: Yes, sir.

Q: After that, you resided in Cabay-angan?
A: Yes. Sir.

Q: And the private complainant at that time also was residing at Purok 13, Cabay-angan?
A: In Purok 3.

Q: And your houses were just about 2 to 3 kilometers [away] from each other?
A: Yes, sir.

x x x x x x x x x

Q: But beginning 1993 October[,] you worked continuously up to November 1996?
A: Yes, sir.

Q: And you just stayed at about 2 to 3 kilometers [away] from the house of the private complainant?
A: Yes, sir (TSN, 28 June 2000, pp. 3-5).

Corroborating appellant's testimony, Gadian testified, thus—

Q: Besides being related to accused Rolando Zamoraga, you were also the one who got him from Negros to work here is that correct?
A: Yes, sir.

by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime when it happened, and not merely that he was somewhere else.[35] The records show that such is not the case here as appellant failed to adduce an iota of satisfactory evidence that it was physically impossible for him to be in AAA's house at or about the same time the rape occurred.

What stands out therefore is that the evidence for the defense has failed to negate appellant's presence at the *locus criminis* at the time of the commission of the offense. Suffice to say, denial and alibi, being negative self-serving defenses, cannot prevail over the affirmative allegations of the victim,[36] AAA, and the latter's categorical and positive identification of appellant as her assailant.[37] On this score, the imputation of ill motives to AAA's mother and to AAA herself must likewise be dismissed as a last-ditch attempt on the part of appellant to exonerate himself from an inevitable guilty verdict.

With respect to the monetary award, we agree with the OSG that civil indemnity and moral damages, being based on different jural foundations, are separate and distinct from each other.[38] However, we do not accede to its recommendation that appellant be ordered to pay ₱50,000.00 as moral damages, ₱75,000.00 as civil indemnity and ₱20,000.00 as exemplary damages. In

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Q: And while working with you, he stayed in your house in Cabay-angan?
A: Yes, sir.
Q: And that house where he stayed was only about 2 kilometers from the house of your daughter…?
A: More than two kilometers (TSN, 4 January 2001, pp. 8-9, 11).

[35] *People v. Melivo*, *supra* note 35 at 426; *People v. Padao*, 437 Phil. 405, 417 (2002); *People v. Acala*, 366 Phil. 797, 814 (1999); *People v. Alfaro*, 458 Phil. 942 (2003).

[36] *People v. Acala*, 366 Phil. 797, 815 (1999); *People v. Lozano*, 423 Phil. 20, 27-28 (2001).

[37] *People v. Abellera*, *supra* note 33 at 340-341.

[38] CA *rollo,* p. 86.

People v. Biong,[39] we held that upon a finding of the fact of rape the award of civil indemnity is mandatory in the amount of ₱50,000.00, or ₱75,000.00 if death penalty is involved; whereas moral damages in the amount of ₱50,000.00 is automatically granted in addition without need of further proof inasmuch as it is assumed that a victim of rape has actually suffered moral injuries that entitles her to such an award.[40] Hence, the award of the Court of Appeals in the amount of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity is proper in the case at bar.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR-HC No. 00181 finding appellant Rolando Zamoraga guilty beyond reasonable doubt of two counts of statutory rape is *AFFIRMED*. For each count of rape, he is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the offended party (to be identified through the Informations in this case) ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages pursuant to prevailing jurisprudence.[41]

SO ORDERED.

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

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[39] 450 Phil. 432 (2003).

[40] *Id*. at 448.

[41] *People v. Alarcon*, *supra* note 33; *People v. Carpio*, G.R. No. 170840, 29 November 2006, 508 SCRA 604 ; *People v. Biong*, *supra* note 39.

SECOND DIVISION

[G.R. No. 179477. February 6, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JIMMY TABIO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION MUST ALLEGE QUALIFYING CIRCUMSTANCE.— Rule 110 of the 2000 Rules of Criminal Procedure is clear and unequivocal that both qualifying and aggravating circumstances must be alleged with specificity in the information.

2. ID.; ID.; ID.; DUPLICITY OF OFFENSES; FAILURE TO OBJECT CONSTITUTES WAIVER.— The Court also observes that there is duplicity of the offenses charged in the information, which is a ground for a motion to quash. Three (3) separate acts of rape were charged in one information only. But the failure of appellant to interpose in objection on this ground constitutes waiver.

3. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN THE PROSECUTION THEREOF.— Our courts have been traditionally guided by three settled principles in the prosecution of the crime of rape: (1) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (2) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (3) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence of the defense. In a prosecution for rape, the complainant's candor is the single most important issue. If a complainant's testimony meets the test of credibility, the accused may be convinced on the sole basis thereof.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY THE FACT THAT WITNESS IS MENTALLY RETARDED.— AAA never wavered

in her assertion that appellant raped her. AAA's testimony is distinctively clear, frank and definite without any pretension or hint of a concocted story despite her low intelligence as can be gleaned from her answers in the direct examination. The fact of her mental retardation does not impair the credibility of her unequivocal testimony. AAA's mental deficiency lends greater credence to her testimony for someone as feeble-minded and guileless as her could not speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the appellant.

5. ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE TESTIMONY AND ABSENT EVIDENCE OF PHYSICAL IMPOSSIBILITY FOR ACCUSED TO BE AT THE PLACE OF THE CRIME AT THE TIME OF THE CRIME.— Appellant's denials and alibi, which are merely self-serving evidence, cannot prevail over the positive, consistent and straightforward testimony of AAA. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. We have meticulously reviewed the records and found no justification to deviate from the findings of fact of the trial court.

6. ID.; ID.; SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; NOT ESTABLISHED IN CASE AT BAR.— As to the alleged second and third rape, we find that the prosecution failed to establish beyond reasonable doubt the elements of the offense *e.g.,* carnal knowledge and force or intimidation. The only evidence presented to prove the two other charges were AAA's monosyllabic affirmative answers to two leading questions if appellant repeated during the second and third times he was in her house what he had done during the first time. AAA's testimony on these two later rapes was overly generalized and lacked many specific details on how they were committed. Her bare statement that appellant repeated what he had done to her the first time is inadequate to establish beyond reasonable doubt the alleged second and third rapes. Whether or not he raped her is the fact in issue which the court

must determine based on the evidence offered. The prosecution must demonstrate in sufficient detail the manner by which the crime was perpetrated. Certainly, the testimony of AAA to the effect that the appellant repeated what he did in the first rape would not be enough to warrant the conclusion that the second and third rape had indeed been committed. Each and every charge of rape is a separate and distinct crime so that each of them should be proven beyond reasonable doubt. The quantum of evidence in criminal cases requires more than that.

7. CRIMINAL LAW; RAPE; CIVIL PENALTIES; PROPER CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES IN CASE AT BAR. – As to the civil liability of appellant, we affirm the reduction by the appellate court of the civil indemnity to ₱50,000.00 only, as well as the additional award of ₱25,000.00 as exemplary damages. The civil indemnity awarded to the victims of qualified rape shall not be less than seventy-five thousand pesos (₱75,000.00), and ₱50,000.00 for simple rape. This civil indemnity is awarded for each and every count of rape, such that one found guilty of two counts of simple rape would be liable to pay ₱50,000.00 for each count, or ₱100,000.00 in all. We note that the appellate court implicitly awarded ₱50,000.00 as civil indemnity for all three counts of simple rape. Such award would have been improper for a conviction for three counts of simple rape. Still, because appellant is guilty of one count of simple rape, ₱50,000.00 still emerges as the appropriate amount of civil indemnity. In addition, the victim or heirs, as the case may be, can also recover moral damages pursuant to Article 2219 of the Civil Code. In rape cases, moral damages are awarded without need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. In this respect, we agree with the appellate court in the award of ₱50,000.00 as moral damages. The appellate court's award of ₱25,000.00 as exemplary damages by way of public example is also proper.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TINGA, *J.*:

Appellant Jimmy Tabio was charged with three (3) counts of rape in a single Information,[1] the accusatory portion of which reads as follows:

> That between June 13, 2002 and June 28, 2002 in [Aurora[2]] the said accused, did then and there, unlawfully, feloniously and willfully, have carnal knowledge of mentally retarded AAA[3] by means of force and intimidation three times all committed while the victim was alone inside their house and during nighttime which was taken advantage of to facilitate the commission of the crime.
>
> CONTRARY TO LAW.

Appellant pleaded not guilty on arraignment before the Regional Trial Court (RTC) of Baler, Aurora, Branch 96.[4] Trial on the merits ensued. The victim, AAA testified that one night in June 2002, while she was alone in her home, appellant entered her house. He pressed a knife on AAA's breast, removed her clothing, fondled her breast, undressed himself, and mounted her as she was seated on a bed. He inserted his penis in her vagina and ejaculated. AAA was able to recognize the appellant as her house was lighted with a gas lamp. AAA further testified that the appellant on two succeeding occasions again entered her home and repeated the same acts on her.[5]

Other witnesses for the prosecution presented testimony concerning AAA's mental condition. A doctor[6] who had trained

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[1] Record, pp. 1-2.

[2] The complete address of the victim is withheld to protect her privacy. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

[3] The real name of the victim is withheld to protect her privacy.

[4] Presided by Judge Corazon Soluren.

[5] TSN, 17 December 2002, pp. 2-8.

[6] Dr. Roman Balangue; TSN, 13 February 2003, pp. 3-8.

with the National Center for Mental Health testified that he had examined AAA and concluded that while she was 23 years old at the time of the rape, she nonetheless had the mental age of a six-year old child.[7] AAA's mother and grand aunt also testified on her mental retardation and the occurrences after she had reported the rape to them.[8]

Appellant testified in his own behalf, denying that he had raped AAA and offering as alibi that he was up in the mountain at the time of the rape.[9] Appellant's wife[10] and his brother-in-law, Jaime Bautista,[11] tried to corroborate his alibi through their own testimony.

On 25 November 2003, the RTC handed down a decision finding appellant guilty and imposing the penalty of death on three (3) counts of qualified rape, defined in Article 266-A, paragraph 1 (d) and penalized under Article 266-B, paragraph 6 (10) of the Revised Penal Code. The RTC also ordered appellant to pay ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages.[12] The records of the case were thereafter forwarded to this Court on automatic review. On 7 June 2005, the Court issued a Resolution[13] transferring the case to the Court of Appeals for appropriate action.[14]

The Court of Appeals[15] affirmed with modification the decision of the trial court. The appellate court found appellant guilty of all three (3) counts for simple rape only and not qualified rape. It

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[7] *Id*., at 10.

[8] TSN, 17 December 2002, pp. 11-16; and TSN, 20 January 2003, pp. 3-7.

[9] TSN, 7 May 2003, pp. 2-6.

[10] TSN, 3 June 2003, pp. 2-6.

[11] TSN, 8 May 2003, pp. 2-5.

[12] Records, p. 109.

[13] Pursuant to the case of *People v. Efren Mateo*, G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640, 656.

[14] CA *rollo,* p. 19-A.

[15] Through the decision dated 23 January 2007 penned by Associate Justice Jose Sabio, Jr. and concurred in by Associate Justices Jose Reyes, Jr. and Myrna Dimaranan Vidal.

also reduced the civil indemnity to ₱50,000.00 and added an award of ₱25,000.00 as exemplary damages.[16]

The case is again before us for our final disposition. Appellant had assigned three (3) errors in his appeal initially passed upon by the Court of Appeals, to wit: whether the RTC erred in finding him guilty of qualified rape with the penalty of death in view of the prosecution's failure to allege a qualifying circumstance in the information; whether the RTC erred in finding him guilty of all three (3) counts of rape despite the alleged failure of the prosecution to prove his guilt beyond reasonable doubt; and whether the RTC erred in awarding ₱75,000.00 as civil indemnity.

The Court of Appeals properly resolved the first error in appellant's favor. The information should have warranted a judgment of guilt only for simple, not qualified rape. We quote with approval the appellate court when it said:

Under Article 266-B(10)[17] of the Revised Penal Code, knowledge by the offender of the mental disability, emotional disorder, or physical handicap at the time of the commission of the rape is the qualifying circumstance that sanctions the imposition of the death penalty. Rule 110[18] of the 2000 Rules of Criminal Procedure requires

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[16] *Rollo*, p. 21.

[17] Art. 266-B. Penalties. x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating or qualifying circumstances: x x x

10) When the offender **knew** of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime. (Emphasis supplied)

[18] SEC. 8. *Designation of the offense*.—The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SEC. 9. *Cause of the accusation*.— The acts or omissions complaint of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

both qualifying and aggravating circumstances to be alleged with specificity in the information.[19]

In the case at bench, however, the information merely states that the appellant had carnal knowledge with a mentally retarded complainant. It does not state that appellant knew of the mental disability of the complainant at the time of the commission of the crime. It bears stressing that the rules now require that the qualifying circumstance that sanctions the imposition of the death penalty should be specifically stated in the information. Article 266-B (10) of the Revised Penal Code could not, thus, be applied and the supreme penalty of death could not be validly imposed.[20]

Rule 110 of the 2000 Rules of Criminal Procedure is clear and unequivocal that both qualifying and aggravating circumstances must be alleged with specificity in the information.

The Court also observes that there is duplicity[21] of the offenses charged in the information, which is a ground for a motion to quash.[22] Three (3) separate acts of rape were charged in one information only. But the failure of appellant to interpose an objection on this ground constitutes waiver.[23]

We turn to the second issue. While the Court affirms that appellant is guilty of simple rape, we nonetheless find that only the first rape was conclusively proven. The second and third

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[19] *People v. Limio*, G.R. Nos. 148804-06, 27 May 2004, 429 SCRA 597, 615.

[20] *Rollo*, pp. 8-9.

[21] Rule 110, Sec. 13. Duplicity of the offense.—A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.

[22] Rule 117, Sec. 3. Grounds.—The accused may move to quash the complaint or informationon any of the following grounds: x x x

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law; x x x

[23] Rule 117, Sec. 9. *Failure to move to quash or to allege any ground therefor*.—The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

rapes of which appellant was charged and found guilty, were not proven beyond reasonable doubt.

Our courts have been traditionally guided by three settled principles in the prosecution of the crime of rape: (1) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (2) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (3) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence of the defense.[24] In a prosecution for rape, the complainant's candor is the single most important issue. If a complainant's testimony meets the test of credibility, the accused may be convicted on the sole basis thereof.[25]

We have thoroughly examined AAA's testimony and found nothing that would cast doubt on the credibility of her account of the first rape. We quote the pertinent portion of her testimony:

PROS. RONQUILLO: to the witness

x x x x x x x x x

Q Did you have any occasion to see Jimmy inside your house in June 2002?
A Yes, Sir.

Q What time was that?
A Night time, Sir.

x x x x x x x x x

Q You said that Jimmy went inside your house. What did he do there?
A He fondled my breast, Sir.

Q Did you have your clothes on when Jimmy Tabio went to your house?
A Yes, sir.

x x x x x x x x x

[24] *People v. De Guzman y Pascual*, 388 Phil. 943, 952-953 (2000, citing *People v. Abad*, 268 SCRA 246 (1997).

[25] *Id.* at 954.

Q Don't be ashamed. You said that you have your clothes on. When Jimmy saw you what did he do with your clothes, if any?
A He removed my dress, Sir.

x x x x x x x x x

Q So you are now without clothes because you said Jimmy removed your clothes. What did he do after removing your clothes?
A He placed himself on top of me.

COURT: to the witness

Q Was he standing when Jimmy mounted on you?
A I was sitting, Sir.

PROS. RONQUILLO: to the witness

Q When Jimmy placed himself on top of you was he dressed or nude?
A He was naked, Sir.

Q You said that he placed himself on top of you. What did Jimmy do while he was on top of you?
A He pressed a knife on me.

Q On what part of your body did he press the knife?
A Here, Sir. (Witness indicated the upper part of her left breast)

Q What else did Jimmy do aside from pressing the knife near your breast?
A Jimmy was in our house, Sir.

Q Do you know what penis is?
A Yes, Sir.

Q Do you know what Jimmy did with hs (sic) penis?
A Yes, Sir.

Q What did he do with his penis?
A He placed his penis to my vagina.

Q What did you feel when Jimmy did that?
A I felt pain, Sir.

Q After Jimmy inserted his penis in your vagina, what else did he do?
A Nothing more, Sir.

Q Did he move while he was on top of you?
A Yes, Sir.

Q Can you demonstrate his movement while he was on top of you?
A (Witness indicated the movement by moving her body.)

x x x x x x x x x

PROS. RONQUILLO: to the witness

Q What else did you notice while the penis of Jimmy was in your vagina?
A There was some kind of milk, Sir.

COURT: to the witness

Q Where?
A In my vagina, Sir.

PROS. RONQUILLO: to the witness

Q Why did you notice that? What did you do?
A I watched my vagina, Sir.

Q That is why you saw that thing which looks like milk?
A Yes, Sir.

Q Now, it was night time when Jimmy went into your house, is it not?
A Yes, Sir.

Q How were you able to see Jimmy while it was night time?
A I have a light, Sir.

Q What kind of light was that?
A Gas l[a]mp, Sir.[26] (Emphasis supplied.)

AAA never wavered in her assertion that appellant raped her. AAA's testimony is distinctively clear, frank and definite without any pretension or hint of a concocted story despite her low intelligence as can be gleaned from her answers in the direct

[26] TSN, 17 December 2002, pp. 2-6.

examination. The fact of her mental retardation does not impair the credibility of her unequivocal testimony. AAA's mental deficiency lends greater credence to her testimony for someone as feeble-minded and guileless as her could not speak so tenaciously and explicitly on the details of the rape if she has not in fact suffered such crime at the hands of the appellant.[27]

Appellant's denials and alibi, which are merely self-serving evidence, cannot prevail over the positive, consistent and straightforward testimony of AAA. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[28] We have meticulously reviewed the records and found no justification to deviate from the findings of fact of the trial court that—

> Accused's alibi that he was in the mountain gathering woods during the period when [AAA] was raped deserves no consideration. When the accused took the witness stand, he gave an evasive, confused and vague account of his whereabouts at the time the crime was committed as well as with respect to the distance of his whereabouts from the *locus criminis*. Accused's wife and his brother-in-law tried to corroborate his (accused's) testimony that he was in the mountain during the commission of rape but to no avail.
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> x x x x x x x x x
>
> In the instant case, the distance of the place where the accused allegedly was is less than half a kilometer (200 meters) which could be negotiated in less than an hour. x x x[29]

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[27] See *People v. Toralba*, 414 Phil. 793, 800 (2001) citing *People v. Ducta*, G.R. No. 134608, 16 August 2000, 338 SCRA 272; *People v. Lubong*, 332 SCRA 672 (2000); *People v. Cabingas,* 329 SCRA 21 (2000)*; People v. Tipay,* 329 SCRA 52 (2000) and *People v. San Juan*, G.R. No. 105556, 4 April 1997, 270 SCRA 693.

[28] See *People v. Ejandra*, G.R. No. 134203, 27 May 2004, 429 SCRA 364, 379.

[29] Records, p. 107.

However, as to the alleged second and third rape, we find that the prosecution failed to establish beyond reasonable doubt the elements of the offense *e.g.*, carnal knowledge and force or intimidation. The only evidence presented to prove the two other charges were AAA's monosyllabic affirmative answers to two leading questions if appellant repeated during the second and third times he was in her house what he had done during the first time. We quote that only portion of AAA's testimony relating to the second and third alleged rapes, to wit:

PROS. RONQUILLO: to the witness

Q You said that Jimmy went to your house three times. What did he do during the second time?
A He entered our house, Sir.

Q Yes, he entered your house. **Did he repeat what he did during the first time?**
A **Yes, Sir.**

Q How about the third time? What did he do?
A He has a knife, Sir.

Q Yes. Did he repeat what he did during the first time?
A Yes, Sir.[30] (Emphasis supplied)

AAA's testimony on these two later rapes was overly generalized and lacked many specific details on how they were committed. Her bare statement that appellant repeated what he had done to her the first time is inadequate to establish beyond reasonable doubt the alleged second and third rapes. Whether or not he raped her is the fact in issue which the court must determine[31] based on the evidence offered. The prosecution must demonstrate in sufficient detail the manner by which the crime was perpetrated. Certainly, the testimony of AAA to the effect that the appellant repeated what he did in the first rape would not be enough to warrant the conclusion that the second and third rape had indeed been committed. Each and every charge of rape is a separate and distinct crime so that each of

[30] TSN, 17 December 2002, p. 7.

[31] FRANCISCO, RICARDO; *EVIDENCE*, 1996 ed., p. 348.

them should be proven beyond reasonable doubt. The quantum of evidence in criminal cases requires more than that.

In the case of *People v. Garcia*,[32] wherein the appellant was charged with 183 counts of rape, we held that:

> x x x Be that as it may, however, on the bases of the evidence adduced by the prosecution, appellant can be convicted only of the two rapes committed in November, [*sic*] 1990 and on July 21, 1994 as testified to by complainant, and for the eight counts of rape committed in May and June and on July 16, 1994 as admitted in appellants aforementioned letter of August 24, 1994. **We cannot agree with the trial court that appellant is guilty of 183 counts of rape because, as correctly asserted by the defense, each and every charge of rape is a separate and distinct crime so that each of them should be proven beyond reasonable doubt. On that score alone, the indefinite testimonial evidence that complainant was raped every week is decidedly inadequate and grossly insufficient to establish the guilt of appellant therefor with the required quantum of evidence. So much of such indefinite imputations of rape, which are uncorroborated by any other evidence, fall within this category.**[33] (Emphasis supplied)

We must uphold the primacy of the presumption of innocence in favor of the accused when the evidence at hand falls short of the quantum required to support conviction.

As to the civil liability of appellant, we affirm the reduction by the appellate court of the civil indemnity to ₱50,000.00 only, as well as the additional award of ₱25,000.00 as exemplary damages, but on rather different premises, considering our conclusion that he is only guilty of one, not three counts of rape.

The civil indemnity awarded to the victims of qualified rape shall not be less than seventy-five thousand pesos (₱75,000.00),[34] and ₱50,000.00 for simple rape.[35] This civil indemnity is awarded

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[32] 346 Phil. 475 (1997).

[33] *Id.* at 497.

[34] *People v. Perez*, 357 Phil. 17, 35 (1998); *People v. Bernaldez*, 355 Phil. 740, 758 (1998); *People v. Victor*, 354 Phil. 195, 209-210 (1998).

[35] See *People v. Mendoza*, 432 Phil. 666, 684 (2002).

for each and every count of rape, such that one found guilty of two counts of simple rape would be liable to pay ₱50,000.00 for each count, or ₱100,000.00 in all.

We note that the appellate court implicitly awarded ₱50,000.00 as civil indemnity for all three counts of simple rape. Such award would have been improper for a conviction for three counts of simple rape.[36] Still, because appellant is guilty of one count of simple rape, ₱50,000.00 still emerges as the appropriate amount of civil indemnity.

In addition, the victim or heirs, as the case may be, can also recover moral damages pursuant to Article 2219 of the Civil Code. In rape cases, moral damages are awarded without need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award.[37] In this respect, we agree with the appellate court in the award of ₱50,000.00 as moral damages. The appellate court's award of ₱25,000.00 as exemplary damages by way of public example is also proper.[38]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01301 is AFFIRMED WITH MODIFICATION. Appellant is found GUILTY of only ONE count of simple rape and ACQUITTED of the TWO other counts of qualified rape. Appellant is sentenced to suffer the penalty of *reclusion perpetua*, and ordered to pay to the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

SO ORDERED.

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

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[36] See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 435-436.

[37] *People v. Pagsanjan*, 442 Phil. 667, 687 (2002).

[38] *People v. de los Santos*, 439 Phil. 630, 641 (2002).

FIRST DIVISION

[G.R. No. 126297. February 11, 2008]

PROFESSIONAL SERVICES, INC., *petitioner, vs.* **THE COURT OF APPEALS and NATIVIDAD and ENRIQUE AGANA,** *respondents.*

[G.R. No. 126467. February 11, 2008]

NATIVIDAD (Substituted by her children MARCELINO AGANA III, ENRIQUE AGANA, JR., EMMA AGANA ANDAYA, JESUS AGANA, and RAYMUND AGANA) and ENRIQUE AGANA, *petitioners, vs.* **THE COURT OF APPEALS and JUAN FUENTES,** *respondents.*

[G.R. No. 127590. February 11, 2008]

MIGUEL AMPIL, *petitioner, vs.* **THE COURT OF APPEALS and NATIVIDAD AGANA and ENRIQUE AGANA,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; HOSPITAL LIABILITY FOR MEDICAL NEGLIGENCE; EMPLOYER-EMPLOYEE RELATIONSHIP "IN EFFECT" EXISTS BETWEEN THE HOSPITAL AND THE NEGLIGENT DOCTOR.— As the hospital industry changes, so must the laws and jurisprudence governing hospital liability. The immunity from medical malpractice traditionally accorded to hospitals has to be eroded if we are to balance the interest of the patients and hospitals under the present setting. Before this Court is a motion for reconsideration filed by Professional Services, Inc. (PSI), petitioner in G.R. No. 126297, assailing the Court's First Division Decision dated January 31, 2007, finding PSI and Dr. Miguel Ampil, petitioner in G.R. No. 127590, jointly and severally liable for medical negligence. As earlier mentioned, the First Division, in its assailed Decision, ruled that an

employer-employee relationship **"in effect"** exists between the Medical City and Dr. Ampil. Consequently, both are jointly and severally liable to the Aganas. In *Ramos vs. Court of Appeals* the Court considered the peculiar relationship between a hospital and its consultants on the bases of certain factors. One such factor is the "control test" wherein the hospital exercises control in the hiring and firing of consultants, like Dr. Ampil, and in the conduct of their work. The doctrine in *Ramos* stays, *i.e.,* for the purpose of allocating responsibility in medical negligence cases, an employer-employee relationship exists between hospitals and their consultants. In the instant cases, PSI merely offered a **general denial** of responsibility, maintaining that consultants, like Dr. Ampil, are "independent contractors," not employees of the hospital. Even assuming that Dr. Ampil is not an employee of Medical City, but an independent contractor, still the said hospital is liable to the Aganas.

2. ID.; ID.; ID.; ID.; ID.; DOCTRINE OF APPARENT AUTHORITY; PRESENT IN CASE AT BAR.— PSI argues that the **doctrine of apparent authority** cannot apply to these cases because spouses Agana failed to establish proof of their reliance on the representation of Medical City that Dr. Ampil is its employee. The argument lacks merit. Atty. Agana categorically testified that one of the reasons why he chose Dr. Ampil was that **he knew him to be a staff member of Medical City, a prominent and known hospital**. PSI is estopped from passing the blame solely to Dr. Ampil. Its act of displaying his name and those of the other physicians in the public directory at the lobby of the hospital amounts to holding out to the public that it offers quality medical service through the listed physicians. This justifies Atty. Agana's belief that Dr. Ampil was a member of the hospital's staff. **It must be stressed that under the doctrine of apparent authority, the question in every case is whether the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question.** In these cases, the circumstances yield a positive answer to the question.

3. ID.; ID.; ID.; ID.; ID.; DOCTRINE OF CORPORATE RESPONSIBILITY; APPLIED IN CASE AT BAR.— The challenged Decision also anchors its ruling on the **doctrine of corporate responsibility.** The duty of providing quality medical service is no longer the sole prerogative and responsibility of the physician. This is because the modern hospital now tends to organize a **highly-professional medical staff** whose competence and performance need also to be monitored by the hospital commensurate with its inherent responsibility to provide quality medical care. **Such responsibility includes the proper supervision of the members of its medical staff. Accordingly, the hospital has the duty to make a reasonable effort to monitor and oversee the treatment prescribed and administered by the physicians practicing in its premises.** Unfortunately, PSI had been remiss in its duty. It did not conduct an **immediate investigation** on the reported missing gauzes to the great prejudice and agony of its patient. Dr. Jocson, a member of PSI's medical staff, who testified on whether the hospital conducted an investigation, was evasive. The testimony shows Dr. Jocson's **lack of concern for the patients. Such conduct is reflective of the hospital's manner of supervision. Not only did PSI breach its duty to oversee or supervise all persons who practice medicine within its walls, it also failed to take an active step in fixing the negligence committed.** This renders PSI, not only vicariously liable for the negligence of Dr. Ampil under Article 2180 of the Civil Code, but also **directly liable** for its own negligence under Article 2176. Moreover, there is merit in the trial court's finding that the failure of PSI to conduct an investigation **"established PSI's part in the dark conspiracy of silence and concealment about the gauzes."**

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R E S O L U T I O N

SANDOVAL-GUTIERREZ, *J.*:

As the hospital industry changes, so must the laws and jurisprudence governing hospital liability. The immunity from medical malpractice traditionally accorded to hospitals has to be eroded if we are to balance the interest of the patients and hospitals under the present setting.

Before this Court is a motion for reconsideration filed by Professional Services, Inc. (PSI), petitioner in G.R. No. 126297, assailing the Court's First Division Decision dated January 31, 2007, finding PSI and Dr. Miguel Ampil, petitioner in G.R. No. 127590, jointly and severally liable for medical negligence.

A brief revisit of the antecedent facts is imperative.

On April 4, 1984, Natividad Agana was admitted at the Medical City General Hospital (Medical City) because of difficulty of bowel movement and bloody anal discharge. Dr. Ampil diagnosed her to be suffering from "cancer of the sigmoid." Thus, on April 11, 1984, Dr. Ampil, assisted by the medical staff[1] of Medical City, performed an anterior resection surgery upon her. During the surgery, he found that the malignancy in her sigmoid area had spread to her left ovary, necessitating the removal of certain portions of it. Thus, Dr. Ampil obtained the consent of Atty. Enrique Agana, Natividad's husband, to permit Dr. Juan Fuentes, respondent in G.R. No. 126467, to perform hysterectomy upon Natividad.

Dr. Fuentes performed and completed the hysterectomy. Afterwards, Dr. Ampil took over, completed the operation and closed the incision. However, the operation appeared to be flawed. In the corresponding Record of Operation dated April 11, 1984, the attending nurses entered these remarks:

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[1] The medical staff was composed of physicians, both residents and interns, as well as nurses.

sponge count lacking 2
announced to surgeon searched done (sic) but to no avail
continue for closure.

After a couple of days, Natividad complained of excruciating pain in her anal region. She consulted both Dr. Ampil and Dr. Fuentes about it. They told her that the pain was the natural consequence of the surgical operation performed upon her. Dr. Ampil recommended that Natividad consult an oncologist to treat the cancerous nodes which were not removed during the operation.

On May 9, 1984, Natividad, accompanied by her husband, went to the United States to seek further treatment. After four (4) months of consultations and laboratory examinations, Natividad was told that she was free of cancer. Hence, she was advised to return to the Philippines.

On August 31, 1984, Natividad flew back to the Philippines, still suffering from pains. Two (2) weeks thereafter, her daughter found a piece of gauze protruding from her vagina. Dr. Ampil was immediately informed. He proceeded to Natividad's house where he managed to extract by hand a piece of gauze measuring 1.5 inches in width. Dr. Ampil then assured Natividad that the pains would soon vanish.

Despite Dr. Ampil's assurance, the pains intensified, prompting Natividad to seek treatment at the Polymedic General Hospital. While confined thereat, Dr. Ramon Gutierrez detected the presence of a foreign object in her vagina — a foul-smelling gauze measuring 1.5 inches in width. The gauze had badly infected her vaginal vault. A recto-vaginal fistula had formed in her reproductive organ which forced stool to excrete through the vagina. Another surgical operation was needed to remedy the situation. Thus, in October 1984, Natividad underwent another surgery.

On November 12, 1984, Natividad and her husband filed with the Regional Trial Court, Branch 96, Quezon City a complaint for damages against PSI (owner of Medical City), Dr. Ampil and Dr. Fuentes.

On February 16, 1986, pending the outcome of the above case, Natividad died. She was duly substituted by her above-named children (the Aganas).

On March 17, 1993, the trial court rendered judgment in favor of spouses Agana finding PSI, Dr. Ampil and Dr. Fuentes jointly and severally liable. On appeal, the Court of Appeals, in its Decision dated September 6, 1996, affirmed the assailed judgment with modification in the sense that the complaint against Dr. Fuentes was dismissed.

PSI, Dr. Ampil and the Aganas filed with this Court separate petitions for review on *certiorari*. On January 31, 2007, the Court, through its First Division, rendered a Decision holding that PSI is jointly and severally liable with Dr. Ampil for the following reasons: *first,* there is an employer-employee relationship between Medical City and Dr. Ampil. The Court relied on *Ramos v. Court of Appeals*,[2] holding that for the purpose of apportioning responsibility in medical negligence cases, an employer-employee relationship **in effect exists** between hospitals and their attending and visiting physicians; *second,* PSI's act of publicly displaying in the lobby of the Medical City the names and specializations of its accredited physicians, including Dr. Ampil, estopped it from denying the existence of an employer-employee relationship between them under the **doctrine of ostensible agency or agency by estoppel**; and *third,* PSI's failure to supervise Dr. Ampil and its resident physicians and nurses and to take an active step in order to remedy their negligence rendered it directly liable under the **doctrine of corporate negligence**.

In its motion for reconsideration, PSI contends that the Court erred in finding it liable under Article 2180 of the Civil Code, there being no employer-employee relationship between it and its consultant, Dr. Ampil. PSI stressed that the Court's Decision in *Ramos* holding that "an employer-employee relationship **in effect** exists between hospitals and their attending and visiting physicians for the purpose of apportioning responsibility" had been reversed in a subsequent Resolution.[3] Further, PSI argues

[2] G.R. No. 124354, December 29, 1999, 321 SCRA 584.

[3] Promulgated on April 11, 2002.

that the **doctrine of ostensible agency or agency by estoppel** cannot apply because spouses Agana failed to establish one requisite of the doctrine, *i.e.*, that Natividad relied on the representation of the hospital in engaging the services of Dr. Ampil. And lastly, PSI maintains that the **doctrine of corporate negligence** is misplaced because the proximate cause of Natividad's injury was Dr. Ampil's negligence.

The motion lacks merit.

As earlier mentioned, the First Division, in its assailed Decision, ruled that an employer-employee relationship "**in effect"** exists between the Medical City and Dr. Ampil. Consequently, both are jointly and severally liable to the Aganas. This ruling proceeds from the following ratiocination in *Ramos*:

> We now discuss the responsibility of the hospital in this particular incident. The unique practice (among private hospitals) of filling up specialist staff with attending and visiting "consultants," who are allegedly not hospital employees, presents problems in apportioning responsibility for negligence in medical malpractice cases. **However, the difficulty is only more apparent than real.**
>
> In the first place, **hospitals exercise significant control in the hiring and firing of consultants and in the conduct of their work within the hospital premises.** Doctors who apply for "consultant" slots, visiting or attending, are required to submit proof of completion of residency, their educational qualifications; generally, evidence of accreditation by the appropriate board (diplomate), evidence of fellowship in most cases, and references. These requirements are carefully scrutinized by members of the hospital administration or by a review committee set up by the hospital who either accept or reject the application. This is particularly true with respondent hospital.
>
> **After a physician is accepted, either as a visiting or attending consultant, he is normally required to attend clinico-pathological conferences, conduct bedside rounds for clerks, interns and residents, moderate grand rounds and patient audits and perform other tasks and responsibilities, for the privilege of being able to maintain a clinic in the hospital, and/or for the privilege of admitting patients into the hospital.** In addition to these, **the physician's performance as a specialist is generally**

evaluated by a peer review committee on the basis of mortality and morbidity statistics, and feedback from patients, nurses, interns and residents. A consultant remiss in his duties, or a consultant who regularly falls short of the minimum standards acceptable to the hospital or its peer review committee, is normally politely terminated.

In other words, private hospitals hire, fire and exercise real control over their attending and visiting "consultant" staff. **While "consultants" are not, technically employees, a point which respondent hospital asserts in denying all responsibility for the patient's condition, the control exercised, the hiring, and the right to terminate consultants all fulfill the important hallmarks of an employer-employee relationship, with the exception of the payment of wages. In assessing whether such a relationship in fact exists, the control test is determining. Accordingly, on the basis of the foregoing, we rule that for the purpose of allocating responsibility in medical negligence cases, an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians.** This being the case, the question now arises as to whether or not respondent hospital is solidarily liable with respondent doctors for petitioner's condition.

The basis for holding an employer solidarily responsible for the negligence of its employee is found in Article 2180 of the Civil Code which considers a person accountable not only for his own acts but also for those of others based on the former's responsibility under a relationship of *partia ptetas*.

Clearly, in *Ramos*, the Court considered the peculiar relationship between a hospital and its consultants on the bases of certain factors. One such factor is the "control test" wherein the hospital exercises control in the hiring and firing of consultants, like Dr. Ampil, and in the conduct of their work.

Actually, contrary to PSI's contention, the Court did not reverse its ruling in *Ramos*. What it clarified was that the De Los Santos Medical Clinic did not exercise control over its consultant, hence, there is no employer-employee relationship between them. Thus, despite the granting of the said hospital's motion for reconsideration, the doctrine in *Ramos* stays, *i.e.*, for the purpose of allocating responsibility in medical negligence

cases, an employer-employee relationship exists between hospitals and their consultants.

In the instant cases, PSI merely offered a **general denial** of responsibility, maintaining that consultants, like Dr. Ampil, are "independent contractors," not employees of the hospital. Even assuming that Dr. Ampil is not an employee of Medical City, but an independent contractor, still the said hospital is liable to the Aganas.

In *Nograles, et al. v. Capitol Medical Center, et al.,*[4] through Mr. Justice Antonio T. Carpio, the Court held:

> The question now is whether CMC is automatically exempt from liability considering that Dr. Estrada is an independent contractor-physician.
>
> In general, a hospital is not liable for the negligence of an independent contractor-physician. There is, however, an exception to this principle. The hospital may be liable if the physician is the "ostensible" agent of the hospital. (*Jones v. Philpott*, 702 F. Supp. 1210 [1988]) This exception is also known as the "doctrine of apparent authority." (Sometimes referred to as the apparent or ostensible agency theory. [*King v. Mitchell,* 31 A.D.3rd 958, 819 N.Y. S.2d 169 (2006)].
>
> x x x x x x x x x
>
> The doctrine of apparent authority essentially involves two factors to determine the liability of an independent contractor-physician.
>
> The first factor focuses on the hospital's manifestations and is sometimes described as an inquiry whether the hospital acted in a manner which would lead a reasonable person to conclude that the individual who was alleged to be negligent was an employee or agent of the hospital. (*Diggs v. Novant Health, Inc.*, 628 S.E.2d 851 (2006) citing *Hylton v. Koontz,* 138 N.C. App. 629 (2000). **In this regard, the hospital need not make express representations to the patient that the treating physician is an employee of the hospital; rather a representation may be general and implied.** (*Id.*)

The doctrine of apparent authority is a specie of the doctrine of estoppel. Article 1431 of the Civil Code provides that "[t]hrough estoppel, an admission or representation is rendered conclusive upon the person

[4] G.R. No. 142625, December 19, 2006, 511 SCRA 204.

making it, and cannot be denied or disproved as against the person relying thereon." Estoppel rests on this rule: "Whether a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it. (*De Castro v. Ginete,* 137 Phil. 453 [1969], citing Sec. 3, par. A, Rule 131 of the Rules of Court. See also *King v. Mitchell,* 31 A.D.3rd 958, 819 N.Y.S.2d 169 [2006]).

x x x x x x x x x

The second factor focuses on the patient's reliance. It is sometimes characterized as an inquiry on whether the plaintiff acted in reliance upon the conduct of the hospital or its **agent**, consistent with ordinary care and prudence. (*Diggs v. Novant Health, Inc.*)

PSI argues that the **doctrine of apparent authority** cannot apply to these cases because spouses Agana failed to establish proof of their reliance on the representation of Medical City that Dr. Ampil is its employee.

The argument lacks merit.

Atty. Agana categorically testified that one of the reasons why he chose Dr. Ampil was that **he knew him to be a staff member of Medical City, a prominent and known hospital**.

Q Will you tell us what transpired in your visit to Dr. Ampil?

A Well, I saw Dr. Ampil at the Medical City, **I know him to be a staff member there**, and I told him about the case of my wife and he asked me to bring my wife over so she could be examined. Prior to that, I have known Dr. Ampil, first, he was staying in front of our house, he was a neighbor, second, my daughter was his student in the University of the East School of Medicine at Ramon Magsaysay; and when my daughter opted to establish a hospital or a clinic, Dr. Ampil was one of our consultants on how to establish that hospital. And from there, I have known that he was a specialist when it comes to that illness.

Atty. Agcaoili

On that particular occasion, April 2, 1984, what was your reason for choosing to contact Dr. Ampil in connection with your wife's illness?

A First, before that, I have known him to be a specialist on that part of the body as a surgeon; **second, I have known him to be a staff member of the Medical City which is a prominent and known hospital.** And third, because he is a neighbor, I expect more than the usual medical service to be given to us, than his ordinary patients.[5]

Clearly, PSI is estopped from passing the blame solely to Dr. Ampil. Its act of displaying his name and those of the other physicians in the public directory at the lobby of the hospital amounts to holding out to the public that it offers quality medical service through the listed physicians. This justifies Atty. Agana's belief that Dr. Ampil was a member of the hospital's staff. **It must be stressed that under the doctrine of apparent authority, the question in every case is whether the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question.**[6] In these cases, the circumstances yield a positive answer to the question.

The challenged Decision also anchors its ruling on the **doctrine of corporate responsibility**.[7] The duty of providing quality medical service is no longer the sole prerogative and responsibility of the physician. This is because the modern hospital now tends

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[5] TSN, April 12, 1985, pp. 25-26.

[6] *Id*., citing *Hudson V.C., Loan Assn., Inc. v. Horowytz*, 116 N.J.L. 605, 608, 186 A 437 (Sup. Ct. 1936).

[7] The corporate negligence doctrine imposes several duties on a hospital: **(1)** to use reasonable care in the maintenance of safe and adequate facilities and equipment; **(2)** to select and retain only competent physicians; **(3)** to oversee as to patient care all persons who practice medicine within its walls; and **(4)** to formulate, adopt, and enforce adequate rules and policies to ensure quality care for its patients. These special tort duties arise from the special relationship existing between a hospital or nursing home and its patients, which are based on the vulnerability of the physically or mentally ill persons and their inability to provide care for themselves. 40 A Am Jur 2d 28 citing *Funkhouser v. Wilson*, 89 Wash. App. 644, 950 P 2d 501 (Div.1 1998), review granted, 135 Wash. 2d 1001, 959 P 2d 126 (1998).

to organize a **highly-professional medical staff** whose competence and performance need also to be monitored by the hospital commensurate with its inherent responsibility to provide quality medical care.[8] **Such responsibility includes the proper supervision of the members of its medical staff**. **Accordingly, the hospital has the duty to make a reasonable effort to monitor and oversee the treatment prescribed and administered by the physicians practicing in its premises.**

Unfortunately, PSI had been remiss in its duty. It did not conduct an **immediate investigation** on the reported missing gauzes to the great prejudice and agony of its patient. Dr. Jocson, a member of PSI's medical staff, who testified on whether the hospital conducted an investigation, was evasive, thus:

Q We go back to the operative technique, this was signed by Dr. Puruganan, was this submitted to the hospital?
A Yes, sir, this was submitted to the hospital with the record of the patient.

Q Was the hospital immediately informed about the missing sponges?
A That is the duty of the surgeon, sir.

Q As a witness to an untoward incident in the operating room, was it not your obligation, Dr., to also report to the hospital because you are under the control and direction of the hospital?
A The hospital already had the record of the two OS missing, sir.

Q If you place yourself in the position of the hospital, how will you recover?
A You do not answer my question with another question.

Q Did the hospital do anything about the missing gauzes?
A The hospital left it up to the surgeon who was doing the operation, sir.

Q Did the hospital investigate the surgeon who did the operation?
A I am not in the position to answer that, sir.

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[8] *Purcell v. Zimbelman*, 18 Ariz. App. 75, 500 P2d 335 (1972).

Q You never did hear the hospital investigating the doctors involved in this case of those missing sponges, or did you hear something?

x x x x x x x x x

A I think we already made a report by just saying that two sponges were missing, it is up to the hospital to make the move.

Atty. Agana

Precisely, I am asking you if the hospital did a move, if the hospital did a move.

A I cannot answer that.

Court

By that answer, would you mean to tell the Court that you were aware if there was such a move done by the hospital?

A I cannot answer that, your honor, because I did not have any more follow-up of the case that happened until now.[9]

The above testimony obviously shows Dr. Jocson's **lack of concern for the patients. Such conduct is reflective of the hospital's manner of supervision.** N**ot only did PSI breach its duty to oversee or supervise all persons who practice medicine within its walls, it also failed to take an active step in fixing the negligence committed**. This renders PSI, not only vicariously liable for the negligence of Dr. Ampil under Article 2180 of the Civil Code, but also **directly liable** for its own negligence under Article 2176.

Moreover, there is merit in the trial court's finding that the failure of PSI to conduct an investigation "**established PSI's part in the dark conspiracy of silence and concealment about the gauzes**." The following testimony of Atty. Agana supports such findings, thus:

Q You said you relied on the promise of Dr. Ampil and despite the promise you were not able to obtain the said record. Did you go back to the record custodian?

A I did not because I was talking to Dr. Ampil. He promised me.

[9] TSN, February 26, 1987, pp. 26-28.

Q After your talk to Dr. Ampil, you went to the record custodian?

A I went to the record custodian to get the clinical record of my wife, and I was given a portion of the records consisting of the findings, among them, the entries of the dates, but not the operating procedure and operative report.[10]

In sum, we find no merit in the motion for reconsideration.

WHEREFORE, we *DENY* PSI's motion for reconsideration *with finality*.

SO ORDERED.

Puno, C.J., Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 130389. February 11, 2008]

THE PHILIPPINE COTTON CORPORATION, *petitioner-appellant, vs.* **NARAINDAS GAGOOMAL and ENGRACIO ANG,** *respondents-appellees,*

CHINA BANKING CORPORATION, *intervenor-appellee.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED; PROCEDURE FOR THE NOTATION OF INTEREST THAT

[10] TSN, November 22, 1985, pp. 52-53.

DID NOT APPEAR IN THE RECONSTITUTED CERTIFICATE OF TITLE.— A special law specifically deals with the procedure for the reconstitution of Torrens certificates of title lost or destroyed. Under Section 4 of Act No. 26: Liens and other encumbrances affecting a destroyed or lost certificate of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order. (a) Annotations or memoranda appearing on the owner's, co-owner's, mortgagee's or lessee's duplicate; (b) Registered documents on file in the registry of deeds, or authenticated copies thereof showing that the originals thereof had been registered; and (c) **Any other document which, in the judgment of the court, is sufficient and proper basis** for reconstituting the liens or encumbrances affecting the property covered by the lost or destroyed certificate of title. Furthermore, Sections 8 and 11 of the same Act provide for the procedure for the notation of an interest that did not appear in the reconstituted certificate of title, mandating that a petition be filed before a court of competent jurisdiction. Thus, it is not the ministerial function of the Register of Deeds to record a right or an interest that was not duly noted in the reconstituted certificate of title. As a matter of fact, this task is not even within the ambit of the Register of Deed's job as the responsibility is lodged by law to the proper courts. The provisions of the law leave no question nor any doubt that it is indeed the duty of the trial court to determine the merits of the petition and render judgment as justice and equity may require. This conclusion is bolstered by Chapter X, Section 108 of P.D. No. 1529. The court's intervention in the amendment of the registration book after the entry of a certificate of title or of a memorandum thereon is categorically stated in the Property Registration Decree and cannot be denied by the mere allegations of petitioner. Hence, the contentions that the Register of Deeds may "validly re-annotate the encumbrance/liens and annotate the Supreme Court decision on the administratively reconstituted transfer certificates of titles (TCTs)" have no basis in law and jurisprudence.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Carlos Mayorico E. Caliwara for private respondents.

Lim Vigilia Alcala Dumlao & Orencia for China Banking Corp.
Crisologo V. Ramirez for Register of Deeds.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review on *certiorari*.[1] assailing the Decision[2] of the Court of Appeals (CA) promulgated on August 29, 1997 in CA-G.R. CV No. 50332.

The facts of record would indicate that Pacific Mills, Inc. (Pacific Mills) originally owned five parcels of land covered by Transfer Certificates of Title (TCT) Nos. 136640, 136441, 222370 and 134249. These properties were subsequently purchased by respondents on an installment basis from Pacific Mills on July 19, 1979.[3]

On June 23, 1983, petitioner filed a collection case against Pacific Mills before the Regional Trial Court (RTC) of Pasig, Branch 162 on the ground of alleged failure to fulfill its obligation under a contract of loan. After hearing, the trial court issued a writ of preliminary attachment in favor of petitioner. Thereafter, on August 17, 1983, the writ of preliminary attachment was annotated on TCT Nos. 136640, 136441, 222370 and 134249.

On December 27, 1985, the RTC of Pasig rendered a decision ordering Pacific Mills to pay its obligation under the loan agreement plus interest, penalty charges, attorney's fees and costs of suit. On appeal, the CA affirmed the decision of the trial court. Not satisfied with the judgment of the appellate court, Pacific Mills filed a petition for review before this Court.

During the pendency of the appeal or on June 11, 1988, the Quezon City Hall was razed by fire thereby destroying the records

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

[2] Penned by Associate Justice Ma. Alicia Austria-Martinez (now a member of this Court), with Associate Justices Fidel P. Purisima and Romeo J. Callejo, Sr. (now retired members of this Court) concurring, *rollo*, pp. 83-87.

[3] Deed of Absolute Sale, Annex "A", *records*, pp. 5-10.

of the Registry of Deeds of Quezon City, including the TCTs of Pacific Mills.

Sometime in 1992, Pacific Mills filed a petition for reconstitution of the burned TCTs through administrative reconstitution, in accordance with Republic Act No. 6732.[4] On March 23, 1992, the Registry of Deeds of Quezon City issued to Pacific Mills the reconstituted TCTs, namely: No. RT-55702 (for TCT No. 136640), No. RT-55704 (for TCT No. 134249), No. RT-55703 (for TCT No. 136441) and No. RT-55705 (for TCT No. 222370). However, the aforesaid alleged annotations of the preliminary attachment in favor of petitioner were not incorporated in the reconstituted TCTs, but annotated therein was the sale made by Pacific Mills to respondents and their payment in full. On even date, the reconstituted TCTs were cancelled in favor of the respondents. Respondents were given the following clean TCT Nos. 56683[5] (for RT-55703), 56684[6] (for RT-55702), 56685[7] (for RT-55704) and 56686[8] (for RT-55705).

On February 8, 1993, petitioner wrote the Registry of Deeds of Quezon City requesting for the annotation of the notice of levy, and, subsequently, the annotation of a favorable decision of this Court rendered on August 3, 1992, on the new TCTs issued to respondents.

On February 10, 1993, Samuel C. Cleofe, the Quezon City Register of Deeds, informed respondents that the letter-request for re-annotation of notice of levy had been entered in the Primary Entry Book 574/Volume 24, and asked them to surrender their owners' duplicate copies of TCT Nos. 56683 to 56686.[9]

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[4] "An Act Allowing Administrative Reconstitution of Original Copies of Certificates of Titles Lost or Destroyed Due to Fire, Flood and Other *Force Majeure*, Amending for the Purpose Section One Hundred Ten of Presidential Decree Numbered Fifteen Twenty-Nine and Section Five of Republic Act Numbered Twenty-Six."

[5] Annex "B", *records*, pp. 11-13.

[6] Annex "C", *id.* at 14-16.

[7] Annex "E", *id.* at 19-20.

[8] Annex "D", *id*. at 17-18.

[9] See Annex "F", *id.* at 21.

Immediately upon receipt of the said letter, respondents verified the original copies of titles in the possession of the Registry of Deeds and discovered that the following annotations were included at the back of the titles: "Request for Re-Annotation of Notice of Levy" and "Letter Request for Annotation of Entry of Judgment of Supreme Court."

Thereafter, respondents filed on March 3, 1993, a Petition for the Cancellation of Annotations in Land Titles before the RTC of Quezon City, Branch 100, docketed as Civil Case No. Q-6056(93). Later on, petitioner was impleaded as an additional respondent, while China Banking Corporation filed a complaint-in-intervention for being a mortgagee of the real properties, together with all the improvements thereon.

On March 29, 1995, the trial court rendered judgment in favor of respondents. The dispositive portion of the decision reads:

> WHEREFORE, premises above considered, there being no justification for the Quezon City Register of Deeds in making the annotation on petitioners' original TCT Nos. 56683 (RT-55703), 56684 (RT-55702), 56685 (RT-55748) and 56686 (RT-55705), said respondent is hereby ordered to DELETE therefrom the said annotation "request for annotation and the annotated Supreme Court decision against the Pacific Mills, Inc." and to desist from its request for petitioners to submit their owners duplicate of titles to annotate such request of the Philippine Cotton Corporation.
>
> There being no justiciable issue in the complaint-in-intervention, let the annotations of a mortgage executed by petitioners on December 18, 1992 in favor of intervenor China Banking Corporation remain on petitioners' subject TCTs.
>
> SO ORDERED.[10]

The trial court ratiocinated that:

> Under the circumstances, respondent [the Registry of Deeds of Quezon City] should and could have properly refused such request instead of immediately annotating it. In the same light, "The Register of Deeds may likewise properly refuse registration of an order attachment when it appears that the title involved is not in the name of the defendant and

[10] Penned by Judge Pedro T. Santiago, *id*. at 457-458.

there is no evidence submitted to indicate that the said defendant has any present or future interest in the property covered by the titles." (*Gotauco vs. Register of Deeds of Tayabas*, 59 Phil. 756, 1934 and *Geonanga vs. Hodges*, 55 O.G. p. 2891, April 21, 1958). (Underscoring Supplied)[11]

Unsatisfied with the outcome of the case, petitioner filed a notice of appeal before the CA, contending that:

"THE REGISTER OF DEEDS OF QUEZON CITY HAS THE AUTHORITY TO RE-ANNOTATE THE NOTICE OF LEVY AND TO ANNOTATE THE ENTRY OF JUDGMENT OF THE SUPREME COURT ON TRANSFER CERTIFICATES OF TITLE NOS. 56683, 56684, 56685 AND 56686, ALL ISSUED IN THE NAME OF THE PETITIONERS-APPELLEES AS A RESULT OF AN ADMINISTRATIVE RECONSTITUTION OF TITLES."[12]

In its August 29, 1997 decision, the appellate court dismissed the appeal because the issue raised by the petitioner was a pure question of law, over which the CA had no jurisdiction.

Hence, this petition.

Petitioner presents the following assignment of errors:

FIRST ERROR

THE LOWER COURT ERRED IN NOT SUSTAINING THE AUTHORITY OF THE QUEZON CITY REGISTER OF DEEDS TO VALIDLY RE-ANNOTATE THE ENCUMBRANCE/LIENS AND ANNOTATE THE SUPREME COURT DECISION ON THE ADMINISTRATIVELY RECONSTITUTED TRANSFER CERTIFICATES OF TITLES (TCTs) IN FAVOR OF PETITIONER-APPELLANT.

SECOND ERROR

THE LOWER COURT, IN CONSEQUENCE THEREOF, LIKEWISE ERRED IN ORDERING THE QUEZON CITY REGISTER OF DEEDS TO DELETE THE ANNOTATION THAT READS: "REQUEST FOR ANNOTATION AND THE ANNOTATED SUPREME COURT DECISION AGAINST PACIFIC MILLS, INC.", FROM PETITIONERS' ORIGINAL TCT NOS. 96683 [*sic*] (RT-55703), 56684 (RT-55702),

[11] *Id.* at 456-457.

[12] *Rollo*, p. 86.

56685 (RT-55748) AND 56686 (RT-55705) AND TO DESIST FROM REQUESTING RESPONDENTS/APPELLEES TO SUBMIT THEIR OWNERS' DUPLICATE OF TITLES FOR ANNOTATION OF PETITIONER PHILIPPINE COTTON CORPORATION'S REQUEST.[13]

Petitioner asserts that a cursory reading of Section 71 of Presidential Decree No. 1529 shows that it is the ministerial duty of the Register of Deeds, in the matter of an attachment or other liens in the nature of involuntary dealing in registered land, to "send notice by mail to a registered owner requesting him to produce his duplicate certificate so that a memorandum of attachment or other lien may be made thereon." This provision, according to petitioner, actually applies whenever a writ of attachment has been issued by a court of competent jurisdiction after hearing on the issuance of the said writ. The notice of attachment not having been dissolved, it was ministerial on the part of the Register of Deeds to record the notice on the TCTs he issued.

Petitioner would persuade this Court that it is the ministerial duty of the Register of Deeds to record any encumbrance or lien on respondents' existing TCTs. It cites, as proof of its supposition, Sections 10 and 71 of the Property Registration Decree (P.D. No. 1529), which are quoted as follows:

Section 10. *General functions of Registers of Deeds.* — The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.

It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly cancelled. If the instrument is not registrable, he shall forthwith deny registration thereof and inform the presentor of such denial in writing, stating the ground or reason therefor, and advising him of his right to appeal by *consulta* in accordance with Section 117 of this Decree.

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[13] *Id.* at 22.

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Section 71. *Surrender of certificate in involuntary dealings.* – If an attachment or other lien in the nature of involuntary dealing in registered land is registered, and the duplicate certificate is not presented at the time of registration, the Register of Deeds, shall, within thirty-six hours thereafter, send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce his duplicate certificate so that a memorandum of the attachment or other lien may be made thereon. If the owner neglects or refuses to comply within a reasonable time, the Register of Deeds shall *report the matter to the court*, and it shall, after notice, enter an order to the owner to produce his certificate at a time and place named therein, and may enforce the order by suitable process. (Underscoring supplied)

The Court is not in accord with the stance of petitioner. Section 10 of P.D. No. 1529 merely involves the general functions of the Register of Deeds, while Section 71 thereof relates to an attachment or lien in a registered land in which the duplicate certificate was ***not presented at the time of the registration of the said lien or attachment.***

A special law specifically deals with the procedure for the reconstitution of Torrens certificates of title lost or destroyed. Under Section 4 of Act No. 26:[14]

Liens and other encumbrances affecting a destroyed or lost certificate of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) Annotations or memoranda appearing on the owner's, co-owner's, mortgagee's or lessee's duplicate;

(b) Registered documents on file in the registry of deeds, or authenticated copies thereof showing that the originals thereof had been registered; and

(c) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the liens or encumbrances affecting the property covered by the lost or destroyed certificate of title. (Underscoring supplied)

[14] "An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed."

Furthermore, Sections 8 and 11 of the same Act provide for the procedure for the notation of an interest that did not appear in the reconstituted certificate of title, mandating that a petition be filed before a court of competent jurisdiction:

> Section 8. *Any person whose right or interest was duly noted in the original of a certificate of title, at the time it was lost or destroyed, but does* ***not appear*** *so noted on the reconstituted certificate of title*, which is subject to the reservation provided in the preceding section, may, while such reservation subsists, *file a petition with the proper Court of First Instance for the annotation of such right or interest on said reconstituted certificate of title*, and the court, after notice and hearing, shall determine the merits of the petition and render such judgment as justice and equity may require. The petition shall state the number of the reconstituted certificate of title and the nature, as well as a description, of the right or interest claimed. (Underscoring supplied)
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> x x x
>
> Section 11. *Petitions for reconstitution of registered interests, liens and other encumbrances, based on sources enumerated in sections 4(b) and/or 4(c) of this Act, shall be filed, by the interested party, with the proper Court of First Instance.* The petition shall be accompanied with the necessary documents and shall state, among other things, the number of the certificate of title and the nature as well as a description of the interest, lien or encumbrance which is to be reconstituted, and the court, after publication, in the manner stated in section nine of this Act, and hearing shall determine the merits of the petition and render such judgment as justice and equity may require. (Underscoring supplied)

Clearly, therefore, it is not the ministerial function of the Register of Deeds to record a right or an interest that was not duly noted in the reconstituted certificate of title. As a matter of fact, this task is not even within the ambit of the Register of Deed's job as the responsibility is lodged by law to the proper courts. The foregoing quoted provisions of the law leave no question nor any doubt that it is indeed the duty of the trial court to determine the merits of the petition and render judgment as justice and equity may require.

This conclusion is bolstered by Chapter X,[15] Section 108 of P.D. No. 1529, which provides:

Sec. 108. *Amendment and alteration of certificates*. — **No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance.** A registered owner or **other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant inchoate appearing on the certificate,** have terminated and ceased; **or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering the certificate or any memorandum thereon, or on any duplicate certificate**; or that the name of any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interest of heirs or creditors will thereby be affected, or that a corporation which owned registered land and has been dissolved has not yet conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the **court may hear and determine the petition after notice to all parties in interest, and may order** the entry or cancellation of a new certificate, **the entry or cancellation of a memorandum upon a certificate**, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper: *Provided, however*, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that **nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith**, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section,

All petitions or motions filed under this section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered. (Underscoring supplied)

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[15] Petitions and Actions After Original Registration.

The court's intervention in the amendment of the registration book after the entry of a certificate of title or of a memorandum thereon is categorically stated in the Property Registration Decree and cannot be denied by the mere allegations of petitioner. Hence, the contentions that the Register of Deeds may "validly re-annotate the encumbrance/liens and annotate the Supreme Court decision on the administratively reconstituted transfer certificates of titles (TCTs)" have no basis in law and jurisprudence.

Petitioner further submits that the issuance of the TCTs to respondents is fraudulent. It suggests that under Sections 69 and 73 of P.D. No. 1529, any person whose interest does not appear on a reconstituted title may file a request directly with the Register of Deeds.

As correctly observed by respondents, P.D. No. 1529 principally pertains to the registration of property, while R.A. No. 26 is a special law on the procedure for the reconstitution of Torrens certificates of title that were lost or destroyed. Specifically, Section 69[16] of P.D. No. 1529 refers to an attachment that arose **after** the issuance of a certificate of title; while Section 71[17] of the same law pertains to the registration of the

[16] Sec. 69. *Attachments.* – An attachment, or a copy of any writ, order or process issued by a court of record, intended to create or preserve any lien, status, right, or attachment upon registered land, shall be filed and registered in the Registry of Deeds for the province or city in which the land lies, and, in addition to the particulars required in such papers for registration, shall contain a reference to the number of the certificate of title to be affected and the registered owner or owners thereof, and also if the attachment, order, process or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for identification of the land or interest intended to be affected. A restraining order, injunction or *mandamus* issued by the court shall be entered and registered on the certificate of title affected, free of charge.

[17] Sec. 71. *Surrender of certificate in involuntary dealings*. – If an attachment or other lien in the nature of involuntary dealing in registered land is registered, and the duplicate certificate is not presented at the time of registration, the Register of Deeds, shall, within thirty-six hours thereafter, send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce his duplicate certificate so that a memorandum of the attachment or other lien may be made thereon. If the owner neglects or refuses to comply within a reasonable time, the

order of a court of an attachment that was continued, reduced, dissolved or otherwise affected by a judgment of the court. Undoubtedly, the foregoing provisions find no application in the present case since petitioner insists that its interest was annotated **prior** to the reconstitution of the disputed certificates of title.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 50332, dated August 29, 1997, and the Decision of the Regional Trial Court of Quezon City, Branch 101, in Civil Case No. Q-6056(93),[18] are hereby *AFFIRMED*.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 147443. February 11, 2008]

LPBS COMMERCIAL, INC., *petitioner, vs.* **HON. VENANCIO J. AMILA, in his capacity as Presiding Judge of the Regional Trial Court of Tagbilaran City, Br. 3 and THE FIRST CONSOLIDATED BANK (FCB) OF BOHOL, INC.,** *respondents.*

Register of Deeds shall report the matter to the court, and it shall, after notice, enter an order to the owner to produce his certificate at a time and place named therein, and may enforce the order by suitable process.

[18] The case was re-raffled to Branch 101 on January 13, 1995.

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; APPEAL, NOT *CERTIORARI*, IS THE PROPER REMEDY AGAINST AN INTERLOCUTORY ORDER.— The order denying petitioner's motion for issuance of a TRO is an interlocutory order on an incident which does not touch on the merits of the case or put an end to the proceedings. The remedy against an interlocutory order is not *certiorari*, but an appeal in case of unfavorable decision. Only if there are circumstances that clearly demonstrate the inadequacy of an appeal that the remedy of *certiorari* is allowed, none of which is present in the instant case. Moreover, no special and important reason or exceptional and compelling circumstance has been adduced by the petitioner why direct recourse to this Court should be allowed. This Court's original jurisdiction to issue a writ of *certiorari* (as well as of prohibition, *mandamus*, *quo warranto, habeas corpus* and injunction) is not exclusive, but is concurrent with the Regional Trial Courts and the Court of Appeals in certain cases. The propensity of litigants and lawyers to disregard the hierarchy of courts in our judicial system by seeking relief directly from this Court must be put to a halt for two reasons: (1) it should be an imposition upon the precious time of this Court; and (2) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.

APPEARANCES OF COUNSEL

Glavosa Law Office for petitioner.
Zeu Kalinao G. Lim for private respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for *certiorari*[1] assails the January 17, 2001 Order[2] of the Regional Trial Court of Bohol, Branch 3 denying petitioner's Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction. Also assailed is the February 22, 2001 Order[3] denying the Motion for Reconsideration.

In 1991, petitioner obtained several loans from respondent First Consolidated Bank (FCB) of Bohol Inc. By July 1997, petitioner's loan with respondent bank amounted to ₱11.5 Million with an average interest rate of 15.5% per annum. The loan was covered by several Promissory Notes and secured with a Real Estate Mortgage[4] covering five parcels of land.

In October 1997, petitioner's loan obligation was restructured and consolidated into three Promissory Notes[5] executed as follows:

October 16, 1997	₱4,775,000.00
October 23, 1997	₱5,150,000.00
November 10, 1997	₱1,575,000.00

Consequently, the old Promissory Notes were deemed cancelled and superseded by the new ones which provided for an increased interest rate of 20% per annum for the first two notes, and 30% per annum for the third note.

On June 11, 1998, petitioner filed a Complaint[6] for Reformation of Documents, Recovery of Excessive Interest Payments,

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[1] *Rollo*, pp. 3-11.

[2] *Id*. at 69.

[3] *Id*. at 73-74.

[4] *Id*. at 23-24 and 28-29.

[5] *Id*. at 20-22.

[6] *Id*. at 12-19.

Damages, Injunction with Preliminary Injunction and/or Temporary Restraining Order against respondent bank before the Regional Trial Court of Bohol (RTC-Bohol) docketed as Civil Case No. 6200. The RTC-Bohol, through Executive Judge Achilles L. Melicor subsequently issued an Order directing the special raffle of Civil Case No. 6200 and denying petitioner's application for TRO.[7] The case was eventually assigned to RTC-Bohol Branch 3 which was presided by Judge Fernando G. Fuentes III.

In its complaint, petitioner alleged that additional oppressive and excessive charges were unilaterally imposed by respondent bank in violation of their agreement. Petitioner claimed that the interest rates applicable to the aggregate loan is only 20% and not 30% as reflected in the third Promissory Note dated November 10, 1997; and that the term of the promissory notes was six months and not 30 days.

In its Answer,[8] respondent bank alleged that the imposition of the additional charge of 5% per annum based on the outstanding principal and the total amount of the unpaid interest was in accordance with the provisions of the Promissory Notes. Respondent bank added that contrary to petitioner's claim, the parties did not have any agreement providing for a maturity period of six months.

Despite being given countless opportunities to settle the matter, the parties were unable to reach an agreement. In the course of the protracted proceedings, Judge Fuentes was replaced by Judge Venancio J. Amila. Noting the slow progress of the case in the hearing held on May 11, 2000, Judge Amila gave the parties a last chance to settle before finally proceeding to pre-trial.[9]

Meanwhile, on November 10, 2000, respondent bank filed an "*Application for the Extra-Judicial Foreclosure of the Real Estate Mortgage*." On December 11, 2000, petitioner filed an

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[7] *Id*. at 111.

[8] *Id*. at 35-49.

[9] *Id*. at 165.

"*Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction*" to enjoin foreclosure. When said motion was heard on December 20, 2000, petitioner asked the trial court to reset the hearing claiming the possibility of an amicable agreement between the parties. The trial court reset the hearing to January 15, 2001, but on January 12, 2001, petitioner again filed an urgent motion for the postponement of the hearing which the trial court denied. During the January 15, 2001 hearing, respondent bank manifested that there has been no settlement between the parties and moved for the resolution of petitioner's pending motion for the issuance of a TRO.

On January 17, 2001, the trial court issued an Order denying the motion for issuance of a TRO, thus:

> WHEREFORE, considering that there has been a long default of plaintiff to pay its loan obligation to defendant bank according to the reconstructed promissory notes, the foreclosure of the mortgaged properties is therefore due and proper. However, as the propriety of additional interests allegedly unilaterally imposed by defendant are being questioned by plaintiff, the foreclosure should be limited only to the uncontested agreement in fairness to both, which is the amount of the loan and the interest therein due as mutually agreed by the parties. The penalties and all other additional increments thereto shall be the subject of hearing to determine its propriety or justification.
>
> SO ORDERED.[10]

Petitioner moved for reconsideration but was denied by the trial court. Hence, this petition.

The order denying petitioner's motion for issuance of a TRO is an interlocutory order on an incident which does not touch on the merits of the case or put an end to the proceedings.[11] The remedy against an interlocutory order is not *certiorari*, but an appeal in case of an unfavorable decision. Only if there are circumstances that clearly demonstrate the inadequacy of

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[10] *Id*. at 69.

[11] *Law Firm of Abrenica, Tungol and Tibayan v. Court of Appeals*, G.R. No. 143706, April 5, 2002, 380 SCRA 285, 293.

an appeal that the remedy of *certiorari* is allowed,[12] none of which is present in the instant case.

Moreover, no special and important reason or exceptional and compelling circumstance has been adduced by the petitioner why direct recourse to this Court should be allowed. This Court's original jurisdiction to issue a writ of *certiorari* (as well as of prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction) is not exclusive, but is concurrent with the Regional Trial Courts and the Court of Appeals in certain cases.

In *Liga ng mga Barangay v. City Mayor of Manila*[13] we held that —

> 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 therefor 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. This is [an] established policy. 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.

The propensity of litigants and lawyers to disregard the hierarchy of courts in our judicial system by seeking relief directly from this Court must be put to a halt for two reasons: (1) it would be an imposition upon the precious time of this Court; and (2) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances

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[12] *Id*.

[13] G.R. No. 154599, January 21, 2004, 420 SCRA 562, 572.

had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.[14]

WHEREFORE, the petition is *DISMISSED*.

SO ORDERED.

Austria-Martinez, Corona, Nachura,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 157177. February 11, 2008]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **JESUSA P. REYES and CONRADO B. REYES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI TO THE SUPREME COURT UNDER RULE 45; REVIEW LIMITED TO ERRORS OF LAW; EXCEPTIONS.— The Court is not a trier of facts, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower courts. As a rule, the findings of fact of the trial court when affirmed by the CA are final and conclusive and cannot be reviewed on appeal by this Court, as long as they are borne out by the record or are based on substantial evidence. Such rule however is not absolute, but is subject to well-established exceptions, which are: 1) when

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[14] *Santiago v. Vazquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 651-652.

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

the inference made is manifestly mistaken, absurd or impossible; 2) when there is a grave abuse of discretion; 3) when the finding is grounded entirely on speculations, surmises or conjectures; 4) when the judgment of the CA is based on a misapprehension of facts; 5) when the findings of facts are conflicting; 6) when the CA, in making its findings, went beyond the issues of the case, and those findings are contrary to the admissions of both appellant and appellee; 7) when the findings of the CA are contrary to those of the trial court; 8) when the findings of fact are conclusions without citation of specific evidence on which they are based; 9) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and 10) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; CIVIL CASES REQUIRE PREPONDERANCE OF EVIDENCE.— It is a basic rule in evidence that each party to a case must prove his own affirmative allegations by the degree of evidence required by law. In civil cases, the party having the burden of proof must establish his case by preponderance of evidence, or that evidence which is of greater weight or is more convincing than that which is in opposition to it. It does not mean absolute truth; rather, it means that the testimony of one side is more believable than that of the other side, and that the probability of truth is on one side than on the other. Section 1, Rule 133 of the Rules of Court provides the guidelines for determining preponderance of evidence, thus: 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 circumstances 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 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 legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

3. ID.; ID.; ID.; ID.; PHYSICAL EVIDENCE PREVAILS OVER TESTIMONIAL EVIDENCE.— Physical evidence is a mute but eloquent manifestation of truth, and it ranks high in our hierarchy of trustworthy evidence. We have, on many occasions, relied principally upon physical evidence in ascertaining the truth. Where the physical evidence on record runs counter to the testimonial evidence of the prosecution witnesses, we consistently rule that the physical evidence should prevail. In addition, to uphold the declaration of the CA that it is unlikely for respondent Jesusa and her daughter to concoct a false story against a banking institution is to give weight to conjectures and surmises, which we cannot countenance. In fine, respondents failed to establish their claim by preponderance of evidence.

APPEARANCES OF COUNSEL

Benedicto Verzosa Gealogo Burkley & Associates for petitioner.

Teresita Gandionco Oledan for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to annul the Decision[1] of the Court of Appeals (CA) dated October 29, 2002 as well as its Resolution[2] dated February 12, 2003, which affirmed with modification the Decision of the Regional Trial Court (RTC) of Makati, Branch 142, in Civil Case No. 91-3453,[3] requiring Bank of Philippine Islands (petitioner) to return to spouses Jesusa P. Reyes and Conrado B. Reyes (respondents) the amount of ₱100,000.00 plus interest and damages.

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[1] CA *rollo*, pp. 109-117; penned by Justice Renato C. Dacudao, concurred in by Justices Eugenio S. Labitoria and Danilo B. Pine; docketed as CA-G.R. CV No. 47862.

[2] *Id*. at 133.

[3] Entitled *Jesusa P. Reyes and Conrado B. Reyes v. Bank of Philippine Islands*.

The conflicting versions of the parties are aptly summarized by the trial court, to wit:

On December 7, 1990 at around 2:00 p.m., plaintiff Jesusa Reyes together with her daughter, Joan Reyes, went to BPI Zapote Branch to open an ATM account, she being interested with the ongoing promotions of BPI entitling every depositor with a deposit amounting to ₱2,000.00 to a ticket with a car as its prize to be raffled every month.

She was accommodated, in lieu of the bank manager Mr. Nicasio, by Cicero Capati (Pats) who was an employee of the bank and in charge of the new accounts and time deposits characteristically described as having homosexual inclinations. They were entertained by Capati and were made to sit at a table occupied by a certain Liza.

Plaintiff informed Capati that they wanted to open an ATM account for the amount of ₱200,000.00, ₱100,000.00 of which shall be withdrawn from her exiting savings account with BPI bank which is account no. 0233-2433-88 and the other ₱100,000.00 will be given by her in cash.

Capati allegedly made a mistake and prepared a withdrawal slip for ₱200,00.00 (sic) to be withdrawn from her existing savings account with said bank and the plaintiff Jesusa Reyes believing in good faith that Capati prepared the papers with the correct amount signed the same unaware of the mistakes in figures.

While she was being entertained by Capati, her daughter Joan Reyes was filling up the signature cards and several other forms.

Minutes later after the slips were presented to the teller, Capati returned to where the plaintiff was seating and informed the latter that the withdrawable balance could not accommodate ₱200,000.00.

Plaintiff explained that she is withdrawing the amount of ₱100,000.00 only and then changed and correct the figure two (2) into one (1) with her signature super-imposed thereto signifying the change, afterwhich the amount of ₱100,000.00 in cash in two bundles containing 100 pieces of ₱500.00 peso bill were given to Capati with her daughter Joan witnessing the same. Thereafter Capati prepared a deposit slip for ₱200,000.00 in the name of plaintiff Jesusa Reyes with the new account no. 0235-0767-48 and brought the same to the teller's booth.

After a while, he returned and handed to the plaintiff her duplicate copy of her deposit to account no. 0235-0767-48 reflecting the amount of ₱200,000.00 with receipt stamp showing December 7, as the date.

Plaintiff and daughter then left.

On December 14, 1990, Mrs. Jesusa received her express teller card from said bank.

Thereafter on December 26, 1990, plaintiff left for the United States (Exhs. "T", "U"- "U-1") and returned to Manila on January 31, 1991 (Exhs. "V"-"V-1").

When she went to her pawnshop, she was made aware by her statement of account sent to her by BPI bank that her ATM account only contained the amount of ₱100,000.00 with interest.

She then sent her daughter to inquire, however, the bank manager assured her that they would look into the matter.

On February 6, 1991, plaintiff instructed Efren Luna, one of her employees, to update her savings account passbook at the BPI with the folded deposit slip for ₱200,000.00 stapled at the outer cover of said passbook. After presenting the passbook to be updated and when the same was returned, Luna noticed that the deposit slip stapled at the cover was removed and validated at the back portion thereof.

Thereafter, Luna returned with the passbook to the plaintiff and when the latter saw the validation, she got angry.

Plaintiff then asked the bank manager why the deposit slip was validated, whereupon the manager assured her that the matter will be investigated into.

When no word was heard as to the investigation made by the bank, Mrs. Reyes sent two (2) demand letters thru her lawyer demanding return of the missing ₱100,000.00 plus interest (Exhs. "B" and "C"). The same was received by defendant on July 25, 1991 and October 7, 1991, respectively.

The last letter prompted reply from defendant inviting plaintiff to sit down and discuss the problem.

The meeting resulted to the bank promising that Capati will be submitted to a lie detector test.

Plaintiff, however, never learned of the result of said test. Plaintiff filed this instant case.

Defendant on the other hand claimed that Bank of the Philippine Island admitted that Jesusa Reyes had effected a fund transfer in the amount of ₱100,000.00 from her ordinary savings account to the express teller account she opened on December 7, 1990 (Exhs. "3" to "3-C"), however, it was the only amount she deposited and no additional cash deposit of ₱100,000.00 was made. That plaintiff wanted to effect the transfer of ₱200,000.00 but the balance in her account was not sufficient and could not accommodate the same. Plaintiff thereafter agreed to reduce the amount to be withdrawn from ₱200,000.00 to ₱100,000.00 with plaintiff's signature superimposed on said corrections; that the original copy of the deposit slip was also altered from ₱200,000.00 to ₱100,000.00, however, instead of plaintiff signing the same, the clerk-in-charge of the bank, in this case Cicero Capati, signed the alteration himself for Jesusa Reyes had already left without signing the deposit slip. The documents were subsequently machine validated for the amount of ₱100,000.00 (Exhs. "2" and "4").

Defendant claimed that there was actually no cash involved with the transactions which happened on December 7, 1990 as contained in the bank's teller tape (Exhs."1" to "1-C").

Defendant further claimed that when they subjected Cicero Capati to a lie detector test, the latter passed the same with flying colors (Exhs. "5" to "5-C"), indicative of the fact that he was not lying when he said that there really was no cash transaction involved when plaintiff Jesusa Reyes went to the defendant bank on December 7, 1990; defendant further alleged that they even went to the extent of informing Jesusa Reyes that her claim would not be given credit (Exh. "6") considering that no such transaction was really made on December 7, 1990.[4]

On August 12, 1994, the RTC issued a Decision[5] upholding the versions of respondents, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds in favor of the plaintiff Jesusa P. Reyes and Conrado Reyes and against defendant Bank of the Philippine Islands ordering the latter to:

1. Return to plaintiffs their ₱100,000.00 with interest at 14% per annum from December 7, 1990;

[4] Records, pp. 220-222.

[5] *Id*. at 219-225; per Judge Gil P. Fernandez, Sr.

2. Pay plaintiffs ₱1,000,000.00 as moral damages;

3. Pay plaintiffs ₱350,000.00 as exemplary damages;

4. Pay plaintiffs ₱250,000.00 for and attorney's fees.[6]

The RTC found that petitioner's claim that respondent Jesusa deposited only ₱100,000.00 instead of ₱200,000.00 was hazy; that what should control was the deposit slip issued by the bank to respondent, for there was no chance by which respondent could write the amount of ₱200,000.00 without petitioner's employee noticing it and making the necessary corrections; that it was deplorable to note that it was when respondent Jesusa's bankbook was submitted to be updated after the lapse of several months when the alleged error claimed by petitioner was corrected; that Article 1962 of the New Civil Code provides that a deposit is constituted from the moment a person receives a thing belonging to another with the obligation of safely keeping it and of returning the same; that under Article 1972, the depositary is obliged to keep the thing safely and to return it when required to the depositor or to his heirs and successors or to the person who may have been designated in the contract.

Aggrieved, petitioner appealed to the CA which in a Decision dated October 29, 2002 affirmed the RTC decision with modification as follows:

Nonetheless, the award of 14% interest per annum on the missing ₱100,000.00 can stand some modification. The interest thereon should be 12% per annum, reckoned from May 12, 1991, the last day of the five day-grace period given by plaintiff-appellees' counsel under the first demand letter dated May 6, 1991 (Exhibit B), or counted from May 7, 1991, the date when defendant-appellant received said letter. Interest is demandable when the obligation consist in the payment of money and the debtor incurs in delay.

Also, we have to reduce the ₱1 million award of moral damages to a reasonable sum of ₱50,000.00. Moral damages are not intended to enrich a plaintiff at the expense of a defendant. They are awarded only to enable the injured party to obtain means, diversion, or amusements that will serve to alleviate the moral suffering he has

[6] *Id*. at 224-225.

undergone, by reason of the defendant's culpable action. The award of moral damages must be proportionate to the suffering inflicted.

In addition, we have to delete the award of ₱350,000.00 as exemplary damages. The absence of malice and bad faith, as in this case, renders the award of exemplary damages improper.

Finally, we have to reduce the award of attorney's fees to a reasonable sum of ₱30,000.00, as the prosecution of this case has not been attended with any unusual difficulty.

WHEREFORE, with the modifications thus indicated, the judgment appealed from is in all other respects AFFIRMED. Without costs.[7]

In finding petitioner liable for the missing ₱100,000.00, the CA held that the RTC correctly gave credence to the testimonies of respondent Jesusa and Joan Reyes to the effect that aside from the fund transfer of ₱100,000.00 from Jesusa's savings account, Jesusa also made a cash deposit of ₱100,000.00 in the afternoon of December 7, 1990; that it is unlikely for these two to concoct a story of falsification against a banking institution of the stature of petitioner if their claims were not true; that the duplicate copy of the deposit slip showed a deposit of ₱200,000.00; this, juxtaposed with the fact that it was not machine-validated and the original copy altered by the bank's clerk from ₱200,000.00 to ₱100,000.00 with the altered amount "validated," is indicative of anomaly; that even if it was bank employee Cicero Capati who prepared the deposit slip, Jesusa stood her ground and categorically denied having any knowledge of the alteration therein made; that petitioner must account for the missing ₱100,000.00 because it was the author of the loss; that banks are engaged in business imbued with public interest and are under strict obligation to exercise utmost fidelity in dealing with its clients, in seeing to it that the funds therein invested or by them received are properly accounted for and duly posted in their ledgers.

Petitioner's motion for reconsideration was denied in a Resolution dated February 12, 2003.

Hence, the present petition on the following grounds:

[7] CA *rollo*, pp. 116-117.

A. In affirming the decision of the trial court holding BPI liable for the amount of ₱100,000.00 representing an alleged additional deposit of respondents, the Honorable Court of Appeals gravely abused its discretion by resolving the issue based on a conjecture and ignoring physical evidence in favor of testimonial evidence.

B. The Court of Appeals gravely abused its discretion, being as it is contrary to law, in holding BPI liable to respondents for the payment of interest at the rate of 12% per annum.

C. This Honorable Court gravely abused its discretion, being as it is contrary to law, in holding BPI liable for moral damages and attorney's fees at the reduced amounts of ₱50,000.00 and ₱30,000.00, respectively.[8]

The main issue for resolution is whether the CA erred in sustaining the RTC's finding that respondent Jesusa made an initial deposit of ₱200,000.00 in her newly opened Express Teller account on December 7, 1990.

The issue raises a factual question. The Court is not a trier of facts, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower courts.[9] As a rule, the findings of fact of the trial court when affirmed by the CA are final and conclusive and cannot be reviewed on appeal by this Court, as long as they are borne out by the record or are based on substantial evidence.[10] Such rule however is not absolute, but is subject to well-established exceptions, which are: 1) when the inference made is manifestly mistaken, absurd or impossible; 2) when there is a grave abuse of discretion; 3) when the finding is grounded entirely on speculations, surmises or conjectures; 4) when the judgment of the CA is based on a misapprehension of facts; 5) when the findings of facts are conflicting; 6) when the CA, in making its findings, went beyond the issues of the case, and those findings are contrary to the

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[8] *Rollo*, pp. 30-31.

[9] *Id.*

[10] *Prudential Bank v. Lim*, G.R. No. 136371, November 11, 2005, 474 SCRA 485, 491.

admissions of both appellant and appellee; 7) when the findings of the CA are contrary to those of the trial court; 8) when the findings of fact are conclusions without citation of specific evidence on which they are based; 9) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and 10) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[11] We hold that this case falls under exception Nos. 1, 3, 4, and 9 which constrain us to resolve the factual issue.

It is a basic rule in evidence that each party to a case must prove his own affirmative allegations by the degree of evidence required by law.[12] In civil cases, the party having the burden of proof must establish his case by preponderance of evidence,[13] or that evidence which is of greater weight or is more convincing than that which is in opposition to it. It does not mean absolute truth; rather, it means that the testimony of one side is more believable than that of the other side, and that the probability of truth is on one side than on the other.[14]

Section 1, Rule 133 of the Rules of Court provides the guidelines for determining preponderance of evidence, thus:

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 circumstances 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

[11] *Go v. Court of Appeals*, G.R. No. 112550, February 5, 2001, 351 SCRA 145.

[12] REVISED RULES OF COURT, Rule 131, Sec. 1.

[13] REVISED RULES ON EVIDENCE, Rule 133, Sec. 1.

[14] *Reyes v. Court of Appeals*, 432 Phil. 1052, 1061 (2002), citing *Rivera v. Court of Appeals*, 348 Phil. 734 (1998).

of their testimony, their interest or want of interest, and also their personal credibility so far as the same legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

For a better perspective on the calibration of the evidence on hand, it must first be stressed that the judge who had heard and seen the witnesses testify was not the same judge who penned the decision. Thus, not having heard the testimonies himself, the trial judge or the appellate court would not be in a better position than this Court to assess the credibility of witnesses on the basis of their demeanor.

Hence, to arrive at the truth, we thoroughly reviewed the transcripts of the witnesses' testimonies and examined the pieces of evidence on record.

After a careful and close examination of the records and evidence presented by the parties, we find that respondents failed to successfully prove by preponderance of evidence that respondent Jesusa made an initial deposit of ₱200,000.00 in her Express Teller account.

Respondent Jesusa and her daughter Joan testified that at the outset, respondent Jesusa told Capati that she was opening an Express Teller account for ₱200,000.00; that she was going to withdraw and transfer ₱100,000.00 from her savings account to her new account, and that she had an additional ₱100,000.00 cash. However, these assertions are not borne out by the other evidence presented. Notably, it is not refuted that Capati prepared a withdrawal slip[15] for ₱200,000.00. This is contrary to the claim of respondent Jesusa that she instructed Capati to make a fund transfer of only ₱100,000.00 from her savings account to the Express Teller account she was opening. Yet, respondent Jesusa signed the withdrawal slip. We find it strange that she would sign the withdrawal slip if her intention in the first place was to withdraw only ₱100,000.00 from her savings account and deposit ₱100,000.00 in cash with her.

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[15] Records, p. 21, Exhibit "4".

Moreover, respondent Jesusa's claim that she signed the withdrawal slip without looking at the amount indicated therein fails to convince us, for respondent Jesusa, as a businesswoman in the regular course of business and taking ordinary care of her concerns,[16] would make sure that she would check the amount written on the withdrawal slip before affixing her signature. Significantly, we note that the space provided for her signature is very near the space where the amount of ₱200,000.00 in words and figures are written; thus, she could not have failed to notice that the amount of ₱200,000.00 was written instead of ₱100,000.00.

The fact that respondent Jesusa initially intended to transfer the amount of ₱200,000.00 from her savings account to her new Express Teller account was further established by the teller's tape presented as petitioner's evidence and by the testimony of Emerenciana Torneros, the teller who had attended to respondent Jesusa's transactions.

The teller's tape,[17] Exhibit "1" unequivocally shows the following data:

151159 07DEC90 1370 288A 233324299

151245 07DEC90 1601 288A **233243388**
***200000.00[18]
BIG AMOUNT
151251 07DEC90 1601 288J 233243388
***200000.00
151309 07DEC90 1601 288A 233243388
***200000.00
PB BALANCE ERROR
BAL. 229,257.64

151338 07DEC90 1601 288A 233243388
***200000.00
BIG AMOUNT
151344 07DEC90 1601 288J 233243388
***200000.00

[16] Rule 131, Sec. 3(d).

[17] Records, p. 154, Exhibit "1".

[18] Exhibit "1-c".

151404 07DEC90 1601 288A 233243388
***200000.00
TOD
151520 07DEC90 1601 288A 233320145
***2000.00
151705 07DEC90 1789 288A 233324299
***22917.00
151727 07DEC90 1601 288A 233243388
***100000.00
BIG AMOUNT
151730 07DEC90 1601 288J 233243388
***100000.00
151746 07DEC90 1601 288A 233243388
***100000.00[19]
151810 07DEC90 1370 288A **235076748**
151827 07DEC90 1790 288A 235076748
***100000.00 ***100000.00[20]
151903 07DEC90 1301 288A 233282405
151914 07DEC90 1690 288A 235008955
***1778.05
152107 07DEC90 1601 288A 3333241381
***5000.00
152322 07DEC90 1601 288A 233314374
***2000.00
152435 07DEC90 1370 288A 235076764
152506 07DEC90 1790 288A 235076764
***4000.00 ***4000.00
152557 07DEC90 1601 288A 233069469
***2000.00
152736 07DEC90 1601 288A 233254584
***2000.00
152849 07DEC90 0600 288A 231017585
***3150.00 686448
152941 07DEC90 1790 288A 3135052255
***2800.00 ***2800.00

[19] Exhibit "1-b".

[20] Exhibit "1-a".

153252 07DEC90 1601 288A 233098264
(Emphasis supplied)

The first column shows the exact time of the transactions; the second column shows the date of the transactions; the third column shows the bank transaction code; the fourth column shows the teller's code; and the fifth column shows the client's account number. The teller's tape reflected various transactions involving different accounts on December 7, 1990 which included respondent Jesusa's Savings Account No. 233243388 and her new Express Teller Account No. 235076748. It shows that respondent Jesusa's initial intention to withdraw ₱200,000.00, **not ₱100,000.00**, from her Savings Account No. 233324299 was begun at 3 o'clock, 12 minutes and 45 seconds as shown in Exhibit "1-c".

In explaining the entries in the teller's tape, Torneros testified that when she was processing respondent Jesusa's withdrawal in the amount of ₱200,000.00, her computer rejected the transaction because there was a discrepancy;[21] thus, the word "BIG AMOUNT" appeared on the tape. "Big amount" means that the amount was so big for her to approve,[22] so she keyed in the amount again and overrode the transaction to be able to process the withdrawal using an officer's override with the latter's approval.[23] The letter "J" appears after Figure 288 in the fourth column to show that she overrode the transaction. She then keyed again the amount of ₱200,000.00 at 3 o'clock 13 minutes and 9 seconds; however, her computer rejected the transaction, because the balance she keyed in based on respondent Jesusa's passbook was wrong;[24] thus appeared the phrase "balance error" on the tape, and the computer produced the balance of ₱229,257.64, and so she keyed in the withdrawal of ₱200,000.00.[25] Since it was a big amount, she again had to

[21] TSN, May 4, 1993, p. 10.

[22] *Id*.

[23] *Id*.

[24] TSN, April 27, 1993, p. 15.

[25] *Id*. at 16.

override it, so she could process the amount. However, the withdrawal was again rejected for the reason "TOD, overdraft,"[26] which meant that the amount to be withdrawn was more than the balance, considering that there was a debited amount of ₱30,935.16 reflected in respondent Jesusa's passbook, reducing the available balance to only ₱198,322.48.[27]

Torneros then called Capati to her cage and told him of the insufficiency of respondent Jesusa's balance.[28] Capati then motioned respondent Jesusa to the teller's cage; and when she was already in front of the teller's cage, Torneros told her that she could not withdraw ₱200,000.00 because of overdraft; thus, respondent Jesusa decided to just withdraw ₱100,000.00.[29]

This explains the alteration in the withdrawal slip with the superimposition of the figure "1" on the figure "2" and the change of the word "two" to "one" to show that the withdrawn amount from respondent Jesusa's savings account was only ₱100,000.00, and that respondent Jesusa herself signed the alterations.

The teller's tape showed that the withdrawal of the amount of ₱100,000.00 by fund transfer was resumed at 3 o'clock 17 minutes and 27 seconds; but since it was a big amount, there was a need to override it again, and the withdrawal/fund transfer was completed. At 3 o'clock 18 minutes and 27 seconds, the amount of ₱100,000.00 was deposited to respondent Jesusa's new Express Teller Account No. 235076748.

The teller's tape definitely establishes the fact of respondent Jesusa's original intention to withdraw the amount of ₱200,000.00, and not ₱100,000.00 as she claims, from her savings account, to be transferred as her initial deposit to her new Express Teller account, the insufficiency of her balance in her savings account, and finally the fund transfer of the amount of

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[26] *Id*. at 20.

[27] Records, p. 73, Exhibit "D-2".

[28] TSN, April 27, 1993, p. 19.

[29] *Id*.

₱100,000.00 from her savings account to her new Express Teller account. We give great evidentiary weight to the teller's tape, considering that it is inserted into the bank's computer terminal, which records the teller's daily transactions in the ordinary course of business, and there is no showing that the same had been purposely manipulated to prove petitioner's claim.

Respondent Jesusa's bare claim, although corroborated by her daughter, that the former deposited ₱100,000.00 cash in addition to the fund transfer of ₱100,000.00, is not established by physical evidence. While the duplicate copy of the deposit slip[30] was in the amount of ₱200,000.00 and bore the stamp mark of teller Torneros, such duplicate copy failed to show that there was a cash deposit of ₱100,000.00. An examination of the deposit slip shows that it did not contain any entry in the breakdown portion for the specific denominations of the cash deposit. This demolishes the testimonies of respondent Jesusa and her daughter Joan.

Furthermore, teller Torneros's explanation of why the duplicate copy of the deposit slip in the amount of ₱200,000.00 bore the teller's stamp mark is convincing and consistent with logic and the ordinary course of business. She testified that Capati went to her cage bringing with him a withdrawal slip for ₱200,000.00 signed by respondent Jesusa, two copies of the deposit slip for ₱200,000.00 in respondent Jesusa's name for her new Express Teller account, and the latter's savings passbook reflecting a balance of ₱249,657.64[31] as of November 19, 1990.[32] Thus, at first glance, these appeared to Torneros to be sufficient for the withdrawal of ₱200,000.00 by fund transfer. Capati then got her teller's stamp mark, stamped it on the duplicate copy of the deposit slip, and gave the duplicate to respondent Jesusa, while the original copy[33] of the deposit slip was left in her cage.[34] However, as Torneros started processing the

[30] Records, p. 6, Exhibits "A" and "7".

[31] Records, p. 73; Exhibits "D-2" and "D-2 a"; the entry shows ₱243,657.64.

[32] TSN, April 27, 1993, pp. 10-12.

[33] Records, p. 22. Exhibits "W", "W-1", "2" and "2-A".

[34] TSN, April 27, 1993, pp. 10-12.

transaction, it turned out that respondent Jesusa's balance was insufficient to accommodate the ₱200,000.00 fund transfer as narrated earlier.

Since respondent Jesusa had signed the alteration in the withdrawal slip and had already left the teller's counter thereafter and Capati was still inside the teller's cage, Torneros asked Capati about the original deposit slip and the latter told her, *"Ok naman iyan,"*[35] and Capati superimposed the figures "1" on "2" on the deposit slip[36] to reflect the initial deposit of ₱100,000.00 for respondent Jesusa's new Express Teller account and signed the alteration. Torneros then machine-validated the deposit slip. Thus, the duplicate copy of the deposit slip, which bore Torneros's stamp mark and which was given to respondent Jesusa prior to the processing of her transaction, was not machine-validated unlike the original copy of the deposit slip.

While the fact that the alteration in the original deposit slip was signed by Capati and not by respondent Jesusa herself was a violation of the bank's policy requiring the depositor to sign the correction,[37] nevertheless, we find that respondents failed to satisfactorily establish by preponderance of evidence that indeed there was an additional cash of ₱100,000.00 deposited to the new Express Teller account.

Physical evidence is a mute but eloquent manifestation of truth, and it ranks high in our hierarchy of trustworthy evidence.[38] We have, on many occasions, relied principally upon physical evidence in ascertaining the truth. Where the physical evidence on record runs counter to the testimonial evidence of the prosecution witnesses, we consistently rule that the physical evidence should prevail.[39]

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[35] TSN, May 4, 1993, p. 28.

[36] TSN, April 27, 1993, p. 20.

[37] TSN, Nov. 10, 1992, pp. 59-60.

[38] See *Jose v. Court of Appeals*, G.R. Nos. 118441-42, January 18, 2000, 322 SCRA 25, 31, citing *People v. Uycoque*, G.R. No. 107495, July 31, 1995, 246 SCRA 769 (1995).

[39] *Id*. citing *People v. Vasquez*, G.R. No. 102366, October 3, 1997, 280 SCRA 160.

In addition, to uphold the declaration of the CA that it is unlikely for respondent Jesusa and her daughter to concoct a false story against a banking institution is to give weight to conjectures and surmises, which we cannot countenance.

In fine, respondents failed to establish their claim by preponderance of evidence.

Considering the foregoing, we find no need to tackle the other issues raised by petitioner.

WHEREFORE, the petition is *GRANTED*. The decision of the Court of Appeals dated October 29, 2002 as well as its Resolution dated February 12, 2003 are hereby *REVERSED* and *SET ASIDE*. The complaint filed by respondents, together with the counterclaim of petitioner, is *DISMISSED*.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 157573. February 11, 2008]

ELINEL CAÑA, *petitioner, vs.* **EVANGELICAL FREE CHURCH OF THE PHILIPPINES,** *respondent.*

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

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL TO THE COURT OF APPEALS; FORM AND CONTENTS; SUBSEQUENT SUBMISSION OF MISSING DOCUMENT AS SUBSTANTIAL COMPLIANCE OF THE LAW, UPHELD IN THE INTEREST OF JUSTICE.— The CA did not commit any error when it reinstated respondent's petition upon subsequent submission of a copy of the Board Resolution authorizing respondent's counsel to sign the certificate of forum shopping in its behalf. x x x In *National Steel Corporation v. Court of Appeals,* the Court ruled that: Circular No. 28-91 was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be so interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure – which is to achieve substantial justice as expeditiously as possible. **The fact that the Circular requires that it be strictly complied with merely underscores its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances.** x x x In *Vicar International Construction, Inc. v. FEB Leasing and Finance Corporation*, the Court reiterated the principle that technical rules of procedure should be used to promote, not frustrate, justice. x x x Thus, the subsequent submission of the authority granted to herein respondent's counsel to sign the certification is substantial compliance, especially in view of the merits of the instant case. As to respondent's subsequent submission of the complaint and answer as well as other material portions of the records of the case, the Court has ruled in *Cusi-Hernandez v. Diaz, Jaro v. Court of Appeals and Donato v. Court of Appeals,* that subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance which calls for the relaxation of the rules of procedure. x x x Thus, what should guide judicial action is that a party litigant is given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, honor, or property on mere technicalities. Needless to stress, "a litigation is not a game of technicalities." When technicality deserts its function of being an aid to justice, the Court is justified in exempting from its operation a particular case. Technical

rules of procedure should be used to promote, not frustrate justice. While the swift unclogging of court dockets is a laudable objective, granting substantial justice is an even more urgent ideal. Indeed, the Rules of Court should be applied with reason and liberality. This is called for specially because, as in the instant case, the strict application of the above-cited rules will not serve the ends of justice.

2. **ID.; ID.; APPEAL; QUESTIONS OF FACT, NOT PROPER; EXCEPTION; CONFLICT IN FINDINGS BETWEEN THE TRIAL COURT AND THE APPELLATE COURT.—** Although the general rule is that a petition for review under Rule 45 of the Rules of Court should cover only questions of law and questions of fact are not reviewable, the same is subject to exceptions among which is when the findings of the appellate court conflict with the findings of the trial court, as in the present case.

3. **CIVIL LAW; LAND TITLES; NOTARIZED DEED OF SALE AND TITLE OVER THE PROPERTY PREVAILS AGAINST UNSUBSTANTIATED AFFIDAVITS.—** The self-serving and unsubstantiated affidavits of petitioner and his witnesses alleging that it was MCEC which owns the subject property because it paid the purchase price failed to overcome the documentary evidence presented by respondent, consisting of the notarized deed of sale and the title over the property in question. Respondent's title over the subject property is evidence of its ownership thereof. It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Moreover, the age-old rule is that the person who has a Torrens Title over a land is entitled to possession thereof.

APPEARANCES OF COUNSEL

Villanueva Caña & Associates Law Offices for petitioner.
Editha Arciaga-Santos 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 September 20, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 59760, which reversed and set aside the Decision[2] of the Regional Trial Court (RTC) of Malabon City, Branch 74 dated May 15, 2000; and the CA Resolution dated February 26, 2003,[3] denying petitioner's Motion for Reconsideration.

A dispute over the possession of a land claimed by a church against its former pastor sparked the commencement of this case in the trial court. The disputed property, consisting of a church lot and building, is covered by Transfer Certificate of Title No. 96813, registered in the name of Evangelical Free Church of the Philippines (respondent), a corporation existing under and by virtue of Philippine laws. Elinel Caña (petitioner) is its former pastor assigned to its affiliate, Malabon Evangelical Free Church, which petitioner refers to as Malabon Christian Evangelical Church (MCEC).

Respondent permitted petitioner to occupy the disputed property wherein MCEC maintained worship services. However, on December 1, 1997, respondent revoked petitioner's license and verbally demanded that petitioner vacate the disputed property but the latter refused to obey. Hence, respondent sought the services of a counsel who wrote a formal demand letter dated December 17, 1997 requiring petitioner to vacate the disputed premises and surrender peaceful possession thereof to respondent. Petitioner ignored the demand letter.

Consequently, respondent brought an action for ejectment against petitioner before the MTC of Malabon City. Petitioner filed an Answer with Counterclaim.

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[1] Penned by Justice Edgardo P. Cruz with the concurrence of Justices Oswaldo D. Agcaoili and Danilo B. Pine, *rollo*, p. 7.

[2] CA *rollo*, p. 19.

[3] *Id*. at 175.

On September 24, 1998, the MTC rendered a decision dismissing respondent's complaint as well as petitioner's counterclaim.

On appeal, the RTC affirmed the MTC decision.

Respondent filed a petition for review with the CA.

On September 25, 2000, the CA issued a Resolution, to wit:

> Contrary to Sec. 5, Rule 7, 1997 Rules on Civil Procedure, the verification and certification of non-forum shopping is signed merely by petitioner's counsel who does not appear to have been authorized to do so in its behalf.
>
> Moreover, copies of the pleadings, *i.e.*, complaint and answer in the ejectment suit and other material portions of the record as would support the allegations of the petition are not attached (Sec. 2(d), Rule 42, *supra*).
>
> WHEREFORE, for being insufficient in form and substance, the petition for review is DISMISSED.
>
> SO ORDERED.[4]

Respondent filed a Motion for Reconsideration attaching thereto copies of the complaint, answer and other portions of the record.[5]

On February 27, 2001, the CA issued another Resolution directing respondent to submit a copy of the board resolution authorizing its counsel to sign the certificate of non-forum shopping in its behalf.[6] Respondent complied with the said directive.[7]

In a Resolution dated May 31, 2001, the CA granted respondent's motion for reconsideration and reinstated the latter's petition for review.[8]

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[4] CA *rollo*, p. 43.

[5] *Id*. at 44.

[6] *Id*. at 110.

[7] See Compliance, *id*. at 111-113.

[8] *Id*. at 116.

On September 20, 2002, the CA rendered the presently assailed Decision, the dispositive portion of which reads:

> WHEREFORE, the appealed decision of the Regional Trial Court is **REVERSED** and **SET ASIDE**. Respondent [herein petitioner] and all persons claiming rights under him are ordered to vacate the disputed property. The prayer for reasonable compensation for the use and occupation of the property and attorney's fees is **DENIED** for lack of factual basis. No pronouncement as to costs.
>
> SO ORDERED.[9]

Petitioner filed a Motion for Reconsideration but it was denied by the CA via its presently assailed Resolution dated February 26, 2003.[10]

Hence, the present petition based on the following grounds:

I

THE HONORABLE COURT OF APPEALS GROSSLY ERRED IN GIVING DUE COURSE TO THE PETITION OF RESPONDENT CONSIDERING THAT IT MISERABLY FAILED TO COMPLY WITH REVISED CIRCULAR NO. 28-91 AND SC CIRCULAR 1-88 AS THE PETITION WAS NOT SIGNED BY THE AUTHORIZED REPRESENTATIVE OF RESPONDENT CORPORATION BUT ONLY BY ITS COUNSEL WHO WAS NOT DULY AUTHORIZED BY RESPONDENT'S BOARD OF DIRECTORS AND FOR FAILURE TO ATTACH PERTINENT COPIES OF PLEADINGS AND OTHER MATERIAL PORTIONS OF THE RECORD TO THE PETITION.

II

THE HONORABLE COURT OF APPEALS, IN MANIFEST ERROR AND IN GRAVE ABUSE OF DISCRETION, BLATANTLY IGNORED THE UNREBUTTED, CATEGORICAL DECLARATION/ ADMISSION OF PETITIONER'S WITNESSES IN THEIR AFFIDAVIT THAT THE SUBJECT PROPERTY WAS ALREADY FULLY PAID BY MCEC AND THAT THE SAME WAS BOUGHT FOR THE BENEFIT OF MCEC AND NOT FOR RESPONDENT AND WHICH FACTUAL FINDING OF THE METROPOLITAN

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[9] CA *rollo*, pp. 152-153.

[10] *Id*. at 175.

TRIAL COURT WAS AFFIRMED BY THE REGIONAL TRIAL COURT OF MALABON CITY AND, THEREFORE, IS BINDING AND ENTITLED TO DUE RESPECT BY THE COURT OF APPEALS.[11]

In his first assigned error, petitioner contends that under Section 5, Rule 7 of the 1997 Rules of Civil Procedure and Revised Circular No. 28-91, it is the principal party and not the attorney who shall certify under oath the certification of non-forum shopping; that in the present case, it was not respondent or its authorized representative but its counsel who signed the certification of non-forum shopping; that it was a certain Rev. Ariel Jornales who was respondent's authorized representative; that it was Rev. Jornales who gave a Power of Attorney to respondent's counsel; that Rev. Jornales has no power to delegate the authority given him to represent respondent; that respondent's counsel has no independent authority to represent respondent corporation; and that this defect may not be cured by subsequent compliance with the requirements.

Petitioner further avers that compliance with the requirements of Section 2, Rule 42 of the 1997 Rules of Civil Procedure and Section 3, Supreme Court Circular No. 1-88, which require the submission of pleadings and other material portions of the records as would support the allegations of the petition, are mandatory.

Respondent counters that the courts may, in the interest of substantial justice, disregard technicalities and decide the case on its merits; that inadequacies and errors of form should be overlooked when they defeat rather than help in arriving at a just and fair result as to the essential merits of any case.

Anent the second assigned error, petitioner claims that in all the pleadings filed by respondent, it never disputed petitioner's claim that MCEC was the one which purchased the disputed property; that the amount of eighty thousand pesos appearing in one of the receipts presented in evidence as payment made

[11] *Rollo*, p. 52.

by petitioner for Church Assistance Revolving Fund (CARF) loan actually represents payment for the disputed property; and that the CA erred in failing to give credence to the unrebutted affidavits of petitioner and his witnesses which clearly show that the subject property was fully paid for by MCEC.

Respondent contends that while findings of the trial court are entitled to great weight and should not be disturbed on appeal, an exception lies where the lower court has overlooked or ignored some fact or circumstances of sufficient weight or significance, which, if considered, would alter the situation; that the trial court, in the instant case, has overlooked and misapplied certain facts that merited a reversal by the CA of the trial court's decision; that the affidavits of petitioner and his witnesses cannot prevail over respondent's Transfer Certificate of Title over the disputed property.

The Court's Ruling

The Court finds the petition devoid of merit.

On the first assigned error —

The CA did not commit any error when it reinstated respondent's petition upon subsequent submission of a copy of the Board Resolution authorizing respondent's counsel to sign the certificate of forum shopping in its behalf.

The provision of the Rules of Court in point is Section 2, Rule 42, as amended, which provides as follows:

Sec. 2. *Form and contents*. — The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional

Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

The petitioner shall also submit together with the petition a certification under oath 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.

In *National Steel Corporation v. Court of Appeals,*[12] the Court ruled that:

Circular No. 28-91[13] was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be so interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure —which is to achieve substantial justice as expeditiously as possible.

The fact that the Circular requires that it be strictly complied with merely underscores its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances. (Emphasis and underscoring supplied)

x x x x x x x x x[14]

In *Vicar International Construction, Inc. v. FEB Leasing and Finance Corporation*,[15] the Court reiterated the principle that technical rules of procedure should be used to promote,

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[12] G.R. No. 134468, August 29, 2002, 388 SCRA 85.

[13] Adopted and incorporated in Section 2, Rule 42.

[14] *Id*. at 92-93.

[15] G.R. No. 157195, April 22, 2005, 456 SCRA 588.

not frustrate, justice. Citing the case of *BA Savings Bank v. Sia*,[16] the Court held:

> x x x [t]he Court of Appeals denied due course to a petition for *certiorari* filed by BA Savings Bank. The CA's action was grounded on the fact that the Certification on anti-forum shopping incorporated in the Petition had been signed merely by the bank's counsel, not by a duly authorized representative, as required under Supreme Court Circular No. 28-91. Subsequently filed by the petitioner was a Motion for Reconsideration, to which was attached a Certificate issued by the corporate secretary. The Certificate showed that the Resolution promulgated by the board of directors had authorized the lawyers of petitioner "to represent it in any action or proceeding before any court, tribunal or agency; and to sign, execute and deliver the certificate of non-forum shopping," among others. Nevertheless, the Court of Appeals denied the Motion on the ground that Supreme Court Revised Circular No. 28-91 "requires that it is the petitioner, not the counsel, who must certify under oath to all of the facts and undertakings required therein."
>
> The Court again reversed the appellate court and ruled thus:
>
> Circular 28-91 was prescribed by the Supreme Court to prohibit and penalize the evils of forum shopping. **We see no circumvention of this rationale if the certificate was signed by the corporation's specifically authorized counsel, who had personal knowledge of the matters required in the Circular.** In *Bernardo v. NLRC,* we explained that a literal interpretation of the Circular should be avoided if doing so would subvert its very rationale. Said the Court:
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> x x x. Indeed, while the requirement as to certificate of non-forum shopping is mandatory, nonetheless the requirements must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum-shopping.[17] (emphasis supplied)

Thus, the subsequent submission of the authority granted to herein respondent's counsel to sign the certification is substantial compliance, especially in view of the merits of the instant case.[18]

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[16] 336 SCRA 484 (2000).

[17] *Vicar International Construction v. FEB* Leasing, *supra* at 597-598.

[18] *Id*. at 596-598.

As to respondent's subsequent submission of the complaint and answer as well as other material portions of the records of the case, the Court has ruled in *Cusi-Hernandez v. Diaz*,[19] *Jaro v. Court of Appeals*[20] and *Donato v. Court of Appeals*,[21] that subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance which calls for the relaxation of the rules of procedure. The Court's pronouncement in *Republic v. Court of Appeals*[22] is worth echoing: "*Cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be better served.*"[23] Thus, what should guide judicial action is that a party litigant is given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, honor, or property on mere technicalities.[24]

Needless to stress, "a litigation is not a game of technicalities."[25] When technicality deserts its function of being an aid to justice, the Court is justified in exempting from its operations a particular case.[26] Technical rules of procedure should be used to promote, not frustrate justice.[27] While the swift unclogging of court dockets is a laudable objective, granting substantial justice is an even more urgent ideal.[28] Indeed, the Rules of Court should be applied with reason and liberality. This is called for specially because, as in the instant case, the strict application of the above-cited rules will not serve the ends of justice.

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[19] G.R. No. 140436, July 18, 2000, 336 SCRA 113, 119-120.

[20] G.R. No. 127536, February 19, 2002, 377 SCRA 282, 297.

[21] G.R. No. 129638, December 8, 2003, 417 SCRA 216, 226.

[22] G.R. No. 130118, July 9, 1998, 292 SCRA 243, 251-252.

[23] *Donato v. Court of Appeals*, see note 21 at 227.

[24] *Id*.

[25] *Id*. at 226.

[26] *Id*. at 226-227.

[27] *Id*.

[28] *Id*.

On the second assigned error -

The Court finds it untenable. Although the general rule is that a petition for review under Rule 45 of the Rules of Court should cover only questions of law[29] and questions of fact are not reviewable,[30] the same is subject to exceptions among which is when the findings of the appellate court conflict with the findings of the trial court, as in the present case.[31] The Court is not persuaded by petitioner's contention that in all its pleadings, respondent never disputed petitioner's claim that MCEC was the one which purchased the property in question. Records show that in respondent's Complaint[32] as well as in its Position Paper[33] respondent has consistently asserted ownership of the disputed property; and to buttress such claim it presented in evidence the Deed of Absolute Sale[34] as well as the Transfer Certificate of Title[35] over the said property. The Deed of Absolute Sale is a direct refutation of petitioner's contention that it was MCEC which purchased the disputed property.

In support of his allegation that MCEC is the owner of the disputed property and, therefore, entitled to possess the same, petitioner presented in evidence his affidavit[36] and those of the Chairman of the Board of Trustees[37] and Treasurer[38] of the

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[29] *Microsoft Corporation v. Maxicorp, Inc*., G.R. No. 140946, September 13, 2004, 438 SCRA 224, 230.

[30] *Id*.

[31] *Encinas v. National Bookstore*, G.R. No. 162704, November 19, 2004, 443 SCRA 293, 301.

[32] *Rollo,* p. 81.

[33] *Id*. at 96.

[34] *Id*. at 104.

[35] *Id*. at 105.

[36] CA *rollo*, p. 95.

[37] *Id*. at 98.

[38] *Id*. at 90.

MCEC as well as the Resolution of the Board of Deacons[39] of MCEC, all attesting that MCEC is the owner of the subject property having fully paid the purchase price for the same. However, the Court agrees with the CA that these affidavits and resolution are, at best, self-serving. Being officers of MCEC who have vested interest in the disputed property, it is natural that the statements contained in the documents executed by them would lean towards the establishment of MCEC's ownership of the property in question. No other competent evidence was presented to support these affidavits and resolution.

The self-serving and unsubstantiated affidavits of petitioner and his witnesses alleging that it was MCEC which owns the subject property because it paid the purchase price failed to overcome the documentary evidence presented by respondent, consisting of the notarized deed of sale and the title over the property in question.

Respondent's title over the subject property is evidence of its ownership thereof. It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.[40] Moreover, the age-old rule is that the person who has a Torrens Title over a land is entitled to possession thereof.[41]

Petitioner failed to refute the finding of the CA that the RTC's conclusion that MCEC had fully paid for the disputed property is based on mere conjecture rather than on solid evidence. Petitioner's statement of account as of August 31, 1991 discloses that MCEC's CARF loan was released in July 1983, or three months after respondent's acquisition of the disputed property. Respondent's notarized Deed of Absolute Sale unequivocally proves that it purchased the property on April 22, 1983.

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[39] *Id*. at 103.

[40] *Clemente v. Razo*, G.R. No. 151245, March 4, 2005, 452 SCRA 769, 778 citing *Vda. de Retuerto v. Barz*, 372 SCRA 712, 719 (2001).

[41] *Arambulo v. Gungab*, G.R. No. 156581, September 30, 2005, 471 SCRA 640, 649-650.

Further, the receipt dated July 22, 1993[42] and the CARF Financial Report[43] and CARF Loan Balances[44] presented in evidence by petitioner do not prove that it was MCEC which paid the purchase price of the subject property. Instead, as the CA correctly found, the said receipt and the CARF Loan Balances merely prove MCEC's full payment of its CARF loan. But petitioner failed to establish that the proceeds of its CARF loan were used to pay the purchase price for the disputed property. Thus, the Court finds no error in the ruling of the CA that evidence of MCEC's CARF loan payments may not be considered as proof of its payment of the subject property.

In fine, petitioner failed to present competent evidence to prove his right to remain in possession of the disputed property. The preponderance of evidence militates in favor of respondent's complaint for the ejectment of petitioner.

Finally, it is well to quote the CA, thus:

> Having failed to overcome petitioner's [herein respondent] right of possession over the disputed property, respondent [herein petitioner] cannot insist that his continued occupation thereof is lawful. One whose stay is merely tolerated becomes a deforciant illegally occupying the property the moment he is required to leave (*Cañiza vs. Court of Appeals*, 268 SCRA 640). This is consistent with the principle that "a person who occupies the land of another at the latter's forbearance or permission without any contract between them is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him." (*Jimenez vs. Patricia, Inc.*, 340 SCRA 525)

Be that as it may, the foregoing disquisition is by no means conclusive on the issue of ownership of the disputed property. It is doctrinal that an ejectment suit is conclusive only on the issue of material possession or possession *de facto* of the property under litigation. The issue of ownership is considered in an ejectment suit only for the limited purpose of determining who between the contending parties has the better right to possession (*Chua vs. Court of Appeals,* 286

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[42] *Rollo*, p. 120.

[43] *Id*. at 121.

[44] *Id*. at 122.

SCRA 437). Put simply, the adjudication made herein regarding the issue of ownership should be regarded as merely provisional and, therefore, would not bar or prejudice an action between the same parties involving title to the property (*Asset Privatization Trust vs. Court of Appeals*, 229 SCRA 627).[45]

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated September 20, 2002 and its Resolution of February 26, 2003 are *AFFIRMED*.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 158332. February 11, 2008]

MARICALUM MINING CORPORATION, *petitioner, vs.* **REMINGTON INDUSTRIAL SALES CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONE PARTY'S APPEAL FROM A JUDGMENT WILL NOT INURE TO THE BENEFIT OF A CO-PARTY WHO FAILED TO APPEAL; EXCEPTION; COMMONALITY OF INTERESTS; ELUCIDATED.— One party's appeal from a

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[45] *Rollo*, p. 152.

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

judgment will not inure to the benefit of a co-party who failed to appeal; and as against the latter, the judgment will continue to run its course until it becomes final and executory. To this general rule, however, one exception stands out: where both parties have a commonality of interests, the appeal of one is deemed to be the vicarious appeal of the other. As the Court held in *John Kam Biak Y. Chan, Jr. v. Iglesia ni Cristo*: The modification made by this Court to the judgment of the Court of Appeals must operate as against Yoro, for as fittingly held by the court *a quo*: While it is settled that a party who did not appeal from the decision cannot seek any relief other than what is provided in the judgment appealed from, nevertheless, when the rights and liability of the defendants are so interwoven and dependent as to be inseparable, in which case, the modification of the appealed judgment in favor of appellant operates as a modification to Gen. Yoro who did not appeal. In this case, the liabilities of Gen. Yoro and appellant being solidary, the above exception applies. In *Director of Lands v. Reyes*, the Court identified the circumstances indicative of a commonality in the interests of the parties, such as when: a) their rights and liabilities originate from only one source or title; b) homogeneous evidence establishes the existence of their rights and liabilities; and c) whatever judgment is rendered in the case or appeal, their rights and liabilities will be affected, even if to varying extents.

2. ID.; ID.; ID.; ID.; ID.; ID.; APPLICATION IN CASE AT BAR.— The issue is whether the Court's Decisions in *DBP v. CA* and *PNB v. CA* inured to the benefit of petitioner which was not a party to either case, as to bar execution of the April 10, 1990 RTC Decision, as affirmed in the October 6, 1995 CA Decision in CA-G.R. CV No. 27720, against it. In *DBP v. CA* and *PNB v. CA*, the Court has conclusively adjudicated the commonality in the interests of DBP, PNB and petitioner, in relation to private respondent. To recall *DBP v. CA*, the main issue resolved therein was whether Marinduque Mining and DBP and its transferees, including petitioner, are one and the same corporate entity such that the latter may be held liable for the obligations of the former. The contention of private respondent was that such piercing of the corporate veil separating Marinduque Mining, DBP and its transferees was warranted because DBP foreclosed on the mortgage of Marinduque Mining

and acquired the latter's properties by auction sale but later dispersed said properties to various corporations, including petitioner, all for the fraudulent purpose of placing said properties beyond the reach of private respondent and thereby frustrating its efforts to collect on the obligation of Marinduque Mining. The Court found the foregoing contention of private respondent untenable and ruled that the acquisition by DBP of the properties of Marinduque Mining was *bona fide*. The Court further held that the subsequent transfer by DBP of the properties of Marinduque Mining to several corporations, including petitioner, was legitimate. Based on the foregoing findings, the Court concluded that private respondent failed to discharge its burden of proving bad faith on the part of Marinduque Mining and ***its transferees*** in the mortgage and foreclosure of the subject properties as to justify the piercing of the corporate veil. More crucial, the Court ordered the dismissal of the original complaint, noting that the proper remedy of private respondent is to enforce its lien on the unpaid purchase price of the specific movable properties it sold to Marinduque Mining through a liquidation proceeding instituted in accordance with Article 2243 of the Civil Code. Likewise in *PNB v. CA*, the Court held that private respondent had no cause of action against PNB because its acquisition by foreclosure sale of the properties of Marinduque Mining was legitimate and did not result in damage to private respondent. The adjudication rendered in *DBP v. CA* and *PNB v. CA* is plain: private respondent has no cause of action against DBP, PNB and their transferees, including petitioner, for they are corporate entities separate and distinct from Marinduque Mining, and cannot be held liable for the latter's obligations to private respondent. No compelling reason exists to discard the veil of their corporate fiction because the acquisition through foreclosure sale by DBP and PNB of the properties of Marinduque Mining was mandated by law, and their transfer of said properties to various corporations, including petitioner, for management and operation thereof was legitimate. The foregoing adjudication is conclusive even upon this Court, more so, the CA. Furthermore, the dismissal in *DBP v. CA* of the complaint filed in Civil Case No. 84-25858 constitutes a supervening event as it virtually blotted out the April 10, 1990 RTC Decision rendered therein. No vested right accrued from said RTC Decision in favor of private

respondent; no ministerial duty impelled the CA to allow execution thereof.

APPEARANCES OF COUNSEL

King Capuchino Tan & Associates for petitioner.
P.C. Nolasco & Associates for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

By way of Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, Maricalum Mining Corporation (petitioner) assails before this Court the February 10, 2003 Decision[1] and May 21, 2003 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 65209.

The facts in *Development Bank of the Philippines v. Court of Appeals and Remington Industrial Sales Corporation*[3] (hereinafter referred to as "*DBP v. CA*") and *Philippine National Bank v. Court of Appeals and Remington Industrial Sales Corporation*[4] (hereinafter referred to as "*PNB v. CA*") are relevant to the present case.

Remington Industrial Sales Corporation (private respondent) sued Marinduque Mining and Industrial Corporation (Marinduque Mining) for payment of ₱921,755.95 worth of construction materials and other merchandise. The complaint, docketed with the Regional Trial Court of Manila, Branch 19 (RTC) as Civil Case No. 84-25858, was amended four times to implead as co-defendants Philippine National Bank (PNB), Nonoc Mining and Industrial Corporation (Nonoc Mining), Development Bank of the Philippines (DBP), Asset Privatization Trust (APT), Island

[1] Penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Roberto A. Barrios and Edgardo F. Sundiam; *rollo*, p. 12.

[2] *Id*. at 19.

[3] 415 Phil. 538 (2001).

[4] 419 Phil. 480 (2001).

Cement Corporation (ICC) and petitioner, on the ground that they are assignees/ transferees of the real and personal properties, chattels, machineries, equipment and other assets of Marinduque Mining. In particular, petitioner was impleaded because "the properties, real and personal, chattels, machineries, equipment and all other assets of the Marinduque Mining & Industrial Corporation at Sipalay, Negros Occidental, mining projects at Rizal Province, which were foreclosed by the Philippine National Bank and Development Bank of the Philippines, were transferred to (petitioner) x x x."[5]

On April 10, 1990, the RTC rendered the following Decision:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering the defendants Marinduque Mining & Industrial Corporation, Philippine National Bank, Development Bank of the Philippines, Nonoc Mining and Industrial Corporation, Maricalum Mining Corporation [petitioner], Island Cement Corporation and Asset Privatization Trust to pay, jointly and severally, the sum of ₱920,755.95, representing the principal obligation, including the stipulated interest as of June 22, 1984, plus ten percent (10%) surcharge per annum by way of penalty, until the amount is fully paid; the sum equivalent to 10% of the amount due as and for attorney's fees; and to pay the costs.
>
> SO ORDERED.[6]

Petitioner and its co-defendants PNB, DBP, Nonoc Mining, ICC and APT filed with the CA an appeal docketed as CA-G.R. CV No. 27720.[7] The CA dismissed their appeal in a Decision[8] dated October 6, 1995.

DBP and PNB filed before the Court separate appeals, docketed as G.R. Nos. 126200 and 122710, respectively.

On its own, petitioner also attempted to institute an appeal with the Court by filing a motion for an extension of 30 days

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[5] *Id*. at 483.

[6] *Rollo*, p. 123.

[7] CA Decision in CA-G.R. CV No. 27720; *id*. at 124.

[8] *Id*. at 144.

within which to file a petition for review on *certiorari* and to pay the legal fees. However, for lack of an affidavit of service as required under paragraph 2 of Supreme Court Circular No. 1-88 and Administrative Circular No. 3-96, the Court denied its motion in the Resolution[9] of December 4, 1996, which became final on January 30, 1997.[10] Petitioner also sought to intervene in *PNB v. CA* but the Court disallowed it due to the tardiness of its motion.[11]

Thus, on December 5, 2000, private respondent filed with the RTC a Motion for Execution solely against petitioner on the ground that:

> 6. With the finality of the Honorable Supreme Court's resolution of denial of December 4, 1996 and the entry of said resolution in the book of entries of judgment itself, ***the decision of the Honorable Court of Appeals dated October 6, 1995 affirming the decision of this Honorable Court dated April 10, 1990 has now become final and executory, as far as [petitioner] is concerned***, for which reason, issuance of a writ of execution for its satisfaction would be most proper at this stage against said [petitioner].[12] (Emphasis supplied.)

Over petitioner's objection,[13] the RTC granted the Motion for Execution in an Order[14] dated March 9, 2001. It denied petitioner's Motion for Reconsideration[15] in an Order dated May 10, 2001.[16] Consequently, a Writ of Execution[17] was issued on the basis of which certain bank accounts of petitioner were

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[9] *Id*. at 145.

[10] *Id*.

[11] *Id*. at 219.

[12] *Id*. at 70.

[13] *Id*. at 74, 77.

[14] *Id.* at 81.

[15] *Id.* at. 83.

[16] *Id.* at 99.

[17] *Id.* at 88.

garnished.[18] This prompted petitioner to file with the CA a Petition for *Certiorari* and Prohibition (With Preliminary Mandatory Injunction and Preliminary Injunction),[19] docketed as CA-G.R. SP No. 65209.

In the interregnum, the Court rendered a Decision[20] dated August 16, 2001 in *DBP v. CA*, thus:

> WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals dated October 6, 1995 and its Resolution promulgated on August 29, 1992 are REVERSED and SET ASIDE. ***The original complaint filed in the Regional Trial Court in CV Case No. 84-25858 is hereby DISMISSED***.
>
> SO ORDERED [21] (Emphasis supplied.)

which became final on September 27, 2001.

In *PNB v. CA*, the Court rendered a Decision[22] dated October 12, 2001, the dispositive portion of which reads:

> WHEREFORE, the Court REVERSES the decision of the Court of Appeals and in lieu thereof, enters judgment DISMISSING the complaint of Remington Industrial Sales Corporation in Civil Case No. 84-25858, Regional Trial Court, Branch 19, Manila, as against defendants Philippine National Bank and Development Bank of the Philippines[*sic*].
>
> No costs.
>
> SO ORDERED,[23]

which became final on February 12, 2002.

Thus, citing *PNB v. CA*, petitioner filed in CA-G.R. No. 65209, a Manifestation[24] urging it to dismiss the claim of private respondent and annul the March 9, 2001 and May 10, 2001 RTC Orders.

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[18] CA *rollo*, pp. 34, 44.

[19] *Id*. at 1.

[20] *Supra* note 3.

[21] *Id*. at 553.

[22] Penned by Justice Bernardo P. Pardo.

[23] *Supra* note 4, at 493.

[24] CA *rollo*, p. 94.

The CA rendered the February 10, 2003 Decision assailed herein, dismissing the Petition for *Certiorari* and Prohibition and affirming the questioned RTC Orders. It denied petitioner's Motion for Reconsideration.

Hence, petitioner is before the Court yet again on the following grounds:

I

THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE ORDERS DATED MARCH 9, 2001 AND MAY 10, 2001 OF HON. JUDGE ZENAIDA R. DAGUNA GRANTING THE MOTION FOR EXECUTION AS AGAINST HEREIN PETITIONER MARICALUM, A MERE ASSIGNEE/SUCCESSOR-IN-INTEREST OF THE PHILIPPINE NATIONAL BANK AND DEVELOPMENT BANK OF THE PHILIPPINES.

A. Petitioner Maricalum is merely an assignee/successor-in-interest when it acquired properties foreclosed by the Philippine National Bank (PNB, for brevity) and the Development Bank of the Philippines (DBP, for brevity) and a solidary judgment debtor in the complaint filed by respondent Remington docketed as Civil Case No. 84-25858

B. This Honorable Court's Decision dated October 12, 2001 in G.R. No. 122710 in the case entitled "*Philippine National Bank v. Court of Appeals and Remington Industrial Sales Corporation*" [*PNB v. CA*] has consequently exonerated petitioner Maricalum from any liability, considering the latter is merely an assignee/successor-in-interest of PNB and DBP.

C. By virtue of this Honorable Court's Decision dated October 12, 2001 in G.R. No. 122710, respondent Remington has no more cause of action against petitioner Maricalum, as said decision clearly and unequivocally declares that in Civil Case No. 84-25858, "x x x the obligation remains with MMIC (Marinduque Mining and Industrial Corporation). x x x"

II

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT DECLARED THAT RESPONDENT REMINGTON HAD ACQUIRED VESTED RIGHTS AGAINST HEREIN PETITIONER MARICALUM,

A MERE ASSIGNEE/SUCCESSOR-IN-INTEREST OF PNB AND DBP.

A. This Decision dated October 12, 2001 of this Honorable Court in G.R. No. 122710 is the law of the case and any right that respondent Remington may have acquired as against petitioner Maricalum prior thereto is contrary to law.

B. The Decision dated October 12, 2001 of this Honorable Court in G.R. No. 122710 is a supervening event which renders impossible the execution of the monetary judgment in Civil Case No. 84-25858 as against petitioner Maricalum,

C. The assailed Decision dated February 10, 2003 and Resolution dated May 21, 2003 of the Court of Appeals in CA G.R. SP No. 65209 is patently iniquitous and manifestly unjust.[25]

This time, petitioner's recourse is not in vain.

Simplified, the issue is whether the Court's Decisions in *DBP v. CA* and *PNB v. CA* inured to the benefit of petitioner which was not a party to either case, as to bar execution of the April 10, 1990 RTC Decision, as affirmed in the October 6, 1995 CA Decision in CA-G.R. CV No. 27720, against it.

The CA ruled in the negative, thus:

It is a well-settled rule that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional and the failure to perfect the appeal has the effect of rendering the judgment final and executory.

In the case at bench, the failure of the defendants, among them the petitioner, to perfect their appeal from the decision of this Court in CA-G.R. No. 27720, promulgated on 06 October 1995, affirming the decision of the trial court, rendered the said decision of the Court final and executory except as against Philippine National Bank and Development Bank of the Philippines.

The respective appeals filed by the Philippine National Bank and the Development Bank of the Philippine did not inure to the benefit of their co-defendants, including the petitioner, who did not appeal nor can it be deemed to be an appeal of such co-defendants from the judgment against them. Simply put, the

[25] Petition, *rollo*, pp. 33-34.

appeals interposed by the Philippine National Bank and Development Bank of the Philippines, in no way, prevented the aforementioned decision of this Court from becoming final and executory as against the petitioner and the other defendants notwithstanding the fact that all of said defendants were held solidarily liable in the said decision.

Once a decision becomes final and executory, vested rights are acquired by the winning party. As such, the winning party can have the said decision executed as a matter of right, and the issuance of a Writ of Execution becomes a ministerial duty of the court. By the same token, the sheriff's duty in the execution of a writ issued by a court is likewise purely ministerial.[26] (Emphasis supplied.)

The Court holds otherwise.

Indeed, one party's appeal from a judgment will not inure to the benefit of a co-party who failed to appeal; and as against the latter, the judgment will continue to run its course until it becomes final and executory.[27] To this general rule, however, one exception stands out: where both parties have a commonality of interests, the appeal of one is deemed to be the vicarious appeal of the other.[28] As the Court held in *John Kam Biak Y. Chan, Jr. v. Iglesia ni Cristo*:

The modification made by this Court to the judgment of the Court of Appeals must operate as against Yoro, for as fittingly held by the court *a quo*:

> While it is settled that a party who did not appeal from the decision cannot seek any relief other than what is provided in the judgment appealed from, nevertheless, when the rights and liability of the defendants are so interwoven and dependent as to be inseparable, in which case, the modification of the appealed judgment in favor of appellant operates as a modification to

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[26] *Rollo*, pp. 15-16.

[27] *Portes v. Arcala*, G.R. No. 145264, August 30, 2005, 468 SCRA 343; *Mactan-Cebu International Airport Authority v. Court of Appeals*, 399 Phil. 695 (2000).

[28] *Republic of the Philippines v. Institute for Social Concern*, G.R. No. 156306, January 28, 2005, 449 SCRA 512, citing *Tropical Homes, Inc. v. Fortun*, G.R. No. 51554, January 13, 1989, 169 SCRA 81, 90.

Gen. Yoro who did not appeal. In this case, the liabilities of Gen. Yoro and appellant being solidary, the above exception applies.[29]

In *Director of Lands v. Reyes*,[30] the Court identified the circumstances indicative of a commonality in the interests of the parties, such as when: a) their rights and liabilities originate from only one source or title; b) homogeneous evidence establishes the existence of their rights and liabilities; and c) whatever judgment is rendered in the case or appeal, their rights and liabilities will be affected, even if to varying extents.

In *DBP v. CA* and *PNB v. CA*, the Court has conclusively adjudicated the commonality in the interests of DBP, PNB and petitioner, in relation to private respondent.

To recall *DBP v. CA*, the main issue resolved therein was whether Marinduque Mining and DBP and its transferees, including petitioner, are one and the same corporate entity such that the latter may be held liable for the obligations of the former. The contention of private respondent was that such piercing of the corporate veil separating Marinduque Mining, DBP and its transferees was warranted because DBP foreclosed on the mortgage of Marinduque Mining and acquired the latter's properties by auction sale but later dispersed said properties to various corporations, including petitioner, all for the fraudulent purpose of placing said properties beyond the reach of private respondent and thereby frustrating its efforts to collect on the obligation of Marinduque Mining.

The Court found the foregoing contention of private respondent untenable and ruled that the acquisition by DBP of the properties of Marinduque Mining was *bona fide*:

x x x In this case, however, we do not find any fraud on the part of Marinduque Mining and ***its transferees*** to warrant the piercing of the corporate veil.

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[29] G.R. No. 160283, October 14, 2005, 473 SCRA 177, citing *Buot v. Court of Appeals*, 410 Phil. 183 (2001) and *Consolidated Bank and Trust Corporation v. Court of Appeals*, 274 Phil. 947 (1991).

[30] *Director of Lands v. Reyes* and *Alinsunurin v. Director of Lands*, No. L-27594 and No. L-28144, February 27, 1976, 69 SCRA 415.

It bears stressing that PNB and DBP are mandated to foreclose on the mortgage when the past due account had incurred arrearages of more than *20% of the total outstanding obligation. Section 1 of Presidential Decree No.* 385 (The Law on Mandatory Foreclosure) provides:

> It shall be mandatory for government financial institutions, after the lapse of sixty (60) days from the issuance of this decree, to foreclose the collateral and/or securities for any loan, credit accommodation, and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interest and other charges, as appearing in the books of account and/or related records of the financial institution concerned. This shall be without prejudice to the exercise by the government financial institution of such rights and/or remedies available to them under their respective contracts with their debtors, including the right to foreclose on loans, credits, accommodations and/or guarantees on which the arrearages are less than twenty (20%) percent.

Thus, PNB and DBP did not only have a right, but the duty under said law, to foreclose upon the subject properties. The banks had no choice but to obey the statutory command.[31]

The Court further held that the subsequent transfer by DBP of the properties of Marinduque Mining to several corporations, including petitioner, was legitimate:

Neither do we discern any bad faith on the part of DBP by its creation of Nonoc Mining, ***Maricalum [petitioner]*** and Island Cement. As Remington [private respondent] itself concedes, DBP is not authorized by its charter to engage in the mining business. ***The creation of the three corporations was necessary to manage and operate the assets acquired in the foreclosure sale lest they deteriorate from non-use and lose their value***. In the absence of any entity willing to purchase these assets from the bank, what else would it do with these properties in the meantime? Sound business practice required that they be utilized for the purposes for which they were intended.

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[31] *Development Bank of the Philippines v. Court of Appeals*, *supra* note 3, at 546-547.

[Private respondent] also asserted in its third amended complaint that the use of Nonoc Mining, [petitioner] and Island Cement of the premises of Marinduque Mining and the hiring of the latter's officers and personnel also constitute badges of bad faith.

Assuming that the premises of Marinduque Mining were not among those acquired by DBP in the foreclosure sale, convenience and practicality dictated that the corporations so created occupy the premises where these assets were found instead of relocating them. No doubt, many of these assets are heavy equipment and it may have been impossible to move them. The same reasons of convenience and practicality, not to mention efficiency, justified the hiring by Nonoc Mining, [petitioner] and Island Cement of Marinduque Mining's personnel to manage and operate the properties and to maintain the continuity of the mining operations.[32] (Emphasis supplied.)

Based on the foregoing findings, the Court concluded that private respondent failed to discharge its burden of proving bad faith on the part of Marinduque Mining and ***its transferees*** in the mortgage and foreclosure of the subject properties as to justify the piercing of the corporate veil.[33] More crucial, the Court ordered the dismissal of the original complaint, noting that the proper remedy of private respondent is to enforce its lien on the unpaid purchase price of the specific movable properties it sold to Marinduque Mining through a liquidation proceeding instituted in accordance with Article 2243 of the Civil Code.[34]

Likewise in *PNB v. CA*, the Court held that private respondent had no cause of action against PNB because its acquisition by foreclosure sale of the properties of Marinduque Mining was legitimate and did not result in damage to private respondent.[35]

The adjudication rendered in *DBP v. CA* and *PNB v. CA* is plain: private respondent has no cause of action against DBP, PNB and their transferees, including petitioner, for they are

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[32] *Development Bank of the Philippines v. Court of Appeals, supra* note 3, at 548-549.

[33] *Id*. at 549.

[34] *Id*. at 550-553.

[35] *Philippine National Bank v. Court of Appeals*, *supra* note 4, at 492-493.

corporate entities separate and distinct from Marinduque Mining, and cannot be held liable for the latter's obligations to private respondent. No compelling reason exists to discard the veil of their corporate fiction because the acquisition through foreclosure sale by DBP and PNB of the properties of Marinduque Mining was mandated by law, and their transfer of said properties to various corporations, including petitioner, for management and operation thereof was legitimate.

The foregoing adjudication is conclusive even upon this Court, more so, the CA.[36]

Furthermore, the dismissal in *DBP v. CA* of the complaint filed in Civil Case No. 84-25858 constitutes a supervening event as it virtually blotted out the April 10, 1990 RTC Decision rendered therein.[37] No vested right accrued from said RTC Decision in favor of private respondent; no ministerial duty impelled the CA to allow execution thereof.

WHEREFORE, the petition is *GRANTED*. The February 10, 2003 Decision and the May 21, 2003 Resolution in CA-G.R. SP No. 65209 of the Court of Appeals are *REVERSED* and *SET ASIDE* and the March 9, 2001 and May 10, 2001 Orders of the Regional Trial Court in Civil Case No. 84-25858 are *ANNULLED*.

No costs.

SO ORDERED.

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

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[36] *Dapar v. Biascan*, G.R. No. 141880, September 27, 2004, 439 SCRA 179; *Heirs of Clemencia Parasac v. Republic of the Philippines*, G.R. No. 159910, May 4, 2006, 489 SCRA 499.

[37] *Megaworld Properties and Holdings, Inc. v. Cobarde*, G.R. No. 156200, March 31, 2004, 426 SCRA 689. See also *Sañado v. Court of Appeals*, 408 Phil. 669 (2001); *Sps. Serrano v. Court of Appeals*, 463 Phil. 77 (2003).

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

THIRD DIVISION

[G.R. No. 158941. February 11, 2008]

TIMESHARE REALTY CORPORATION, *petitioner, vs.* **CESAR LAO and CYNTHIA V. CORTEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; A STATUTORY PRIVILEGE THAT MUST COMPLY WITH THE REQUIREMENTS OF LAW.— A judgment must become final at the time appointed by law — this is a fundamental principle upon which rests the efficacy of our courts whose processes and decrees command obedience only when these are perceived to have some degree of permanence and predictability. Thus, an appeal from such judgment, not being a natural right but a mere statutory privilege, must be perfected according to the mode and within the period prescribed by the law and the rules; otherwise, the appeal is forever barred, and the judgment becomes binding.

2. ID.; ID.; ID.; APPEAL TO THE COURT OF APPEALS; PERIOD OF APPEAL; MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW MUST COMPLY WITH THE LEGAL RESTRICTIONS.— Section 70 of Republic Act No. 8799 which was enacted on July 19, 2000, is the law which governs petitioner's appeal from the orders of the SEC *En Banc*. It prescribes that such appeal be taken to the CA "by petition for review in accordance with the pertinent provisions of the Rules of Court," specifically Rule 43. Section 4 of Rule 43 is restrictive in its treatment of the period within which a petition may be filed: Section 4. *Period of appeal*. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. ***Upon proper motion and the payment of the full amount of the docket fee before the***

expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. Petitioner's Motion for Extension of Time to File Petition for Review flouted the foregoing restriction: it sought, not a 15-day, but a 30-day extension of the appeal period; and it did not even bother to cite a compelling reason for such extension, other than its counsel's caseload which, as we have repeatedly ruled, hardly qualifies as an imperative cause for moderation of the rules.

3. ID.; ID.; ID.; FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES; EFFECT THEREOF.— As cited by the SEC *En Banc* in its March 25, 2002 Decision, as early as February 13, 1998, the SEC, through Director Linda A. Daoang, already rendered a ruling on the effectivity of the registration statement of petitioner. Petitioner sought a reconsideration of said ruling but the same was denied by Director Daoang in an Order dated March 9, 1998. However, petitioner did not resort to any other administrative remedy against said ruling, such as by questioning the same before the SEC *En Banc*. Having failed to exhaust the administrative remedies available to it, petitioner is already bound by said ruling and can no longer question the same through a direct and belated recourse to us.

APPEARANCES OF COUNSEL

Magsalin Pobre Lapid & Villena Law Offices for petitioner.
Lacas Lao & Associates for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the October 30, 2002 Resolution[1] of the Court of Appeals (CA), which denied due

[1] Penned by Associate Justice Regalado E. Maambong and concurred in by Associate Justices Delilah Vidallon-Magtolis and Andres E. Reyes, Jr.; *rollo*, p. 17.

course to the appeal of Timeshare Realty Corporation (petitioner) from the March 25, 2002 Decision[2] of the Securities and Exchange Commission (SEC) in SEC Case No. 01-99-6199; and the July 4, 2003 CA Resolution,[3] which denied petitioner's Motion for Reconsideration.

As found by the SEC,[4] the antecedent facts are as follows:

On October 6, 1996, herein petitioner sold to Ceasar M. Lao and Cynthia V. Cortez (respondents), one timeshare of Laguna de Boracay for US$7,500.00 under Contract No. 135000998 payable in eight months and fully paid by the respondents.

Sometime in February 1998, the SEC issued a resolution to the effect that petitioner was without authority to sell securities, like timeshares, prior to February 11, 1998. It further stated in the resolution/order that the Registration Statement of petitioner became effective only on February 11, 1998. It also held that the 30 days within which a purchaser may exercise the option to unilaterally rescind the purchase agreement and receive the refund of money paid applies to all purchase agreements entered into by petitioner prior to the effectivity of the Registration Statement.

Petitioner sought a reconsideration of the aforesaid order but the SEC denied the same in a letter dated March 9, 1998.

On March 30, 1998, respondents wrote petitioner demanding their right and option to cancel their Contract, as it appears that Laguna de Boracay is selling said shares without license or authority from the SEC. For failure to get an answer to the said letter, respondents this time, through counsel, reiterated their demand through another letter dated June 29, 1998. But despite repeated demands, petitioner failed and refused to refund or pay respondents.[5]

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[2] *Id*. at 40.

[3] *Id*. at 110.

[4] SEC Decision, *rollo*, pp. 42-43.

[5] *Id*.

Respondents directly filed with SEC *En Banc*[6] a Complaint[7] against petitioner and the Members of its Board of Directors — Julius S. Strachan, Angel G. Vivar, Jr. and Cecilia R. Palma — for violation of Section 4 of *Batas Pambansa Bilang (B.P. Blg.)* 178.[8] Petitioner filed an Answer[9] to the Complaint but the SEC *En Banc*, in an Order[10] dated April 25, 2000, expunged the Answer from the records due to tardiness.

On March 25, 2002, the SEC *En Banc* rendered a Decision in favor of respondents, ordering petitioner, together with Julius S. Strachan, Angel G. Vivar, Jr., and Cecilia R. Palma, to pay respondents the amount of US$7,500.00.[11]

Petitioner filed a Motion for Reconsideration[12] which the SEC *En Banc* denied in an Order[13] dated June 24, 2002.

Petitioner received a copy of the June 24, 2002 SEC *En Banc* Order on July 4, 2002[14] and had 15 days or until July 19, 2002 within which to appeal. However, on July 10, 2002, petitioner sought from the CA an extension of 30 days, counted from July 19, 2002, or until August 19, 2002, within which to appeal.[15] The CA partly granted the motion in an Order dated July 24, 2002, to wit:

As prayed for, but conditioned on the timeliness of its filing, the Motion for Extension to File Petition for Review dated 09 July 2002 and filed before this Court on 10 July 2002 is GRANTED and

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[6] It is noted that the propriety of the filing of the complaint directly with the SEC *En Banc* was never raised as an issue.

[7] *Rollo*, p. 30.

[8] THE REVISED SECURITIES ACT, approved February 23, 1982.

[9] *Rollo*, p. 36.

[10] SEC Decision, *supra* note 4, at 42.

[11] *Id*. at 44

[12] *Id*. at 45.

[13] *Id*. at 49.

[14] CA *rollo*, p. 2.

[15] *Id*.

petitioners are given a non-extendible period of fifteen (15) days from 10 July 2002 or ***until 25 July 2002*** within which to file the desired petition, otherwise, the above-entitled case will be dismissed. (Emphasis supplied.)[16]

Petitioner purportedly received the July 24, 2002 CA Order on July 29, 2002,[17] but filed a Petition for Review with the CA on August 19, 2002.[18]

In the assailed October 30, 2002 Resolution, the CA dismissed the Petition for Review, thus:

> Under Section 4, Rule 43 of the 1997 Revised Rules of Civil Procedure, petitioners shall not be given an extension longer than fifteen (15) days from the expiration of the reglementary period, except for the most compelling reason.
>
> Thus, on 24 July 2002, in the absence of a compelling reason that justifies the granting of a longer period of extension, this Court issued a resolution wherein petitioners were given an extension of ONLY fifteen days from 10 July 2002 or until 25 July 2002 within which to file the petition for review, otherwise, the above entitled case will be dismissed.
>
> However, records show that petitioners filed their petition for review only on 19 August 2002, which is twenty-five (25) days beyond the allowed 15-day extended period granted by this Court.
>
> WHEREFORE, the appeal from the decision of the Securities and Exchange Commission (SEC) Case No. 01-99-6199 is hereby DISMISSED for failure of the petitioners to file their Petition for Review under the 15-day period granted by this Court as provided by Rule 43, Section 4 of the 1997 Revised Rules of Civil Procedure.
>
> SO ORDERED.[19]

and denied petitioner's Motion for Reconsideration in the assailed Resolution dated July 4, 2003.[20]

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[16] CA *rollo*, p. 6.

[17] *Id*. at 7.

[18] *Id*.

[19] *Id*. at 31-32.

[20] *Id*. at 51.

Petitioner filed the present petition, urging us to look beyond the procedural lapse in its appeal, and resolve the following substantive issues:

> Whether or not the eventual approval or issuance of license has retroactive effect and therefore ratifies all earlier transactions;
>
> Whether or not a party in a contract could withdraw or rescind unilaterally without valid reason.[21]

We deny the petition.

A judgment must become final at the time appointed by law[22] — this is a fundamental principle upon which rests the efficacy of our courts whose processes and decrees command obedience only when these are perceived to have some degree of permanence and predictability. Thus, an appeal from such judgment, not being a natural right but a mere statutory privilege, must be perfected according to the mode and within the period prescribed by the law and the rules; otherwise, the appeal is forever barred, and the judgment becomes binding.[23]

Section 70 of Republic Act No. 8799[24] which was enacted on July 19, 2000, is the law which governs petitioner's appeal from the orders of the SEC *En Banc*. It prescribes that such appeal be taken to the CA "by petition for review in accordance with the pertinent provisions of the Rules of Court," specifically Rule 43.[25]

Section 4 of Rule 43 is restrictive in its treatment of the period within which a petition may be filed:

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[21] Petition, *rollo*, p. 11.

[22] *Far East Bank and Trust Company v. Commissioner of Internal Revenue*, G.R. No. 149589, September 15, 2006, 502 SCRA 87, 91.

[23] *Ang v. Grageda*, G.R. No. 166239, June 8, 2006, 490 SCRA 424, 438; *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005, 469 SCRA 633, 646; *Petilla v. Court of Appeals*, G.R. No. 150792, March 3, 2004, 424 SCRA 254, 262.

[24] THE SECURITIES REGULATION CODE, approved July 19, 2000.

[25] *Hongkong and Shanghai Banking Corporation, Ltd. v. G.G. Sportswear Manufacturing Corporation*, G.R. No. 146526, May 5, 2006, 489 SCRA 578, 585.

Section 4. *Period of appeal*. - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. ***Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.*** (Emphasis supplied.)

Petitioner's Motion for Extension of Time to File Petition for Review flouted the foregoing restriction: it sought, not a 15-day, but a 30-day extension of the appeal period;[26] and it did not even bother to cite a compelling reason for such extension, other than its counsel's caseload which, as we have repeatedly ruled, hardly qualifies as an imperative cause for moderation of the rules.[27]

Its motion for extension being inherently flawed, petitioner should not have presumed that the CA would fully grant the same.[28] Instead, it should have exercised due diligence by filing the proper petition within the allowable period,[29] or at the very least, ascertaining from the CA whether its motion for extension had been acted upon.[30] As it were, petitioner's counsel left the country, unmindful of the possibility that his client's period to

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[26] *Muñez v. Jomo*, G.R. No. 173253, October 30, 2006, 506 SCRA 300, 307.

[27] *Bernardo v. People of the Philippines* G.R. No. 166980, April 4, 2007, 520 SCRA 332, 341-342. See also *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, November 15, 2005, 475 SCRA 41, 51; *Marcial v. Hi-Cement Corporation/Union Cement Corporation,* G.R. No. 144900, November 18, 2005, 475 SCRA 388, 396.

[28] *Bernardo v. People of the Philippines*, *supra* note 27, at 341.

[29] *Gochan v. Gochan*, 446 Phil. 433, 456 (2003); *Sps. Galen v. Atty. Paguirigan*, 428 Phil. 590, 596 (2002).

[30] *Ang v. Grageda*, *supra* note 23, at 444.

appeal was about to lapse - as it indeed lapsed on July 25, 1999, after the CA allowed them a 15-day extension only, in view of the restriction under Section 4, Rule 43. Thus, petitioner has only itself to blame that the Petition for Review it filed on August 19, 1999 was late by 25 days. The CA cannot be faulted for dismissing it.

The Court notes that the CA reckoned the 15-day extension it granted to petitioner from July 10, 1999, the date petitioner filed its Motion for Extension, rather than from July 19, 1999, the date of expiration of petitioner's original period to appeal. While such computation of the CA appears to be erroneous, petitioner did not question it in the present petition. But even if we do reckon the 15-day extension period from July 19, 1999, the same would have ended on August 3, 1999, making petitioner's appeal still inexcusably tardy by 16 days. Either way we reckon it, therefore, petitioner's appeal was not perfected within the period prescribed under Rule 43.

Nevertheless, the Court opts to resolve the substantive issues raised by petitioner in its appeal so as to determine the lawful rights of the parties and put an end to the litigation.

Petitioner claims that at the time it entered into a timeshare purchase agreement with respondents on October 6, 1996, it already possessed the requisite license and marketing agreement to engage in such transactions,[31] as evidenced by its registration with the SEC as a corporation.[32] Petitioner argues that when it was registered and authorized by the SEC as broker of securities[33] — such as the Laguna de Boracay timeshares — this had the effect of ratifying its October 6, 1996 purchase agreement with respondents, and removing any cause for the latter to rescind it.

The Court is not persuaded.

As cited by the SEC *En Banc* in its March 25, 2002 Decision, as early as February 13, 1998, the SEC, through Director

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[31] Petition, *rollo*, p. 11.

[32] *Id*. at 26.

[33] *Id*. at 27.

Linda A. Daoang, already rendered a ruling on the effectivity of the registration statement of petitioner, *viz*:

> This has reference to your registration statement which was rendered effective 11 February 1998. The 30 days within which a purchaser may exercise the option to ***unilaterally rescind*** the purchase agreement and receive the refund of money paid, applies to all purchase agreements entered into by the registrant **prior to the effectivity of the registration statement.** ***The 30-day rescission period for contracts signed before the Registration Statement was rendered effective shall commence on 11 February 1998. The rescission period for contracts after 11 February 1998 shall commence on the date of purchase agreement.*** (Emphasis supplied.)[34]

Petitioner sought a reconsideration of said ruling but the same was denied by Director Daoang in an Order dated March 9, 1998.[35] However, petitioner did not resort to any other administrative remedy against said ruling, such as by questioning the same before the SEC *En Banc*. Having failed to exhaust the administrative remedies available to it, petitioner is already bound by said ruling and can no longer question the same through a direct and belated recourse to us.[36]

Finally, the provisions of *B.P. Blg*. 178 do not support the contention of petitioner that its mere registration as a corporation already authorizes it to deal with unregistered timeshares. Corporate registration is just one of several requirements before it may deal with timeshares:

> Section 8. Procedure for registration. - (a) All securities required to be registered under subsection (a) of Section four of this Act shall be registered through the filing by the issuer or by any dealer or underwriter interested in the sale thereof, in the office of the Commission, of a sworn registration statement with respect to such securities, containing or having attached thereto, the following:

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[34] *Rollo*, p. 90.

[35] *Id*. at 91.

[36] *Hongkong and Shanghai Banking Corporation, Ltd. v. G.G. Sportswear Manufacturing Corporation*, *supra* note 25, at 585-586.

x x x x x x x x x

(36) Unless previously filed and registered with the Commission and brought up to date:

(a) A copy of its articles of incorporation with all amendments thereof and its existing by-laws or instruments corresponding thereto, whatever the name, if the issuer be a corporation.

Prior to fulfillment of all the other requirements of Section 8, petitioner is ***absolutely*** proscribed under Section 4 from dealing with unregistered timeshares, thus:

Section 4. Requirement of registration of securities. — (a) No securities, except of a class exempt under any of the provisions of Section five hereof or unless sold in any transaction exempt under any of the provisions of Section six hereof, shall be sold or offered for sale or distribution to the public within the Philippines ***unless such securities shall have been registered and permitted to be sold as hereinafter provided***. (Emphasis supplied.)

WHEREFORE, the petition is *DENIED* for lack of merit.

Costs against petitioner.

SO ORDERED.

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

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

THIRD DIVISION

[G.R. No. 159026. February 11, 2008]

MRS. ALBERTA YANSON/HACIENDA VALENTIN-BALABAG, *petitioner, vs.* **THE HON. SECRETARY, DEPARTMENT OF LABOR AND EMPLOYMENT (LEGAL SERVICE-MANILA),** *public respondent.*

MARDY CABIGO, MARIANO CABIGO, JORGE CABIGO, RAMONA CABIGO, RODOLFO VALDEZ, DEONELA VALDEZ, LYDIA TALIBONG,* GERMAN TALIBONG, EFREN MALUNES, DELMA ENRIQUEZ, REGIE ENRIQUEZ, LUCIA GERVACIO, ROGELIO GERVACIO, EDWIN ESPARAS, CONRADO ESPARAS, BERNALDA ALCANTARA, RONALDO ALCANTARA, RENALDO SENADRE,*** ANGELO SENADRE,**** JOSE ANTARAN, MORITA ANTARAN, JOHNNY ANTARAN, JOEMARIE ANTARAN, SENADOR TALIDONG, JONELSON TALIDONG, ANIOLINA OCSEN, RONITO LASQUETO, LORETO LASQUETO, BELCESAN LASQUETO FELIZARDO DELOS REYES, AURELIO DELOS REYES, ORLANDO PADOL, PRECY CABAHOG, EMILIO CABAHOG, EDEN MALUNES, CARMELO ESMERALDA, DOLORES FLORES, RENATO FLORES, ELADIO ALCANTARA, INOCENCIO BERNAIZ, and RONILO LASQUETO,** *private respondents.*

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* Spelled "Talidong" in the December 17, 1998 Writ of Execution issued by DOLE Bacolod; *rollo*, p. 104.

** *Id*.

*** Spelled "Sanadre" in the December 17, 1998 Writ of Execution issued by DOLE Bacolod; *rollo*, p. 104.

**** *Id*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; APPEAL FROM MONETARY AWARD; POSTING OF PROPER AMOUNT OF APPEAL BOND, MANDATORY.— In *Guico, Jr. v. Hon. Quisumbing*, we held that the posting of the proper amount of the appeal bond under Article 128 (b) is mandatory for the perfection of an appeal from a monetary award in labor standard cases: The next issue is whether petitioner was able to perfect his appeal to the Secretary of Labor and Employment. Article 128 (b) of the Labor Code clearly provides that the appeal bond must be "in the amount equivalent to the monetary award in the order appealed from." The records show that petitioner failed to post the required amount of the appeal bond. His appeal was therefore not perfected. Just like the petitioner in the present case, the employer in *Guico v. Secretary of Labor* had also sought a reduction of the appeal bond due to financial losses arising from the shutdown of his business; yet, we did not temper the strict requirement of Article 128 (b) for him. The rationale behind the stringency of such requirement is that the employer-appellant may choose between a cash bond and a surety bond. Hence, limitations in his liquidity should pose no obstacle to his perfecting an appeal by posting a mere surety bond. Moreover, Article 128(b) deliberately employed the word "only" in reference to the requirements for perfection of an appeal in labor standards cases. "Only" commands a restrictive application, giving no room for modification of said requirements.

2. ID.; ID.; ID.; ID.; REDUCTION OF APPEAL BOND, NOT APPLICABLE IN CASE AT BAR.— Petitioner pointed out, that Article 223 of the Labor Code prescribes similar requirements for perfection of appeals to the National Labor Relations Commission (NLRC); yet, the same has been applied with moderation in that a reduction of the appeal bond may be allowed. That is correct; but then, it should be borne in mind that reduction of bond in the NLRC is expressly authorized under the Rules implementing Article 223, *viz*.: RULE VI. APPEALS Section 6. Bond. – In case the decision of the Labor Arbiter, the Regional Director or his duly authorized Hearing Officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety

bond, which shall be in effect until final disposition of the case, issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of damages and attorney's fees. The employer, his counsel, as well as the bonding company, shall submit a joint declaration under oath attesting that the surety bond posted is genuine. ***The Commission may, in justifiable cases and upon Motion of the Appellant, reduce the amount of the bond. The filing of the motion to reduce bond shall not stop the running of the period to perfect appeal.*** No similar authority is given the DOLE Secretary in Department Order No. 18-02 (Implementing Rules), Series of 2002, amending Department Order No. 7-A, Series of 1995, implementing Article 128(b), thus: Rule X-A x x x **Section 9. Cash or surety bond; when required. — In case the order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a duly accredited bonding company. The bond should be in the amount equivalent to the monetary award indicated in the order.** x x x Under the foregoing Implementing Rules, it is plain that public respondent has no authority to accept an appeal under a reduced bond.

3. **ID.; ID.; ID.; PERIOD TO PERFECT AN APPEAL; VIOLATED IN CASE AT BAR.—** Further applying the Implementing Rules, there is one other reason for holding that petitioner failed to perfect her appeal. It is of record that she received the August 12, 1998 Compliance Order issued by DOLE-Bacolod, as indicated in the registry return card marked Annex "I". Petitioner does not question this, except to point out that the registry return card does not indicate the date she received the order. That is of no consequence, for the fact remains that petitioner was put on actual notice not only of the existence of the August 12, 1998 Compliance Order but also of the summary investigation of her establishment. It behooves her to file a timely appeal to public respondent or object to the conduct of the investigation. Petitioner did neither, opting instead to sit idle and wait until the following year to question the investigation and resultant order, in the guise of opposing the writ of execution through a motion dubbed "Double Verified Special Appearance to Oppose 'Writ of Execution' For Being a Blatant and Dangerous Violation of Due Process."

Such appeal already went beyond the ten-day period allowed under Section 8(b) of Rule X-B of the Implementing Rules.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; ONLY QUESTIONS OF LAW, PROPER.— We dwell only on questions of law, not purely questions of fact, in petitions for review on *certiorari* under Rule 45 of the Rules of Court. The first issue which petitioner raised, that is, whether she was properly served the notices of hearing issued by DOLE-Bacolod, is purely factual. The determination made by DOLE-Bacolod on this matter binds us, especially as it was not reversed by public respondent and the CA. We therefore cannot supplant its factual finding with our own, moreso that petitioner's bare denial cannot outweigh the probative value of the registry return cards attached to the record which indicate that said notices were received by petitioner.

APPEARANCES OF COUNSEL

Lyndon P. Caña for petitioners.
Pamplona Genito & Valdezco for private respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the October 30, 2002 Decision[1] of the Court of Appeals (CA) which affirmed the September 21, 2001 Order[2] of the Secretary of the Department of Labor and Employment (public respondent), and the May 22, 2003 CA Resolution[3] which denied the motion for reconsideration.

The facts are of record.

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[1] Penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Edgardo F. Sundiam; *rollo*, p. 42.

[2] *Id*. at 77.

[3] *Id*. at 55.

On March 27, 1998, Mardy Cabigo and 40 other workers (private respondents) filed with the Department of Labor and Employment-Bacolod District Office (DOLE Bacolod) a request for payroll inspection[4] of Hacienda Valentin Balabag owned by Alberta Yanson (petitioner). DOLE Bacolod conducted an inspection of petitioner's establishment on May 27, 1998, and issued a Notice of Inspection Report, finding petitioner liable for the following violations of labor standard laws:

1. Underpayment of salaries and wages (workers being paid a daily rate of Ninety Pesos [₱90.00] since 1997 and Seventy Five Pesos [₱75.00] prior to such year);
2. Non-payment of 13th month pay for two (2) years;
3. Non-payment of Social Amelioration Bonus (SAB) for two (2) years;
4. Non-payment of employer's 1/3 carabao share.[5]

and directing her to correct the same, thus:

You are required to affect [sic] restitution and/or correction of the foregoing at the company or plant level within ten (10) calendar days from notice hereof.

Any question of the above findings should be submitted to this Office within five (5) working days from notice hereof otherwise order of compliance shall be issued.

This notice shall be posted conspicuously in the premises of the workplace, removal of which shall subject the establishment to a fine and/or contempt proceedings.

When there is a certified union, a copy of the notice shall be furnished said union.[6]

In addition, DOLE Bacolod scheduled a summary investigation and issued, by registered mail, notices of hearing[7] as well as a

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[4] CA *rollo*, p. 65.

[5] CA *rollo*, p. 91.

[6] *Id*.

[7] *Rollo*, pp. 102-102 (sic).

subpoena duces tecum[8] to the parties. Petitioner did not appear in any of the scheduled hearings, or present any pleading or document.[9]

In a Compliance Order[10] dated August 12, 1998, DOLE Bacolod directed petitioner to pay, within five (5) days, ₱9,084.00 to each of the 41 respondents or a total of ₱372,444.00, and to submit proof of payment thereof. It also required petitioner to correct existing violations of occupational safety and health standards.[11]

Thereafter, DOLE Bacolod issued on December 17, 1998 a Writ of Execution of its August 12, 1998 Compliance Order, *viz*.:

> NOW, THEREFORE, you are hereby commanded to proceed to the premises of HAD. VALENTIN/BALABAG, MS. ALBERTA YANSON located at Brgy. Graneda or at Burgos St., Bacolod City and require the respondent to comply with the Order and pay the amount of THREE HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED FORTY-FOUR (₱372,444.00).
>
> You are to collect the above-stated amount from the respondent and deposit the same to the Cashier of this Office for appropriate disposition to herein workers and/;or the supervision of the Office of the Regional Director. Otherwise, you are to execute this Writ by attaching the goods and chattel of the respondent not exempt from execution or in case of insufficiency thereof, against the real or immovable property.
>
> You are further ordered to collect the Execution and/or Sheriff Fee in the amount of TWO THOUSAND ONE HUNDRED TWENTY-SEVEN (₱2,127.00) PESOS.
>
> Return this Writ to this Office within sixty (60) days from receipt hereof together with your statement in writing of the proceeding that you shall have conducted by virtue hereof.[12]

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[8] Memorandum for Public Respondent, *id*. at 222.

[9] *Id*.

[10] *Id*. at 104.

[11] *Id*. at 105.

[12] *Rollo*, p. 105.

On February 17, 1999, petitioner filed with DOLE Bacolod a Double Verified Special Appearance to Oppose "Writ of Execution" For Being a Blatant and Dangerous Violation of Due Process,[13] claiming that she did not receive any form of communication, or participate in any proceeding relative to the subject matter of the writ of execution. Petitioner also impugned the validity of the August 12, 1998 Compliance Order subject of the writ of execution on the ground of lack of employment relationship between her and private respondents. DOLE Bacolod denied said motion in an Order[14] dated March 11, 1999.

Petitioner filed with public respondent a Verified Appeal[15] and Supplement to the Verified Appeal,[16] posting therewith an appeal bond of ₱1,000.00 in money order and attaching thereto a Motion to be Allowed to Post Minimal Bond with Motion for Reduction of Bond.[17] Public respondent dismissed her appeal in an Order[18] dated September 21, 2001.

Petitioner filed a Petition for *Certiorari*[19] which was denied due course and dismissed by the CA in its assailed October 30, 2002 Decision. Petitioner's motion for reconsideration was also denied.

Hence, petitioner's present recourse on the following grounds:

I. The Honorable Court of Appeals and the Honorable Secretary of Labor, with all due respect, deprived the herein petitioner-appellant of her constitutional right not to be deprived of property without due process of law, and of free access to courts and quasi-judicial bodies by reason of poverty;

II. The Honorable Labor Secretary in his assailed Decision, with all due respect, for some rather mysterious reason or the other,

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[13] *Id*. at 107.

[14] *Id*. at 90.

[15] *Id*. at 80.

[16] *Id*. at 112.

[17] *Rollo*, p. 99.

[18] *Id*. at 77.

[19] *Id*. at 62.

dismissed the appeal with utter disregard of the fact that her Regional Director, whose orders were appealed to her were never received by the Petitioner.

Said orders assessing payments against the petitioner were issued without notice received by petitioner, and enforced without giving the petitioner a chance to controvert the atrocious figures, and two years after the petitioner's farm had ceased its operations;

III. The Honorable Labor Secretary denied the petitioner of her right to seasonably raise the issue of lack of jurisdiction and the right [to] appeal;

IV. There are very serious errors of fact and law in the assailed decision of the Honorable Labor Secretary, with all due respect; or that the assailed decision, with all due respect, is patently and blatantly contrary to law and jurisprudence.[20]

The petition lacks merit.

The appeal which petitioner filed with public respondent ultimately questioned the August 12, 1998 Compliance Order in which DOLE Bacolod, in the exercise of its visitorial and enforcement power, awarded private respondents ₱9,084.00 each in labor standard benefits or the aggregate sum of ₱377,444.00.[21] For its perfection, the appeal was therefore subject to the requirements prescribed under Article 128 of the Labor Code, as amended by Republic Act No. 7730,[22] *viz*.:

Art. 128. Visitorial and Enforcement Power. — x x x (b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety

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

[21] Verified Appeal, *rollo*, p. 82.

[22] An Act Further Strengthening the Visitorial and Enforcement Powers of the Secretary of Labor and Employment, Amending for the Purpose Article 128 (b) of Presidential Decree No. 442.

engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this article may be appealed to the latter. In case said order involves 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 Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from. (Emphasis ours)

When petitioner filed her Verified Appeal and Supplement to the Verified Appeal, she posted a mere ₱1,000.00-appeal bond and attached a Motion to be Allowed to Post Minimal Bond with Motion for Reduction of Bond. Public respondent rejected said appeal for insufficiency of the appeal bond, *viz*.:

We note and stress that there is no analogous application in the Office of the Secretary of the practice in the NLRC of reducing the appeal bond; the law applicable to the Office of the Secretary of Labor and Employment does not allow this practice. In other words, the respondent's request for the reduction of the required bond cannot be allowed for lack of legal basis. ***Hence, for lack of the required bond, the respondent's appeal was never duly perfected and must therefore be dismissed.***[23] (Emphasis ours)

Citing *Allied Investigation Bureau, Inc. v. Secretary of Labor and Employment*,[24] the CA held that public respondent did not commit grave abuse of discretion in holding that petitioner failed to perfect her appeal due to the insufficiency of her bond.[25]

Petitioner contends that the CA and public respondent denied her the right to appeal when they rejected her ₱1,000.00-appeal

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[23] September 21, 2001 DOLE Order, *id*. at 28.

[24] 377 Phil. 80, 92 (1999).

[25] *Rollo*, p. 47.

bond. She insists that her appeal bond cannot be based on the monetary award of ₱372,444.00 granted by DOLE Bacolod in its August 14, 1998 Order which, having been rendered without prior notice to her, was a patent nullity and completely without effect.[26] She argues that her appeal bond should instead be based on her capacity to pay; otherwise, her right to free access to the courts as guaranteed under Article III, Section 2 of the Constitution would be set to naught merely because of her diminished financial capacity.

Our sympathy for petitioner cannot override our fidelity to the law.

In *Guico, Jr. v. Hon. Quisumbing*,[27] we held that the posting of the proper amount of the appeal bond under Article 128 (b) is mandatory for the perfection of an appeal from a monetary award in labor standard cases:

> The next issue is whether petitioner was able to perfect his appeal to the Secretary of Labor and Employment. Article 128 (b) of the Labor Code clearly provides that the appeal bond must be "in the amount equivalent to the monetary award in the order appealed from." The records show that petitioner failed to post the required amount of the appeal bond. His appeal was therefore not perfected.[28]

Just like the petitioner in the present case, the employer in *Guico v. Secretary of Labor* had also sought a reduction of the appeal bond due to financial losses arising from the shutdown of his business; yet, we did not temper the strict requirement of Article 128 (b) for him. The rationale behind the stringency of such requirement is that the employer-appellant may choose between a cash bond and a surety bond. Hence, limitations in his liquidity should pose no obstacle to his perfecting an appeal by posting a mere surety bond.

Moreover, Article 128(b) deliberately employed the word "only" in reference to the requirements for perfection of an

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[26] Petition, *id*. at 27.

[27] 359 Phil. 197 (1998).

[28] *Guico, Jr. v. Hon. Quisumbing, id*. at 209.

appeal in labor standards cases. "Only" commands a restrictive application,[29] giving no room for modification of said requirements.

Petitioner pointed out, however, that Article 223[30] of the Labor Code prescribes similar requirements for perfection of appeals to the National Labor Relations Commission (NLRC); yet, the same has been applied with moderation in that a reduction of the appeal bond may be allowed.[31] That is correct; but then, it should be borne in mind that reduction of bond in the NLRC is expressly authorized under the Rules implementing Article 223, *viz.*:[32]

RULE VI. APPEALS

Section 6. Bond. – In case the decision of the Labor Arbiter, the Regional Director or his duly authorized Hearing Officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond, which shall be in effect until final disposition of the case, issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

The employer, his counsel, as well as the bonding company, shall submit a joint declaration under oath attesting that the surety bond posted is genuine.

The Commission may, in justifiable cases and upon Motion of the Appellant, reduce the amount of the bond. The filing of the

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[29] *Sapitan v. JB Line*, G.R. No. 163775, October 19, 2007.

[30] Article 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...

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In case of 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.

[31] *Nicol v. Footjoy Industrial Corp.,* G.R. No. 159372, July 27, 2007.

[32] *Computer Innovations Center v. National Labor Relations Commission*, G.R. No. 152410, June 29, 2005, 462 SCRA 183, 189.

motion to reduce bond shall not stop the running of the period to perfect appeal. (Emphasis supplied.)

No similar authority is given the DOLE Secretary in Department Order No. 18-02 (Implementing Rules), Series of 2002, amending Department Order No. 7-A, Series of 1995, implementing Article 128(b), thus:

Rule X-A

Section 8. Appeal. - (a) The Order of the Regional Director shall be final and executory unless appealed to the Secretary within ten (10) calendar days from receipt thereof.

(b) The appeal shall be filed with the Regional Office where the case originated together with the memorandum of the appealing party. The appellee may file his answer within ten (10) calendar days from receipt of the appellants memorandum.

Section 9. Cash or surety bond; when required. - In case the order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a duly accredited bonding company. The bond should be in the amount equivalent to the monetary award indicated in the order.

Section 10. Writ of execution. - (a) If no appeal is perfected within the reglementary period, the Regional Director shall, *motu propio* (sic) or upon motion of any interested party, issue a writ of execution to enforce the order. In the enforcement of the writ, the assistance of the law enforcement authorities may be sought.

(b) A writ of execution may be recalled subsequent to its issuance, if it is shown that an appeal has been perfected in accordance with this rule. (Emphasis ours)

Under the foregoing Implementing Rules, it is plain that public respondent has no authority to accept an appeal under a reduced bond.

Further applying the Implementing Rules, there is one other reason for holding that petitioner failed to perfect her appeal. It is of record that she received the August 12, 1998 Compliance Order issued by DOLE-Bacolod, as indicated in the registry

return card marked Annex "I".[33] Petitioner does not question this, except to point out that the registry return card does not indicate the date she received the order. That is of no consequence, for the fact remains that petitioner was put on actual notice not only of the existence of the August 12, 1998 Compliance Order but also of the summary investigation of her establishment. It behooves her to file a timely appeal to public respondent[34] or object to the conduct of the investigation.[35] Petitioner did neither, opting instead to sit idle and wait until the following year to question the investigation and resultant order, in the guise of opposing the writ of execution through a motion dubbed "Double Verified Special Appearance to Oppose 'Writ of Execution' For Being a Blatant and Dangerous Violation of Due Process."[36] Such appeal already went beyond the ten-day period allowed under Section 8(b) of Rule X-B of the Implementing Rules.

In fine, the CA was correct in holding that public respondent did not commit grave abuse of discretion in rejecting the appeal of petitioner due to the insufficiency of her appeal bond.

Even if we delve into its substance, her appeal would still not prosper. Petitioner questions the August 12, 1998 Compliance Order on the grounds that she was never notified of the proceedings leading to its issuance, and that as early as 1997, her employment relationship with the private respondents had already been severed.

We dwell only on questions of law, not purely questions of fact, in petitions for review on *certiorari* under Rule 45 of the Rules of Court. The first issue which petitioner raised, that is, whether she was properly served the notices of hearing issued by DOLE-Bacolod, is purely factual.[37] The determination made by DOLE-Bacolod on this matter binds us, especially as it was

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[33] *Rollo*, p. 103.

[34] *Laguna CATV Network, Inc. v. Maraan*, 440 Phil. 734, 740 (2002).

[35] *EJR Crafts Corporation v. Court of Appeals*, G.R. No. 154101, March 10, 2006, 484 SCRA 340, 351.

[36] *Rollo*, p. 109.

[37] *Velayo-Fong v. Velayo*, G.R. NO. 155488, December 6, 2006, 510 SCRA 320, 329.

not reversed by public respondent and the CA. We therefore cannot supplant its factual finding with our own,[38] moreso that petitioner's bare denial cannot outweigh the probative value of the registry return cards attached to the record which indicate that said notices were received by petitioner.[39]

Anent the second issue, the records do not sustain petitioner's claim. In a Collective Bargaining Agreement dated January 29, 1998,[40] petitioner acknowledged under oath that she is the employer of private respondents Mardy Cabigo, *et al*., who are members of the union known as Commercial and Agro-Industrial Labor Organization.

WHEREFORE, the petition is *DENIED* for lack of merit.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 159730. February 11, 2008]

NORKIS TRADING CO., INC. and/or MANUEL GASPAR E. ALBOS, JR., *petitioners, vs.* **MELVIN GNILO,** *respondent.**

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[38] *EJR Crafts Corporation v. Court of Appeals*, *supra* note 35, at 349.

[39] *Rollo*, pp. 101-103.

[40] CA *rollo*, pp. 70-83.

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

* Pursuant to Section 4, Rule 45 of the Rules of Court, the Court of Appeals, as respondent, is deleted from the title of the case.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI TO THE SUPREME COURT UNDER RULE 45; ONLY QUESTIONS OF LAW ALLOWED; EXCEPTIONS; CONFLICT IN FINDINGS AND CONCLUSIONS.— The issue for resolution is whether respondent's transfer from the position of Credit and Collection Manager to that of a Marketing Assistant amounts to a constructive dismissal. This is a factual matter. Rule 45 of the Rules of Court provides that only questions of law may be raised in a petition for review on *certiorari*. The *raison d'etre* is that the Court is not a trier of facts. It is not to re-examine and re-evaluate the evidence on record. The general rule is that the factual findings of the NLRC, as affirmed by the CA, are accorded high respect and finality unless the factual findings and conclusions of the LA clash with those of the NLRC and the CA, as it appears in this case. Thus we have to review the records and the arguments of the parties to resolve the factual issues and render substantial justice to the parties.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; EMPLOYER'S PREROGATIVE TO TRANSFER AND REASSIGN EMPLOYEES FOR VALID REASONS AND ACCORDING TO THE REQUIREMENT OF ITS BUSINESS; WHEN CONSIDERED CONSTRUCTIVE DISMISSAL.— Well-settled is the rule that it is the prerogative of the employer to transfer and reassign employees for valid reasons and according to the requirement of its business. An owner of a business enterprise is given considerable leeway in managing his business. Our law recognizes certain rights, collectively called management prerogative as inherent in the management of business enterprises. We have consistently recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment, provided that there is no demotion in rank or diminution of his salary, benefits and other privileges and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. This privilege is inherent in the right of employers to control and manage their enterprises effectively. The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving

management of its prerogative to change their assignments or to transfer them. Managerial prerogatives, however, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice. The employer bears the burden of showing that the transfer is not unreasonable, inconvenient or prejudicial to the employee; and does not involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal. Constructive dismissal is defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee, leaving him with no option but to forego his continued employment.

3. ID.; ID.; ID.; ID.; DEMOTION IN CASE AT BAR IS CONSTRUCTIVE DISMISSAL.— A transfer is defined as a "movement from one position to another which is of equivalent rank, level or salary, without break in service." Promotion, on the other hand, is the "advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary." Conversely, demotion involves a situation in which an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary. In this case, while the transfer of respondent from Credit and Collection Manager to Marketing Assistant did not result in the reduction of his salary, there was a reduction in his duties and responsibilities which amounted to a demotion tantamount to a constructive dismissal as correctly held by the NLRC and the CA. There is constructive dismissal when an employee's functions, which were originally supervisory in nature, were reduced; and such reduction is not grounded on valid grounds such as genuine business necessity. There is also constructive dismissal when an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee as to foreclose any choice on his part except to resign from such employment. Respondent's demotion in the nature of his functions coupled with petitioner Albos's act of insensibility no doubt amounts to his constructive dismissal.

4. ID.; LABOR STANDARDS; WAGES; ACTION FOR RECOVERY OF WAGES; ATTORNEY'S FEES, PROPER.— We find no error committed by the NLRC in awarding attorney's fees. In *San Miguel Corporation v. Aballa*, we held that in actions for recovery of wages or where an employee was forced to litigate and thus incur expenses to protect his rights and interests, a maximum of 10% of the total monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the Civil Code. The award of attorney's fees is proper and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.

APPEARANCES OF COUNSEL

Quisumbing Ignacio Guia & Lambino Law Offices for petitioners.

S.A. Santiago & Santiago Law Offices for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] dated June 20, 2003 and the Resolution[2] dated August 25, 2003 of the Court of Appeals (CA) in CA G.R. SP No. 72568.

Melvin R. Gnilo (respondent) was initially hired by Norkis Trading Co., Inc. (petitioner Norkis) as Norkis Installment Collector (NIC) in April 1988. Manuel Gaspar E. Albos, Jr. (petitioner Albos) is the Senior Vice-President of petitioner Norkis. Respondent held various positions in the company until he was

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[1] Penned by Justice Romeo A. Brawner (now COMELEC Commissioner), concurred in by Justices Eliezer R. delos Santos and Regalado E. Maambong, *rollo*, pp. 29-34.

[2] *Id*. at 36.

appointed as Credit and Collection Manager of Magna Financial Services Group, Inc.-Legaspi Branch, petitioner Norkis's sister company, in charge of the areas of Albay and Catanduanes with travel and transportation allowances and a service car.

A special audit team was conducted in respondent's office in Legaspi, Albay from March 13 to April 5, 2000 when it was found out that respondent forwarded the monthly collection reports of the NICs under his supervision without checking the veracity of the same. It appeared that the monthly collection highlights for the months of April to September 1999 submitted by respondent to the top management were all overstated particularly the account handled by NIC Dennis Cadag, who made it appear that the collection efficiency was higher than it actually was; and that the top management was misled into believing that respondent's area of responsibility obtained a favorable collection efficiency.

Respondent was then charged by petitioners' Inquiry Assistance Panel (Panel) with negligence of basic duties and responsibilities resulting in loss of trust and confidence and laxity in directing and supervising his own subordinates. During the investigation, respondent admitted that he was negligent for failing to regularly check the report of each NIC under his supervision; that he only checked at random the NIC's monthly collection highlight reports; and that as a leader, he is responsible for the actions of his subordinates. He however denied being lax in supervising his subordinates, as he imposed discipline on them if the need arose.

On May 30, 2000, petitioner Norkis through its Human Resource Manager issued a memorandum[3] placing respondent under 15 days suspension without pay, travel and transportation allowance, effective upon receipt thereof. Respondent filed a letter protesting his suspension and seeking a review of the penalty imposed.

Another memorandum[4] dated June 30, 2000 was issued to respondent requiring him to report on July 5, 2000 to the head

[3] CA *rollo*, p. 82.

[4] CA *rollo*, p. 83.

office of petitioner Norkis in Mandaluyong City for a re-training or a possible new assignment without prejudice to his request for a reconsideration or an appeal of his suspension. He was then assigned to the Marketing Division directly reporting to petitioner Albos.

In a letter[5] dated July 27, 2000, respondent requested petitioner Albos that he be assigned as Sales Engineer or to any position commensurate with his qualifications. However, on July 28, 2000, respondent was formally appointed as Marketing Assistant to petitioner Albos, which position respondent subsequently assumed.

However, on October 4, 2000, respondent filed with the Labor Arbiter (LA) a complaint for illegal suspension, constructive dismissal, non-payment of allowance, vacation/sick leave, damages and attorney's fees against petitioners.

On March 30, 2001, the LA rendered his decision[6] dismissing the complaint for lack of merit.

The LA found that the position of Credit and Collection Manager held by respondent involved a high degree of responsibility requiring trust and confidence; that his failure to observe the required procedure in the preparation of reports, which resulted in the overstated collection reports continuously for more than six months, was sufficient to breach the trust and confidence of petitioners and was a valid ground for termination; that instead of terminating him, petitioners merely imposed a 15-day suspension which was not illegal; and that petitioners exercised their inherent prerogative as an employer when they appointed respondent as a Marketing Assistant.

Respondent appealed the LA decision to the National Labor Relations Commission (NLRC). In a Resolution[7] dated January 29, 2002, the NLRC reversed the LA, the dispositive portion of which reads:

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[5] *Id*. at 248.

[6] Penned by Labor Arbiter Jovencio Ll. Mayor, Jr., *rollo*, pp. 37-57.

[7] Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, CA *rollo*, pp. 26-49.

WHEREFORE, premises considered, complainant's appeal is partly GRANTED. The Labor Arbiter's decision in the above-entitled case is REVERSED. It is hereby declared that complainant was constructively dismissed from his employment. Respondent Norkis Trading Co., Inc is ordered to pay complainant the amount of ₱411,796.00 as backwages and separation pay, plus ten percent (10%) thereof as attorney's fees.[8]

In so ruling, the NLRC found that the 15-day suspension cannot be considered harsh and unconscionable as petitioners validly exercised their management prerogative to impose discipline on an erring employee for negligence by submitting unreliable and inaccurate reports for six consecutive months to the top management who used the reports in their planning and decision-making activities, and thus caused damage or injury one way or another to petitioners. It however held that the transfer of respondent from the position of Credit and Collection Manager to Marketing Assistant resulted in his demotion in rank from Manager to a mere rank and file employee, which was tantamount to constructive dismissal and therefore illegal.

The NLRC ruled that respondent was constructively dismissed and therefore he was entitled to reinstatement and payment of full backwages from the time he quit working on October 19, 2000 due to his demotion up to the time of his actual reinstatement. However, it found that the parties' relationship was already strained on account of this case; thus, it ordered the payment of respondent's separation pay equivalent to his one-month salary for every year of service. It upheld the LA's dismissal of respondent's prayer for damages for failure to submit substantial evidence to support the same, but awarded attorney's fees.

Petitioners filed their Motion for Reconsideration while respondent filed his Motion for Reconsideration/Clarification.

On June 24, 2002, the NLRC issued another Resolution,[9] the dispositive portion of which reads:

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[8] *Id*. at 48.

[9] CA *rollo*, pp. 50-58.

WHEREFORE, premises considered, respondents' [petitioners] motion for reconsideration is DENIED for lack of merit while complainant's [respondent] motion for reconsideration is GRANTED. This Commission's January 29, 2002 Resolution in the above-entitled case is hereby AFFIRMED with the MODIFICATION that respondent Norkis Trading Company, Inc. is ordered to pay complainant the adjusted amount of ₱444,739.38 as backwages, separation pay, 13th month pay and refund of provident fund contribution.[10]

In granting respondent's motion for reconsideration, the NLRC found that petitioners admitted in their Rejoinder that they had not paid respondent his 13th-month pay and that respondent had yet to make a written request for the refund of his provident fund contribution; thus, respondent was entitled thereto and the provident fund contribution must also be returned to him.

Petitioners filed a petition for *certiorari* with the CA. Subsequently, they also filed a Motion for the Issuance of a Temporary Restraining Order or a Writ of Preliminary Injunction, as respondent had filed a Motion for the Issuance of a Writ of Execution with the NLRC.

On June 20, 2003, the CA rendered its assailed Decision denying the petition and affirming the NLRC Resolutions.

On August 25, 2003, the CA denied petitioners' Motion for Reconsideration.

Hence, herein petition wherein petitioners assigned the following errors committed by the CA:

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE ERRONEOUS FINDINGS OF THE NLRC DESPITE THE FACT THAT THE NLRC OVERLOOKED, MISAPPRECIATED OR MISAPPLIED SOME FACTS THAT WOULD HAVE AFFECTED THE RESULT OF THE CASE.

THE HONORABLE COURT OF APPEALS ACTED CONTRARY TO LAW AND JURISPRUDENCE WHEN IT HELD THAT PRIVATE RESPONDENT WAS CONSTRUCTIVELY DISMISSED.[11]

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[10] *Id*. at 57.

[11] *Rollo*, p. 15.

Petitioners contend that factual findings of quasi-judicial agencies, while generally accorded finality, may be reviewed by this Court when the findings of the NLRC and the LA are contradictory; that in the exercise of its equity jurisdiction, this Court may look into the records of the case to re-examine the questioned findings.

Petitioners claim that they were merely exercising their inherent prerogative as an employer when they appointed respondent as Marketing Assistant to the Senior Vice-President for Marketing; that respondent's performance evaluations during the previous years showed that he was weak in the financial aspect of operation, but was good in marketing; thus, he would function with utmost efficiency and maximum benefit to the company in the Marketing Department; and that he had accepted his appointment unconditionally.

Petitioners submit that the positions of Credit and Collection Manager and Marketing Assistant are co-equal and of the same level of authority; that the scope of work of a Marketing Assistant is wider, since he has access to confidential informations and has the chance to communicate directly with higher officers of the company; that his area of responsibility as Credit and Collection Manager was limited to branches located in Legaspi City and Virac, Catanduanes; whereas as Marketing Assistant, he is responsible for analyzing and coordinating all marketing information relevant to the company's motorcycles from all over Luzon, and his reports are necessary for the planning and decision-making activities of petitioners' top management; and that there is no demotion, since respondent's position is more encompassing and vital to the company and he is receiving the same salary.

Petitioners also contend that they should not be adjudged to pay attorney's fees as they did not act in bad faith.

In his Comment, respondent states that it is not the function of this Court to analyze and weigh all over again the evidence already considered in the proceedings below, as its jurisdiction is limited to reviewing errors of law; that the CA had not only

passed upon the legal/factual issues and arguments presented by the parties but had waded into the records and found out that the findings of the NLRC were supported by substantial evidence. He informs this Court that he was able to enforce the writ of execution issued by the NLRC and subsequently secured the release of the monetary award on November 14, 2003.

The parties thereafter filed their respective memoranda.

The issue for resolution is whether respondent's transfer from the position of Credit and Collection Manager to that of a Marketing Assistant amounts to a constructive dismissal. This is a factual matter. Rule 45 of the Rules of Court provides that only questions of law may be raised in a petition for review on *certiorari*. The *raison d'etre* is that the Court is not a trier of facts. It is not to re-examine and re-evaluate the evidence on record. The general rule is that the factual findings of the NLRC, as affirmed by the CA, are accorded high respect and finality unless the factual findings and conclusions of the LA clash with those of the NLRC and the CA, as it appears in this case. Thus we have to review the records and the arguments of the parties to resolve the factual issues and render substantial justice to the parties.[12]

Well-settled is the rule that it is the prerogative of the employer to transfer and reassign employees for valid reasons and according to the requirement of its business.[13] An owner of a business enterprise is given considerable leeway in managing his business. Our law recognizes certain rights, collectively called management prerogative as inherent in the management of business enterprises. We have consistently recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment, provided that there is no demotion in rank or diminution of his salary, benefits and other privileges[14] and the action is not motivated by discrimination,

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[12] *Union Motor Corporation v. National Labor Relations Commission*, G.R. No. 159738, December 9, 2004, 445 SCRA 683, 689-690.

[13] *Castillo v. National Labor Relations Commission*, 367 Phil. 605, 615 (1999).

[14] *Id*.

made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[15] This privilege is inherent in the right of employers to control and manage their enterprises effectively.[16]

The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them. Managerial prerogatives, however, are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.[17]

The employer bears the burden of showing that the transfer is not unreasonable, inconvenient or prejudicial to the employee; and does not involve a demotion in rank or a diminution of his salaries, privileges and other benefits.[18] Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal.[19]

Constructive dismissal is defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay.[20]

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[15] *The Philippine American Life and General Insurance Co. v. Gramaje*, G.R. No. 156963, November 11, 2004, 442 SCRA 274, 284, citing *Mendoza v. Rural Bank of Lucban*, G.R. No. 155421, July 7, 2004, 433 SCRA 756, 766, citing *Lanzaderas v. Amethyst Security and General Services, Inc.*, 452 Phil. 621, 635 (2003); *Jarcia Machine Shop and Auto Supply, Inc. v. National Labor Relations Commission*, 334 Phil. 84, 95 (1997); *Escobin v. National Labor Relations Commission*, 351 Phil. 973, 999 (1998).

[16] *Mendoza v. Rural Bank of Lucban*, *supra* note 15, citing *Lanzaderas v. Amethyst Security and General Services, Inc.*, *supra* note 15; *Jarcia Machine Shop and Auto Supply, Inc. v. National Labor Relations Commission*, *supra* note 15, at 93; *Escobin v. National Labor Relations Commission*, *supra* note 15.

[17] *Mendoza v. Rural Bank of Lucban*, *supra* note 15. See Antonio H. Abad Jr., *Compendium on Labor Law* (2004), p. 55.

[18] *Blue Dairy Corporation v. National Labor Relations Commission*, 373 Phil. 179, 186 (1999).

[19] *Id*.

[20] *Blue Dairy Corporation v. National Labor Relations Commission*, *supra* note 18, citing *Philippine-Japan Active Carbon Corporation v. National Labor Relations Commission*, G.R. No. 83239, March 8, 1989, 171 SCRA 164, 168.

Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee, leaving him with no option but to forego his continued employment.[21]

A transfer is defined as a "movement from one position to another which is of equivalent rank, level or salary, without break in service."[22] Promotion, on the other hand, is the "advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary."[23] Conversely, demotion involves a situation in which an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary.[24]

In this case, while the transfer of respondent from Credit and Collection Manager to Marketing Assistant did not result in the reduction of his salary, there was a reduction in his duties and responsibilities which amounted to a demotion tantamount to a constructive dismissal as correctly held by the NLRC and the CA.

A comparison in the nature of work of these two positions shows a great difference. As Credit and Collection Manager, respondent was clothed with all the duties and responsibilities of a managerial employee. He could devise and implement action plans to meet his objectives and exercise independent judgment in resolving problem accounts. He had power and control over NICs, Branch Control Officers (BCOs) and Cashiers under his supervision, and he provided them training in the performance

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[21] *Blue Dairy Corporation v. National Labor Relations Commission*, *supra* note 18, citing *Philippine Advertising Counselors, Inc. v. National Labor Relations Commission*, 331 Phil. 694, 702 (1996).

[22] *Tinio v. Court of Appeals*, G.R. No. 171764, June 8, 2007, 524 SCRA 533, 541.

[23] *Id*., citing *Millares v. Subido*, 127 Phil. 370, 378 (1967).

[24] *Tinio v. Court of Appeals*, *supra* note 22.

of their respective works. Further, he had the authority to ensure reserves in the NICs, BCOs and Cashiers in case of expansion, reassignment and/or termination. There is no doubt that said position of Credit and Collection Manager entails great duties and responsibilities and involves discretionary powers. In fact, even in petitioners' pleadings, they repeatedly stated that the position involved a high degree of responsibility requiring trust and confidence as it relates closely to the financial interest of the company.

On the other hand, the work of a Marketing Assistant is clerical in nature, which does not involve the exercise of any discretion. Such job entails mere data gathering on vital marketing informations relevant to petitioners' motorcycles and making reports to his direct supervisor. He is a mere staff member in the office of the Senior Vice-President for Marketing. While petitioners claim that the position of a Marketing Assistant covers a wide area as compared with the position of Credit and Collection Manager, the latter is reposed with managerial duties in overseeing petitioners' business in his assigned area, unlike the former in which he merely collates raw data. These two positions are not of the same level of authority.

There is constructive dismissal when an employee's functions, which were originally supervisory in nature, were reduced; and such reduction is not grounded on valid grounds such as genuine business necessity.[25]

We quote with approval the findings of the CA on the matter of respondent's demotion in his functions, thus:

x x x Studying minutely the proof proffered by both sides, our considered ruling is that there is more than the requisite quantum of evidence in support of the NLRC's conclusion that indeed, private respondent was constructively dismissed. This is evident, not only from the much reduced powers and prerogatives of the private respondent when his position was changed from Credit and Collection Manager to Marketing Assistant to the Senior Vice President; the variance in the duties between the two, as may be gleaned from the definition of functions made of record, in this case, are glaring and

[25] *Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756, 769 (2002).

indubitable. As Credit and Collection Manager, private respondent had the authority to "devise and implement action plans x x x, manage and control the security and safety of collections and repossessed units x x x, effectively supervise, teach and train BCO and cashiers x x x, discipline NIC's, BCO's and cashiers, x x x," among others. In other words, he was part of management, or was at the supervisory level, to say the least. On the other hand, as Marketing Assistant to the Senior Vice President, private respondent was stripped of all management and oversize wherewithal, and became an appendage of his immediate supervisor, confined to such mundane functions as to "analyze monthly LTO data x x x, coordinate with Sales Engineers x x x, and make quarterly reports x x x," give inputs on such dreary information such as prices of rice and copra, tobacco and gasoline, sources of people's income, peace and order situation, prepare brochures, *etc*., which are humdrum clerical tasks requiring little or no discretion. Worse, he lost all the people under him, and had no staff, and was relegated to a "mere rank and file employee who had no one under his supervision and whose duties were merely routinary and clerical in nature which did not require the use of independent judgment."[26]

Moreover, petitioners failed to refute respondent's claim that as Credit and Collection Manager, he was provided with a service car which was no longer available to him as Marketing Assistant; thus, such was a reduction in his benefit.

There is also constructive dismissal when an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee as to foreclose any choice on his part except to resign from such employment.[27] As aptly observed by the CA, to wit:

While we may allow petitioners the leeway of disciplining its employees, which is why we uphold the finding of the NLRC that the fifteen-day suspension of private respondent was legal and proper,

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[26] *Rollo*, p. 32.

[27] *Soliman Security Services, Inc. v. Court of Appeals*, 433 Phil. 902, 910 (2002); see also *Ala Mode Garments, Inc. v. National Labor Relations Commission*, 335 Phil. 971, 978 (1997); *Philippine Advertising Counselors, Inc. v. National Labor Relations Commission*, *supra* note 21; *Philippine-Japan Active Carbon Corporation v. National Labor Relations Commission*, *supra* note 20.

We cannot countenance the barbaric treatment suffered by the latter in the hands of his bosses. Undisputed it is that not only was private respondent made to look like an idiot when he was not given work in his new assignment, but that he was humiliated and debased when petitioner Albos, in a very uncouth manner, hurled expletives at the private respondent, calling him *bobo, gago* and screaming *putang ina mo* in front of him, at the same time "crumpling (his) report" and throwing it into his face. Such undignified and boorish deeds perpetrated against private respondent directly caused him to forthwith leave the employ of petitioner corporation, which he served loyally for some twelve (12) years.[28]

Respondent's demotion in the nature of his functions coupled with petitioner Albos's act of insensibility no doubt amounts to his constructive dismissal.

Anent petitioners' claim that respondent unconditionally accepted his formal appointment as Marketing Assistant on August 3, 2000, we note that in a letter dated July 27, 2000 addressed to petitioner Albos when he learned that he would be assigned as a Marketing Assistant, respondent had expressed reservations on such assignment and asked that he instead be assigned as Sales Engineer or to any position commensurate to his qualifications. Respondent could not be faulted for accepting the position of a Marketing Assistant, since he did so and stayed put in order to compare and evaluate his position. However, he experienced not only a demotion in his duties and responsibilities, an undignified treatment by his immediate superior, which prompted him to file this case.

Petitioners argue that it is patently inimical to their interest if respondent would be maintained in the position of Credit and Collection Manager, as he was negligent in the performance of his duties as such; that the 1999 incident was not the first time that respondent forwarded to top management overstated collection reports, since three of the NICs under respondent's supervision committed similar misrepresentations in 1997; and that it has been held that the mere existence of a basis for believing that the supervisor or other personnel occupying

[28] *Rollo*, p. 33.

positions of responsibility has breached the trust and confidence reposed in him by his employer is a sufficient ground for dismissal.

While petitioners have the prerogative to transfer respondent to another position, such transfer should be done without diminution of rank and benefits which has been shown to be present in respondent's case. He could have been transferred to a job of managerial position and not to that of a Marketing Assistant. Moreover, petitioners failed to substantiate their claim that respondent was weak in the financial aspect of operation, but he was good in marketing, as the performance evaluation report relied upon by petitioners would not suffice. On the other hand, the evaluation report dated March 10, 1997 stated that respondent's track records in sales and collection showed his potential for advancement and could be the basis for his promotion to Marketing Manager.

We note that the alleged overstated collection reports of three NICs under respondent's supervision submitted in 1997, were already mentioned in the IAP report of the 1999 incident for which respondent was meted the penalty of 15- day suspension without salary, travel and transportation allowance; thus, the same could no longer be used to justify his transfer. Moreover, respondent's demotion, which was a punitive action, was, in effect, a second penalty for the same negligent act of respondent.

Finally, we find no error committed by the NLRC in awarding attorney's fees. In *San Miguel Corporation v. Aballa*,[29] we held that in actions for recovery of wages or where an employee was forced to litigate and thus incur expenses to protect his rights and interests, a maximum of 10% of the total monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code,[30] Section 8, Rule VIII, Book III of its

[29] G.R. No. 149011, June 28, 2005, 461 SCRA 392.

[30] ART. 111. Attorney's fees. — (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered. (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees which exceed ten percent of the amount of wages recovered.

Implementing Rules;[31] and paragraph 7, Article 2208 of the Civil Code.[32] The award of attorney's fees is proper and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.[33]

WHEREFORE, the petition is *DENIED*. The Decision dated June 20, 2003 and the Resolution dated August 25, 2003 of the Court of Appeals are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 166435. February 11, 2008]

THE SUPERINTENDENT OF CITY SCHOOLS FOR MANILA, ESTHER JUANINO, MA. LUISA QUIÑONES and SECRETARY OF THE DEPARTMENT OF EDUCATION, *petitioners, vs.* **MA. GRACIA AZARCON, and MELINDA AÑONUEVO,** *respondents*.

[31] SEC. 8. Attorney's fees. — Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

[32] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

x x x x x x x x x

[33] *San Miguel Corporation v. Del Rosario*, *supra* note 29, at 432-433.

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

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW (RA 4670) MAGNA CARTA FOR PUBLIC SCHOOL TEACHERS; TRANSFER OR REASSIGNMENT OF PUBLIC SCHOOL TEACHER; REQUISITES.— Section 6 of The Magna Carta for Public School Teachers (RA 4670) provides: Section 6. Consent for Transfer— Transportation Expenses. Except for cause and as herein otherwise provided, no teacher shall be transferred without his consent from one station to another. **Where the exigencies of service require the transfer of a teacher from one station to another, such transfer may be effected by the school superintendent who shall previously notify the teacher concerned of the transfer and the reason or reasons therefor.** If the teacher believes there is no justification for the transfer, he may appeal his case to the Director of Public Schools or the Director of Vocational Education, as the case may be. Pending his appeal and the decision thereon, his transfer shall be held in abeyance; *Provided*, *however,* That no transfers whatever shall be made three months before any national or local elections. Necessary transfer expenses of the teacher and his family shall be paid for by the Government if his transfer is finally approved. For a transfer or reassignment of a public school teacher to be valid, the following requisites must be satisfied: 1) the transfer or reassignment was undertaken pursuant to the exigencies of service; 2) the school superintendent previously notified the teacher concerned of his/her transfer or reassignment; 3) the teacher concerned was informed of the reason or reasons for his/her transfer and 4) that the transfer was not made three months before a national or local election.

2. ID.; ID.; ID.; ID.; ID.; THE TRANSFER OR REASSIGNMENT WAS UNDERTAKEN PURSUANT TO THE EXIGENCIES OF TRANSFER OR REASSIGNMENT; ELUCIDATED.— With regard to the first requisite, in *Department of Education v. CA*, we held that the appointment of teachers does not refer to any particular station or school. They are not entitled to stay permanently in one station because their assignments are subject to the exigencies of the service. The exigencies of the service, as mentioned in Section 6 of RA 4670, should be viewed in the light of Section 1, Article XIV of the Constitution which

provides: Section 1. The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all. The accessibility of quality education determines the exigencies of the service. Thus, assignments undertaken for purposes of improving the educational system and/or making education more accessible are valid.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Free Legal Assistance Group for respondents.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari*[1] assails the decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 40848 and its resolution[3] denying reconsideration.

Respondents Ma. Gracia Azarcon and Melinda Anoñuevo, public school teachers assigned at General M. Hizon Elementary School (GMHES) in Tondo, Manila, joined the unauthorized mass action of public school teachers held from September 17 to 19, 1990.

On September 20, 1990, then Department of Education, Culture and Sports (DECS)[4] Secretary Isidro Cariño filed various charges[5] against those teachers who participated in the aforementioned mass action. Respondents were among those

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

[2] Penned by Associate Justice Roberto A. Barrios (deceased) and concurred by Associate Justices Delilah Vidallon-Magtolis (retired) and Mariano C. del Castillo of the Special Twelfth Division of the Court of Appeals. Dated June 17, 2004. *Rollo,* pp. 49-59.

[3] Dated November 22, 2004. *Id.,* pp. 61-63.

[4] Now Department of Education (or Dep-Ed).

[5] *Rollo*, pp. 17, 64-65. The September 20, 1990 memorandum provided:

charged and placed under preventive suspension.[6] They were later found guilty of conduct prejudicial to the best interest of the service and were consequently dismissed.[7]

Aggrieved, respondents appealed their dismissal to the Merit System Protection Board (MSPB) which, however, dismissed their appeal for lack of merit.[8]

Respondents elevated the MSPB decision to the Civil Service Commission (CSC). In its August 3, 1993 resolution,[9] the CSC agreed that respondents acted "without due regard to the adverse consequences of their actions which necessarily resulted in the suspension and stoppage of classes, to the prejudice of the students."[10] It, however, modified the penalty to six months' suspension without pay. The CSC took into consideration the

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This OFFICE has found on the basis of the report of the Principal that a *prima facie* case exists against you for **grave misconduct, neglect of duty, gross violation of Civil Service law**[**s**] **and rules or reasonable office regulations, refusal to perform official duty, gross insubordination, conduct prejudicial to the best interest of service** [**and**] **absence without leave** committed as follows:

1. Joining unauthorized mass actions without filing requisite leave of absence for the period of September 17-19, 1990.
2. Ignoring report-to-work directives issued by superior officers.
3. Unjustified abandonment of teaching posts without securing prior permission or approval from the proper authorities for the period September 17-19, 1990.
4. Non-observance of Civil Service laws and implementing rules and regulations.
5. Non-compliance with reasonable office rules and regulations.
6. Incurring unauthorized absences without approved leave.
7. Other violations similar to the above. (emphasis provided)

[6] *Id*., p. 65.

[7] *Id*.

[8] *Id*., p. 66.

[9] CSC Resolution No. 93-2898 signed by CSC chairperson Patricia Sto. Tomas and commissioners Ramon P. Ereneta, Jr. and Thelma P. Gaminde. *Id*., pp. 64-66.

[10] *Id*., p. 66.

period of time respondents were out of work and ordered their automatic reinstatement to their former positions without back salaries.[11]

On the strength of the October 3, 1993 CSC resolution, respondents requested petitioner Dr. Erlinda G. Lolarga, superintendent of city schools for Manila (superintendent), to reinstate them at GMHES.[12]

On November 22, 1993, petitioner superintendent informed her co-petitioner Ma. Luisa Quinoñes, GMHES principal, that respondents "[could] no longer be assigned any teaching loads because all teaching positions in GMHES [had] been filled."[13] For this reason, respondent Azarcon was assigned to A. Lacson Elementary School (ALES)[14] while respondent Anoñuevo was transferred to Plaridel Elementary School (PES).[15] Despite their respective transfers, respondents retained their permanent status and grade/subject assignment.[16]

However, respondents refused to accept their new assignments. They instead moved for the implementation of the August 3, 1993 CSC resolution in the CSC. They also insisted on reporting at GMHES while their motion was pending.[17] Since respondent Azarcon did not report to her new station, petitioner Esther Juanino, ALES principal, considered her absent without official leave beginning December 16, 1993.[18]

On January 18, 1994, respondents filed a petition for prohibition and *mandamus* with damages and application for

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[11] *Id*.

[12] Letters dated October 19, 1993. The letters were sent to the office of petitioner Ma. Luisa Quinoñes, GMHES principal. Quinoñes forwarded the letter to the superintendent of city schools in Manila. *Id*., pp. 67-68.

[13] 1st indorsement of the division of city schools. *Id*., p. 70.

[14] *Id*., p. 72.

[15] *Id*., p. 71.

[16] *Id*., pp. 71-72.

[17] Letter dated November 26, 1993. *Id*., p. 73.

[18] Letter dated December 21, 1993. *Id.,* p. 74.

the issuance of a writ of preliminary injunction and/or temporary restraining order (TRO)[19] against petitioners in the Regional Trial Court (RTC) of Pasig City, Branch 155.[20] The RTC issued a TRO on January 21, 1994.[21] After hearing, however, it denied respondents' application for a writ of preliminary injunction in an order dated February 15, 1994.[22] Respondents moved for the reconsideration of that order.

On October 20, 1994, the CSC, acting on respondents' motion for implementation, ordered the immediate reinstatement of respondents as teachers at GMHES.[23] It ordered Director Nilo P. Rosas of the DECS National Capital Region, the schools superintendent of Manila and the GMHES principal to reinstate respondents at GMHES without prejudice to any future assignment to other schools should the exigencies of the service so require.[24]

Petitioner superintendent informed the CSC that, although respondents had been reinstated as public school teachers, there was, however, no vacancy in GMHES. Thus, they were assigned to schools that lacked teachers (ALES and PES respectively). In consideration of these facts, the superintendent inquired if the October 20, 1994 CSC resolution had been substantially complied with.[25]

On November 20, 1995, the CSC, through commissioner Thelma Gaminde, responded to the superintendent's query. It opined that because respondents had been receiving their salaries since November 30, 1993, they were deemed reinstated and

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[19] Docketed as SCA No. 560.

[20] *Rollo*, p. 22.

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

[22] Order dated February 15, 1994. Penned by Judge Fernando L. Gerona, Jr. *Id*., pp. 76-79.

[23] Resolution No. 94-5725 signed by CSC chairperson Patricia Sto. Tomas and Commissioners Ramon P. Ereñeta, Jr. and Thelma P. Gaminde. *Id*., pp. 84-85.

[24] *Id*., p. 85.

[25] *Id*., p. 55.

were presumed to have been discharging their functions as teachers.[26]

Consequently, on February 28, 1996, the RTC denied respondents' motion for reconsideration (of its February 15, 1994 order). According to the trial court, the November 20, 1995 CSC letter rendered respondents' motion moot and academic.[27]

Respondents thereafter filed a petition for *certiorari* in the CA assailing the February 15, 1994 and February 28, 1996 orders of the RTC.[28]

On June 17, 2004, the appellate court granted respondents' petition. It found that the RTC committed grave abuse of discretion in issuing the assailed orders. The October 20, 1994 CSC resolution unequivocally ordered the reinstatement of respondents at GMHES.[29] Thus, they should first be reinstated at GMHES before they could be transferred to another station.[30] Accordingly, the CA granted respondents' petition. It set aside the February 15, 1994 and February 28, 1996 orders of the RTC and ordered the reinstatement of respondents to their former positions in GMHES "without prejudice to any future reassignment to other schools as may be directed according to the policies and rules of the DECS."[31]

Petitioners moved for reconsideration but their motion was denied. Thus, this petition.

Petitioners assert that they substantially complied with the October 20, 1994 CSC resolution when they reinstated

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[26] *Id*.

[27] Penned by Judge Luis R. Tongco. Dated February 28, 1996. *Id*., pp. 86-87.

Petitioners' certificate of non-forum shopping made no mention of what happened to the petition for prohibition and *mandamus* respondents filed in the RTC.

[28] *Id*., p. 49.

[29] *Id*., p. 58.

[30] *Id*.

[31] *Id*., pp. 58-59.

respondents as public school teachers albeit in different stations.[32] The nature of respondents' appointments allowed reassignment to any station within the City of Manila.[33]

We agree with petitioners.

Section 6 of The Magna Carta for Public School Teachers (RA 4670) provides:

> Section 6. Consent for Transfer— Transportation Expenses. Except for cause and as herein otherwise provided, no teacher shall be transferred without his consent from one station to another.
>
> **Where the exigencies of service require the transfer of a teacher from one station to another, such transfer may be effected by the school superintendent who shall previously notify the teacher concerned of the transfer and the reason or reasons therefor.** If the teacher believes there is no justification for the transfer, he may appeal his case to the Director of Public Schools or the Director of Vocational Education, as the case may be. Pending his appeal and the decision thereon, his transfer shall be held in abeyance; *Provided*, *however,* That no transfers whatever shall be made three months before any national or local elections.
>
> Necessary transfer expenses of the teacher and his family shall be paid for by the Government if his transfer is finally approved. (emphasis supplied)

For a transfer or reassignment of a public school teacher to be valid, the following requisites must be satisfied:

1. the transfer or reassignment was undertaken pursuant to the exigencies of service;
2. the school superintendent previously notified the teacher concerned of his/her transfer or reassignment;
3. the teacher concerned was informed of the reason or reasons for his/her transfer and
4. that the transfer was not made three months before a national or local election.

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[32] *Id*., pp. 29-34.

[33] *Id*., pp. 34-43.

With regard to the first requisite, in *Department of Education v. CA*,[34] we held that the appointment of teachers does not refer to any particular station or school.[35] They are not entitled to stay permanently in one station[36] because their assignments are subject to the exigencies of the service.

The exigencies of the service, as mentioned in Section 6 of RA 4670, should be viewed in the light of Section 1, Article XIV of the Constitution which provides:

> Section 1. The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

The accessibility of quality education determines the exigencies of the service. Thus, assignments undertaken for purposes of improving the educational system and/or making education more accessible are valid.

In this instance, respondents' six-month suspension meant that their students would have had no teachers for the duration of their suspension. Hence, other teachers had to be assigned to take over.[37] When respondents requested their reinstatement in the last quarter of 1993 (which was the middle of the school year),[38] there was in truth no vacancy in GMHES.

Because there was no vacancy in GMHES, respondents were reinstated as public school teachers but were assigned to schools where there were vacancies (particularly ALES and PES). Petitioners therefore not only implemented the October 20, 1994 CSC resolution but also addressed the lack of teachers in ALES and PES. Petitioners' solution was correct, commonsensical,

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[34] G.R. No. 81032, 22 March 1990, 183 SCRA 555.

[35] *Id*., p. 562.

[36] *Id*.

[37] *Supra* notes 7 and 8. Note that the original penalty imposed (by the DECS and affirmed by the MSPB) on respondents was dismissal from service. Thus, they were out of service for more than six months.

[38] Note that CSC Resolution No. 93-2898 was issued on August 3, 1993 and that respondents asked petitioners for their reinstatement on October 19, 1993.

valid and constitutional. Their collective acts were geared towards ensuring the accessibility of quality education to the pupils concerned.

On the second and third requisites, because respondents were able to extensively and exhaustively question the legality of their transfers, they were clearly apprised not only of their respective transfers but also the reasons therefor.

With regard the fourth requisite, respondents were effectively transferred on November 22, 1994.[39] The nearest national elections to that date were on May 11, 1992 and May 8, 1995 while the most proximate local election was on May 9, 1994. Respondents were clearly not transferred within three months before any national or local election.

All things considered, the RTC did not commit grave abuse of discretion in issuing its February 15, 1994 and February 28, 1996 orders. The October 20, 1994 CSC resolution qualifiedly ordered respondents' reinstatement at GMHES[40] (*i.e.,* without prejudice to future reassignment as the exigencies of the service may require[41]). Thus, respondents' reinstatement as public school teachers, despite the change of station, substantially complied with the October 20, 1994 CSC resolution.

WHEREFORE, the petition is hereby *GRANTED*. The June 17, 2004 decision and November 22, 2004 resolution of the Court of Appeals in CA-G.R. SP No. 40848 are *REVERSED* and *SET ASIDE*. Accordingly, the February 15, 1994 and February 28, 1996 orders of the Regional Trial Court of Pasig City, Branch 155 are *REINSTATED*.

No pronouncement as to costs.

SO ORDERED.

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

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[39] *Supra* note 13.

[40] *Id*., p. 55.

[41] *Id*.

FIRST DIVISION

[G.R. No. 169332. February 11, 2008]

ABS-CBN BROADCASTING CORPORATION, *petitioner, vs.* **WORLD INTERACTIVE NETWORK SYSTEMS (WINS) JAPAN CO., LTD.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RA 876 (ARBITRATION LAW); RTC HAS JURISDICTION OVER QUESTIONS RELATING TO ARBITRATION.— RA 876 itself mandates that it is the Court of First Instance, now the RTC, which has jurisdiction over questions relating to arbitration, such as a petition to vacate an arbitral award.

2. ID.; ID.; PETITION TO VACATE AWARD MADE BY ARBITRATOR; GROUNDS; ERRORS OF FACT/LAW AND GRAVE ABUSE OF DISCRETION, NOT INCLUDED.— Section 24 of RA 876 provides for the specific grounds for a petition to vacate an award made by an arbitrator: Sec. 24. *Grounds for vacating award*. — **In any one of the following cases**, **the court must make an order vacating the award** upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings: (a) The award was procured by corruption, fraud, or other undue means; or (b) That there was evident partiality or corruption in the arbitrators or any of them; or (c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (d) That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made. Based on the foregoing provisions, the law itself clearly provides that the RTC must issue an order vacating an arbitral award only "in any one of

the . . . cases" enumerated therein. Under the legal maxim in statutory construction *expressio unius est exclusio alterius*, the explicit mention of one thing in a statute means the elimination of others not specifically mentioned. As RA 876 did not expressly provide for errors of fact and/or law and grave abuse of discretion (proper grounds for a petition for review under Rule 43 and a petition for *certiorari* under Rule 65, respectively) as grounds for maintaining a petition to vacate an arbitral award in the RTC, it necessarily follows that a party may not avail of the latter remedy on the grounds of errors of fact and/or law or grave abuse of discretion to overturn an arbitral award.

3. REMEDIAL LAW; JUDICIARY REORGANIZATION ACT; COURT OF APPEALS; EXCLUSIVE APPELLATE JURISDICTION; INCLUDES ADVERSE DECISION OF VOLUNTARY ARBITRATOR, IF ERROR OF FACT/LAW IS RAISED.— In *Luzon Development Bank v. Association of Luzon Development Bank Employees*, the Court held that a voluntary arbitrator is properly classified as a "quasi-judicial instrumentality" and is, thus, within the ambit of Section 9 (3) of the Judiciary Reorganization Act, as amended. Under this section, the Court of Appeals shall exercise: xxx xxx xxx (3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, **instrumentalities**, boards or commissions, including the Securities and Exchange Commission, the Employees' Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948. As such, decisions handed down by voluntary arbitrators fall within the exclusive appellate jurisdiction of the CA. This decision was taken into consideration in approving Section 1 of Rule 43 of the Rules of Court. x x x [T]he proper remedy from the adverse decision of a voluntary arbitrator, if errors of fact and/or law are raised, is a petition for review under Rule 43 of the Rules of Court.

4. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; POWER; TO DETERMINE GRAVE ABUSE OF DISCRETION ON THE PART OF ANY BRANCH OR INSTRUMENTALITY OF THE GOVERNMENT.— Section 1 of Article VIII of the 1987 Constitution provides that: SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. **Judicial power includes the duty of the courts of justice** to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.** As may be gleaned from the above stated provision, it is well within the power and jurisdiction of the Court to inquire whether any instrumentality of the Government, such as a voluntary arbitrator, has gravely abused its discretion in the exercise of its functions and prerogatives. Any agreement stipulating that "the decision of the arbitrator shall be final and unappealable" and "that no further judicial recourse if either party disagrees with the whole or any part of the arbitrator's award may be availed of" cannot be held to preclude in proper cases the power of judicial review which is inherent in courts. We will not hesitate to review a voluntary arbitrator's award where there is a showing of grave abuse of authority or discretion and such is properly raised in a petition for *certiorari* and there is no appeal, nor any plain, speedy remedy in the course of law.

5. REMEDIAL LAW; CIVIL PROCEDURE; JUDICIAL REMEDIES AN AGGRIEVED PARTY TO AN ARBITRAL AWARD MAY UNDERTAKE. — Significantly, *Insular Savings Bank v. Far East Bank and Trust Company* definitively outlined several judicial remedies an aggrieved party to an arbitral award may undertake: (1) a petition in the proper RTC to issue an order to vacate the award on the grounds provided for in Section 24 of RA 876; (2) a petition for review in the CA under Rule 43 of the Rules of Court on questions of fact, of law, or mixed questions of fact and law; and (3) a petition for *certiorari* under Rule 65 of the Rules of Court should the arbitrator have acted without or in excess of his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

6. ID.; ID.; APPEAL AND *CERTIORARI*; DISTINGUISHED.— Time and again, we have ruled that the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. Proper issues that may be raised in a petition for review under Rule 43 pertain to errors of fact, law or mixed questions of fact and law. While a petition for *certiorari* under Rule 65 should only limit itself to errors of jurisdiction, that is, grave abuse of discretion amounting to a lack or excess of jurisdiction. Moreover, it cannot be availed of where appeal is the proper remedy or as a substitute for a lapsed appeal. x x x It must be emphasized that every lawyer should be familiar with the distinctions between the two remedies for it is not the duty of the courts to determine under which rule the petition should fall. Petitioner's ploy was fatal to its cause. An appeal taken either to this Court or the CA by the wrong or inappropriate mode shall be dismissed.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioner.
Ponce Enrile Reyes & Manalastas for respondent.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to set aside the February 16, 2005 decision[1] and August 16, 2005 resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 81940.

On September 27, 1999, petitioner ABS-CBN Broadcasting Corporation entered into a licensing agreement with respondent World Interactive Network Systems (WINS) Japan Co., Ltd., a foreign corporation licensed under the laws of Japan. Under the agreement, respondent was granted the exclusive license to

[1] Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Godardo A. Jacinto (retired) and Rosalinda Asuncion-Vicente of the Second Division of the Court of Appeals. *Rollo*, pp. 59-71.

[2] *Id*., pp. 73-74.

distribute and sublicense the distribution of the television service known as "The Filipino Channel" (TFC) in Japan. By virtue thereof, petitioner undertook to transmit the TFC programming signals to respondent which the latter received through its decoders and distributed to its subscribers.

A dispute arose between the parties when petitioner accused respondent of inserting nine episodes of WINS WEEKLY, a weekly 35-minute community news program for Filipinos in Japan, into the TFC programming from March to May 2002.[3] Petitioner claimed that these were "unauthorized insertions" constituting a material breach of their agreement. Consequently, on May 9, 2002,[4] petitioner notified respondent of its intention to terminate the agreement effective June 10, 2002.

Thereafter, respondent filed an arbitration suit pursuant to the arbitration clause of its agreement with petitioner. It contended that the airing of WINS WEEKLY was made with petitioner's prior approval. It also alleged that petitioner only threatened to terminate their agreement because it wanted to renegotiate the terms thereof to allow it to demand higher fees. Respondent also prayed for damages for petitioner's alleged grant of an exclusive distribution license to another entity, NHK (Japan Broadcasting Corporation).[5]

The parties appointed Professor Alfredo F. Tadiar to act as sole arbitrator. They stipulated on the following issues in their terms of reference (TOR)[6]:

1. Was the broadcast of WINS WEEKLY by the claimant duly authorized by the respondent [herein petitioner]?

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[3] The CA erroneously stated that the "unauthorized insertions" took place only sometime in May 2002.

[4] The CA erroneously indicated the date as May 9, 2000.

[5] Not a party to this case.

[6] In arbitration proceedings, the TOR functions like a Pre-Trial Order in judicial proceedings, *i.e.* it controls the course of the trial, unless it is corrected for manifest and palpable errors.

2. Did such broadcast constitute a material breach of the agreement that is a ground for termination of the agreement in accordance with Section 13 (a) thereof?

3. If so, was the breach seasonably cured under the same contractual provision of Section 13 (a)?

4. Which party is entitled to the payment of damages they claim and to the other reliefs prayed for?

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The arbitrator found in favor of respondent.[7] He held that petitioner gave its approval to respondent for the airing of WINS WEEKLY as shown by a series of written exchanges between the parties. He also ruled that, had there really been a material breach of the agreement, petitioner should have terminated the same instead of sending a mere notice to terminate said agreement. The arbitrator found that petitioner threatened to terminate the agreement due to its desire to compel respondent to re-negotiate the terms thereof for higher fees. He further stated that even if respondent committed a breach of the agreement, the same was seasonably cured. He then allowed respondent to recover temperate damages, attorney's fees and one-half of the amount it paid as arbitrator's fee.

Petitioner filed in the CA a petition for review under Rule 43 of the Rules of Court or, in the alternative, a petition for *certiorari* under Rule 65 of the same Rules, with application for temporary restraining order and writ of preliminary injunction. It was docketed as CA-G.R. SP No. 81940. It alleged serious errors of fact and law and/or grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the arbitrator.

Respondent, on the other hand, filed a petition for confirmation of arbitral award before the Regional Trial Court (RTC) of Quezon City, Branch 93, docketed as Civil Case No. Q-04-51822.

Consequently, petitioner filed a supplemental petition in the CA seeking to enjoin the RTC of Quezon City from further proceeding with the hearing of respondent's petition for

[7] Decision dated January 9, 2004. *Rollo*, pp. 108-142.

confirmation of arbitral award. After the petition was admitted by the appellate court, the RTC of Quezon City issued an order holding in abeyance any further action on respondent's petition as the assailed decision of the arbitrator had already become the subject of an appeal in the CA. Respondent filed a motion for reconsideration but no resolution has been issued by the lower court to date.[8]

On February 16, 2005, the CA rendered the assailed decision dismissing ABS-CBN's petition for lack of jurisdiction. It stated that as the TOR itself provided that the arbitrator's decision shall be final and unappealable and that no motion for reconsideration shall be filed, then the petition for review must fail. It ruled that it is the RTC which has jurisdiction over questions relating to arbitration. It held that the only instance it can exercise jurisdiction over an arbitral award is an appeal from the trial court's decision confirming, vacating or modifying the arbitral award. It further stated that a petition for *certiorari* under Rule 65 of the Rules of Court is proper in arbitration cases only if the courts refuse or neglect to inquire into the facts of an arbitrator's award. The dispositive portion of the CA decision read:

> WHEREFORE, the instant petition is hereby **DISMISSED** for lack of jurisdiction. The application for a writ of injunction and temporary restraining order is likewise **DENIED**. The Regional Trial Court of Quezon City Branch 93 is directed to proceed with the trial for the Petition for Confirmation of Arbitral Award.
>
> SO ORDERED.

Petitioner moved for reconsideration. The same was denied. Hence, this petition.

Petitioner contends that the CA, in effect, ruled that: (a) it should have first filed a petition to vacate the award in the RTC and only in case of denial could it elevate the matter to the CA via a petition for review under Rule 43 and (b) the assailed decision implied that an aggrieved party to an arbitral award does not have the option of directly filing a petition for review under Rule 43 or a petition for *certiorari* under Rule 65 with the CA even if the issues raised

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[8] Per petition for review on *certiorari*, *id*., p. 18; and petitioner's memorandum filed with this Court, p. 343.

pertain to errors of fact and law or grave abuse of discretion, as the case may be, and not dependent upon such grounds as enumerated under Section 24 (petition to vacate an arbitral award) of RA 876 (the Arbitration Law). Petitioner alleged serious error on the part of the CA.

The issue before us is whether or not an aggrieved party in a voluntary arbitration dispute may avail of, directly in the CA, a petition for review under Rule 43 or a petition for *certiorari* under Rule 65 of the Rules of Court, instead of filing a petition to vacate the award in the RTC when the grounds invoked to overturn the arbitrator's decision are other than those for a petition to vacate an arbitral award enumerated under RA 876.

RA 876 itself mandates that it is the Court of First Instance, now the RTC, which has jurisdiction over questions relating to arbitration,[9] such as a petition to vacate an arbitral award.

Section 24 of RA 876 provides for the specific grounds for a petition to vacate an award made by an arbitrator:

> Sec. 24. *Grounds for vacating award*. — **In any one of the following cases**, **the court must make an order vacating the award** upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings:
>
> (a) The award was procured by corruption, fraud, or other undue means; or
>
> (b) That there was evident partiality or corruption in the arbitrators or any of them; or
>
> (c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section

[9] Section 4 of RA 876 provides:

> Sec. 4. *Form of arbitration agreement*. –
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> x x x x x x x x x
>
> The making of a contract or submission for arbitration of any controversy, shall be deemed a consent of the parties to the jurisdiction of the Court of First Instance of the province or city where any of the parties resides, to enforce such contract or submission.

nine hereof, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or

(d) That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

Based on the foregoing provisions, the law itself clearly provides that the RTC must issue an order vacating an arbitral award only "in any one of the . . . cases" enumerated therein. Under the legal maxim in statutory construction *expressio unius est exclusio alterius*, the explicit mention of one thing in a statute means the elimination of others not specifically mentioned. As RA 876 did not expressly provide for errors of fact and/or law and grave abuse of discretion (proper grounds for a petition for review under Rule 43 and a petition for *certiorari* under Rule 65, respectively) as grounds for maintaining a petition to vacate an arbitral award in the RTC, it necessarily follows that a party may not avail of the latter remedy on the grounds of errors of fact and/or law or grave abuse of discretion to overturn an arbitral award.

Adamson v. Court of Appeals[10] gave ample warning that a petition to vacate filed in the RTC which is not based on the grounds enumerated in Section 24 of RA 876 should be dismissed. In that case, the trial court vacated the arbitral award seemingly based on grounds included in Section 24 of RA 876 but a closer reading thereof revealed otherwise. On appeal, the CA reversed the decision of the trial court and affirmed the arbitral award. In affirming the CA, we held:

The Court of Appeals, in reversing the trial court's decision held that the nullification of the decision of the Arbitration Committee was not based on the grounds provided by the Arbitration Law and that xxx private respondents (petitioners herein) have failed to substantiate with any evidence their claim of partiality. Significantly, even as respondent judge ruled against the arbitrator's award, he could not find fault with their impartiality and integrity. **Evidently, the nullification of the award rendered at the case at bar was not made on the basis of any of the grounds provided by law.**

[10] G.R. No. 106879, 27 May 1994, 232 SCRA 602.

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It is clear, therefore, that the award was vacated not because of evident partiality of the arbitrators but because the latter interpreted the contract in a way which was not favorable to herein petitioners and because it considered that herein private respondents, by submitting the controversy to arbitration, was seeking to renege on its obligations under the contract.

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It is clear then that **the Court of Appeals reversed the trial court** not because the latter reviewed the arbitration award involved herein, but **because the respondent appellate court found that the trial court had no legal basis for vacating the award.** (Emphasis supplied).

In cases not falling under any of the aforementioned grounds to vacate an award, the Court has already made several pronouncements that a petition for review under Rule 43 or a petition for *certiorari* under Rule 65 may be availed of in the CA. Which one would depend on the grounds relied upon by petitioner.

In *Luzon Development Bank v. Association of Luzon Development Bank Employees*, [11] the Court held that a voluntary arbitrator is properly classified as a "quasi-judicial instrumentality" and is, thus, within the ambit of Section 9 (3) of the Judiciary Reorganization Act, as amended. Under this section, the Court of Appeals shall exercise:

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(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, **instrumentalities**, boards or commissions, including the Securities and Exchange Commission, the Employees' Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948. (Emphasis supplied)

[11] G.R. No. 120319, 6 October 1995, 249 SCRA 162, 168-169.

As such, decisions handed down by voluntary arbitrators fall within the exclusive appellate jurisdiction of the CA. This decision was taken into consideration in approving Section 1 of Rule 43 of the Rules of Court.[12] Thus:

> SECTION 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act Number 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and **voluntary arbitrators authorized by law.** (Emphasis supplied)

This rule was cited in *Sevilla Trading Company v. Semana*,[13] *Manila Midtown Hotel v. Borromeo,*[14] and *Nippon Paint Employees Union-Olalia v. Court of Appeals*.[15] These cases held that the proper remedy from the adverse decision of a voluntary arbitrator, if errors of fact and/or law are raised, is a petition for review under Rule 43 of the Rules of Court. Thus, petitioner's contention that it may avail of a petition for review under Rule 43 under the circumstances of this case is correct.

As to petitioner's arguments that a petition for *certiorari* under Rule 65 may also be resorted to, we hold the same to be in accordance with the Constitution and jurisprudence.

Section 1 of Article VIII of the 1987 Constitution provides that:

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[12] *Nippon Paint Employees Union-Olalia v. Court of Appeals*, G.R. No. 159010, 19 November 2004, 443 SCRA 286, 290.

[13] G.R. No. 152456, 28 April 2004, 428 SCRA 239, 243-244.

[14] G.R. No. 138305, 22 September 2004, 438 SCRA 653, 656-657.

[15] *Supra* at 290-291.

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.** (Emphasis supplied)

As may be gleaned from the above stated provision, it is well within the power and jurisdiction of the Court to inquire whether any instrumentality of the Government, such as a voluntary arbitrator, has gravely abused its discretion in the exercise of its functions and prerogatives. Any agreement stipulating that "the decision of the arbitrator shall be final and unappealable" and "that no further judicial recourse if either party disagrees with the whole or any part of the arbitrator's award may be availed of" cannot be held to preclude in proper cases the power of judicial review which is inherent in courts.[16] We will not hesitate to review a voluntary arbitrator's award where there is a showing of grave abuse of authority or discretion and such is properly raised in a petition for *certiorari*[17] and there is no appeal, nor any plain, speedy remedy in the course of law.[18]

Significantly, *Insular Savings Bank v. Far East Bank and Trust Company*[19] definitively outlined several judicial remedies an aggrieved party to an arbitral award may undertake:

[16] *Chung Fu Industries (Phils.) v. Court of Appeals*, G.R. No. 96283, 25 February 1992, 206 SCRA 545, 552-555.

[17] *Id*., p. 556, citing *Oceanic Bic Division (FFW) v. Romero*, No. L-43890, 16 July 1984, 130 SCRA 392. *See also Maranaw Hotels and Resorts Corp. v. Court of Appeals*, G.R. No. 103215, 6 November 1992, 215 SCRA 501, where we sustained the CA decision dismissing the petition for *certiorari* filed before it as the voluntary arbitrator did not gravely abuse his discretion in deciding the arbitral case before him. We emphasized therein that decisions of voluntary arbitrators are final and unappealable except when there is want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice, or erroneous interpretation of the law.

[18] *Asset Privatization Trust v. Court of Appeals,* G.R. No. 121171, 29 December 1998, 300 SCRA 579, 600-601.

[19] G.R. No. 141818, 22 June 2006, 492 SCRA 145, 156.

(1) a petition in the proper RTC to issue an order to vacate the award on the grounds provided for in Section 24 of RA 876;

(2) a petition for review in the CA under Rule 43 of the Rules of Court on questions of fact, of law, or mixed questions of fact and law; and

(3) a petition for *certiorari* under Rule 65 of the Rules of Court should the arbitrator have acted without or in excess of his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Nevertheless, although petitioner's position on the judicial remedies available to it was correct, we sustain the dismissal of its petition by the CA. The remedy petitioner availed of, entitled "*alternative petition for review under Rule 43 or petition for certiorari under Rule 65*," was wrong.

Time and again, we have ruled that the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[20]

Proper issues that may be raised in a petition for review under Rule 43 pertain to errors of fact, law or mixed questions of fact and law.[21] While a petition for *certiorari* under Rule 65 should only limit itself to errors of jurisdiction, that is, grave abuse of discretion amounting to a lack or excess of jurisdiction.[22] Moreover, it cannot be availed of where appeal is the proper remedy or as a substitute for a lapsed appeal.[23]

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[20] *Sebastian v. Morales*, G.R. No. 141116, 17 February 2003, 397 SCRA 549, 561; *Oriental Media, Inc. v. Court of Appeals*, G.R. No. 80127, 6 December 1995, 250 SCRA 647, 653; *Hipolito v. Court of Appeals,* G.R. Nos. 108478-79, 21 February 1994, 230 SCRA 191, 204; *Federation of Free Workers v. Inciong*, G.R. No. L-49983, 20 April 1992, 208 SCRA 157, 164; and *Manila Electric Company v. Court of Appeals*, G.R. No. 88396, 4 July 1990, 187 SCRA 200, 205.

[21] RULES OF COURT, Rule 43, Sec. 3.

[22] RULES OF COURT, Rule 65, Sec. 1.

[23] *Oriental Media, Inc. v. Court of Appeals*, *Hipolito v. Court of Appeals, Federation of Free Workers v. Inciong*, and *Manila Electric Company v. Court of Appeals, supra*.

In the case at bar, the questions raised by petitioner in its *alternative petition* before the CA were the following:

A. THE SOLE ARBITRATOR COMMITTED SERIOUS ERROR AND/OR GRAVELY ABUSED HIS DISCRETION IN RULING THAT THE BROADCAST OF "WINS WEEKLY" WAS DULY AUTHORIZED BY ABS-CBN.

B. THE SOLE ARBITRATOR COMMITTED SERIOUS ERROR AND/OR GRAVELY ABUSED HIS DISCRETION IN RULING THAT THE UNAUTHORIZED BROADCAST DID NOT CONSTITUTE MATERIAL BREACH OF THE AGREEMENT.

C. THE SOLE ARBITRATOR COMMITTED SERIOUS ERROR AND/OR GRAVELY ABUSED HIS DISCRETION IN RULING THAT WINS SEASONABLY CURED THE BREACH.

D. THE SOLE ARBITRATOR COMMITTED SERIOUS ERROR AND/OR GRAVELY ABUSED HIS DISCRETION IN RULING THAT TEMPERATE DAMAGES IN THE AMOUNT OF ₱1,166,955.00 MAY BE AWARDED TO WINS.

E. THE SOLE ARBITRATOR COMMITTED SERIOUS ERROR AND/OR GRAVELY ABUSED HIS DISCRETION IN AWARDING ATTORNEY'S FEES IN THE UNREASONABLE AMOUNT AND UNCONSCIONABLE AMOUNT OF ₱850,000.00.

F. THE ERROR COMMITTED BY THE SOLE ARBITRATOR IS NOT A SIMPLE ERROR OF JUDGMENT OR ABUSE OF DISCRETION. IT IS GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION.

A careful reading of the assigned errors reveals that the real issues calling for the CA's resolution were less the alleged grave abuse of discretion exercised by the arbitrator and more about the arbitrator's appreciation of the issues and evidence presented by the parties. Therefore, the issues clearly fall under the classification of errors of fact and law — questions which may be passed upon by the CA via a petition for review under Rule 43. Petitioner cleverly crafted its assignment of errors in such a way as to straddle both judicial remedies, that is, by alleging serious errors of fact and law (in which case a petition for review under Rule 43 would be proper) and grave abuse of discretion (because of which a petition for *certiorari* under Rule 65 would be permissible).

It must be emphasized that every lawyer should be familiar with the distinctions between the two remedies for it is not the duty of the courts to determine under which rule the petition should fall.[24] Petitioner's ploy was fatal to its cause. An appeal taken either to this Court or the CA by the wrong or inappropriate mode shall be dismissed.[25] Thus, the *alternative* petition filed in the CA, being an inappropriate mode of appeal, should have been dismissed outright by the CA.

WHEREFORE, the petition is hereby *DENIED*. The February 16, 2005 decision and August 16, 2005 resolution of the Court of Appeals in CA-G.R. SP No. 81940 directing the Regional Trial Court of Quezon City, Branch 93 to proceed with the trial of the petition for confirmation of arbitral award is *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

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[24] *Chua v. Santos*, G.R. No. 132467, 18 October 2004, 440 SCRA 365, 372-373, citing paragraph 4 (e) of Supreme Court Circular No. 2-90 dated March 9, 1990, Guidelines to be Observed in Appeals to the Court of Appeals and the Supreme Court, to wit:

e) *Duty of counsel*. — It is, therefore, incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client's cause.

[25] *Ybañez v. Court of Appeals*, G.R. No. 117499, 9 February 1996, 253 SCRA 540, 547, citing paragraph 4 of Supreme Court Circular No. 2-90 dated March 9, 1990, Guidelines to be Observed in Appeals to the Court of Appeals and the Supreme Court. Thus:

4. *Erroneous Appeals*. — An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

SECOND DIVISION

[G.R. No. 175930-31. February 11, 2008]

WILFRED* A. NICOLAS, *petitioner, vs.* **HON. SANDIGANBAYAN, Third Division and the OFFICE OF THE SPECIAL PROSECUTOR,** *respondents.*

[G.R. Nos. 176010-11. February 11, 2008]

JOSE FRANCISCO ARRIOLA, *petitioner, vs.* **THE HON. SANDIGANBAYAN (THIRD DIVISION) and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; PROSECUTOR MUST RELY ON THE STRENGTH OF ITS OWN EVIDENCE, NOT ON THE WEAKNESS OF THE EVIDENCE FOR THE DEFENSE.— The evidence for the prosecution is the yardstick for determining the sufficiency of proof necessary to convict; and that the prosecution must rely on the strength of its own evidence rather than on the weakness of the evidence for the defense.

2. ID.; CRIMINAL PROCEDURE; TRIAL; DEMURRER TO EVIDENCE; ELUCIDATED.— Section 15, Rule 119 of the Revised Rules of Court provides: Sec. 15. *Demurrer to evidence.* – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused with prior leave of court. If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion without the express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence which his adversary

* "Wilfredo" in some pleadings.

produced is insufficient in point of law to make out a case or sustain the issue. The party filing the demurrer in effect challenges the sufficiency of the prosecution's evidence. The Court is thus tasked to ascertain if there is *competent* or *sufficient* evidence to establish a *prima facie* case to sustain the indictment or support a verdict of guilt.

3. ID.; ID.; ID.; ID.; REMEDY FOR DENIAL THEREOF IS *CERTIORARI* UNDER RULE 65 PRESENT GRAVE ABUSE OF DISCRETION.— On whether *certiorari* is the proper remedy in the consolidated petitions, the general rule prevailing is that it does not lie to review an order denying a demurrer to evidence, which is equivalent to a motion to dismiss, filed after the prosecution has presented its evidence and rested its case. Such order, being merely interlocutory, is not appealable; neither can it be the subject of a petition for *certiorari*. The rule admits of exceptions, however. Action on a demurrer or on a motion to dismiss rests on the sound exercise of judicial discretion. In *Tadeo v. People*, this Court declared that *certiorari* may be availed of when the denial of a demurrer to evidence is tainted with "grave abuse of discretion or excess of jurisdiction, or oppressive exercise of judicial authority." And so it did declare in *Choa v. Choa* where the denial is patently erroneous.

4. TAXATION; TARIFF AND CUSTOMS CODE; VIOLATION THEREOF; REQUISITES.— With respect to petitioners' indictment for violation of Section 3604 of the Tariff and Customs Code, the prosecution needed to prove that: (1) at the time material to the case, petitioners were officials or employees of the Bureau of Customs or of any other agency of the government charged with the provisions of the Code; and (2) they either conspired or colluded with another or others to defraud the customs revenue or otherwise violate the law (paragraph d), or willfully made an opportunity for any person to defraud the customs revenue or failed to do any act with intent to enable any person to defraud the customs revenue (paragraph e). Fraud contemplated by law must be intentional – that which is actual and not constructive, and consists of deception willfully and deliberately dared or resorted to in order to give up some right. Conspiracy, on the other hand, must be established by the same quantum of evidence as the

elements of the offense charged. It must be shown by overt acts indicating not only unity of purpose but also unity in execution of the unlawful objective by the alleged conspirators.

5. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); ELEMENTS.— To sustain the indictment or to support a guilty verdict against petitioners for violation of Section 3(e) of R.A. No. 3019, the prosecution must establish all the foregoing elements of the offense: 1. The accused is a public officer or a private person charged in conspiracy with the former; 2. That he or she causes undue injury to any party, whether the government or a private party; 3. The public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public functions; 4. Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and 5. That the public officer has acted with manifest partiality, evident bad faith, or gross inexcusable negligence. *Sistoza v. Desierto* stressed that for culpability to attach under Section 3(e) of R.A. No. 3019, it is not enough to show mere bad faith, partiality or negligence because the law requires the bad faith or partiality to be evident or manifest, respectively, and the negligent deed to be gross and inexcusable. And that the acts indicating any of these modalities of committing the violation must be determined with certainty.

6. ID.; ID.; DISMISSAL OF ADMINISTRATIVE CASE BARS THE FILING OF A CRIMINAL CASE HERE.— This Court is not unmindful of its rulings that the dismissal of an administrative case does not bar the filing of a criminal prosecution for the same or similar acts subject of the administrative complaint and that the disposition in one case does not inevitably govern the resolution of the other case/s and vice versa. The applicability of these rulings, however, must be distinguished in the present cases. In *Ocampo v. Office of the Ombudsman* and the other cases cited by the prosecution in its Consolidated Comment, it was the dismissal of the criminal cases that was pleaded to abate the administrative cases filed against the therein petitioners. The quantum of proof required to sustain administrative charges is significantly lower than that necessary for criminal actions. To this effect was the ruling in *Ocampo*: The dismissal of the criminal case will not foreclose

administrative action filed against petitioner or give him a clean bill of health in all respects. The Regional Trial Court, in dismissing the criminal complaint, was simply saying that the prosecution was unable to prove the guilt of petitioner beyond reasonable doubt, a condition *sine qua non* for conviction. **The lack or absence of proof beyond reasonable doubt does not mean an absence of any evidence whatsoever for there is another class of evidence which, though insufficient to establish guilt beyond reasonable doubt, is adequate in civil cases; this is preponderance of evidence. Then, too, there is the "substantial evidence" rule in administrative proceedings which merely requires such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.** Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusion in one should not necessarily be binding on the other. Where, as in this case, the administrative complaint was dismissed for failing to satisfy the degree of proof which is merely substantial evidence, *a fortiori* the criminal case based on the same facts and evidence cannot but falter and fall against the highest quantum of proof – proof beyond reasonable doubt. The present cases must be distinguished likewise from those involving the prior dismissal of administrative cases. Unlike in the cases cited by the prosecution, this Court's Decision in the administrative case against Nicolas ruled squarely that the he was not guilty of bad faith and gross neglect of duty, which constitute an *essential element* of the crime under Section 3(e) of R.A. No. 3019. Under the doctrine of *stare decisis*, such ruling should be applied to the criminal case for violation of Section 3(e), R.A. No. 3019, the facts and evidence being substantially the same. In fine, absent the element of evident bad faith and gross neglect of duty, not to mention want of proof of manifest partiality on the part of Nicolas, the graft case against him cannot prosper.

APPEARANCES OF COUNSEL

Reyes Francisco & Associates for JF Ariola.
Tan Acut & Lopez for W.A. Nicolas.

D E C I S I O N

CARPIO MORALES, *J.*:

In the present consolidated petitions for *certiorari* and prohibition with prayer for issuance of a Temporary Restraining Order (TRO) or Writ of Preliminary Injunction, petitioners, Wilfred A. Nicolas (Nicolas) and Jose Francisco Arriola (Arriola), attribute to public respondent, Sandiganbayan, grave abuse of discretion in issuing its Resolutions of August 31, 2006[1] and December 7, 2006[2] denying their Demurrer to Evidence and their motions for reconsideration, respectively.

Nicolas and Arriola, former Commissioner and Deputy Commissioner, respectively, of the Economic Intelligence and Investigation Bureau (EIIB), stand charged before public respondent in Criminal Case Nos. 26267 and 26268,[3] for violation of Section 3604[4] of the Tariff and Customs Code in the first

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[1] Penned by Justice Godofredo L. Legaspi, chairperson of the Third Division of the Sandiganbayan and concurred in by Justices Efren N. De La Cruz and Norberto Y. Geraldez. *Rollo*, G.R. Nos. 175930-31, pp. 125- 132; *rollo*, G.R. Nos. 176010-11, pp. 39-46.

[2] *Id*. at 133-134; *id*. at 66-67.

[3] Similarly entitled "*People of the Philippines v. Wilfred A. Nicolas, J. Francisco Arriola and John Doe.*"

[4] Section 3604. Statutory Offenses of Officials and Employees. — Every official, agent or employee of the Bureau or of any other agency of the government charged with the enforcement of the provisions of this Code, who is guilty of any delinquency herein below indicated shall be punished with a fine of not less than Five Thousand Pesos nor more than Fifty Thousand Pesos and imprisonment for not less than one year nor more than ten years and perpetual disqualification to hold public office, to vote and to participate in any public election:

x x x x x x x x x

(d) Those who conspire or collude with another or others to defraud the customs revenue or otherwise violate the law;

(e) Those who willfully make opportunity for any person to defraud the customs revenue or who do or fail to do any act with intent to enable any person to defraud said revenue;

x x x x x x x x x

case, and Section 3(e)[5] of the Anti-Graft and Corrupt Practices Act or Republic Act (R.A.) No. 3019 in the second.

Culled from the records are the following material facts:

On April 16, 1999, a 40-footer container van bearing Serial Number TRIU-576078-1 and Plate Number PKN 290, which was suspected to be carrying undeclared goods, was seized by EIIB operatives under the command of Arriola, then chief of the Special Operations Group. The van was turned over for safekeeping to the Armed Forces of the Philippines Logistics Command (LOGCOM) compound in Quezon City on April 19, 1999.

On May 6, 1999, however, the van was released by military police from the LOGCOM compound to representatives of the EIIB and Trinity Brokerage. While the van was heading to the docks for shipment to the alleged consignee, it surreptitiously exited at the North harbor with its cargo. It has since been missing.

For purportedly allowing the release of the goods, Nicolas and Arriola were indicted for conspiring with one John Doe who took possession of the goods without proper documentation and payment of customs duties and taxes in the alleged amount of ₱656,950, thereby depriving the government of revenue.

Both Nicolas and Arriola pleaded not guilty to the charges.

The prosecution presented four witnesses: (1) Commodore George T. Uy (Uy), former commander of the LOGCOM whose signature appeared in the Authority for the withdrawal of the van; (2) Romeo Allan Rosales, chief of the Informal Entry Division-Manila International Container Port (IED-MICP); (3) Ruel Pantaleon (Pantaleon), chief of the Supply Section of the General Services Division (GSD) of the Bureau of Customs;

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[5] Sec. 3. (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, advantage, preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

and (4) Alejo Acorda (Acorda) of the LOGCOM who signed as a witness in the Certification of Withdrawal of the van.

Through its testimonial and documentary evidence, the prosecution attempted to show that the withdrawal of the van from the LOGCOM compound was based on a Notice of Withdrawal signed by Nicolas, and on the Authority for the withdrawal of the van which, though it appeared to have been issued by Uy, was not actually signed by him.

The prosecution likewise attempted to establish that the documents, including Official Receipts allegedly presented to show payment of customs duties and taxes, were all spurious.

After concluding the presentation of its evidence, the prosecution filed on February 16, 2006 a Formal Offer of Evidence/Exhibits[6] to which petitioner Arriola filed a Comment/Opposition.[7]

By Resolution of March 30, 2006,[8] public respondent admitted the following documentary evidence for the prosecution:

(1) Exhibit "A"	-	Turn-Over Receipt dated April 19, 1999 for container Van No. TRIU 576078-1[9]
(2) Exhibit "E"	-	Certification of Withdrawal dated May 6, 1999[10]
(3) Exhibit "F"	-	A portion of the passport of then Capt. Uy[11]
(4) Exhibit "G"	-	Affidavit of Capt. Uy dated May 25, 2004[12]

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[6] *Rollo*, G.R. Nos. 176010-11, pp. 101-112.

[7] *Id*. at 128-131.

[8] *Rollo*, G.R. Nos. 175930-31, p. 291; *rollo*, G.R. Nos. 176010-11, p. 133.

[9] *Rollo*, G.R. Nos. 176010-11, p. 113.

[10] *Id*. at 120.

[11] *Id*. at 121.

[12] *Id*. at 122.

(5) Exhibit "H"	-	Letter dated March 4, 2003 of Mr. Ramon P. Simon addressed to the chief of the Informal Entry Division of the Bureau of Customs[13]
(6) Exhibit "I"	-	Letter dated March 4, 2003 of Mr. Reynaldo E. Tanquilut addressed to Ms. Zenaida D. Lanaria, chief of the Liquidation and Billing Division of the Bureau of Customs[14]
(7) Exhibits "J" to "J-2"	-	Certification dated March 17, 2003 issued by Mr. Romeo Allan R. Rosales, chief of the IED-MICP[15]
(8) Exhibit "K"	-	Certification dated December 14, 1999 issued by Ruel L. Pantaleon, chief of the Supply Section, GSD, Bureau of Customs[16]

The rest of the Exhibits for the prosecution, being mere photocopies, were not admitted by public respondent. The excluded evidence consisted of Mission Order No. 04-105-99 dated April 19,1999 for the inventory of the contents of the van (Exhibit "B"); the Inventory List of the van (Exhibits "C" to "C-3"); the Notice of Withdrawal dated May 6, 1999 (Exhibit "D"); and portions of No. 4 Ledger Series-99, the official logbook of the IED-MICP (Exhibits "J-3" and "J-4").

Petitioners separately filed motions for Leave of Court to File Demurrer to Evidence with Motion to Admit Attached Demurrer to Evidence.[17]

Respecting the first Information, petitioners' respective Demurrer maintained that the evidence admitted by public respondent

[13] *Id*. at 123.

[14] *Id.* at 124.

[15] *Id.* at 125.

[16] *Id.* at 127.

[17] *Rollo*, G.R. Nos. 175930-31, pp. 292-348; *rollo*, G.R. Nos. 176010-11, pp. 47-51. Dated May 12, 2006 and May 3, 2006 for petitioners Nicolas and Arriola, respectively.

failed to identify and prove that they were the perpetrators of the crimes charged, for there was no showing that they caused, approved or acted in any manner relative to the release of the goods.

Petitioners went on to contend that none of the documentary evidence bore their names or signatures. And neither was there any testimonial evidence that they acted towards the release of the shipment.

Additionally, petitioners contended that the shipment was not shown to be imported, or for export, or otherwise subject of coastwise trade as to be subject to customs duties; and that even assuming that customs duties were due, there was no evidence that the same were not paid.

Regarding Import Entry Declaration Nos. 5000-99, 5001-99 and 5002-99 which, the prosecution maintained, were used for the release of the goods but were not processed through the IED-MICP, petitioners contended that the same were not shown to have a bearing on the shipment or to their indictment. These import entry declarations were not even presented as documentary evidence, they added.

On the prosecution's submission that customs duties were not paid, petitioners' contended that the same is visited by a similar failure to link the allegedly fraudulent Official Receipt[18] Nos. 75071606, 7501609, and 75071603 to the cargo.

Respecting the second Information, petitioners' Demurrer maintained that the prosecution failed to establish each and every material element thereof.

In the main, petitioners thus argued that the prosecution was not only unable to show that they were the perpetrators of the crimes charged or that they committed any prohibited act; it was also not able to prove that undue injury was caused the government.

Finally, as to both Informations, petitioners submitted that the existence of conspiracy between them and/or John Doe was not established.

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[18] BC Form No. 38.

To petitioners' motions to File Demurrer to Evidence[19] and their Demurrer to Evidence,[20] the prosecution filed a Comment/ Opposition.

By the first questioned Resolution of August 31, 2006, public respondent denied petitioners' respective Demurrer to Evidence. In denying the Demurrer, public respondent held that, *inter alia,* the prosecution was able to establish that the goods apprehended by the EIIB for non-payment of customs duties were deposited at the LOGCOM in Quezon City and while there they were inventoried and found to be computer spare parts and not "parts of a rock crusher" as they were allegedly originally declared; and that on May 6, 1999, the goods were withdrawn from the LOGCOM compound on the strength of a Notice of Withdrawal purportedly signed by then LOGCOM Commander Uy who did not actually issue it as he was then in the United States on official travel nor by the then deputy LOGCOM commander, one Colonel Romero.

Public respondent concluded that petitioners should not have allowed the withdrawal of the goods from the LOGCOM compound by persons other than the real consignee and without obtaining proof that the customs duties were fully and correctly paid. In doing so, public respondent ruled, petitioners "can be deemed to have conspired or colluded with one another or others to defraud the customs revenue or otherwise violated the law."[21]

Petitioners filed their respective motions for reconsideration.[22] The prosecution filed an Opposition [23] which merited petitioners' Reply.[24]

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[19] *Rollo*, G.R. Nos. 176010-11, pp. 134-142. Dated May 17, 2006.

[20] *Rollo*, G.R. Nos. 175930-31, pp. 349-396. Dated September 19, 2006.

[21] *Rollo*, G.R. Nos. 175930-31, p. 131; *rollo*, G.R. Nos. 176010-11, p. 45. Resolution of August 31, 2006.

[22] *Id*. at 360-396; *id*. at 68-81.

[23] *Rollo*, G.R. Nos. 175930-31, pp. 397-408.

[24] *Id.* at 409-427; *rollo*, G.R. Nos. 176010-11, pp. 171-181. Dated November 24, 2006 and November 9, 2006 for petitioners Nicolas and Arriola, respectively.

By the second questioned Resolution of December 7, 2006,[25] public respondent denied petitioners' motions for reconsideration.

Hence, these consolidated petitions.

As stated early on, petitioners jointly ascribe grave abuse of discretion to public respondent for denying their Demurrer given what they submit is the absence or lack of evidence to sustain the cases against them.

Nicolas additionally submits that public respondent grievously abused its discretion when it disregarded this Court's December 16, 2004 Decision in G.R. No. 154668[26] "*Wilfred A. Nicolas v. Aniano A. Desierto*," in which he was absolved of administrative liability for gross neglect of duty and dishonesty arising from the same incident subject of the criminal charges against him.

Invoking the doctrines of *res judicata* and *stare decisis*, Nicolas contends that public respondent particularly failed to abide by this Court's ruling in the said administrative case that he had acted in good faith in relying upon the apparently valid and genuine documents submitted to him when he requested for the release of the van from the LOGCOM compound.

It appears that Nicolas had, by way of a Manifestation,[27] informed public respondent of this Court's Decision in the administrative case. Public respondent merely noted it, however, together with the pleadings that were subsequently filed after the Manifestation.[28] On the basis of the same Decision in the

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[25] *Rollo*, G.R. Nos. 175930-31, pp. 133-134; *rollo*, G.R. Nos. 176010-11, pp. 66-67.

[26] 447 SCRA 154.

[27] *Rollo*, G.R. Nos. 175930-31, pp. 168-173.

[28] *Id*. at 174 & 194. Minutes of the proceedings on January 24, 2005 and April 7, 2005 of respondent Sandiganbayan. The exchange of pleadings consisted of a Counter Manifestation, a Reply Manifestation and a Rejoinder Manifestation (*id*. at 175-193.)

administrative case, Nicolas filed a Motion to Dismiss[29] the criminal cases against him but public respondent denied it.[30]

Before delving on the substantive issues, this Court must first address the propriety of the availment of a petition for *certiorari* and prohibition in assailing a denial of a demurrer to evidence. Then, too, it must determine if the present petitions have been rendered moot and academic by the continuation of the trial – for reception of evidence for the defense. As to the latter issue, the Court notes that public respondent had cancelled the initial presentation of defense evidence upon the filing of the present petitions to afford the Court time to act on petitioners' applications for TRO or Writ of Preliminary Injunction.

By Order given in open court on March 27, 2007, public respondent subsequently cancelled and reset the hearing scheduled on even date and on March 28, 2007.[31] It directed the initial presentation of evidence for Arriola on June 27, 2007 if no TRO was issued by this Court.

The Court did not issue a TRO or a Writ of Preliminary Injunction to stop public respondent from continuing the proceedings in the cases. There is no information if the defense has started or concluded the presentation of its evidence.

Be that as it may, the continuation of the trial should not stand in the way of this Court's ruling on the present petitions. Suffice it to stress that should the denial of petitioners' Demurrer be found to be tainted with grave abuse of discretion, whatever proceedings were conducted before public respondent during the pendency of the present petitions are void.

Moreover, it bears stressing that the evidence for the prosecution is the yardstick for determining the sufficiency of proof necessary to convict; and that the prosecution must rely

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[29] *Id*. at 195-209.

[30] *Id*. at 239-241.

[31] *Rollo*, G.R. Nos. 176010-11, p. 428.

on the strength of its own evidence rather than on the weakness of the evidence for the defense.[32]

On whether *certiorari* is the proper remedy in the consolidated petitions, the general rule prevailing is that it does not lie to review an order denying a demurrer to evidence, which is equivalent to a motion to dismiss, filed after the prosecution has presented its evidence and rested its case.[33]

Such order, being merely interlocutory, is not appealable; neither can it be the subject of a petition for *certiorari*.[34] The rule admits of exceptions, however. Action on a demurrer or on a motion to dismiss rests on the sound exercise of judicial discretion.[35] In *Tadeo v. People*,[36] this Court declared that *certiorari* may be availed of when the denial of a demurrer to evidence is tainted with "grave abuse of discretion or excess of jurisdiction, or oppressive exercise of judicial authority." And so it did declare in *Choa v. Choa*[37] where the denial is patently erroneous.

Indeed, resort to *certiorari* is expressly recognized and allowed under Rules 41 and 65 of the Rules of Court, *viz*:

Rule 41:

SEC. 1. *Subject of appeal*. – x x x

No appeal may be taken from:

x x x x x x x x x

(c) **An interlocutory order**;

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[32] *Madrid v. Court of Appeals*, 388 Phil. 366, 400 (2000), citing *People v. Comesario*, 366 Phil. 62, 68 (1999).

[33] *David v. Rivera*, 464 Phil. 1006, 1013-1014 (2004); *Ong v. People*, 396 Phil. 546, 554 (2000); *Cruz v. People*, 363 Phil. 156, 161 (1999).

[34] *David v. Rivera*, *supra*; *Tadeo v. People*, 360 Phil. 914, 919 (1998). *Vide Cruz v. People*, *supra*; *Katigbak v. Sandiganbayan*, 453 Phil. 515, 535-536 (2003).

[35] *Tan v. Court of Appeals*, 347 Phil. 320, 329 (1997); *Bernardo v. Court of Appeals*, 344 Phil. 335, 346 (1997).

[36] *Tadeo v. People*, *supra* note 34.

[37] 441 Phil. 175, 182-183 (2002), citing *Cruz v. People*, *supra* note 33.

x x x x x x x x x

In all the above instances where the judgment or final order is not appealable, **the aggrieved party may file an appropriate special civil action under Rule 65**.

Rule 65:

SEC. 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. (Emphasis supplied)

Did public respondent commit grave abuse of discretion in denying petitioners' Demurrer? The Court finds that it did.

Section 15, Rule 119 of the Revised Rules of Court provides:

Sec. 15. *Demurrer to evidence*. – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion without the express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence which his adversary produced is insufficient in point of law to make out a case or sustain the issue.[38]

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[38] *Soriquez v. Sandiganbayan*, G.R. No. 153526, October 25, 2005, 474 SCRA 222, 228; *Rivera v. People of the Philippines*, G.R. No. 163996, June 9, 2005, 460 SCRA 85, 91; *Gutib v. Court of Appeals*, 371 Phil. 293, 300 (1999).

The party filing the demurrer in effect challenges the sufficiency of the prosecution's evidence.[39] The Court is thus tasked to ascertain if there is *competent* or *sufficient* evidence to establish a *prima facie* case to sustain the indictment or support a verdict of guilt.[40]

Alleged Violation of the Tariff and Customs Code

With respect to petitioners' indictment for violation of Section 3604 of the Tariff and Customs Code, the prosecution needed to prove that: (1) at the time material to the case, petitioners were officials or employees of the Bureau of Customs or of any other agency of the government charged with the provisions of the Code; and (2) they either conspired or colluded with another or others to defraud the customs revenue or otherwise violate the law (paragraph d), or willfully made an opportunity for any person to defraud the customs revenue or failed to do any act with intent to enable any person to defraud the customs revenue (paragraph e).

Fraud contemplated by law must be intentional – that which is actual and not constructive, and consists of deception willfully and deliberately dared or resorted to in order to give up some right.[41]

Conspiracy, on the other hand, must be established by the same quantum of evidence as the elements of the offense charged. It must be shown by overt acts indicating not only unity of purpose but also unity in execution of the unlawful objective by the alleged conspirators.[42]

From the testimonial and documentary evidence of the prosecution admitted by public respondent, the Court gathers

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[39] *Gutib v. Court of Appeals*, *supra*.

[40] *Supra*; *Katigbak v. Sandiganbayan*, *supra* note 34.

[41] *Farolan, Jr. v. Court of Tax Appeals*, G.R. No. L-42204, January 21, 1993, 217 SCRA 298, 304, cited in *Remigio v. Sandiganbayan*, 424 Phil. 859, 869 (2002).

[42] *People v. Larrañaga*, 66 Phil. 324, 388-389(2004); *People v. Manuel*, G.R. Nos. 93926-28, July 28, 1994, 234 SCRA 532, 542; *Orodio v. Court of Appeals*, G.R. No. 57579, September 13, 1988, 165 SCRA 316, 323; *Magsuci v. Sandiganbayan*, 310 Phil. 14, 19 (1995).

that apart from establishing that petitioners were government officials, the prosecution was only able to establish that: (1) the van was turned over to the LOGCOM on April 19, 1999; (2) the same van was withdrawn from the LOGCOM compound on May 6, 1999; (3) the signature appearing above the name of prosecution witness, then LOGCOM commander Uy, in the Authority for the withdrawal of the van was not his; (4) Import Entry Nos. 5000-99 to 5002-99 were not filed with the IED-MICP; and (5) Bureau of Customs O.R. Nos. 75071606, 7501609, and 75071603 are spurious.

There is no competent or sufficient evidence of particular overt acts that would tend to show that petitioners colluded with each other or with another person or others to defraud the customs revenue or to otherwise violate the law, or that they willfully made it possible for John Doe to defraud the customs revenue.

Not one of the prosecution witnesses identified, mentioned or even alluded to either of petitioners as having personally interceded or been present during the release of the cargo from the LOGCOM compound, or testified as to any act or omission that may be construed to be in furtherance of the alleged conspiracy to defraud the customs revenue.

The Notice of Withdrawal (Exhibit "D"), the only document bearing the name and signature of petitioner Nicolas, was not even admitted by respondent court.

It may not be amiss to mention further that while Uy testified that he did not sign the Authority to release the van, he admitted during cross-examination that the signature above his printed name appeared to be that of his deputy commander, Col. Romero, who was authorized to sign "for" him in his absence.[43]

Respecting the purported failure of petitioners to note the fraudulent nature of O.R. Nos. 75071606, 7501609 and 75071603, the Court notes the testimony of Pantaleon, then chief of the Supply Section of the GSD of the Bureau of Customs,

[43] Transcript of Stenographic Notes (TSN), March 8, 2005, pp. 19-20; *rollo*, G.R. Nos. 176010-11, pp. 535-536.

which is quoted in the Petition[44] of Nicolas, and which merited no refutation from the prosecution in its Consolidated Comment.

Thus, during cross-examination, Pantaleon stated that only the Printing Office, his Division chief and he were privy to the formula used in the printing of BC Forms No. 38, and that other government offices including the EIIB have not been informed of this formula.

Q: Now, Mr. Witness you made mention of [the] formula used in determining the series number of official receipts. Now, could you tell us: Does this formula change every year or is it constant?

A: Constant, sir.

Q: So, the same formula in 1999 is the same formula for this year?

A: Yes, Sir.

Q: Okay, now Mr. Witness, who determined this formula?

A: I myself, Sir.

Q: You determined the formula?

A: Yes, Sir.

Q: **Okay. Now, Mr. Witness, who were the persons to whom you divulged this formula?**

A: ***Sa akin po at saka sa Hepe ng Division na nagretiro*. To me and to the Chief Division that [sic] ha[s] retired.**

Q: **Aside from the two (2) of you, nobody knows the formula?**

A: **The printing office, Sir.**

x x x x x x x x x

Q: Now, in performing your duties with respect to the formula and the printing of the official receipts, do you inform other government offices of the formula?

A: No, Sir.

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[44] *Rollo*, G.R. Nos. 175930-31, pp. 66-67.

Q: **So, you did not inform the EIIB in 1999 about this formula?**

A: ***Hindi po*. No, Sir.**

Q: **So they wouldn't know by just looking at the official receipt whether the official receipt is fake or not because they do not know the formula, would that be a fair statement?**

A: **They don't know the series, Sir.**

Q: **Now my question is, you wouldn't know whether the official receipts would be fake?**

A: ***Hindi ko po alam kung paano nila i-determine*. I don't know how they will determine it**.[45] (Italics and emphasis supplied)

Clearly then, petitioners were not in a position to detect any fraud.

As to the allegations in the Informations that petitioners failed to turn over the goods to the Bureau of Customs pursuant to Memorandum No. 225 and the Joint Guidelines, this Court reiterates its observations in the administrative case against Nicolas subject of G.R. No. 154668:[46]

x x x. Under its standard operating procedure, [the EIIB] normally did the inventory in the presence of representatives of the AFP Logistics Command (which was the depository of apprehended container vans), the Bureau of Customs, the broker or importer, and the Commission on Audit. If there was any irregularity, only then would the EIIB turn over the cargo to the Bureau of Customs.

The aforementioned procedure was consistent with Memorandum Order No. 225, which required the turnover of seized articles to the Bureau of Customs. For practical considerations, the EIIB could not be expected to forward to the Bureau of Customs all cargoes immediately upon apprehension. The EIIB still needed to determine whether there was any irregularity in the importation. Memorandum Order No. 225 itself did not require the immediate forwarding of

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[45] *Id*., referring to the TSN of April 7, 2005, pp. 25-26.

[46] *Supra* note 26.

apprehended cargoes to the Bureau of Customs. Believing in good faith that the taxes and duties had already been paid, petitioner [Nicolas] cannot be faulted for not sending the cargo to the Bureau.[47]

Alleged Violation of R.A. No. 3019

To sustain the indictment or to support a guilty verdict against petitioners for violation of Section 3(e) of R.A. No. 3019, the prosecution must establish all the foregoing elements of the offense:

1. The accused is a public officer or a private person charged in conspiracy with the former;
2. That he or she causes undue injury to any party, whether the government or a private party;
3. The public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public functions;
4. Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
5. That the public officer has acted with manifest partiality, evident bad faith, or gross inexcusable negligence.[48]

The prosecution attempted to build its case for violation of R.A. No. 3019 upon the theory that Nicolas and Arriola, as EIIB commissioner and deputy commissioner, respectively, and in connection with their official duties as such, were responsible for the release of the goods from the LOGCOM compound without the actual payment of customs duties and taxes, thereby causing injury to the government.

The prosecution proffered that the withdrawal of the van from the LOGCOM based on what turned out to be fictitious documents and the subsequent loss of its cargo, which they attributed to petitioners, were motivated by manifest partiality, evident bad faith or gross inexcusable neglect.

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[47] *Supra* at 169-170.

[48] *Peralta v. Desierto*, G.R. No. 153152, October 19, 2005, 473 SCRA 322, 332; *Sistoza v. Desierto*, 437 Phil. 117, 130 (2002).

The evidence for the prosecution failed to sustain its case, however. In addition to this Court's earlier observations about the missing links in the prosecution's evidence, it failed to show by what particular acts petitioners had discharged their functions with manifest partiality, evident bad faith or gross inexcusable neglect.

Sistoza v. Desierto[49] stressed that for culpability to attach under Section 3(e) of R.A. No. 3019, it is not enough to show mere bad faith, partiality or negligence because the law requires the bad faith or partiality to be evident or manifest, respectively, and the negligent deed to be gross and inexcusable. And that the acts indicating any of these modalities of committing the violation must be determined with certainty.[50] Thus held the Court:

> Simply alleging each or all of these methods is not enough to establish probable cause, for it is well settled that allegation does not amount to proof. Nor can we deduce any or all of the modes from mere speculation or hypothesis since good faith on the part of the petitioner as with any other person is presumed. **The facts themselves must demonstrate evident bad faith which connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.**
>
> On the other hand, ***gross inexcusable negligence*** **does not signify mere omission of duties nor plainly the exercise of less than the standard degree of prudence. Rather, it refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. It entails the omission of care that even inattentive and thoughtless men never fail to take on their own property, and in cases involving public officials it takes place only when breach of duty is flagrant and devious.**[51] (Italics in the original; Emphasis and underscoring supplied)

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[49] *Supra*.

[50] *Supra*.

[51] *Supra* at 132.

In the case of Nicolas, he was exonerated of administrative liability in G.R. No. 154668[52] by this Court. In said case, the Court noted that while he requested the release of the cargo, he did so in good faith as he relied on the records before him and the recommendation of Arriola. And it noted that there was nothing to indicate that he had foreknowledge of any irregularity about the cargo.[53] Thus Nicolas was absolved of having acted with gross neglect of duty, *viz*:

> *Arias v. Sandiganbayan* [G.R. Nos. 81563 & 82512, December 19, 1989, 180 SCRA 309] ruled that heads of office could rely to a reasonable extent on their subordinates. x x x
>
> x x x x x x x x x
>
> Without proof that the head of office was negligent, no administrative liability may attach. Indeed, the negligence of subordinates cannot always be ascribed to their superior in the absence of evidence of the latter's own negligence. While Arriola might have been negligent in accepting the spurious documents, such fact does not automatically imply that Nicolas was also. As a matter of course, the latter relied on the former's recommendation. Petitioner [Nicolas] is not mandated or even expected to verify personally from the Bureau of Customs — or from wherever else it originated — each receipt or document that appears on its face to have been regularly issued or executed.[54]

This Court is not unmindful of its rulings that the dismissal of an administrative case does not bar the filing of a criminal prosecution for the same or similar acts subject of the administrative complaint and that the disposition in one case does not inevitably govern the resolution of the other case/s and vice versa.[55] The applicability of these rulings, however, must be distinguished in the present cases.

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[52] *Supra* note 25.

[53] *Supra* note 26 at 166.

[54] *Supra* at 167.

[55] *Saludo, Jr. v. Court of Appeals*, G.R. No. 121404, May 3, 2006; *De La Cruz v. Department of Education, Culture and Sports*, 464 Phil. 1033, 1049 (2004); *Añonuevo, Jr. v. Court of Appeals*, 458 Phil. 532, 541(2003); *Ocampo v. Office of the Ombudsman*, 379 Phil. 21, 27 (2000).

In *Ocampo v. Office of the Ombudsman*[56] and the other cases[57] cited by the prosecution in its Consolidated Comment,[58] it was the dismissal of the criminal cases that was pleaded to abate the administrative cases filed against the therein petitioners.

More importantly, the quantum of proof required to sustain administrative charges is significantly lower than that necessary for criminal actions. To this effect was the ruling in *Ocampo*:

> The dismissal of the criminal case will not foreclose administrative action filed against petitioner or give him a clean bill of health in all respects. The Regional Trial Court, in dismissing the criminal complaint, was simply saying that the prosecution was unable to prove the guilt of petitioner beyond reasonable doubt, a condition *sine qua non* for conviction. **The lack or absence of proof beyond reasonable doubt does not mean an absence of any evidence whatsoever for there is another class of evidence which, though insufficient to establish guilt beyond reasonable doubt, is adequate in civil cases; this is preponderance of evidence. Then, too, there is the "substantial evidence" rule in administrative proceedings which merely requires such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.** Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusion in one should not necessarily be binding on the other.[59] (Emphasis supplied)

Where, as in this case, the administrative complaint was dismissed for failing to satisfy the degree of proof which is merely substantial evidence, *a fortiori* the criminal case based on the same facts and evidence cannot but falter and fall against the highest quantum of proof – proof beyond reasonable doubt.

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[56] *Supra* at 27-28.

[57] *Office of the Court Administrator v. Matas*, 317 Phil. 9 (1995); *Tan v. Commission on Elections*, G.R. No. 112093, October 4, 1994, 237 SCRA 353.

[58] *Rollo*, G.R. Nos. 175930-31, pp. 452-477; *rollo*, G.R. Nos. 176010-11, pp. 397-427.

[59] *Supra* at 27-28.

The present cases must be distinguished likewise from those involving the prior dismissal of administrative cases.[60] Unlike in the cases cited by the prosecution, this Court's Decision in the administrative case against Nicolas ruled squarely that he was not guilty of bad faith and gross neglect of duty, which constitute an *essential element* of the crime under Section 3(e) of R.A. No. 3019. Under the doctrine of *stare decisis*, such ruling should be applied to the criminal case for violation of Section 3(e), R.A. No. 3019, the facts and evidence being substantially the same.[61]

In fine, absent the element of evident bad faith and gross neglect of duty, not to mention want of proof of manifest partiality on the part of Nicolas, the graft case against him cannot prosper.

Like in the case of Nicolas, no act or conduct on the part of Arriola was established that would tend to show that he had acted in evident bad faith, manifest partiality or gross inexcusable negligence in the performance of his functions, as then deputy commissioner of the EIIB and head of the Special Operations Group, relative to the release of the van.

Turning once more to the evidence in the present criminal cases, no documentary or testimonial evidence linking Arriola to the withdrawal of the van, much more, the loss of the goods it contained, is appreciated.

To stress, not one of the documents admitted for the prosecution contained Arriola's name, initials or signature. Neither did any of the prosecution witnesses, not even Acorda who was present during the deposit and withdrawal of the van from the LOGCOM compound, mention or refer to Arriola in any manner or testify on his probable complicity or involvement in

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[60] *Paredes, Jr. v. Hon. Sandiganbayan*, 322 Phil. 709, 730 (1996); *Tecson v. Sandiganbayan*, 376 Phil. 191 (1999). No administrative case was involved in *Ong v. People* (*supra* note 33); hence, the citation of the case was inappropriate.

[61] *Tala Realty Services Corp. v. Banco Filipino*, 389 Phil. 455, 461-462 (2000); *Negros Navigation Co., Inc. v. Court of Appeals*, 346 Phil. 551, 563 (1997); *Paredes, Jr. v. Sandiganbayan*, *supra* note 55 at 730-731.

the crimes charged. For that matter, nothing in the entire testimony of Acorda[62] supports the submission that it was upon Arriola's request that the van was withdrawn from the LOGCOM.

ATTY. SABADO [On cross-examination]
Q : Do you know the reason why Major Rasay and Captain Uy allowed the shipment or the van to be taken out of the Logcom?

WITNESS
A : For us, sir, when there is a request from the EIIB that the property be released, and if it is approved by our boss, it will be released, sir.

ATTY. SABADO
Q : So, you only knew that there was a request and that Captain Uy and Major Rasay allowed this request?

WITNESS
A : Yes, sir.[63]

Even granting *arguendo* Arriola made a recommendation for the withdrawal of the van as the prosecution suggested, this alone does not prove that he acted in bad faith. The presumption of law being in favor of good faith, it was incumbent upon the prosecution to prove bad faith.

Even on the purported spurious receipts that prosecution witness Pantaleon testified on, there is no showing that Arriola was instrumental or participated in their preparation or that he knew of their fraudulent nature.

It bears emphasis that references to petitioner Arriola in the Decision on the administrative case against Nicolas were made only for the purpose of determining the culpability of the latter. These statements, therefore, are in no way binding on Arriola.

Given that the evidence presented by the prosecution against petitioners does not *prima facie* prove petitioners' culpability

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[62] TSN, September 12, 2005, pp. 4-64; *rollo*, G.R. Nos. 176010-11, pp. 455-513.

[63] *Id*. at 60; *id*. at 511.

beyond reasonable doubt, the burden of evidence did not shift to the defense. The Court thus finds that public respondent gravely abused its discretion in denying their Demurrer to Evidence.

WHEREFORE, the consolidated Petitions for *certiorari* and prohibition are *GRANTED*. The Sandiganbayan's assailed Resolutions dated August 31, 2006 and December 7, 2006 are *ANNULLED* and *SET ASIDE* for having been issued with grave abuse of discretion. The separate Demurrer to Evidence of petitioners are accordingly *GRANTED* and the cases against them *DISMISSED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176533. February 11, 2008]

JEROME SOLCO, *petitioner, vs.* **CLAUDINA V. PROVIDO and MARIA TERESA P. VILLARUEL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENT; ELUCIDATED.— Execution is the final stage of litigation, the end of the suit. It cannot be frustrated except for serious reasons demanded by justice and equity. In this jurisdiction, the rule is that when a judgment becomes final and executory, it is the ministerial duty of the court to issue a writ of execution to enforce the judgment, upon motion within five years from the date of its entry, or after the lapse of such

time and before it is barred by the statute of limitations, by an independent action. Either party can move for the execution of the decision so long as the decision or any part of it is in favor of the moving party. The rule on execution of final judgments does not make the filing of the motion for execution exclusive to the prevailing party.

2. ID.; ID.; ID.; PAYMENT TO THE CLERK OF COURT; VALIDITY THEREOF, DISCUSSED; CASE AT BAR.— This Court recognizes the importance of procedural rules in insuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. However, while it is desirable that the Rules of Court be conscientiously observed, the Court has never hesitated, in meritorious cases, to interpret said rules liberally. Unquestionably, the RTC has a general supervisory control over its process of execution. This power carries with it the right to determine every question of fact and law which may be involved in the execution, as well as the power to compel the Villaruels to accept the payment made pursuant to a validly issued writ of execution. As the prevailing party, Solco should not be deprived of the fruits of his rightful victory in the long-drawn legal battle by any ploy of the respondents. Courts must guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts frown upon any attempt to prolong them. Under the foregoing rules, a sheriff is under obligation to enforce the execution of a money judgment by demanding from the judgment obligor the immediate payment directly to the judgment obligee or his representative of the full amount stated in the writ of execution and all lawful fees. However, if the judgment obligee or his representative is not present to receive the payment, the rules require the sheriff to receive the payment which he must turn over within the same day to the clerk of court. If it is not practicable to deliver the amount to the clerk of court within the same day, the sheriff shall deposit the amount in a fiduciary account with the nearest government depository bank. The clerk of court then delivers the amount to the judgment obligee in satisfaction of the judgment. If the judgment obligor cannot pay all or part of the obligation, the sheriff shall levy upon the properties of the judgment obligor. The fact that payment was made to the clerk of court is of no moment. Indeed, the Rules require that in

case the judgment obligee or his representative is not present to receive the payment, the judgment obligor "shall deliver the aforesaid payment to the executing sheriff," who "shall turn over all the amounts coming into his possession within the same day to the clerk of court," who in turn shall deliver the amount to the judgment obligee or his representative in satisfaction of the judgment. However, it would be defeating the ends of justice to rigidly enforce the rules and to invalidate the acceptance of the payment made directly to the clerk of court just because it was not initially paid to the sheriff, who is duty bound to "turn over all the amounts coming into his possession" to the clerk of court. Rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. Besides, payment was made not immediately after the June 7, 2005 demand of the sheriff but after the Villaruels wrote the clerk of court on August 8, 2005 requesting for the full implementation of the writ. Considering that there was no chance for Solco to deliver the payment to the respondents or their representatives, or even to the sheriff, it was only logical for him to make the payment to the clerk of court who issued the writ of execution.

3. ID.; ID.; ID.; PERIOD WITHIN WHICH THE SHERIFFS MUST IMPLEMENT THE WRIT OF EXECUTION; CASE AT BAR.— The Rules do not specify the period within which the sheriffs must implement the writ of execution. When writs are placed in their hands, it is their mandated ministerial duty, in the absence of any instructions to the contrary, to proceed with reasonable promptness to execute them in accordance with their mandate. If the judgment cannot be satisfied in full within 30 days after receipt of the writ, they shall report to the court and state the reason or reasons therefor. They are likewise tasked to make a report to the court every 30 days on the proceedings taken thereon until the judgment is satisfied in full or its effectivity expires. Sheriff Garbanzos served the writ several times on Solco by demanding the immediate payment of the balance of the purchase price and made the corresponding reports to the trial court of the proceedings taken thereon. Considering that Solco's obligation to pay is conditioned upon the eviction of all adverse occupants and removal of all structures

found in the subject property, he was justified in not paying the balance immediately after the May 18 and May 27, 2005 sheriff's demands because the billboard was not yet removed from the premises. In reciprocal obligations, only when a party has performed his part of the contract can he demand that the other party also fulfills his own obligation. Assuming all the obligations of the Villaruels were complied with on June 7, 2005, but Solco still failed to pay his obligation, Sheriff Garbanzos should have levied the properties of the latter to satisfy the judgment as mandated by the Rules. He should not have waited until August 18, 2005 to institute the garnishment proceedings or after the Villaruels requested for the "full implementation" of the writ. Nevertheless, this procedural lapse on the part of the sheriff should not affect the validity of the November 23, 2005 Order of the RTC accepting the MBTC check as full payment of the contract price which was based on the August 8, 2005 letter of the Villaruels to the clerk of court requesting for the full implementation of the writ.

APPEARANCES OF COUNSEL

Law Firm of Mirano Mirano & Mirano for petitioner.
Capanas Solidum & Capanas Law Offices for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* assails the Decision[1] of the Court of Appeals in CA-G.R. CEB SP No. 01561, dated July 26, 2006, which reversed the November 23, 2005, January 19, 2006 and February 17, 2006 Orders of the Regional Trial Court (RTC) of Bacolod City, Branch 47, for having been issued with grave abuse of discretion, as well as the Resolution,[2] dated January 23, 2007, denying the motion for reconsideration.

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[1] *Rollo*, pp. 176-182. Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Agustin S. Dizon.

[2] *Id*. at 200-201.

On April 13, 1989, Josefa Peña *vda. de* Villaruel, Claudina V. Provido, Antonio P. Villaruel, Carmen P. Villaruel, Maria Teresa P. Villaruel, Rosario P. Villaruel, Jesusa P. Villaruel, Alfredo P. Villaruel, Jr., and Josefina Villaruel-Laudico,[3] through their attorney-in-fact respondent Maria Teresa P. Villaruel, executed a Contract to Sell and Memorandum of Agreement with petitioner Jerome Solco over Lot No. 1454-C located at Mandalagan, Bacolod City and covered by TCT No. T-84855 for ₱3M. The agreement provided for the payment of ₱1.6M upon the signing of the contract, and the balance of ₱1.4M upon the dismantling of the structures thereon and the clearing of the premises of its occupants within six (6) months from the execution of the contract.[4] Thereafter, Solco entered the premises and commenced the construction of the improvements.

However, on September 19, 1989, the Villaruels filed a complaint for rescission of contract with damages and application for a writ of preliminary injunction with the RTC of Bacolod City, Branch 47, which was docketed as Civil Case No. 5626.[5] They alleged that Solco violated the terms of their agreement when he entered the premises without notice and started delivering rocks, sand and hollow blocks which destroyed the gate and barbed wire fence that secured the premises, and uprooted the *ipil-ipil* tree. The construction materials allegedly blocked their access to Lacson Street, rendering impossible the dismantling of the structure and removal of the materials therein within the period set by the contract. They also alleged that Solco hired men of questionable repute to work in the premises, threatening their life, security and property.[6]

In his Answer, Solco alleged that the Villaruels had not substantially complied with their obligations under the contract as the house and the billboard were not dismantled and the occupants had not vacated the premises yet. He claimed that

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[3] *Id*. at 400.

[4] *Id*. at 397-402.

[5] *Id*. at 320.

[6] *Id*. at 321-325.

the contract allowed him to take full possession of, and to commence construction on, the premises upon the execution thereof and the payment of ₱1.6M.[7]

On March 29, 1996, the trial court rendered a decision in favor of Solco, thus:

WHEREFORE, conformably with all the foregoing, judgment is hereby rendered in favor of defendant and against plaintiffs, as follows:

1. Dismissing plaintiffs' complaint for lack of merit;

2. Ordering plaintiffs to remove or dismantle the house and the billboard standing on Lot No. 1454-C, subject of this case, within thirty (30) days from finality of this decision; otherwise, the removal or dismantling shall be done by defendant thru the sheriff at the expense of plaintiffs;

3. Ordering plaintiffs and all persons in privity to them and/or their agents to vacate the premises within the same period aforestated;

4. Ordering plaintiffs to immediately restore possession of the subject property to defendant and allow him and his agents to resume introducing any improvement or construction thereon;

5. Condemning plaintiffs to jointly and severally pay actual damages to defendant at the rate of ₱5,000.00 per month from the date of the filing of the complaint on September 19, 1989 up to and until defendant shall have been restored to actual and peaceful possession of lot No. 1454-C;

6. Sentencing plaintiffs to solidarily pay defendant: moral damages of ₱100,000.00 and attorney's fees of ₱70,000.00;

7. Ordering defendant to pay plaintiffs the balance of the purchase price of ₱1,4000,000.00 (sic) of the subject lot, deducting therefrom, however, all the amounts of damages above-awarded to defendant upon the expiration of the thirty-day period provided in No. 2 hereof;

8. Ordering plaintiffs to immediately execute, upon such payment, the deed of absolute sale or conveyance of the subject

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[7] *Id*. at 332-335.

property in favor of the defendant pursuant to Paragraph 6, Page 2 of the Memorandum of Agreement;

9. Sentencing plaintiffs to pay the costs; and

10. Ordering the herein award of damages in favor of defendant as a first lien on the judgment for the non-payment of the necessary filing or docketing fees of defendant's counterclaim.

SO ORDERED.[8]

The Villaruels appealed to the Court of Appeals which affirmed with modifications the decision of the trial court, thus:

WHEREFORE, the Appealed Decision dated March 29, 1996, is hereby AFFIRMED with modification as follows:

1. Plaintiffs-appellants are directed solidarily to pay defendant-appellee actual damages of ₱62,214.00; and

2. The award of moral damages and attorney's fees is reduced to ₱30,000.00 and ₱20,000.00, respectively.

SO ORDERED.[9]

Upon the denial of their motion for reconsideration, the Villaruels filed a petition for review on *certiorari* before this Court docketed as G.R. No. 152781. However, it was denied in a Resolution dated July 1, 2002. Villaruels' motion for reconsideration was denied with finality on December 2, 2002.[10] Judgment was entered and became final and executory on June 12, 2003.[11]

Solco then filed a motion for execution before the trial court which was granted on April 18, 2005.[12] A writ of execution was issued on May 6, 2005.[13]

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[8] *Id*. at 364-365; penned by Judge Edgar G. Garvilles.

[9] *Id*. at 378.

[10] *Id*. at 379.

[11] *Id*. at 383.

[12] *Id*. at 380.

[13] *Id*. at 381-383.

On May 18, 2005, Sheriff Jose Gerardo Y. Garbanzos served the writ on Solco's counsel who informed him that the balance of the purchase price will be paid only if all the adverse occupants have vacated the property. Upon ocular inspection of the property on May 24 and 27, 2005, all adverse occupants had vacated the premises, but the billboard of Trongco Advertising was still there.[14]

In a letter dated May 31, 2005, the Sheriff again demanded from Solco payment of the balance of the purchase price less all damages awarded, but to no avail.[15]

On June 16, 2005, the Villaruels sent a letter to Solco informing him of their decision to cancel and terminate the sale transaction, and the forfeiture of the ₱1.6M to answer for the damages caused to them.[16]

However, on August 8, 2005, Villaruels' counsel wrote a letter to the clerk of court stating that Solco failed to pay the balance of the purchase price, and prayed for the full implementation of the writ of execution by garnishing cash deposits of Solco.[17]

On August 16, 2005, Solco filed a manifestation with motion asking the court to accept the Metropolitan Bank and Trust Company (MBTC) cashier's check dated August 22, 2005 in the amount of ₱1,287,786.00 as full compliance of his obligation under the contract.[18] In its Order dated November 23, 2005, the RTC accepted the payment as full compliance of Solco's obligation and ordered the Villaruels to execute the deed of absolute sale over the property, and appointed the clerk of court to execute the said deed in their behalf should they fail to comply with the order.[19]

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[14] *Id.* at 384-385.

[15] *Id.* at 387.

[16] *Id.* at 389.

[17] *Id.* at 388.

[18] *Id.* at 403-404.

[19] *Id.* at 316.

Meanwhile or on August 25, 2005, the Villaruels filed a complaint for Cancellation of Contract, Quieting of Title and Damages docketed as Civil Case No. 05-12614 and raffled to Branch 49, RTC of Bacolod City.[20]

On January 5, 2006, the Villaruels also filed a motion to quash the writ of execution and to set aside the November 23, 2005 Order claiming that the writ of execution was void because it varied the terms of the judgment and that the RTC had no jurisdiction to alter or modify a final judgment.[21] The RTC denied the said motion to quash in its Order dated January 19, 2006.[22] A motion for reconsideration was filed but it was denied on February 17, 2006.[23]

Thus, the Villaruels filed a petition for *certiorari* before the Court of Appeals assailing the Orders of the RTC dated November 23, 2005, January 19, 2006 and February 17, 2006, for having been issued with grave abuse of discretion. The Court of Appeals granted the petition, thus:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case. The assailed Orders dated November 23, 2005, January 19, 2006 and February 17, 2006 are hereby ANNULED (sic) and SET ASIDE.
>
> SO ORDERED.[24]

Solco filed a motion for reconsideration but was denied hence, the instant petition raising the following errors:

> 1. THE HONORABLE COURT OF APPEALS ERRED IN GRANTING THE PETITION FOR *CERTIORARI* IN CA-G.R. CEB SP NO. 01561 IN CONNECTION WITH THE MONEY JUDGMENT IN CIVIL CASE NO. 5626.

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[20] *Id.* at 390-395.

[21] *Id.* at 409-414.

[22] *Id.* at 317.

[23] *Id.* at 318-319.

[24] *Id.* at 182.

2. THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING THE PETITION FOR *CERTIORARI* IN CA-G.R. CEB SP NO. 01561 ON THE GROUND OF FORUM SHOPPING AND/OR FALSE CERTIFICATION.[25]

Solco argues that the payment with the clerk of court of MBTC cashier's check dated August 22, 2005 in the amount of ₱1,287,786.00 as full payment of the balance of the contract price was in accordance with Section 9, Rule 39 of the Rules of Court which provides that if the judgment obligee is not present to receive the payment, the judgment obligor shall deliver the said payment to the sheriff, who shall turn over all the amounts coming to his possession to the clerk of court. The clerk of court encashed the check for the Villaruels, but they refused to accept the payment. Moreover, assuming the RTC erred in accepting the payment as full compliance under the contract, it pertains only to an error of judgment and not of jurisdiction correctible by *certiorari*.[26]

The issue for resolution is whether the Court of Appeals erred in reversing the Order of the RTC dated November 23, 2005 accepting the MBTC check as full payment of the contract price; the Order dated January 19, 2006 denying the motion to quash the writ of execution; and the Order dated February 17, 2006 denying the motion for reconsideration, on the ground that they were issued in grave abuse of discretion.

The petition is impressed with merit.

Execution is the final stage of litigation, the end of the suit. It cannot be frustrated except for serious reasons demanded by justice and equity. In this jurisdiction, the rule is that when a judgment becomes final and executory, it is the ministerial duty of the court to issue a writ of execution to enforce the judgment,[27] upon motion within five years from the date of its entry, or after the lapse of such time and before it is barred by the statute

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[25] *Id*. at 18.

[26] *Id*. at 21-24.

[27] *Torres v. National Labor Relations Commission*, 386 Phil. 513, 520 (2000).

of limitations, by an independent action.[28] Either party can move for the execution of the decision so long as the decision or any part of it is in favor of the moving party. The rule on execution of final judgments does not make the filing of the motion for execution exclusive to the prevailing party.[29]

In the instant case, the Villaruels moved to quash the writ of execution because it allegedly varied the terms of the judgment. They claimed that the writ directed the sheriff to execute the decision only as against them, contrary to the dispostive portion of the decision which likewise ordered Solco to pay the balance of the purchase price. This contention is untenable. Although the portion of the decision ordering Solco to pay the balance of the contract price was not categorically expressed in the dispositive portion of the writ of execution, the same was explicitly reiterated in the body of the writ. Villaruels' remedy was not to move for the quashal of the writ of execution but to move for its modification to include the portion of the decision which ordered Solco to pay the balance of the contract price.

Besides, records show that despite the apparent insufficiency in the dispositive portion of the writ, the sheriff did not fail to demand payment from Solco. The sheriff filed several partial returns of service of the writ of execution, the pertinent portions of which are as follows:

a. Sheriff's Partial Return of Service dated May 25, 2005

I. On May 18, 2005 the undersigned made a verbal demand with Atty. William Mirano – counsel for the defendant-Jerome Solco for the payment of ONE MILLION FOUR HUNDRED THOUSAND PESOS representing the balance of the purchase price of the subject lot, deducting therefrom, however, all the amounts of damages. Atty. Mirano told the undersigned that they will pay only if all the adverse occupants have vacated the property. Up to this date they have not paid the amount demanded from them; and with regards (sic) to the adverse occupants as per my ocular inspection yesterday May 24,

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[28] RULES OF COURT, Rule 39, Sec. 6.

[29] *Fideldia v. Songcuan*, G.R. No. 151352, July 29, 2005, 465 SCRA 218, 230.

2005 only one structure is left with the assurance from the owner that before the end of this week it will be removed.[30]

b. Sheriff's Partial Return of Service dated May 31, 2005

I. On May 27, 2005 the undersigned made an ocular inspection on the property subject of execution and he found out that all the adverse occupants have already vacated the premises, except for the steel structure which use (sic) to be occupied by the billboard of Tronco Advertising. As per our conversation with Atty. William Mirano – legal counsel of the defendant-Jerome Solco; the advertising firm had already made negotiations with Mr. Solco and the continued presence of their structure which use (sic) to house thier (sic) billboard for advertising purposes is still there. With regards (sic) to the ONE MILLION FOUR HUNDRED THOUSAND PESOS representing the balance of the purchase price of the subject lot the defendant-Jerome Solco has not paid his obligation up to this date.[31]

c. Sheriff's Partial Return of Service dated June 8, 2005

I. On June 7, 2005 the undersigned cause the service of the Writ of Execution and the Sheriff's Demand for the payment of ONE MILLION FOUR HUNDRED THOUSAND PESOS representing the balance of the purchase price of the subject lot, deducting therefrom, however, all the amounts of damages to Mr. Jerome Solco. The latter told the undersigned that all Writs and Demand emanating from this case will be served and coursed thru Atty. William Mirano his counsel of record. Mr. Solco told the undersigned that Atty. William Mirano is his authorized representative and legal counsel. On the same date the undersigned caused the service of the Writ of Execution and Sheriff's Demand to Atty. William Mirano and latter's secretary in the person of Ms. Karen Paduhilao acknowledged receipt of both and affixed her signature on it; Date of Receipt – June 8, 2005. Up to this date the defendant – Mr. Jerome Solco has not paid the balance of the purchase price.[32]

d. Sheriff's Partial Return of Service dated September 3, 2005

1. Defendant – Jerome Solco thru his lawyer Atty. William Mirano tendered payment on MBTC Cashier's Check No. 0790026145 dated August 22, 2005 in the amount of ₱1,287,786.00. It was deposited by the Office of the Clerk of Court, RTC, Bacolod City on August

[30] *Rollo*, p. 384.

[31] *Id*. at 385.

[32] *Id*. at 386.

26, 2006 to its account, re: Acct. No. 422-098-97, Land Bank Bacolod City. Any withdrawal of the amount from said account shall be subject to the payment of the Office Commission totaling ₱19,516.79 (per attached computation by the Office of Atty. ILDEFONSO M. VILLANUEVA, Clerck (sic) of Court VI and *Ex-Officio* Sheriff); there is therefore no full compliance by defendant Solco of the payment of ₱1,287,786.00 to plaintiffs-Villaruel per Writ of Execution

2. Defendant Solco has not paid his filing and docketing fees on his counterclaim as ordered in Paragraph No. 10 of the Decision in CC 5626 dated March 29, 1996, subject of this Writ.

3. Garnishment proceedings were initiated against defendant-Jerome Solco by the undersigned last August 18, 2005 upon payment by the plaintiffs-Villaruel of the proper fees under O.R. No. 2145366 and 7883911 on even date; however upon advice of Atty. ILDEFONSO M. VILLANUEVA, JR., that defendant-Solco verbally promised him that the latter was going to pay, the said garnishment was held in abeyance.[33]

Clearly, the sheriff was not precluded from demanding full payment from Solco although there is no specific order in the dispositive portion of the writ of execution to that effect. Interestingly, we note that at one point, the Villaruels invoked the validity of the writ by asking the clerk of court "to cause the full implementation" of the writ since Solco "had failed to pay nor deposit before [the RTC] the amount of one million four hundred thousand pesos (₱1.4M) less damages, in violation of said Writ of Execution." However, when Solco paid the balance of the purchase price in compliance with said writ, the Villaruels moved to have it quashed because it allegedly modified the judgment of the trial court. This ploy to frustrate the implementation of the writ cannot be countenanced. Thus, the RTC correctly denied the motion to quash the writ of execution and the motion for reconsideration thereof in the assailed Orders dated January 19, 2006 and February 17, 2006, respectively.

As regards the issue of whether the payment to the clerk of court was valid, Section 9, Rule 39 of the Rules of Court pertinently provides:

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[33] CA *rollo*, p. 240.

SEC. 9. *Execution of judgments for money, how enforced. —*

(a) Immediate payment on demand. — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) Satisfaction by levy. — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effects as under a writ of attachment.

(c) Garnishment of debts and credits. — The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishee requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due; otherwise, the choice shall be made by the judgment obligee.

The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee.

In reversing the assailed Orders, the Court of Appeals held that the payment with the clerk of court of MBTC cashier's check representing the balance of the purchase price less the damages awarded did not comply with the foregoing rule as it was made payable to the clerk of court and not directly to the Villaruels.

This Court recognizes the importance of procedural rules in insuring the effective enforcement of substantive rights through the orderly and speedy administration of justice. However, while it is desirable that the Rules of Court be conscientiously observed, the Court has never hesitated, in meritorious cases, to interpret said rules liberally.[34]

Unquestionably, the RTC has a general supervisory control over its process of execution. This power carries with it the right to determine every question of fact and law which may be involved in the execution,[35] as well as the power to compel the Villaruels to accept the payment made pursuant to a validly issued writ of execution. As the prevailing party, Solco should not be deprived of the fruits of his rightful victory in the long-drawn legal battle by any ploy of the respondents. Courts must guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts frown upon any attempt to prolong them.

Under the foregoing rules, a sheriff is under obligation to enforce the execution of a money judgment by demanding from the judgment obligor the immediate payment directly to the judgment obligee or his representative of the full amount stated in the writ of execution and all lawful fees. However, if the judgment obligee or his representative is not present to receive the payment, the rules require the sheriff to receive the payment which he must turn over within the same day to the clerk of court. If it is not practicable to deliver the amount to the clerk of court within the same day, the sheriff shall deposit the amount

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[34] *Seven Brothers Shipping Corporation v. Oriental Assurance Corporation*, 439 Phil. 663, 674 (2002).

[35] *Ysmael v. Court of Appeals*, 339 Phil. 361, 376 (1997).

in a fiduciary account with the nearest government depository bank. The clerk of court then delivers the amount to the judgment obligee in satisfaction of the judgment. If the judgment obligor cannot pay all or part of the obligation, the sheriff shall levy upon the properties of the judgment obligor.

The Rules do not specify the period within which the sheriffs must implement the writ of execution. When writs are placed in their hands, it is their mandated ministerial duty, in the absence of any instructions to the contrary, to proceed with reasonable promptness to execute them in accordance with their mandate.[36] If the judgment cannot be satisfied in full within 30 days after receipt of the writ, they shall report to the court and state the reason or reasons therefor. They are likewise tasked to make a report to the court every 30 days on the proceedings taken thereon until the judgment is satisfied in full or its effectivity expires.[37]

Sheriff Garbanzos served the writ several times on Solco by demanding the immediate payment of the balance of the purchase price and made the corresponding reports to the trial court of the proceedings taken thereon. Considering that Solco's obligation to pay is conditioned upon the eviction of all adverse occupants and removal of all structures found in the subject property, he was justified in not paying the balance immediately after the May 18 and May 27, 2005 sheriff's demands because the billboard was not yet removed from the premises. In reciprocal obligations, only when a party has performed his part of the contract can he demand that the other party also fulfills his own obligation.[38] Assuming all the obligations of the Villaruels were complied with on June 7, 2005, but Solco still failed to pay his obligation, Sheriff Garbanzos should have levied the properties of the latter to satisfy the judgment as mandated by the Rules. He should not have waited until August 18, 2005 to institute the garnishment

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[36] *Escobar Vda. de Lopez v. Luna*, A.M. No. P-04-1786, February 13, 2006, 482 SCRA 265, 274.

[37] RULES OF COURT, Rule 39, Sec. 14.

[38] *BPI Investment Corporation v. Court of Appeals*, 427 Phil. 350, 360 (2002).

proceedings[39] or after the Villaruels requested for the "full implementation" of the writ.

Nevertheless, this procedural lapse on the part of the sheriff should not affect the validity of the November 23, 2005 Order of the RTC accepting the MBTC check as full payment of the contract price which was based on the August 8, 2005 letter of the Villaruels to the clerk of court requesting for the full implementation of the writ.

Moreover, the fact that payment was made to the clerk of court is of no moment. Indeed, the Rules require that in case the judgment obligee or his representative is not present to receive the payment, the judgment obligor "shall deliver the aforesaid payment to the executing sheriff," who "shall turn over all the amounts coming into his possession within the same day to the clerk of court," who in turn shall deliver the amount to the judgment obligee or his representative in satisfaction of the judgment. However, it would be defeating the ends of justice to rigidly enforce the rules and to invalidate the acceptance of the payment made directly to the clerk of court just because it was not initially paid to the sheriff, who is duty bound to "turn over all the amounts coming into his possession" to the clerk of court. Rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided.[40] Besides, payment was made not immediately after the June 7, 2005 demand of the sheriff but after the Villaruels wrote the clerk of court on August 8, 2005 requesting for the full implementation of the writ. Considering that there was no chance for Solco to deliver the payment to the respondents or their representatives, or even to the sheriff, it was only logical for him to make the payment to the clerk of court who issued the writ of execution.

Consequently, upholding the validity of the assailed Orders, constitutes an absolute bar to Civil Case No. 05-12614 for

[39] CA *rollo*, p. 240.

[40] *Idolor v. Court of Appeals*, G.R. No. 161028, January 31, 2005, 450 SCRA 396, 405.

cancellation of contract, quieting of title and damages, now pending before RTC of Bacolod City, Branch 49, filed by the respondents based on the alleged unjustified refusal of Solco to pay the balance of the purchase price. Otherwise, to allow the case to continue, any adverse judgment of the RTC would render the entire proceeding in the courts, not to say the efforts, expenses and time of the parties, ineffective and nugatory.

WHEREFORE, in view of the foregoing, the petition is *GRANTED*. The Decision and Resolution of the Court of Appeals reversing the Orders of the Regional Trial Court of Bacolod City, Branch 47 dated November 23, 2005, accepting the MBTC check as full payment of the contract price and ordering the Villaruels to execute the deed of absolute sale over the property; January 19, 2006 denying the motions to quash the writ of execution and to set aside the November 23, 2005 Order; and February 17, 2006 denying the motion for reconsideration, are *REVERSED and SET ASIDE*. The assailed Orders are *REINSTATED* and Civil Case No. 05-12614 pending before Regional Trial Court of Bacolod City, Branch 49, is ordered *DISMISSED*.

SO ORDERED.

Austria-Martinez, Corona, Nachura,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 178537. February 11, 2008]

SPS. RAFAEL P. ESTANISLAO AND ZENAIDA ESTANISLAO, *petitioners, vs.* **EAST WEST BANKING CORPORATION,** *respondent.*

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

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; REPLEVIN; BOTH A FORM OF PRINCIPAL REMEDY AND A PROVISIONAL RELIEF.— The appellate court erroneously denominated the replevin suit as a collection case. A reading of the original and amended complaints show that what the respondent initiated was a pure replevin suit, and not a collection case. Recovery of the heavy equipment was the principal aim of the suit; payment of the total obligation was merely an alternative prayer which respondent sought in the event manual delivery of the heavy equipment could no longer be made. Replevin, broadly understood, is both a form of principal remedy and a provisional relief. It may refer either to the action itself, *i.e.*, to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and hold it *pendente lite*.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; DATION IN PAYMENT; PROPERTY IS ALIENATED TO THE CREDITOR IN SATISFACTION OF A DEBT IN MONEY; THE DEED OF ASSIGNMENT IN CASE AT BAR IS IN THE NATURE OF A DATION IN PAYMENT.— The deed of assignment was a perfected agreement which extinguished petitioners' total outstanding obligation to the respondent. The deed explicitly provides that the assignor (petitioners), "**in full payment**" of its obligation in the amount of **₱7,305,459.52**, shall deliver the three units of heavy equipment to the assignee (respondent), which "**accepts the assignment in full payment of the above-mentioned debt.**" This could only mean that should petitioners complete the delivery of the three units of heavy equipment covered by the deed, respondent's credit would have been satisfied **in full**, and petitioners' aggregate indebtedness of ₱7,305,459.52 would then be considered to have been paid **in full** as well. The nature of the assignment was a dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money. Such transaction is governed by the law on sales.

3. ID.; OBLIGATIONS AND CONTRACTS; CONSENT; MANIFESTED BY THE MEETING OF THE OFFER AND THE ACCEPTANCE OF THE THING AND THE CAUSE WHICH ARE TO CONSTITUTE THE CONTRACT; CASE AT BAR.— Even if we were to consider the agreement as a compromise agreement, there was no need for respondent's signature on the same, because with the delivery of the heavy equipment which the latter accepted, the agreement was consummated. Respondent's approval may be inferred from its unqualified acceptance of the heavy equipment. Consent to contracts is manifested by the meeting of the offer and the acceptance of the thing and the cause which are to constitute the contract; the offer must be certain and the acceptance absolute. The acceptance of an offer must be made known to the offeror, and unless the offeror knows of the acceptance, there is no meeting of the minds of the parties, no real concurrence of offer and acceptance. Upon due acceptance, the contract is perfected, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

4. ID.; ID.; ID.; NON-INCLUSION OF CERTAIN PROPERTIES IN THE DEED OF ASSIGNMENT DUE TO INADVERTENCE, PLAIN OVERSIGHT OR MISTAKE IS TANTAMOUNT TO INEXCUSABLE MANIFEST NEGLIGENCE, WHICH SHOULD NOT INVALIDATE THE JURIDICAL TIE THAT WAS CREATED.— With its years of banking experience, resources and manpower, respondent bank is presumed to be familiar with the implications of entering into the deed of assignment, whose terms are categorical and left nothing for interpretation. The alleged non-inclusion in the deed of certain units of heavy equipment due to inadvertence, plain oversight or mistake, is tantamount to inexcusable manifest negligence, which should not invalidate the juridical tie that was created. Respondent is presumed to have maintained a high level of meticulousness in its dealings with petitioners. The business of a bank is affected with public interest; thus, it makes a sworn profession of diligence and meticulousness in giving irreproachable service.

5. ID.; ID.; ID.; LEGAL PRESUMPTION IS ALWAYS ON THE VALIDITY THEREOF; CONTEMPORANEOUS AND SUBSEQUENT ACTS OF THE PARTIES SHALL BE CONSIDERED IN JUDGING THEIR INTENTION.— Besides, respondent's protestations of mistake and plain oversight are self-serving. The evidence show that from August 16, 2000 (date of the deed of assignment) up to March 8, 2001 (the date of delivery of the last unit of heavy equipment covered under the deed), respondent did not raise any objections nor make any move to question, invalidate or rescind the deed of assignment. It was not until June 20, 2001 that respondent raised the issue of its alleged mistake by filing an amended complaint for replevin involving different chattels, although founded on the same principal obligation. The legal presumption is always on the validity of contracts. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. When respondent accepted delivery of all three units of heavy equipment under the deed of assignment, there could be no doubt that it intended to be bound under the agreement.

6. ID.; SPECIAL CONTRACTS; MORTGAGE; CHATTEL CANNOT EXIST AS AN INDEPENDENT CONTRACT; VALIDITY OF THE CHATTEL MORTGAGE DEPENDS ON THE VALIDITY OF THE LOAN SECURED BY IT.— Since the agreement was consummated by the delivery on March 8, 2001 of the last unit of heavy equipment under the deed, petitioners are deemed to have been released from all their obligations to respondent. Since there is no more credit to collect, no principal obligation to speak of, then there is no more second deed of chattel mortgage that may subsist. A chattel mortgage cannot exist as an independent contract since its consideration is the same as that of the principal contract. Being a mere accessory contract, its validity would depend on the validity of the loan secured by it. This being so, the amended complaint for replevin should be dismissed, because the chattel mortgage agreement upon which it is based had been rendered ineffectual.

APPEARANCES OF COUNSEL

Gonong Paredes De Leon Marinas Paredes Arevalo & Gonzales for petitioners.

Brioso Arnedo Ona Pamfilo Chuanico Law Offices for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review of the Decision[1] of the Court of Appeals dated April 13, 2007 in CA-G.R. CV No. 87114 which reversed and set aside the Decision of the Regional Trial Court of Antipolo City, Branch 73 in Civil Case No. 00-5731. The appellate court entered a new judgment ordering petitioners spouses Estanislao to pay respondent East West Banking Corporation ₱4,275,919.65 plus interest and attorney's fees. Also assailed is the Resolution[2] dated June 25, 2007 denying the motion for reconsideration.

The facts are as follows:

On July 24, 1997, petitioners obtained a loan from the respondent in the amount of ₱3,925,000.00 evidenced by a promissory note and secured by two deeds of chattel mortgage dated July 10, 1997: one covering two dump trucks and a bulldozer to secure the loan amount of ₱2,375,000.00, and another covering bulldozer and a wheel loader to secure the loan amount of ₱1,550,000.00. Petitioners defaulted in the amortizations and the entire obligation became due and demandable.

On April 10, 2000, respondent bank filed a suit for replevin with damages, praying that the equipment covered by the first deed of chattel mortgage be seized and delivered to it. In the alternative, respondent prayed that petitioners be ordered to

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[1] *Rollo*, pp. 51-71. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag.

[2] *Id.* at 73.

pay the outstanding principal amount of ₱3,846,127.73 with 19.5% interest per annum reckoned from judicial demand until fully paid, exemplary damages of ₱50,000.00, attorney's fees equivalent to 20% of the total amount due, other expenses and costs of suit.

The case was filed in the Regional Trial Court of Antipolo and raffled to Branch 73 thereof.

Subsequently, respondent moved for suspension of the proceedings on account of an earnest attempt to arrive at an amicable settlement of the case. The trial court suspended the proceedings, and during the course of negotiations, a deed of assignment[3] dated August 16, 2000 was drafted by the respondent, which provides in part, that:

> x x x the ASSIGNOR is **indebted to the ASSIGNEE in the aggregate sum of SEVEN MILLION THREE HUNDRED FIVE THOUSAND FOUR HUNDRED FIFTY NINE PESOS and FIFTY TWO CENTAVOS (₱7,305,459.52), Philippine currency, inclusive of accrued interests and penalties as of August 16, 2000**, **and in full payment thereof, the ASSIGNOR does hereby ASSIGN, TRANSFER and CONVEY unto the ASSIGNEE those motor vehicles**, with all their tools and accessories, more particularly described as follows:
>
> Make : Isuzu Dump Truck
>
> x x x x x x x x x
>
> Make : Isuzu Dump Truck
>
> x x x x x x x x x
>
> Make : x x x Caterpillar Bulldozer x x x
>
> That the **ASSIGNEE hereby accepts the assignment in full payment of the above-mentioned debt** x x x. (Emphasis supplied)

Petitioners affixed their signatures on the deed of assignment. However, for some unknown reason, respondent bank's duly authorized representative failed to sign the deed.

On October 6, 2000 and March 8, 2001, respectively, petitioners completed the delivery of the heavy equipment

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[3] *Id*. at 54.

mentioned in the deed of assignment – two dump trucks and a bulldozer – to respondent, which accepted the same without protest or objection.

However, on June 20, 2001, respondent filed a manifestation and motion to admit an amended complaint for the seizure and delivery of two more heavy equipment – the bulldozer and wheel loader – which are covered under the second deed of chattel mortgage. Respondent claimed that its representative inadvertently failed to include the second deed of chattel mortgage among the documents forwarded to its counsel when the original complaint was being drafted. Respondent likewise claimed that petitioners were given a chance to submit a refinancing scheme that would allow them to keep the remaining two heavy equipment, but they failed to come up with such a scheme despite repeated promises to do so.

Respondent's amended complaint for replevin alleged that petitioners' outstanding indebtedness as of June 14, 2001 stood at ₱4,275,919.61 which is more or less equal to the aggregate value of the additional units of heavy equipment sought to be recovered. It also prayed that, in the event the two heavy equipment could not be replevied, petitioners be ordered to pay the outstanding sum of ₱3,846,127.73 with 19.5% interest per annum reckoned from January 24, 1998, compound interest, exemplary damages of ₱50,000.00, attorney's fees equivalent to 20% of the total amount due, other expenses and costs of suit.

Petitioners sought to dismiss the amended complaint. They alleged that their previous payments on loan amortizations, the execution of the deed of assignment on August 16, 2000, and respondent's acceptance of the three units of heavy equipment, had the effect of full payment or satisfaction of their total outstanding obligation which is a bar on respondent bank from recovering any more amounts from them. By way of counterclaim, petitioners sought the award of nominal damages in the amount of ₱500,000.00, moral damages in the amount of ₱500,000.00, exemplary damages in the amount of ₱500,000.00, attorney's fees, litigation expenses, interest and costs.

On March 14, 2006, the trial court dismissed the amended complaint for lack of merit. It held that the deed of assignment and the petitioners' delivery of the heavy equipment effectively extinguished petitioners' total loan obligation. It also held that respondent was estopped from further collecting from the petitioners when it accepted, without any protest, delivery of the three units of heavy equipment as full and complete satisfaction of the petitioners' total loan obligation. Respondent likewise failed to timely rectify its alleged mistake in the original complaint and deed of assignment, taking almost a year to act.

Respondent bank appealed to the Court of Appeals, which reversed the trial court's decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the present appeal is hereby GRANTED. The Decision dated March 14, 2006 of the Regional Trial Court of Antipolo City, Branch 73 in Civil Case No. 00-5731 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered ordering the defendants-appellees to pay, jointly and severally, plaintiff-appellant East West Banking Corporation the sum of FOUR MILLION TWO HUNDRED SEVENTY FIVE THOUSAND NINE HUNDRED NINETEEN and 69/100 (₱4,275,919.69) per Statement of Account as of June 14, 2001 (Exh. "E", Records, p.328) with interest at 12% per annum from June 15, 2001 until full payment thereof. Defendants-appellees are likewise ordered to pay the plaintiff-appellant attorney's fees in the sum equivalent to ten per cent (10%) of the total amount due.
>
> No pronouncement as to costs.
>
> SO ORDERED.[4]

The reversal of the lower court's decision hinges on: (1) the appellate court's finding that the deed of assignment cannot bind the respondent because it did not sign the same. The appellate court ruled that the assignment contract was never perfected although it was prepared and drafted by the respondent; (2) respondent was not estopped by its own declarations in the deed of assignment, because such declarations were the result of "ignorance founded upon an innocent mistake" and "plain

[4] *Id*. at 71.

oversight" on the part of respondent's staff in the bank's loan operations department, who failed to forward the complete documents pertaining to petitioners' account to the bank's legal department, such that when the original complaint for replevin was prepared, the second deed of chattel mortgage covering two other pieces of heavy equipment was inadvertently excluded; (3) petitioners are aware that there were five pieces of heavy equipment under chattel mortgage for an outstanding balance of over ₱7 million; and (4) the appellate court held that even after the delivery of the heavy equipment covered by the deed of assignment, the petitioners continued to negotiate with the respondent on a possible refinancing scheme that will enable them to retain the two other units of heavy equipment still in their possession and which are the subject of the second deed of chattel mortgage.

Petitioners argue that: a) the appellate court erred in ordering the payment of the principal obligation in a replevin suit which it erroneously treated as a collection case; b) the deed of assignment is binding between the parties although it was not signed by the respondent, constituting as it did an offer which they validly accepted; and c) the respondent is estopped from collecting or foreclosing on the second deed of chattel mortgage.

On the other hand, respondent argues that: a) the deed of assignment produced no legal effect between the parties for failure of the respondent to sign the same; b) the deed was founded on a mistake on its part because it honestly believed that only one chattel mortgage had been constituted to secure the petitioners' obligation; c) the non-inclusion of the second deed of chattel mortgage in the original complaint was a case of "plain oversight" on the part of the loan operations unit of respondent bank, which failed to forward to the legal department the complete documents pertaining to the petitioners' loan account; d) the continued negotiations in August 2001 between the parties, after delivery of the three units of heavy equipment, proves that petitioners acknowledged their continuing obligations to respondent under the second deed of mortgage; and, e) the

deed of assignment did not have the effect of novating the original loan obligation.

The issue for resolution is: Did the deed of assignment – which expressly provides that the transfer and conveyance to respondent of the three units of heavy equipment, and its acceptance thereof, shall be **in full payment** of the petitioners' total outstanding obligation to the latter – operate to extinguish petitioners' debt to respondent, such that the replevin suit could no longer prosper?

We find merit in the petition.

The appellate court erroneously denominated the replevin suit as a collection case. A reading of the original and amended complaints show that what the respondent initiated was a pure replevin suit, and not a collection case. Recovery of the heavy equipment was the principal aim of the suit; payment of the total obligation was merely an alternative prayer which respondent sought in the event manual delivery of the heavy equipment could no longer be made.

Replevin, broadly understood, is both a form of principal remedy and a provisional relief. It may refer either to the action itself, *i.e.*, to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and hold it *pendente lite*.[5]

The deed of assignment was a perfected agreement which extinguished petitioners' total outstanding obligation to the respondent. The deed explicitly provides that the assignor (petitioners), "**in full payment**" of its obligation in the amount of **₱7,305,459.52**, shall deliver the three units of heavy equipment to the assignee (respondent), which "**accepts the assignment in full payment of the above-mentioned debt**." This could only mean that should petitioners complete the delivery of the three units of heavy equipment covered by the deed, respondent's

[5] *BA Finance Corporation v. Court of Appeals*, G.R. No. 102998, July 5, 1996, 258 SCRA 102, 110.

credit would have been satisfied **in full**, and petitioners' aggregate indebtedness of ₱7,305,459.52 would then be considered to have been paid **in full** as well.

The nature of the assignment was a dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money. Such transaction is governed by the law on sales.[6] Even if we were to consider the agreement as a compromise agreement, there was no need for respondent's signature on the same, because with the delivery of the heavy equipment which the latter accepted, the agreement was consummated. Respondent's approval may be inferred from its unqualified acceptance of the heavy equipment.

Consent to contracts is manifested by the meeting of the offer and the acceptance of the thing and the cause which are to constitute the contract; the offer must be certain and the acceptance absolute.[7] The acceptance of an offer must be made known to the offeror, and unless the offeror knows of the acceptance, there is no meeting of the minds of the parties, no real concurrence of offer and acceptance.[8] Upon due acceptance, the contract is perfected, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.[9]

With its years of banking experience, resources and manpower, respondent bank is presumed to be familiar with the implications of entering into the deed of assignment, whose terms are categorical and left nothing for interpretation. The alleged non-inclusion in the deed of certain units of heavy equipment due to inadvertence, plain oversight or mistake, is tantamount to inexcusable manifest negligence, which should not invalidate

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[6] CIVIL CODE, Art. 1245.

[7] *Id.*, Art. 1319.

[8] *Malbarosa v. Court of Appeals*, G.R. No. 125761, April 30, 2003, 402 SCRA 168, 177.

[9] CIVIL CODE, Art. 1315.

the juridical tie that was created.[10] Respondent is presumed to have maintained a high level of meticulousness in its dealings with petitioners. The business of a bank is affected with public interest; thus, it makes a sworn profession of diligence and meticulousness in giving irreproachable service.[11]

Besides, respondent's protestations of mistake and plain oversight are self-serving. The evidence show that from August 16, 2000 (date of the deed of assignment) up to March 8, 2001 (the date of delivery of the last unit of heavy equipment covered under the deed), respondent did not raise any objections nor make any move to question, invalidate or rescind the deed of assignment. It was not until June 20, 2001 that respondent raised the issue of its alleged mistake by filing an amended complaint for replevin involving different chattels, although founded on the same principal obligation.

The legal presumption is always on the validity of contracts.[12] In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.[13] When respondent accepted delivery of all three units of heavy equipment under the deed of assignment, there could be no doubt that it intended to be bound under the agreement.

Since the agreement was consummated by the delivery on March 8, 2001 of the last unit of heavy equipment under the deed, petitioners are deemed to have been released from all their obligations to respondent.

Since there is no more credit to collect, no principal obligation to speak of, then there is no more second deed of chattel mortgage that may subsist. A chattel mortgage cannot exist as an independent

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[10] *Fule v. Court of Appeals*, G.R. No. 112212, March 2, 1998, 296 SCRA 698, 715.

[11] *Solidbank v. Arrieta*, G.R. No. 152720, February 17, 2005, 451 SCRA 711, 722.

[12] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, G.R. No. 117847, October 7, 1998, 297 SCRA 170, 189.

[13] Civil Code, Article 1371.

contract since its consideration is the same as that of the principal contract. Being a mere accessory contract, its validity would depend on the validity of the loan secured by it.[14] This being so, the amended complaint for replevin should be dismissed, because the chattel mortgage agreement upon which it is based had been rendered ineffectual.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated April 13, 2007 in CA-G.R. CV No. 87114 and its Resolution dated June 25, 2007 are hereby *SET ASIDE*. The March 14, 2006 decision of the Regional Trial Court of Antipolo, Branch 73, which dismisses Civil Case No. 00-5731, is hereby *REINSTATED*.

SO ORDERED.

Austria-Martinez, Corona, Nachura,* and *Reyes, JJ.,* concur.

EN BANC

[G.R. No. 179285. February 11, 2008]

IMELDA Q. DIMAPORO, *petitioner, vs.* **COMMISSION ON ELECTIONS and VICENTE BELMONTE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET);

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[14] *Naguiat v. Court of Appeals*, G.R. No. 118375, October 3, 2003, 412 SCRA 591, 599.

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

HAS JURISDICTION OVER ELECTORAL PROTEST WHEN THE PROCLAIMED WINNER HAS TAKEN HIS OATH OF OFFICE AND A DEFEATED CANDIDATE CLAIMS TO BE THE WINNER.— In light of this development, jurisdiction over this case has already been transferred to the House of Representatives Electoral Tribunal (HRET). When there has been a proclamation and a defeated candidate claims to be the winner, it is the Electoral Tribunal already that has jurisdiction over the case. In *Lazatin v. Commission on Elections*, the Court had this to say: The petition is impressed with merit because petitioner has been proclaimed winner of the Congressional elections in the first district of Pampanga, has taken his oath of office as such, and assumed his duties as Congressman. *For this Court to take cognizance of the electoral protest against him would be to usurp the function of the House Electoral Tribunal. The alleged invalidity of the proclamation (which had been previously ordered by the COMELEC itself) despite alleged irregularities in connection therewith, and despite the pendency of protests of the rival candidates, is a matter that is also addressed, considering the premises, to the sound judgment of the Electoral Tribunal.*

2. ID.; ELECTIONS; ELECTION CASES; IMBUED WITH PUBLIC INTEREST; PRE-PROCLAMATION CONTROVERSIES SHOULD BE SUMMARILY DECIDED.— The COMELEC was not amiss in quickly deciding Belmonte's petition to correct manifest errors then proclaiming him the winner. Election cases are imbued with public interest. They involve not only the adjudication of the private interest of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the offices within their gift. It has always been the policy of the election law that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible. Considering that at the time of proclamation, there had yet been no *status quo ante* order or temporary restraining order from the court, such proclamation is valid and, as such, it has vested the HRET with jurisdiction over the case as Belmonte has, with the taking of his oath, already become one of their own. Hence, should Dimaporo

wish to pursue further her claim to the congressional seat, the filing of an election protest before the HRET would be the appropriate course of action.

APPEARANCES OF COUNSEL

Pete Quirino-Cuadra and *George Erwin M. Garcia* for petitioner.
The Solicitor General for public respondent.
Brillantes Navarro Jumamil Arcilla Escolin Martinez & *Vivero* for V. Belmonte.

R E S O L U T I O N

REYES, R.T., *J.*:

UNDER consideration is a petition for *certiorari* via Rule 65 of the 1997 Rules of Civil Procedure assailing the (1) Resolution[1] of the Commission on Elections (COMELEC) Second Division dated July 10, 2007 and (2) Resolution[2] of the COMELEC *En Banc* promulgated on September 5, 2007.

The antecedent facts:

Petitioner Imelda Dimaporo and private respondent Vicente Belmonte were both candidates for Representative of the 1st Congressional District of Lanao del Norte during the May 14, 2007 elections.

The said legislative district is composed of seven (7) towns and one (1) city, namely: the Municipalities of Linamon, Kauswagan, Bacolod, Maigo, Kolambugan, Tubod, Baroy and the City of Iligan.

On May 22, 2007, the Provincial Board of Canvassers[3] (PBOC) completed the canvass of the Certificates of Canvass

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[1] *Rollo,* pp. 31-49.

[2] *Id*. at 64-71.

[3] Composed of the Provincial Election Supervisor, Atty. Joseph Hamilton M. Cuevas, chairman; Chief Provincial Prosecutor Atty. Macadatar D. Marsangca, vice-chairman; and Maria Luisa B. Mutia, Ph.D., member.

(COCs) for the City of Iligan and four (4) of the municipalities, namely, Linamon, Kolambugan, Tubod and Baroy. Upon adjournment on May 22, 2007, the said PBOC issued a Certification showing respondent Belmonte in the lead, with 52,783 votes, followed by candidate Badelles with 39,315 votes, and petitioner Dimaporo in third place with only 35,150 votes, *viz.*:

OFFICIAL PARTIAL TOTAL VOTES
FOR MEMBER, HOUSE OF REPRESENTATIVES
BASED ON THE CANVASS BY THE PBOC
OF THE COCs OF FOUR (4) MUNICIPALITIES OF 1st
DISTRICT AND OF THE COC OF ILIGAN CITY
(Votes for Candidates Leo M. Zaragoza and Uriel G. Borja omitted)

MUNICIPALITY	BELMONTE	BADELLES	DIMAPORO
Linamon	2,395	1,737	1,835
Kolambugan	1,530	4,287	3,731
Tubod	2,084	2,607	9,904
Baroy	1,849	3,275	4,195
Iligan City	44,925	27,409	15,485
PARTIAL SUB-TOTAL	52,783	39,315	35,150

Sometime in the evening of May 19, 2007, the ballot boxes containing the COCs of Kauswagan, Bacolod and Maigo were allegedly forcibly opened, their padlocks destroyed and the envelopes containing the COCs and the Statement of Votes (SOV) opened and violated. When the PBOC was about to resume the canvassing at around 9:00 a.m. the succeeding day, the forced opening of the ballot boxes was discovered prompting the PBOC to suspend the canvass.

On May 22, 2007, the Commissioner-in-Charge of CARAGA Region, Nicodemo Ferrer, issued a Resolution ordering that the canvassing of the ballots contained in the tampered ballot boxes of Kauswagan, Maigo and Bacolod be suspended until after the

National Bureau of Investigation (NBI) submits its findings to the Commission.

On May 24, 2007, the NBI submitted its report. It found as follows:

> In our assessment and observation, the culprit(s) managed to enter the room of the Vice-Governor [Irma Umpa Ali] which he/she used as a staging and hiding place while persons are still allowed to enter the building during the canvassing. On the night of May 19, 2007 the culprit(s) hide (*sic*) in the said room and waited until there were no persons allowed inside the building except the provincial guard on duty who was manning the ground floor at the area near the entrance door. The culprit(s) then entered the Session Hall by using some hard ID Card or any similar object which was inserted in between the door and door-lock, and once inside specifically destroyed the padlocks of the ballot boxes for the Municipalities of Bacolod, Maigo and Kauswagan. x x x.

On May 24, 2007, Atty. Dennis L. Ausan, Regional Director, Region X, issued a Very Urgent Memorandum addressed to the COMELEC *En Banc*, enclosing the NBI report, with the following recommendation:

> [T]hat the Commission *En Banc* comes out with an order directing the Provincial Board of Canvassers of Lanao del Norte to immediately reconvene solely for the purpose of retrieving the three envelopes supposedly containing the COCs from the said three (3) municipalities, to open the same in the presence of all watchers, counsels and representatives of all contending parties and the accredited Citizens' Arm of the Commission and right there and then to turn over the same to the representative of the NBI for technical examination by their questioned documents expert.
>
> Further, it is requested that it must also be incorporated in the *En Banc*'s order the directive for the PBOC to turnover to the NBI the copies of the COC of the three (3) municipalities intended for the Commission and the Election Officer for purposes of comparison with that retrieved from the questioned ballot box.

Thereafter, on May 25, 2007, COMELEC issued Resolution No. 8073 adopting in part the recommendation of Atty. Ausan directing the PBOC of Lanao del Norte to "*immediately reconvene*

solely for the purpose of retrieving the three envelopes supposedly containing the COCs from the municipalities of Kauswagan, Bacolod and Maigo" and to "*open the same in the presence of all watchers, counsels, and representatives of all contending parties and the accredited Citizens' Arm of the Commission and right there and then to direct the representatives of the dominant majority and minority parties to present their respective copies of the COCs for comparison with the COCs intended for the COMELEC and with the COCs inside the envelope just opened*."

The COMELEC further resolved that when discrepancies show signs of tampering and falsifying, the PBOC is to "*immediately turnover to the NBI the copies of the COCs of said three (3) municipalities intended for the Commission and the Election Officer for purposes of comparison with those retrieved from the questioned ballot boxes*."

On May 30, 2007, Commissioner Nicodemo Ferrer issued his Memorandum relieving the PBOC of its functions and constituting a special provincial board of canvassers (SPBOC).[4] He further ordered as follows:

> The previous *En Banc* Resolution No. 8073 promulgated on May 25, 2007 is hereby amended to state that upon the opening of the envelopes containing the COCs found inside the tampered ballot boxes for the towns of Kauswagan, Maigo and Bacolod, the same shall at once be canvassed in the presence of the candidates and/or their representatives, taking note of whatever objections that they may interpose on any of the entries in said COCs.

However, no canvassing took place on May 30, 2007 in view of the human barricade of some 100 persons who effectively blocked the entrance to the *Sangguniang Panlalawigan* building.

On May 31, 2007, Commissioner Nicodemo Ferrer issued another Memorandum constituting another SPBOC for Lanao del Norte composed of Atty. Lordino Salvana, as chairman, with Atty. Anna Ma. Dulce Cuevas-Banzon and Atty. Gina Luna

[4] Composed of Atty. Carlito L. Ravelo, as the new chairman, with Atty. Anna Ma. Dulce Cuevas-Banzon and Atty. Aleli Dayo-Ramirez, as members.

Zayas, as members. In said Memorandum, Ferrer gave the following instructions:

> Considering the heightened controversies occasioned by the admitted tampering of the three (3) ballot boxes containing the COCs of said towns to be canvassed, you are directed to refrain from proclaiming any candidate until ordered by the Commission through the undersigned Commissioner-in-Charge of Region X. Appeal, if any, should be immediately elevated to the Commission for evaluation.
>
> This amends the urgent memorandum addressed to Atty. Joseph Hamilton Cuevas dated May 30, 2007.

The chairman and members of the new SPBOC arrived at the venue of the canvassing at Tubod, Lanao del Norte at 10:15 p.m. on May 31, 2007. However, the human barricade which blocked the entrance to the *Sangguniang Panlalawigan* building had now swelled into a horde of some 300 persons. As a consequence, the canvassing still did not take place.

On June 1, 2007, the new SPBOC convened and opened the ballot boxes for the towns of Kauswagan, Maigo and Bacolod. As the SPBOC proceeded with the canvass, private respondent Belmonte objected to the inclusion of the COCs of the concerned municipalities on the following grounds:

1.) There were manifest errors in the COCs;

2.) The numbers of votes in words and in figures opposite the names of appellant and appellees Badelles and Dimaporo contain intercalations done through the application of a white correction fluid ("*SnoPake*"), which intercalations are visible to the naked eye;

3.) The COCs were obviously manufactured;

4.) The COCs were tampered or falsified;

5.) The intercalations in the COCs were not made or prepared by the Municipal Board of Canvassers (MBOC) concerned; and

6.) The SOVs likewise contain intercalations done through "*SnoPake*" resulting in an altered number of votes for appellant and respondents.

The SPBOC denied Belmonte's objections due to lack of jurisdiction.

On that same day, June 1, 2007, Belmonte filed his verified notice of appeal before the SPBOC. On June 5, 2007, Belmonte filed his appeal with appeal memorandum. On June 7, 2007, Belmonte filed with the COMELEC his alternative petition to correct manifest errors.

In the assailed Resolution of July 10, 2007, the Second Division of the COMELEC granted Belmonte's petition. While conceding that it has no jurisdiction to hear and decide pre-proclamation cases against members of the house, it took cognizance of the petition as one for the correction of manifest errors, hence, within its jurisdiction as per the last sentence of Section 15 of Republic Act (R.A.) No. 7166. The law provides:

> Sec. 15. *Pre-proclamation Cases in Elections for President, Vice-President, Senator, and Member of the House of Representatives*. — For purpose of the elections for president, vice-president, senator, and member of the house of representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of election returns or the certificates of canvass, as the case may be, except as provided for in Sec. 30 hereof. However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election returns before it. (Underscoring supplied)

The dispositive portion of the challenged Resolution reads:

> WHEREFORE, premises considered, the Commission (Second Division) resolves to GRANT the Petition and the questioned Rulings of the respondent MBC is hereby REVERSED AND SET ASIDE. The questioned COCs are hereby ordered excluded and should not be canvassed.
>
> The Board of Canvassers is hereby directed to RECONVENE here in Manila (for security purposes) and issue a new certificate of canvass of votes excluding the election returns subject of this appeal and substituting the proper entries as are evident in the authentic copies of the election returns related to the subject COCs. The winning

candidate who garners the most number of votes in accordance with our observation shall after proper canvass be proclaimed by the Board of Canvassers.

SO ORDERED.

On July 13, 2007, Dimaporo moved for a reconsideration. This was denied in the COMELEC's equally assailed *En Banc* Resolution of September 5, 2007. The second Resolution prompted Dimaporo to file, on September 7, 2007, the present petition for *certiorari* with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction questioning the jurisdiction of the COMELEC over the case.

In her petition, Dimaporo claims that the subject matter involved does not pertain to manifest errors but to the "preparation, transmission, receipt, custody and appreciation" of certificates of canvass, a matter outside the realm of the COMELEC's jurisdiction when a congressional seat is involved. She cites Section 15 of R.A. No. 7166.

Dimaporo prays as follows:

1. upon filing of this petition, a temporary restraining order be issued by the Honorable Court enjoining the implementation of the questioned Resolution of July 10, 2007 of the COMELEC (Second Division) and the COMELEC *En Banc* Resolution promulgated on September 5, 2007 affirming the Second Division upon such bond as may be required by the Honorable Court;
2. after due hearing, the questioned Resolution of July 10, 2007 of the COMELEC (Second Resolution) and the COMELEC *En Banc* Resolution promulgated on September 5, 2007 be both reversed and set aside;
3. petitioner be ordered proclaimed as the duly elected Representative of the First Congressional District of the Province of Lanao del Norte in the May 14, 2007 elections;
4. for such other relief as may be deemed just and equitable under the premises.[5]

[5] *Rollo,* p. 25.

On September 13, 2007, Dimaporo filed an urgent motion reiterating the prayer for the issuance of a temporary restraining order. This was followed by the filing of a manifestation and motion for the issuance of a *status quo ante* order and/or temporary restraining order on September 25, 2007. On October 1, 2007, Dimaporo, again, filed a motion to maintain the *status quo* at the time of the filing of the petition.

On October 2, 2007, the Court *En Banc*, acting upon Dimaporo's motion for the issuance of a *status quo ante* order and/or temporary restraining order, issued the following Resolution:

> Acting on the Manifestation and Motion for the Issuance of a *Status Quo Ante* Order and/or Temporary Restraining Order dated September 12, 2007 filed by counsel for petitioner, the Court Resolved to require public respondent Commission on Elections to observe the *STATUS QUO* prevailing at the time of the filing of the petition and refrain from implementing the resolutions of July 10, 2007 and September 5, 2007 of the COMELEC Second Division and *En Banc,* respectively.
>
> The Court further Resolved to NOTE the Motion to Maintain the *Status Quo* at the Time of the Filing of the Petition, dated October 1, 2007, filed by counsel for petitioner.

The succeeding day, October 3, 2007, a *status quo ante* order was issued to the COMELEC stating:

> NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, Respondent COMELEC, your agents, representatives, or persons acting in your place and stead, are hereby required to observe the *STATUS QUO* that is prevailing at the time of the filing of the petition.

On October 8, 2007, private respondent Belmonte filed his comment in which he brought to Our attention that on September 26, 2007, even before the issuance of the *status quo ante* order of the Court, he had already been proclaimed by the PBOC as the duly elected Member of the House of Representatives of the First Congressional District of Lanao del Norte. On that very same day, he had taken his oath before

Speaker of the House Jose de Venecia, Jr. and assumed his duties accordingly.

In light of this development, jurisdiction over this case has already been transferred to the House of Representatives Electoral Tribunal (HRET). When there has been a proclamation and a defeated candidate claims to be the winner, it is the Electoral Tribunal already that has jurisdiction over the case.[6]

In *Lazatin v. Commission on Elections*,[7] the Court had this to say:

> The petition is impressed with merit because petitioner has been proclaimed winner of the Congressional elections in the first district of Pampanga, has taken his oath of office as such, and assumed his duties as Congressman. *For this Court to take cognizance of the electoral protest against him would be to usurp the function of the House Electoral Tribunal. The alleged invalidity of the proclamation (which had been previously ordered by the COMELEC itself) despite alleged irregularities in connection therewith, and despite the pendency of protests of the rival candidates, is a matter that is also addressed, considering the premises, to the sound judgment of the Electoral Tribunal*. (Emphasis supplied)

This was reiterated in *Aggabao v. Commission on Elections*:[8]

> The HRET has sole and exclusive jurisdiction overall contests relative to the election, returns, and qualifications of members of the House of Representatives. Thus, once a winning candidate has been proclaimed, taken his oath, and assumed office as a Member of the House of Representatives, COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins.

The COMELEC was not amiss in quickly deciding Belmonte's petition to correct manifest errors then proclaiming him the winner. Election cases are imbued with public interest.[9] They

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[6] CONSTITUTION (1987), Art. VI, Sec. 17.

[7] G.R. No. 80007, January 25, 1988, 157 SCRA 337, 338.

[8] G.R. No. 163756, January 26, 2005, 449 SCRA 400, 404-405.

[9] *Garcia v. Court of Appeals,* G.R. No. 31775, December 28, 1970, 36 SCRA 582.

involve not only the adjudication of the private interest of rival candidates but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the offices within their gift.[10] It has always been the policy of the election law that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible.[11]

Considering that at the time of proclamation, there had yet been no *status quo ante* order or temporary restraining order from the court, such proclamation is valid and, as such, it has vested the HRET with jurisdiction over the case as Belmonte has, with the taking of his oath, already become one of their own.

Hence, should Dimaporo wish to pursue further her claim to the congressional seat, the filing of an election protest before the HRET would be the appropriate course of action.

WHEREFORE, the petition is *DISMISSED*.

SO ORDERED.

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

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[10] *Vda. De Mesa v. Mencias,* G.R. No. L-24583, October 29, 1966, 18 SCRA 533, 538.

[11] *Sanchez v. Commission on Elections,* G.R. No. 78461, August 12, 1987, 153 SCRA 67, 75.

FIRST DIVISION

[A.C. No. 5281. February 12, 2008]

MANUEL L. LEE, *complainant, vs.* **ATTY. REGINO B. TAMBAGO,** *respondent.*

SYLLABUS

1. CIVIL LAW; SUCCESSION; WILLS; NOTARIAL WILL; FORMAL REQUIREMENTS; A NOTARIAL WILL ATTESTED BY ONLY TWO WITNESSES IS CONSIDERED VOID.— A will is an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate, to take effect after his death. A will may either be notarial or holographic. The law provides for certain formalities that must be followed in the execution of wills. The object of solemnities surrounding the execution of wills is to close the door on bad faith and fraud, to avoid substitution of wills and testaments and to guarantee their truth and authenticity. A notarial will, as the contested will in this case, is required by law to be subscribed at the end thereof by the testator himself. In addition, it should be attested and subscribed by three or more credible witnesses in the presence of the testator and of one another. The will in question was attested by only two witnesses, Noynay and Grajo. On this circumstance alone, the will must be considered void. This is in consonance with the rule that acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

2. ID.; ID.; ID.; ID.; ID.; ACKNOWLEDGMENT IN A NOTARIAL WILL, TWO-FOLD PURPOSE; NOTARIAL REQUIREMENT NOT COMPLIED WITH IN CASE AT BAR.— The Civil Code likewise requires that a will must be acknowledged before a notary public by the testator and the witnesses. The importance of this requirement is highlighted by the fact that it was segregated from the other requirements under Article 805 and embodied in a distinct and separate provision. An acknowledgment is the act of one who has executed a deed in going before some competent officer or

court and declaring it to be his act or deed. It involves an extra step undertaken whereby the signatory actually declares to the notary public that the same is his or her own free act and deed. The acknowledgment in a notarial will has a two-fold purpose: (1) to safeguard the testator's wishes long after his demise and (2) to assure that his estate is administered in the manner that he intends it to be done. A cursory examination of the acknowledgment of the will in question shows that this particular requirement was neither strictly nor substantially complied with. For one, there was the conspicuous absence of a notation of the residence certificates of the notarial witnesses Noynay and Grajo in the acknowledgment. Similarly, the notation of the testator's old residence certificate in the same acknowledgment was a clear breach of the law. These omissions by respondent invalidated the will.

3. LEGAL ETHICS; NOTARIAL LAW; NOTARY PUBLIC; BOUND TO STRICTLY OBSERVE THE REQUIREMENTS OF NOTARIZATION.— As the acknowledging officer of the contested will, respondent was required to faithfully observe the formalities of a will and those of notarization. As we held in *Santiago v. Rafanan*: The Notarial Law is explicit on the obligations and duties of notaries public. They are required to certify that the party to every document acknowledged before him had presented the proper residence certificate (or exemption from the residence tax); and to enter its number, place of issue and date as part of such certification. These formalities are mandatory and cannot be disregarded, considering the degree of importance and evidentiary weight attached to notarized documents. A notary public, especially a lawyer, is bound to strictly observe these elementary requirements.

4. ID.; NOTARY PUBLIC; OLD NOTARIAL LAW AND THE RESIDENCE TAX ACT; VIOLATED BY THE RESPONDENT WHEN HE ALLOWED DECEDENT TO EXHIBIT AN EXPIRED RESIDENCE CERTIFICATE.— The Notarial Law then in force required the exhibition of the residence certificate upon notarization of a document or instrument: xxx. The importance of such act was further reiterated by Section 6 of the Residence Tax Act. xxx. In the issuance of a residence certificate, the law seeks to establish the true and correct identity of the person to whom it is issued,

as well as the payment of residence taxes for the current year. By having allowed decedent to exhibit an expired residence certificate, respondent failed to comply with the requirements of both the old Notarial Law and the Residence Tax Act. As much could be said of his failure to demand the exhibition of the residence certificates of Noynay and Grajo.

5. ID.; ID.; FAILURE THEREOF TO FILE IN THE ARCHIVES DIVISION A COPY OF THE NOTARIZED WILL, NOT A CAUSE FOR DISCIPLINARY ACTION.— On the issue of whether respondent was under the legal obligation to furnish a copy of the notarized will to the archives division, Article 806 provides: Art. 806. Every will must be acknowledged before a notary public by the testator and the witness. **The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.** Respondent's failure, inadvertent or not, to file in the archives division a copy of the notarized will was therefore not a cause for disciplinary action.

6. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; SECONDARY EVIDENCE; REQUIREMENTS FOR ADMISSIBILITY; NOT COMPLIED WITH IN CASE AT BAR.— A photocopy is a mere secondary evidence. It is not admissible unless it is shown that the original is unavailable. The proponent must first prove the existence and cause of the unavailability of the original, otherwise, the evidence presented will not be admitted. Thus, the photocopy of respondent's notarial register was not admissible as evidence of the entry of the execution of the will because it failed to comply with the requirements for the admissibility of secondary evidence.

7. LEGAL ETHICS; NOTARIES PUBLIC; MUST OBSERVE WITH UTMOST CARE AND FIDELITY THE BASIC REQUIREMENTS IN THE PERFORMANCE OF THEIR DUTIES.— Notaries public must observe with utmost care and utmost fidelity the basic requirements in the performance of their duties, otherwise, the confidence of the public in the integrity of notarized deeds will be undermined. Defects in the observance of the solemnities prescribed by law render the entire will invalid. This carelessness cannot be taken lightly in view of the importance and delicate nature of a will,

considering that the testator and the witnesses, as in this case, are no longer alive to identify the instrument and to confirm its contents. Accordingly, respondent must be held accountable for his acts. The validity of the will was seriously compromised as a consequence of his breach of duty.

8. ID.; ID.; OLD NOTARIAL LAW; GROUNDS FOR REVOCATION OF COMMISSION.— In this connection, Section 249 of the old Notarial Law provided: Grounds for revocation of commission. — The following derelictions of duty on the part of a notary public shall, in the discretion of the proper judge of first instance, be sufficient ground for the revocation of his commission: xxx xxx xxx (b) The failure of the notary to make the proper entry or entries in his notarial register touching his notarial acts in the manner required by law. xxx xxx xxx (f) The failure of the notary to make the proper notation regarding *cedula* certificates. These gross violations of the law also made respondent liable for violation of his oath as a lawyer and constituted transgressions of Section 20 (a), Rule 138 of the Rules of Court and Canon 1 and Rule 1.01 of the CPR.

9. ID.; ID.; A LAWYER SHOULD BE A MODEL IN THE COMMUNITY IN SO FAR AS RESPECT FOR THE LAW IS CONCERNED.— The first and foremost duty of a lawyer is to maintain allegiance to the Republic of the Philippines, uphold the Constitution and obey the laws of the land. For a lawyer is the servant of the law and belongs to a profession to which society has entrusted the administration of law and the dispensation of justice. While the duty to uphold the Constitution and obey the law is an obligation imposed on every citizen, a lawyer assumes responsibilities well beyond the basic requirements of good citizenship. As a servant of the law, a lawyer should moreover make himself an example for others to emulate. Being a lawyer, he is supposed to be a model in the community in so far as respect for the law is concerned.

10. ID.; ID.; THE PRACTICE OF LAW IS A PRIVILEGE BURDENED WITH CONDITIONS; DISCIPLINARY SANCTIONS SHALL BE IMPOSED FOR BREACH OF THE CONDITIONS.— The practice of law is a privilege burdened with conditions. A breach of these conditions justifies

disciplinary action against the erring lawyer. A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgment that he has engaged in professional misconduct. These sanctions meted out to errant lawyers include disbarment, suspension and reprimand.

11. ID.; ID.; DISBARMENT; WHEN IT MAY BE IMPOSED.— Disbarment is the most severe form of disciplinary sanction. We have held in a number of cases that the power to disbar must be exercised with great caution and should not be decreed if any punishment less severe — such as reprimand, suspension, or fine — will accomplish the end desired. The rule then is that disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court.

12. ID.; ID.; IMPOSABLE PENALTY FOR FAILURE TO PERFORM THE ELEMENTARY DUTIES OF THEIR OFFICE.— Respondent, as notary public, evidently failed in the performance of the elementary duties of his office. Contrary to his claims that he "exercised his duties as Notary Public with due care and with due regard to the provision of existing law and had complied with the elementary formalities in the performance of his duties xxx," we find that he acted very irresponsibly in notarizing the will in question. Such recklessness warrants the less severe punishment of suspension from the practice of law. It is, as well, a sufficient basis for the revocation of his commission and his perpetual disqualification to be commissioned as a notary public.

APPEARANCES OF COUNSEL

Public Attorney's Office for complainant.

R E S O L U T I O N

CORONA, *J.*:

In a letter-complaint dated April 10, 2000, complainant Manuel L. Lee charged respondent Atty. Regino B. Tambago with

violation of the Notarial Law and the ethics of the legal profession for notarizing a spurious last will and testament.

In his complaint, complainant averred that his father, the decedent Vicente Lee, Sr., never executed the contested will. Furthermore, the spurious will contained the forged signatures of Cayetano Noynay and Loreto Grajo, the purported witnesses to its execution.

In the said will, the decedent supposedly bequeathed his entire estate to his wife Lim Hock Lee, save for a parcel of land which he devised to Vicente Lee, Jr. and Elena Lee, half-siblings of complainant.

The will was purportedly executed and acknowledged before respondent on June 30, 1965.[1] Complainant, however, pointed out that the residence certificate[2] of the testator noted in the acknowledgment of the will was dated January 5, 1962.[3] Furthermore, the signature of the testator was not the same as his signature as donor in a deed of donation[4] (containing his purported genuine signature). Complainant averred that the signatures of his deceased father in the will and in the deed of donation were "in any way (sic) entirely and diametrically opposed from (sic) one another in all angle[s]."[5]

Complainant also questioned the absence of notation of the residence certificates of the purported witnesses Noynay and Grajo. He alleged that their signatures had likewise been forged and merely copied from their respective voters' affidavits.

Complainant further asserted that no copy of such purported will was on file in the archives division of the Records Management and Archives Office of the National Commission for Culture and the Arts (NCCA). In this connection, the

[1] *Rollo*, p. 3.

[2] Now known as Community Tax Certificate.

[3] Page two, Last Will and Testament of Vicente Lee, Sr., *rollo*, p. 3.

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

[5] *Id*., p. 1.

certification of the chief of the archives division dated September 19, 1999 stated:

> Doc. 14, Page No. 4, Book No. 1, Series of 1965 refers to an AFFIDAVIT executed by BARTOLOME RAMIREZ on June 30, 1965 and is available in this Office['s] files.[6]

Respondent in his comment dated July 6, 2001 claimed that the complaint against him contained false allegations: (1) that complainant was a son of the decedent Vicente Lee, Sr. and (2) that the will in question was fake and spurious. He alleged that complainant was "not a legitimate son of Vicente Lee, Sr. and the last will and testament was validly executed and actually notarized by respondent per affidavit [7] of Gloria Nebato, common-law wife of Vicente Lee, Sr. and corroborated by the joint affidavit[8] of the children of Vicente Lee, Sr., namely Elena N. Lee and Vicente N. Lee, Jr. xxx."[9]

Respondent further stated that the complaint was filed simply to harass him because the criminal case filed by complainant against him in the Office of the Ombudsman "did not prosper."

Respondent did not dispute complainant's contention that no copy of the will was on file in the archives division of the NCCA. He claimed that no copy of the contested will could be found there because none was filed.

Lastly, respondent pointed out that complainant had no valid cause of action against him as he (complainant) did not first file an action for the declaration of nullity of the will and demand his share in the inheritance.

In a resolution dated October 17, 2001, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[10]

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[6] *Rollo*, p. 9.

[7] Dated July 11, 2001. *Id*., p. 94.

[8] Dated July 11, 2001. *Id*., p. 95.

[9] *Id*., p. 90.

[10] *Rollo*, p. 107.

In his report, the investigating commissioner found respondent guilty of violation of pertinent provisions of the old Notarial Law as found in the Revised Administrative Code. The violation constituted an infringement of legal ethics, particularly Canon 1[11] and Rule 1.01[12] of the Code of Professional Responsibility (CPR).[13] Thus, the investigating commissioner of the IBP Commission on Bar Discipline recommended the suspension of respondent for a period of three months.

The IBP Board of Governors, in its Resolution No. XVII-2006-285 dated May 26, 2006, resolved:

> [T]o ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification,** the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's failure to comply with the laws in the discharge of his function as a notary public, Atty. Regino B. Tambago is hereby suspended from the practice of law for one year and Respondent's notarial commission is **Revoked and Disqualified** from reappointment as Notary Public for two (2) years.[14]

We affirm with modification.

A will is an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate, to take effect after his death.[15] A will may either be notarial or holographic.

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[11] CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

[12] Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[13] Annex "A", Report and Recommendation by Commissioner Elpidio G. Soriano III, dated February 27, 2006. *Rollo*, p. 13.

[14] Notice of Resolution, IBP Board of Governors. (Emphasis in the original)

[15] CIVIL CODE, Art. 783.

The law provides for certain formalities that must be followed in the execution of wills. The object of solemnities surrounding the execution of wills is to close the door on bad faith and fraud, to avoid substitution of wills and testaments and to guarantee their truth and authenticity.[16]

A notarial will, as the contested will in this case, is required by law to be subscribed at the end thereof by the testator himself. In addition, it should be attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.[17]

The will in question was attested by only two witnesses, Noynay and Grajo. On this circumstance alone, the will must be considered void.[18] This is in consonance with the rule that acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

The Civil Code likewise requires that a will must be acknowledged before a notary public by the testator and the witnesses.[19] The importance of this requirement is highlighted by the fact that it was segregated from the other requirements under Article 805 and embodied in a distinct and separate provision.[20]

An acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring it to be his act or deed. It involves an extra step undertaken whereby the signatory actually declares to the notary public

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[16] Jurado, Desiderio P., *COMMENTS AND JURISPRUDENCE ON SUCCESSION*, 8th ed. (1991), Rex Bookstore, Inc., p. 52. *In re: Will of Tan Diuco*, 45 Phil. 807 (1924); *Unson v. Abella*, 43 Phil. 494 (1922); *Aldaba v. Roque*, 43 Phil. 379 (1922); *Avera v. Garcia*, 42 Phil. 145 (1921); *Abangan v. Abangan*, 40 Phil. 476 (1919).

[17] CIVIL CODE, Art. 804.

[18] CIVIL CODE, Art. 5.

[19] CIVIL CODE, Art. 806.

[20] *Azuela v. Court of Appeals*, G.R. No. 122880, 12 April 2006, 487 SCRA 142.

that the same is his or her own free act and deed.[21] The acknowledgment in a notarial will has a two-fold purpose: (1) to safeguard the testator's wishes long after his demise and (2) to assure that his estate is administered in the manner that he intends it to be done.

A cursory examination of the acknowledgment of the will in question shows that this particular requirement was neither strictly nor substantially complied with. For one, there was the conspicuous absence of a notation of the residence certificates of the notarial witnesses Noynay and Grajo in the acknowledgment. Similarly, the notation of the testator's old residence certificate in the same acknowledgment was a clear breach of the law. These omissions by respondent invalidated the will.

As the acknowledging officer of the contested will, respondent was required to faithfully observe the formalities of a will and those of notarization. As we held in *Santiago v. Rafanan*:[22]

> The Notarial Law is explicit on the obligations and duties of notaries public. They are required to certify that the party to every document acknowledged before him had presented the proper residence certificate (or exemption from the residence tax); and to enter its number, place of issue and date as part of such certification.

These formalities are mandatory and cannot be disregarded, considering the degree of importance and evidentiary weight attached to notarized documents.[23] A notary public, especially a lawyer,[24] is bound to strictly observe these elementary requirements.

The Notarial Law then in force required the exhibition of the residence certificate upon notarization of a document or instrument:

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[21] *Id*.

[22] A.C. No. 6252, 5 October 2004, 440 SCRA 98.

[23] *Santiago v. Rafanan*, *id*., at 99.

[24] Under the old Notarial Law, non-lawyers may be commissioned as notaries public subject to certain conditions. Under the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC, effective August 1, 2004), however, only lawyers may be granted a notarial commission.

Section 251. Requirement as to notation of payment of [*cedula*] residence tax. – Every contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper [*cedula*] residence certificate or are exempt from the [*cedula*] residence tax, and there shall be entered by the notary public as a part of such certificate the number, place of issue, and date of each [*cedula*] residence certificate as aforesaid.[25]

The importance of such act was further reiterated by Section 6 of the Residence Tax Act[26] which stated:

When a person liable to the taxes prescribed in this Act acknowledges any document before a notary public xxx it shall be the duty of such person xxx with whom such transaction is had or business done, to require the exhibition of the residence certificate showing payment of the residence taxes by such person xxx.

In the issuance of a residence certificate, the law seeks to establish the true and correct identity of the person to whom it is issued, as well as the payment of residence taxes for the current year. By having allowed decedent to exhibit an expired residence certificate, respondent failed to comply with the requirements of both the old Notarial Law and the Residence Tax Act. As much could be said of his failure to demand the exhibition of the residence certificates of Noynay and Grajo.

On the issue of whether respondent was under the legal obligation to furnish a copy of the notarized will to the archives division, Article 806 provides:

Art. 806. Every will must be acknowledged before a notary public by the testator and the witness. **The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.** (emphasis supplied)

Respondent's failure, inadvertent or not, to file in the archives division a copy of the notarized will was therefore not a cause for disciplinary action.

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[25] REVISED ADMINISTRATIVE CODE, Book I, Title IV, Chapter 11, Sec. 251.

[26] Commonwealth Act No. 465.

Nevertheless, respondent should be faulted for having failed to make the necessary entries pertaining to the will in his notarial register. The old Notarial Law required the entry of the following matters in the notarial register, in chronological order:

1. nature of each instrument executed, sworn to, or acknowledged before him;
2. person executing, swearing to, or acknowledging the instrument;
3. witnesses, if any, to the signature;
4. date of execution, oath, or acknowledgment of the instrument;
5. fees collected by him for his services as notary;
6. give each entry a consecutive number; and
7. if the instrument is a contract, a brief description of the substance of the instrument.[27]

In an effort to prove that he had complied with the abovementioned rule, respondent contended that he had crossed out a prior entry and entered instead the will of the decedent. As proof, he presented a photocopy of his notarial register. To reinforce his claim, he presented a photocopy of a certification[28] stating that the archives division had no copy of the affidavit of Bartolome Ramirez.

A photocopy is a mere secondary evidence. It is not admissible unless it is shown that the original is unavailable. The proponent must first prove the existence and cause of the unavailability of the original,[29] otherwise, the evidence presented will not be

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[27] REVISED ADMINISTRATIVE CODE, Book I, Title IV, Chapter 11, Sec. 246.

[28] Dated March 15, 2000. *Rollo*, p. 105.

[29] "*When the original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated." RULES OF COURT, Rule 130, Sec. 5.

admitted. Thus, the photocopy of respondent's notarial register was not admissible as evidence of the entry of the execution of the will because it failed to comply with the requirements for the admissibility of secondary evidence.

In the same vein, respondent's attempt to controvert the certification dated September 21, 1999[30] must fail. Not only did he present a mere photocopy of the certification dated March 15, 2000;[31] its contents did not squarely prove the fact of entry of the contested will in his notarial register.

Notaries public must observe with utmost care[32] and utmost fidelity the basic requirements in the performance of their duties, otherwise, the confidence of the public in the integrity of notarized deeds will be undermined.[33]

Defects in the observance of the solemnities prescribed by law render the entire will invalid. This carelessness cannot be taken lightly in view of the importance and delicate nature of a will, considering that the testator and the witnesses, as in this case, are no longer alive to identify the instrument and to confirm its contents.[34] Accordingly, respondent must be held accountable for his acts. The validity of the will was seriously compromised as a consequence of his breach of duty.[35]

In this connection, Section 249 of the old Notarial Law provided:

Grounds for revocation of commission. — The following derelictions of duty on the part of a notary public shall, in the discretion of the proper judge of first instance, be sufficient ground for the revocation of his commission:

xxx xxx xxx

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[30] *Supra* note 6.

[31] *Rollo*, p. 105.

[32] *Bon v. Ziga*, A.C. No. 5436, 27 May 2004, 429 SCRA 185.

[33] *Zaballero v. Montalvan*, A.C. No. 4370, 25 May 2004, 429 SCRA 78.

[34] Annex "A", Report and Recommendation by Commissioner Elpidio G. Soriano III, dated February 27, 2006, *rollo*, p. 12.

[35] *Id*., p. 13.

(b) The failure of the notary to make the proper entry or entries in his notarial register touching his notarial acts in the manner required by law.

xxx xxx xxx

(f) The failure of the notary to make the proper notation regarding *cedula* certificates.[36]

These gross violations of the law also made respondent liable for violation of his oath as a lawyer and constituted transgressions of Section 20 (a), Rule 138 of the Rules of Court[37] and Canon 1[38] and Rule 1.01[39] of the CPR.

The first and foremost duty of a lawyer is to maintain allegiance to the Republic of the Philippines, uphold the Constitution and obey the laws of the land.[40] For a lawyer is the servant of the law and belongs to a profession to which society has entrusted the administration of law and the dispensation of justice.[41]

While the duty to uphold the Constitution and obey the law is an obligation imposed on every citizen, a lawyer assumes responsibilities well beyond the basic requirements of good citizenship. As a servant of the law, a lawyer should moreover make himself an example for others to emulate.[42] Being a lawyer,

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[36] REVISED ADMINISTRATIVE CODE, Book 1, Title IV, Chapter 11.

[37] "*Duties of attorneys.* — It is the duty of an attorney:

(a) To maintain allegiance to the Republic of the Philippines and to support the Constitution and obey the laws of the Philippines;

(b) Xxx," RULES OF COURT, Rule 138, Sec. 20, par. (a).

[38] CANON 1, *supra* note 11.

[39] Rule 1.01, *supra* note 12.

[40] *Montecillo v. Gica*, 158 Phil. 443 (1974). *Zaldivar v. Gonzales*, G.R. Nos. 79690-707, 7 October 1988, 166 SCRA 316.

[41] Agpalo, Ruben E., *LEGAL AND JUDICIAL ETHICS*, 7th Edition (2002), Rex Bookstore, Inc., p. 69. Comments of IBP Committee that drafted the Code of Professional Responsibility, pp. 1-2 (1980).

[42] *Id*.

he is supposed to be a model in the community in so far as respect for the law is concerned.[43]

The practice of law is a privilege burdened with conditions.[44] A breach of these conditions justifies disciplinary action against the erring lawyer. A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgment that he has engaged in professional misconduct.[45] These sanctions meted out to errant lawyers include disbarment, suspension and reprimand.

Disbarment is the most severe form of disciplinary sanction.[46] We have held in a number of cases that the power to disbar must be exercised with great caution[47] and should not be decreed if any punishment less severe — such as reprimand, suspension, or fine — will accomplish the end desired.[48] The rule then is that disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court.[49]

Respondent, as notary public, evidently failed in the performance of the elementary duties of his office. Contrary to his claims that he "exercised his duties as Notary Public with due care and with due regard to the provision of existing law and had complied with the elementary formalities in the performance of his duties xxx," we find that he acted very irresponsibly in

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[43] *Id*.

[44] Agpalo, Ruben E., *LEGAL AND JUDICIAL ETHICS*, 7th Edition (2002), Rex Bookstore, Inc., p. 465.

[45] Guidelines for Imposing Lawyer Sanctions, Integrated Bar of the Philippines Commission on Bar Discipline.

[46] *San Jose Homeowners Association, Inc. v. Romanillos*, A.C. No. 5580, 15 June 2005, 460 SCRA 105.

[47] *Santiago v. Rafanan*, *supra* note 22 at 101. *Alitagtag v. Garcia*, A.C. No. 4738, 10 June 2003, 403 SCRA 335.

[48] *Suzuki v. Tiamson*, A.C. No. 6542, 30 September 2005, 471 SCRA 140; *Amaya v. Tecson*, A.C. No. 5996, 7 February 2005, 450 SCRA 510, 516.

[49] *Bantolo v. Castillon, Jr.*, A.C. No. 6589, 19 December 2005, 478 SCRA 449.

notarizing the will in question. Such recklessness warrants the less severe punishment of suspension from the practice of law. It is, as well, a sufficient basis for the revocation of his commission[50] and his perpetual disqualification to be commissioned as a notary public.[51]

WHEREFORE, respondent Atty. Regino B. Tambago is hereby found guilty of professional misconduct. He violated (1) the Lawyer's Oath; (2) Rule 138 of the Rules of Court; (3) Canon 1 and Rule 1.01 of the Code of Professional Responsibility; (4) Art. 806 of the Civil Code and (5) the provisions of the old Notarial Law.

Atty. Regino B. Tambago is hereby *SUSPENDED* from the practice of law for one year and his notarial commission *REVOKED*. Because he has not lived up to the trustworthiness expected of him as a notary public and as an officer of the court, he is *PERPETUALLY DISQUALIFIED* from reappointment as a notary public.

Let copies of this Resolution be furnished to all the courts of the land, the Integrated Bar of the Philippines and the Office of the Bar Confidant, as well as made part of the personal records of respondent.

SO ORDERED.

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

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[50] *Cabanilla v. Cristal-Tenorio*, A.C. No. 6139, 11 November 2003, 415 SCRA 361. *Guerrero v. Hernando*, 160-A Phil. 725 (1975).

[51] *Tan Tiong Bio v. Gonzales*, A.C. No. 6634, 23 August 2007.

EN BANC

[A.C. No. 7657. February 12, 2008]

VIVIAN VILLANUEVA, *complainant, vs.* **ATTY. CORNELIUS M. GONZALES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; FAILURE TO IMMEDIATELY ACCOUNT FOR AND RETURN THE CLIENT'S MONEY WHEN DUE AND UPON DEMAND DEMONSTRATED THE LAWYER'S LACK OF INTEGRITY AND MORAL SOUNDNESS AND WARRANTS THE IMPOSITION OF DISCIPLINARY ACTION; CASE AT BAR.— Canon 16 states that *a lawyer shall hold in trust all moneys of his client that may come into his possession*. Rule 16.01 of the Code states that *a lawyer shall account for all money received from the client*. Rule 16.03 of the Code states that *a lawyer shall deliver the funds of his client when due or upon demand*. In *Meneses v. Macalino*, the Court held that "if [a] lawyer does not use the money for the intended purpose, the lawyer must *immediately* return the money to the client." In the instant case, respondent demanded ₱10,000 and received ₱8,000 as acceptance fee. Since he did not render *any* legal service, he should have *promptly* accounted for and returned the money to complainant. He did not. After receiving the money, respondent began to avoid complainant. He asked his secretary to lie to complainant and shoo her off. When complainant demanded for the return of the money after *three years* of not hearing from respondent, respondent opted to ignore the demand. Respondent only returned the money after complainant's daughter confronted him. If complainant's daughter had not persisted, respondent would not have returned the money. Respondent did not offer any explanation as to why he waited for three years to lapse before returning the money. In *Macarilay v. Seriña*, the Court held that "[t]he unjustified withholding of funds belonging to the client warrants the imposition of disciplinary action against the lawyer." Respondent's failure to immediately account for and return the money when due and upon demand violated the

trust reposed in him, demonstrated his lack of integrity and moral soundness, and warrants the imposition of disciplinary action. It gave rise to the presumption that he converted the money to his own use and constituted a gross violation of professional ethics and a betrayal of public confidence in the legal profession.

2. ID.; ID.; ID.; FAILURE OF THE LAWYER TO RETURN THE CASE DOCUMENTS TO THE CLIENT, UPON DEMAND, IS REPREHENSIBLE.— Canon 16 of the Code of Professional Responsibility states that *a lawyer shall hold in trust all properties of his client that may come into his possession*. Rule 16.03 of the Code states that *a lawyer shall deliver the property of his client when due or upon demand*. The TCT and other documents are the properties of complainant. Since respondent did not render any legal service to complainant, he should have returned complainant's properties to her. However, he refuses without any explanation to return them. Respondent has kept the TCT and other documents in his possession since 2000. He refuses to return them despite receiving a written demand and being confronted by complainant's daughter. In *Vda. De Enriquez v. San Jose*, the Court held that failure to return the documents to the client is *reprehensible*: "this Court finds reprehensible respondent's failure to heed the request of his client for the return of the case documents. That respondent gave no reasonable explanation for that failure makes his neglect patent."

3. ID.; ID.; ID.; CANON 17 AND 18 THEREOF; VIOLATED WHERE THE LAWYER RECEIVED FROM THE CLIENT AN ACCEPTANCE FEE FOR LEGAL SERVICES AND SUBSEQUENTLY FAILED TO RENDER SUCH SERVICE.— Canon 17 of the Code of Professional Responsibility states that *a lawyer owes fidelity to the cause of his client*. Canon 18 of the Code states that "[*a*] *lawyer shall serve his client with competence and diligence*." Rule 18.03 of the Code states that "[*a*] *lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable*." Clearly, respondent did not serve complainant with fidelity, competence, or diligence. He totally neglected complainant's cause. An attorney-client relationship between respondent and complainant was established when respondent

accepted the acceptance fee. Since then, he should have exercised due diligence in furthering his client's cause and given it his full attention. Respondent did not render *any* service. Once a lawyer agrees to handle a case, he is bound by the Canons of the Code of Professional Responsibility. In *Emiliano Court Townhouses v. Atty. Dioneda*, the Court held that the act of receiving money as acceptance fee for legal services and subsequently failing to render such service is a clear violation of Canons 17 and 18.

4. ID.; ID.; ID.; RULE 18.04; A LAWYER SHOULD KEEP HIS CLIENT INFORMED OF THE STATUS OF HER CASE AND SHOULD RESPOND TO HER REQUESTS FOR INFORMATION.— Rule 18.04 of the Code of Professional Responsibility states that "[*a*] *lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information*." Respondent avoided complainant for three years and kept her in the dark. He did not give her *any* information about the status of her case or respond to her request for information. After giving the money, complainant never heard from respondent again. Complainant went to respondent's office several times to request for information. Every time, respondent avoided complainant and gave her the run-around. xxx. Respondent unjustifiably denied complainant of her right to be fully informed of the status of her case, and disregarded his duties as a lawyer.

5. ID.; ID.; FAILURE THEREOF TO FILE AN ANSWER TO THE COMPLAINT AND TO ATTEND THE HEARING BEFORE THE INTEGRATED BAR OF THE PHILIPPINES DEMONSTRATE A HIGH DEGREE OF IRRESPONSIBILITY.— Respondent's repeated failure to file an answer to the complaint and to appear at the 2 June 2004 mandatory conference aggravate his misconduct. These demonstrate his high degree of irresponsibility and lack of respect for the IBP and its proceedings. His attitude stains the nobility of the legal profession.

6. ID.; ID.; SUSPENSION FROM THE PRACTICE OF LAW FOR TWO YEARS SHALL BE IMPOSED FOR FAILURE OF THE LAWYER TO RENDER ANY LEGAL SERVICE AFTER RECEIVING A FEE AND FOR HIS FAILURE TO

INFORM THE CLIENT OF THE STATUS OF THE CASE AND TO RETURN THE MONEY AND THE DOCUMENT RECEIVED.— The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. The Court finds the recommended penalty inadequate. In *Rollon*, the Court suspended a lawyer from the practice of law for two years for failing to render any legal service after receiving money and for failing to return the money and documents he received. xxx. In *Small*, the Court suspended a lawyer from the practice of law for two years for failing to render any legal service after receiving money, failing to inform his client of the status of the case, and failing to promptly account for and return the money he received. The Court notes that respondent does not have to return any amount to complainant. Complainant gave respondent only ₱8,000, not ₱10,000, and respondent has returned the total amount he received. Lawyers are expected to always live up to the standards embodied in the Code of Professional Responsibility because an attorney-client relationship is highly fiduciary in nature and demands utmost fidelity and good faith. Those who violate the Code must be disciplined. Respondent failed to live up to these standards.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a complaint Vivian Villanueva (complainant) filed against Atty. Cornelius M. Gonzales (respondent) for failure to render legal services and failure to return the money, Transfer Certificate of Title (TCT), and other documents he received from complainant.

The Facts

Sometime in 2000, complainant engaged the services of respondent for the purpose of transferring the title over a piece of property located in Talisay, Cebu. Complainant, as mortgagee, wanted to transfer the title to her name because the mortgagor failed to redeem the property within the redemption period and

the sheriff had already issued a sheriff's definite deed of sale in complainant's favor. Complainant gave respondent ₱8,000 as acceptance fee, the property's TCT, and other pertinent documents.[1]

After receiving the money, TCT, and other documents, respondent began to avoid complainant. Whenever complainant went to respondent's office at BPI Building, Escario St., Cebu City, respondent's secretary would tell her that respondent could not be disturbed because he was either sleeping or doing something important.[2]

In a letter dated 2 July 2003,[3] complainant told respondent that she had lost her trust and confidence in him and asked him to return the ₱8,000, TCT, and other documents. Respondent refused to return the money, TCT, and other documents. After some time and after complainant's daughter confronted him, respondent finally returned the money. However, until now, respondent has not returned the TCT and other documents.[4] Thus, complainant filed a complaint[5] dated 10 September 2003 against respondent before the Integrated Bar of the Philippines (IBP).

In an Order[6] dated 7 October 2003, IBP Director for Bar Discipline Rogelio A. Vinluan ordered respondent to submit his answer to the complaint. Respondent did not submit an answer.[7] In an Order[8] dated 21 April 2004, IBP Commissioner for Bar Discipline Rebecca Villanueva-Maala ordered respondent to submit his answer to the complaint, and set the mandatory conference on 2 June 2004. Respondent did not submit an answer or attend

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[1] *Rollo*, p. 9.

[2] *Id*.

[3] *Id*. at 2.

[4] *Id*. at 12.

[5] *Id*. at 9-10.

[6] *Id*. at 18.

[7] IBP Report and Recommendation, 27 October 2006, p. 1.

[8] *Rollo*, p. 23.

the mandatory conference. The Commission on Bar Discipline considered the case submitted for resolution.[9]

The IBP's Report and Recommendations

In a Report[10] dated 27 October 2006, IBP Commissioner for Bar Discipline Caesar R. Dulay (Commissioner Dulay) found respondent guilty of misconduct and negligent behavior: (1) he failed to perform any legal service to his client, (2) he did not inform his client about the status of the case, (3) he returned the ₱8,000 acceptance fee without any explanation, and (4) he was indifferent. Commissioner Dulay found that respondent violated Canons 16 and 18 of the Code of Professional Responsibility and recommended his suspension from the practice of law for one year.

In a Resolution[11] dated 31 May 2007, the IBP Board of Governors (IBP Board) adopted and approved the Report dated 27 October 2006 with modification. The IBP Board suspended respondent from the practice of law for six months and ordered him to return to complainant the ₱2,000, TCT, and the other documents.

As provided in Section 12(b), Rule 139-B of the Rules of Court,[12] the IBP Board forwarded the instant case to the Court for final action.

The Court's Ruling

The Court sustains the findings and recommendations of the IBP with modification. Respondent violated Canons 16, 17, and

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[9] Report and Recommendation, 27 October 2006, p. 2.

[10] Report and Recommendation, 27 October 2006.

[11] Notice of Resolution.

[12] Section 12(b), Rule 139-B of the Rules of Court provides:

SEC. 12. *Review and decision by the Board of Governors*.—

x x x x x x x x x

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

18, and Rules 16.01, 16.03, 18.03, and 18.04 of the Code of Professional Responsibility.

Respondent Refused to Account for and Return His Client's Money

Canon 16 states that *a lawyer shall hold in trust all moneys of his client that may come into his possession*. Rule 16.01 of the Code states that *a lawyer shall account for all money received from the client*. Rule 16.03 of the Code states that *a lawyer shall deliver the funds of his client when due or upon demand*.

In *Meneses v. Macalino*,[13] the Court held that "if [a] lawyer does not use the money for the intended purpose, the lawyer must *immediately* return the money to the client." In the instant case, respondent demanded ₱10,000 and received ₱8,000 as acceptance fee. Since he did not render *any* legal service, he should have *promptly* accounted for and returned the money to complainant.[14] He did not.

After receiving the money, respondent began to avoid complainant. He asked his secretary to lie to complainant and shoo her off. When complainant demanded for the return of the money after *three years* of not hearing from respondent, respondent opted to ignore the demand. Respondent only returned the money after complainant's daughter confronted him. If complainant's daughter had not persisted, respondent would not have returned the money. Respondent did not offer any explanation as to why he waited for three years to lapse before returning the money. In *Macarilay v. Seriña*,[15] the Court held that "[t]he unjustified withholding of funds belonging to the client warrants the imposition of disciplinary action against the lawyer."

Respondent's failure to immediately account for and return the money when due and upon demand violated the trust reposed

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[13] A.C. No. 6651, 27 February 2006, 483 SCRA 212, 219.

[14] *Small v. Banares*, A.C. No. 7021, 21 February 2007, 516 SCRA 323, 328.

[15] A.C. No. 6591, 4 May 2005, 458 SCRA 12, 25.

in him, demonstrated his lack of integrity[16] and moral soundness,[17] and warrants the imposition of disciplinary action.[18] It gave rise to the presumption that he converted the money to his own use and constituted a gross violation of professional ethics and a betrayal of public confidence in the legal profession.[19]

Respondent Refuses to Return His Client's TCT and Other Documents

Canon 16 of the Code of Professional Responsibility states that *a lawyer shall hold in trust all properties of his client that may come into his possession*. Rule 16.03 of the Code states that *a lawyer shall deliver the property of his client when due or upon demand*.

The TCT and other documents are the properties of complainant. Since respondent did not render any legal service to complainant, he should have returned complainant's properties to her. However, he refuses without any explanation to return them. Respondent has kept the TCT and other documents in his possession since 2000. He refuses to return them despite receiving a written demand and being confronted by complainant's daughter. In *Vda. De Enriquez v. San Jose*,[20] the Court held that failure to return the documents to the client is *reprehensible*: "this Court finds reprehensible respondent's failure to heed the request of his client for the return of the case documents. That respondent gave no reasonable explanation for that failure makes his neglect patent."

Respondent Failed to Serve His Client with Fidelity, Competence, and Diligence

Canon 17 of the Code of Professional Responsibility states that *a lawyer owes fidelity to the cause of his client*. Canon 18

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[16] *Id*.

[17] *Rollon v. Naraval*, A.C. No. 6424, 4 March 2005, 452 SCRA 675, 683.

[18] *Meneses v. Macalino*, *supra* note 13, at 220.

[19] *Rollon v. Naraval*, *supra*.

[20] A.C. No. 3569, 23 February 2007, 516 SCRA 486, 491.

of the Code states that "[*a*] *lawyer shall serve his client with competence and diligence*." Rule 18.03 of the Code states that "[*a*] *lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable*."

Clearly, respondent did not serve complainant with fidelity, competence, or diligence. He totally neglected complainant's cause. An attorney-client relationship between respondent and complainant was established when respondent accepted the acceptance fee. Since then, he should have exercised due diligence in furthering his client's cause and given it his full attention.[21] Respondent did not render *any* service.

Once a lawyer agrees to handle a case, he is bound by the Canons of the Code of Professional Responsibility. In *Emiliano Court Townhouses v. Atty. Dioneda*,[22] the Court held that the act of receiving money as acceptance fee for legal services and subsequently failing to render such service is a clear violation of Canons 17 and 18.

Respondent Did Not Keep His Client Informed of the Status of Her Case and Refused to Respond to Her Requests for Information

Rule 18.04 of the Code of Professional Responsibility states that "[*a*] *lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information*."

Respondent avoided complainant for three years and kept her in the dark. He did not give her *any* information about the status of her case or respond to her request for information. After giving the money, complainant never heard from respondent again. Complainant went to respondent's office several times to request for information. Every time, respondent avoided complainant and gave her the run-around. In her affidavit, complainant stated that:

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[21] *Reyes v. Vitan*, A.C. No. 5835, 15 April 2005, 456 SCRA 87, 90.

[22] 447 Phil. 408, 413 (2003).

I often visited him in his office to make a [follow up] of the progress of the transfer x x x only [to be] told by his secretary that he [was] sleeping and not to be disturbed or [was] doing something important;

x x x **For three agonizing years, I** x x x **never received a feedback from Atty. Gonzales** so much so that I was forced [to write him] a letter which up to present remain[s] unanswered[.][23] (Emphasis ours)

Respondent unjustifiably denied complainant of her right to be fully informed of the status of her case, and disregarded his duties as a lawyer.[24]

Respondent Did Not File an Answer or Attend the Mandatory Hearing Before the IBP

Respondent's repeated failure to file an answer to the complaint and to appear at the 2 June 2004 mandatory conference aggravate his misconduct. These demonstrate his high degree of irresponsibility[25] and lack of respect for the IBP and its proceedings.[26] His attitude stains the nobility of the legal profession.[27]

On the Appropriate Penalty

The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[28] The Court finds the recommended penalty inadequate. In *Rollon*,[29] the Court suspended a lawyer from the practice of law for two years for failing to render any legal service after receiving money and for failing to return the money and documents he received. In that case, the Court held that:

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[23] *Rollo*, p. 11.

[24] *Small v. Banares*, *supra* note 14, at 327.

[25] *Meneses v. Macalino*, *supra* note 13, at 220.

[26] *Small v. Banares*, *supra* at 328.

[27] *Meneses v. Macalino*, *supra*.

[28] *Heirs of Tiburcio F. Ballesteros, Sr. v. Apiag*, A.C. No. 5760, 30 September 2005, 471 SCRA 111, 127.

[29] *Supra* note 17, at 684.

The circumstances of this case indubitably show that after receiving the amount of ₱8,000 as x x x partial service fee, respondent failed to render any legal service in relation to the case of complainant. His continuous inaction despite repeated follow-ups from her reveals his cavalier attitude and appalling indifference toward his client's cause, in brazen disregard of his duties as a lawyer. Not only that. Despite her repeated demands, he also unjustifiably failed to return to her the files of the case that had been entrusted to him. To top it all, he kept the money she had likewise entrusted to him.[30]

In *Small*,[31] the Court suspended a lawyer from the practice of law for two years for failing to render any legal service after receiving money, failing to inform his client of the status of the case, and failing to promptly account for and return the money he received.

The Court notes that respondent does not have to return any amount to complainant. Complainant gave respondent only ₱8,000, not ₱10,000, and respondent has returned the total amount he received. As stated in complainant's affidavit:

> For the legal service[s] sought, Atty. Gonzales asked an acceptance fee of ₱10,000 to which **I gave him ₱8,000** together with the pertinent [mortgage] documents needed by him for the transfer including the Transfer Certificate of Title;
>
> x x x x x x x x x
>
> [D]ue to the persistence of my daughter, Lurina Villanueva, **Atty. Gonzales returned the acceptance fee of ₱8,000** on August 5, 2003 but never returned the documents mentioned in my letter.[32] (Emphasis ours)

Lawyers are expected to always live up to the standards embodied in the Code of Professional Responsibility because an attorney-client relationship is highly fiduciary in nature and demands utmost fidelity and good faith. Those who violate the Code must be disciplined.[33] Respondent failed to live up to these standards.

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[30] *Id*. at 682.

[31] *Supra* note 24, at 329.

[32] *Rollo*, p. 11.

[33] *Igual v. Javier*, 324 Phil. 698, 709 (1996).

WHEREFORE, the Court finds respondent Atty. Cornelius M. Gonzales *GUILTY* of violating Canons 16, 17, and 18, and Rules 16.01, 16.03, 18.03, and 18.04 of the Code of Professional Responsibility. Accordingly, the Court *SUSPENDS* him from the practice of law for two years effective upon finality of this Decision, *ORDERS* him to *RETURN* the TCT and all other documents to complainant within 15 days from notice of this Decision, and *WARNS* him that a repetition of the same or similar offense, including the failure to return the TCT and all other documents as required herein, shall be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 150276. February 12, 2008]

CECILIA B. ESTINOZO, *petitioner, vs.* **COURT OF APPEALS, FORMER SIXTEENTH DIVISION, and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PETITION THEREFOR LIES ONLY WHERE THERE IS NO APPEAL OR PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE COURSE OF LAW.— Immediately apparent is that the petition is the wrong remedy to question the appellate court's issuances. Section 1 of Rule 45 of the Rules of Court expressly provides that a party desiring to appeal by *certiorari* from a judgment or final order or resolution of the CA may file a verified petition for review on *certiorari*. Considering that, in this case, appeal by *certiorari* was available to petitioner, she effectively foreclosed her right to resort to a special civil action for *certiorari*, a limited form of review and a remedy of last recourse, which lies only where there is no appeal or plain, speedy and adequate remedy in the ordinary course of law. A petition for review on *certiorari* under Rule 45 and a petition for *certiorari* under Rule 65 are mutually exclusive remedies. *Certiorari* cannot co-exist with an appeal or any other adequate remedy. The nature of the questions of law intended to be raised on appeal is of no consequence. It may well be that those questions of law will treat exclusively of whether or not the judgment or final order was rendered without or in excess of jurisdiction, or with grave abuse of discretion. This is immaterial. The remedy is appeal, not *certiorari* as a special civil action.

2. ID.; ID.; ID.; 15-DAY REGLEMENTARY PERIOD FOR APPEALING OR FILING A MOTION FOR RECONSIDERATION OR NEW TRIAL CANNOT BE EXTENDED; EXCEPTION.— Even granting *arguendo* that the instant *certiorari* petition is an appropriate remedy, still this Court cannot grant the writ prayed for because we find no grave abuse of discretion committed by the CA in the challenged issuances. The rule, as it stands now without exception, is that the 15-day reglementary period for appealing or filing a motion for reconsideration or new trial cannot be extended, except in cases before this Court, as one of last resort, which may, in its sound discretion grant the extension requested. This rule also applies even if the motion is filed before the expiration of the period sought to be extended. Thus, the appellate court

correctly denied petitioner's Motion for Extension of Time to File a Motion for Reconsideration.

3. ID.; ID.; ID.; NOT A SUBSTITUTE FOR THE LOST APPEAL.— It is well to point out that with petitioner's erroneous filing of a motion for extension of time and with her non-filing of a motion for reconsideration or a petition for review from the CA's decision, the challenged decision has already attained finality and may no longer be reviewed by this Court. The instant Rule 65 petition cannot even substitute for the lost appeal—*certiorari* is not a procedural device to deprive the winning party of the fruits of the judgment in his or her favor. When a decision becomes final and executory, the court loses jurisdiction over the case and not even an appellate court will have the power to review the said judgment. Otherwise, there will be no end to litigation and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality. We reiterate what we stated in *Amatorio v. People* that relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy at law was due to his own negligence, or to a mistaken mode of procedure.

4. ID.; ID.; ID.; WHEN MAY BE DISMISSED; PARTY-LITIGANTS AND THEIR LAWYERS SHOULD REFRAIN FROM FILING FRIVOLOUS PETITIONS FOR *CERTIORARI*.— As a final note, we remind party-litigants and their lawyers to refrain from filing frivolous petitions for *certiorari*. The 2nd and 3rd paragraphs of Section 8 of Rule 65, as amended by A.M. No. 07-7-12-SC, now provide that: x x x However, the court may dismiss the petition if it finds the same patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration. In such event, the court may award in favor of the respondent treble costs solidarily against the petitioner and counsel, in addition to subjecting counsel to administrative sanctions under Rules 139 and 139-B of the Rules of Court. The Court may impose *motu proprio*, based on *res ipsa loquitor*, other disciplinary sanctions or measures on erring lawyers for patently dilatory and unmeritorious petitions for *certiorari*.

APPEARANCES OF COUNSEL

Law Firm of Reciña Reciña & Aragones for petitioner.
The Solicitor General for respondents.

D E C I S I O N

NACHURA, *J.*:

Assailed before the Court via a petition for *certiorari* under Rule 65 are the following issuances of the Court of Appeals (CA): (1) the April 30, 2001 Decision[1] in CA-G.R. CR No. 18387 affirming the November 9, 1994 Decision[2] of the Regional Trial Court, Branch 24 of Maasin, Southern Leyte in Criminal Case Nos. 1261, 1262, 1263, 1264, 1265, 1267 and 1269; (2) the June 28, 2001 Resolution[3] denying petitioner's Motion for Extension of Time to File a Motion for Reconsideration;[4] and (3) the August 17, 2001 Resolution[5] denying petitioner's Motion for Reconsideration[6] of the June 28, 2001 Resolution.

Records reveal the following antecedent facts:

Sometime in February and March 1986, petitioner, while in Sogod, Southern Leyte, represented to private complainants Gaudencio Ang, Rogelio Ceniza, Nilo Cabardo, Salvacion Nueve, Virgilio Maunes, Apolinaria Olayvar, and Mariza Florendo that she was one of the owners of Golden Overseas Employment[7] and that she was recruiting workers to be sent abroad.[8] She

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[1] Penned by Associate Justice (later, Presiding Justice) Romeo A. Brawner (retired); with Associate Justices Remedios Salazar-Fernando and Rebecca De Guia-Salvador, concurring; CA *rollo*, pp. 200-214.

[2] Decided by Judge Leandro T. Loyao, Jr.; *id*. at 4-33.

[3] CA *rollo*, pp. 220-221.

[4] *Id*. at 216-217.

[5] *Id*. at 249-250.

[6] *Id*. at 222-224.

[7] TSN, May 6, 1993, p. 12.

[8] TSN, May 4, 1993, p. 5.

then asked from the said complainants the payment of placement and processing fees totaling ₱15,000.00.[9] Viewing this as a golden opportunity for the amelioration of their lives, the private complainants paid the fees, went with petitioner to Manila, relying on her promise that they would be deployed by July 1986.[10] On the promised date of their departure, however, private complainants never left the country. They were then informed by petitioner that there were no available plane tickets and that they would leave by September of that year.

Came November 1986 and still they were not deployed. This prompted private complainants to suspect that something was amiss, and they demanded the return of their money. Petitioner assured them refund of the fees and even executed promissory notes[11] to several of the complainants; but, as before, her assurances were mere pretenses.[12]

In the early months of 1987, complainants then initiated formal charges for estafa against petitioner. After preliminary investigation, the Provincial Prosecutor filed with the Regional Trial Court (RTC) of Maasin, Southern Leyte seven (7) separate Informations[13] for Estafa, defined and penalized under Article 315,

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[9] *Id*. at 6.

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

[11] Exhibits "G" and "H".

[12] TSN, May 4, 1993, pp. 13-19.

[13] Records (Crim. Case No. 1261), pp. 1-2; records (Crim. Case No. 1262), pp. 1-2; records (Crim. Case No. 1263), pp. 1-2; records (Crim. Case No. 1264), pp. 1-2; records (Crim. Case No. 1265), pp. 1-2; records (Crim. Case No. 1267), pp. 1-2; records (Crim. Case No. 1269), pp. 1-2.

Except for the date of the commission of the crime, the name of the private complainant and the amount involved, the seven separate Informations are similarly worded to read as follows:

"x x x x x x x x x"

"That on or about the 6th day of February, 1986 [in Crim. Cases Nos. 1261 and 1265; '24th day of February, 1986' in Crim. Cases Nos. 1262 and 1263; '3rd day of March, 1986' in Crim. Cases Nos. 1264, 1267 and 1269], in the Municipality of Sogod, province of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of false manifestations and fraudulent representations which she made to

par. 2(a) of the Revised Penal Code (RPC). On request of petitioner, the cases were consolidated and jointly heard by the trial court.[14]

During the trial, in her defense, petitioner testified, among others, that she was an employee of the Commission on Audit who worked as a part-time secretary at FCR Recruitment Agency owned by Fe Corazon Ramirez; that she received the amounts claimed by the complainants and remitted the same to Ramirez;[15] that complainants actually transacted with Ramirez and not with her;[16] and that she was only forced to execute the promissory notes.[17]

On November 9, 1994, the RTC rendered its Decision[18] finding petitioner guilty beyond reasonable doubt of the charges of estafa. The dispositive portion of the trial court's decision reads:

WHEREFORE, FOREGOING CONSIDERED, the Court hereby renders judgment finding the accused Cecilia Dejarme Estinozo

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Gaudencio Ang [in Crim. Case No. 1261; 'Rogelio Ceniza' in Crim. Case No. 1262; 'Nilo Cabardo' in Crim. Case No. 1263; 'Salvacion Nueve' in Crim. Case No. 1264; 'Virgilio Maunes' in Crim. Case No. 1265; 'Apolinaria Olayvar' in Crim. Case No. 1267; 'Mariza Florendo' in Crim. Case No. 1269], the offended party, to the effect that she has the capacity and authority to recruit and enlist persons to work abroad, provided that they give her money in the sum of ₱15,000.00 [in Crim. Cases Nos. 1261, 1262, 1263, 1264, 1265 and 1269] each as processing and placement fees, which she demanded and received from said Gaudencio Ang ['the amount of ₱13,500.00' in Crim. Case No. 1267] as a condition for recruitment and job placement, recruited and promised employment or job placement abroad for said Gaudencio Ang, and once in possession of the amount aforesaid, with intent to defraud the herein complainant, said accused did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the aforesaid sum of money to her own personal use and benefit, to the damage and prejudice of the herein complainant in the sum of FIFTEEN THOUSAND PESOS (₱15,000.00), Philippine Currency.

"x x x x x x x x x"

[14] Records (Crim. Case No. 1261), pp. 82-83.

[15] TSN, October 8, 1993, pp. 6-23; TSN, November 16, 1993, pp. 4-12.

[16] TSN, November 16, 1993, pp. 13-20; TSN, November 17, 1993, pp. 3-18.

[17] TSN, November 17, 1993, pp. 18-19.

[18] CA *rollo*, pp. 4-33.

GUILTY beyond reasonable doubt of seven (7) counts of the crime of Estafa through false pretenses as defined and penalized under Article 315(2)(a) of the Revised Penal Code under Criminal Cases Nos. 1261, 1262, 1263, 1264, 1265, 1267 and 1269, and applying the Indeterminate Sentence Law, with no modifying circumstances to consider for or against her, hereby sentences the said accused, for EACH of the seven (7) counts of Estafa in the criminal cases aforementioned, to an indeterminate penalty of TWO (2) YEARS, ELEVEN (11) MONTHS and TEN (10) DAYS of *prision correccional*, as minimum, to SIX (6) YEARS, EIGHT (8) MONTHS and TWENTY (20) DAYS of *prision mayor*, as maximum, and to pay the costs.

The accused is also ordered to reimburse to the private complainants the following amounts proved during the trial:

1. Gaudencio Ang	———	₱15,000.00
2. Virgilio Maunes	———	₱15,000.00
3. Rogelio Ceniza	———	₱11,500.00
4. Nilo Cabardo	———	₱15,000.00
5. Mariza Florendo	———	₱15,000.00
6. Salvacion Nueve	———	₱15,000.00
7. Salvador Olayvar	———	₱13,500.00

with interest at the legal rate from the date of the filing of the respective informations in each case of every private complainant until the amount shall have been fully paid.

SO ORDERED.[19]

Aggrieved, petitioner appealed the case to the CA (docketed as CA-G.R. CR No. 18387). As aforesaid, the appellate court, in the assailed April 30, 2001 Decision,[20] affirmed the ruling of the trial court. The CA ruled that the complainants positively identified petitioner, their townmate, as the one who falsely presented herself as possessing a license to recruit persons for overseas employment. The seven (7) complainants relied on that representation when

[19] *Id*. at 32-33.

[20] *Supra* note 1.

they paid the amount she required as a condition for their being employed abroad. Petitioner even admitted receiving the said fees.[21] The prosecution had then satisfactorily proved that she committed the offense of Estafa under Article 315, par. 2 (a) of the RPC.[22] Her defense that she was merely an agent of the real recruiter was deemed as merely a last-ditch effort to absolve herself of authorship of the crime. The CA noted that Ramirez was never mentioned when petitioner conducted her recruitment activities, and no evidence was further introduced to show that petitioner remitted the said fees to Ramirez.[23]

On May 30, 2001, within the 15-day reglementary period to file a motion for reconsideration or a petition for review,[24] petitioner filed with the appellate court a Motion for Extension of Time to File a Motion for Reconsideration.[25] On June 28, 2001, the CA, in the challenged Resolution,[26] denied the said motion pursuant to Rule 52, Section 1 of the Rules of Court and Rule 9, Section 2 of the Revised Internal Rules of the Court of Appeals (RIRCA).

Petitioner then filed a Motion for Reconsideration[27] of the June 28, 2001 Resolution of the CA. The appellate court denied the same, on August 17, 2001, in the other assailed Resolution.[28]

Displeased with this series of denials, petitioner instituted the instant Petition for *Certiorari*[29] under Rule 65, arguing, among

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[21] CA *rollo*, pp. 207-208.

[22] *Id*. at 212.

[23] *Id*. at 209-211.

[24] As alleged in petitioner's Motion for Extension of Time to File a Motion for Reconsideration, she received a copy of the decision of the appellate court on May 18, 2001. (*Id*. at 216.)

[25] *Supra* note 4.

[26] *Supra* note 3.

[27] *Supra* note 6.

[28] *Supra* note 5.

[29] *Rollo*, pp. 3-34. In compliance with the Court's February 6, 2002 Resolution (*Id*. at 158.), the petitioner amended her petition, on March 11, 2002, to implead as party respondent the People of the Philippines. (*Id*. at 164-195.)

others, that: (1) her previous counsel, by filing a prohibited pleading, foreclosed her right to file a motion for reconsideration of the CA's decision, and consequently an appeal therefrom;[30] (2) she should not be bound by the mistake of her previous counsel especially when the latter's negligence and mistake would prejudice her substantial rights and would affect her life and liberty;[31] (3) the appellate court gravely abused its discretion when it affirmed petitioner's conviction for the other four (4) criminal cases—Criminal Cases Nos. 1264, 1265, 1267 and 1269—absent any direct testimony from the complainants in those cases;[32] (4) she was deprived of her constitutional right to cross-examine the complainants in the aforementioned 4 cases;[33] and (5) she presented sufficient evidence to cast reasonable doubt as to her guilt in all the seven (7) criminal cases.[34]

The Court rules to dismiss the petition.

Immediately apparent is that the petition is the wrong remedy to question the appellate court's issuances. Section 1 of Rule 45 of the Rules of Court expressly provides that a party desiring to appeal by *certiorari* from a judgment or final order or resolution of the CA may file a verified petition for review on *certiorari*.[35] Considering that, in this case, appeal by *certiorari* was available to petitioner, she effectively foreclosed her right to resort to a

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[30] *Id*. at 14-17.

[31] *Id*. at 17-20.

[32] *Id*. at 21-24.

[33] *Id*. at 24-26.

[34] *Id*. at 26.

[35] As amended by A.M. No. 07-7-12-SC, Section 1 of Rule 45 now states:

Section 1. *Filing of petition with Supreme Court*.—A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

special civil action for *certiorari*, a limited form of review and a remedy of last recourse, which lies only where there is no appeal or plain, speedy and adequate remedy in the ordinary course of law.[36]

A petition for review on *certiorari* under Rule 45 and a petition for *certiorari* under Rule 65 are mutually exclusive remedies. *Certiorari* cannot co-exist with an appeal or any other adequate remedy.[37] The nature of the questions of law intended to be raised on appeal is of no consequence. It may well be that those questions of law will treat exclusively of whether or not the judgment or final order was rendered without or in excess of jurisdiction, or with grave abuse of discretion. This is immaterial. The remedy is appeal, not *certiorari* as a special civil action.[38]

Even granting *arguendo* that the instant *certiorari* petition is an appropriate remedy, still this Court cannot grant the writ prayed for because we find no grave abuse of discretion committed by the CA in the challenged issuances. The rule, as it stands now without exception, is that the 15-day reglementary period for appealing or filing a motion for reconsideration or new trial cannot be extended, except in cases before this Court, as one of last resort, which may, in its sound discretion grant the extension requested.[39] This rule also applies even if the motion is filed before the expiration of

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[36] *See Heirs of Lourdes Potenciano Padilla v. Court of Appeals*, 469 Phil. 196, 204 (2004); *but see Metropolitan Waterworks and Sewerage System v. Daway*, G.R. No. 160732, June 21, 2004, 432 SCRA, 559, 572, in which the Court ruled that it is not enough that a remedy is available to prevent a party from making use of the extraordinary remedy of *certiorari* but that such remedy be an adequate remedy which is equally beneficial, speedy and sufficient, not only a remedy which at some time in the future may offer relief but a remedy which will promptly relieve the petitioner from the injurious acts of the lower tribunal.

[37] *Macawiag v. Balindong*, G.R. No. 159210, September 20, 2006, 502 SCRA 454, 465.

[38] *Pan Realty Corporation v. Court of Appeals*, G.R. No. L-47726, November 23, 1988, 167 SCRA 564, 573.

[39] *Barba v. Court of Appeals*, G.R. No. 169731, March 28, 2007; *Suarez v. Villarama, Jr.*, G.R. No. 124512, June 27, 2006, 493 SCRA 74, 83; *Amatorio v. People*, 445 Phil. 481, 488-490 (2003).

the period sought to be extended.[40] Thus, the appellate court correctly denied petitioner's Motion for Extension of Time to File a Motion for Reconsideration.

It is well to point out that with petitioner's erroneous filing of a motion for extension of time and with her non-filing of a motion for reconsideration or a petition for review from the CA's decision, the challenged decision has already attained finality and may no longer be reviewed by this Court. The instant Rule 65 petition cannot even substitute for the lost appeal[41] —*certiorari* is not a procedural device to deprive the winning party of the fruits of the judgment in his or her favor.[42] When a decision becomes final and executory, the court loses jurisdiction over the case and not even an appellate court will have the power to review the said judgment. Otherwise, there will be no end to litigation and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[43]

We reiterate what we stated in *Amatorio v. People*[44] that relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy at law was due to his own negligence, or to a mistaken mode of procedure.

As a final note, we remind party-litigants and their lawyers to refrain from filing frivolous petitions for *certiorari*. The 2nd and 3rd paragraphs of Section 8 of Rule 65, as amended by A.M. No. 07-7-12-SC, now provide that:

x x x x x x x x x

[40] *Fernandez v. Court of Appeals*, G.R. No. 131094, May 16, 2005, 458 SCRA 454, 468.

[41] *Nippon Paint Employees Union-Olalia v. Court of Appeals*, G.R. No. 159010, November 19, 2004, 443 SCRA 286, 291; *Manila Midtown Hotel v. Borromeo*, G.R. No. 138305, September 22, 2004, 438 SCRA 653, 657.

[42] *Ang v. Grageda*, G.R. No. 166239, June 8, 2006, 490 SCRA 424, 439.

[43] *Macawiag v. Balindong*, *supra* note 37, at 466.

[44] *Supra* note 39, at 491.

However, the court may dismiss the petition if it finds the same patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration. In such event, the court may award in favor of the respondent treble costs solidarily against the petitioner and counsel, in addition to subjecting counsel to administrative sanctions under Rules 139 and 139-B of the Rules of Court.

The Court may impose *motu proprio*, based on *res ipsa loquitor*, other disciplinary sanctions or measures on erring lawyers for patently dilatory and unmeritorious petitions for *certiorari*.

WHEREFORE, premises considered, the petition for *certiorari* is *DISMISSED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 157040. February 12, 2008]

JERRYCO C. RIVERA, *petitioner, vs.* **HON. COURT OF APPEALS, SPS. JOSE N. PINEDA and CORAZON PINEDA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; FINAL AND EXECUTORY; SUBSEQUENT FILING OF AN APPEAL OR A MOTION FOR RECONSIDERATION BEYOND THE PRESCRIBED

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

PERIOD CAN NEITHER DISTURB THE FINALITY OF THE DECISION NOR RESTORE THE JURISDICTION OF THE COURT; RATIONALE; EXCEPTION; NOT PRESENT IN CASE AT BAR.— Entrenched is the rule that a court loses jurisdiction over the case once a decision becomes final and executory. As a matter of course, its power is removed to further alter or amend, much less revoke the judgment. Consequently, the subsequent filing of an appeal or a motion for reconsideration beyond the prescribed period can neither disturb the finality of the decision nor restore jurisdiction to the court. The rationale is explicable: After a decision is declared final and executory, vested rights are already acquired by the winning party. Just as a losing party has the right to appeal a decision or move for its reconsideration, the winning party also has the correlative right to enjoy its finality. The Court recognizes though that in exceptional cases the principle may be relaxed in order to remedy manifest injustice attendant to a rigorous application of the rules of procedure but only in instances when the party invoking liberality shows a ***reasonable*** or ***meritorious*** explanation for such non-compliance. In this case, the Court finds no ample basis to consider the same as falling within the exception.

2. ID.; PLEADINGS AND PRACTICES; SERVICE; SERVICE BY REGISTERED MAIL; WHEN DEEMED COMPLETED.— A review of the records indicated the copy of the CA Decision which was mailed to Rivera bore the notation "returned to sender – unclaimed." Under Sec. 10, Rule 13 of the Revised Rules on Civil Procedure, service by registered mail is deemed completed upon actual receipt by the addressee or after five (5) days from the date the addressee received the ***first*** notice of the postmaster, whichever date is earlier. In the present case, not just one but ***three*** registry notices were sent by the postmaster but the same proved futile. Despite earnest efforts made for Rivera to obtain the mail matter, the latter failed to claim it. This appears to be perplexing considering that Rivera did not even change his address from the time he filed his appellant's brief up to the date the assailed Decision was promulgated. Neither was there allegation on his part that the address written in the registered mail was incorrect.

3. ID.; ID.; ID.; ID.; NOTICE SENT TO COUNSEL OF RECORD IS BINDING UPON THE CLIENT.— The rules provide that if a party is appearing by counsel, service upon him shall be made upon his counsel or any one of them, unless service upon the party himself is ordered by the court. In this case, the law office of Madrid Cacho Dominguez and Associates had been appearing in behalf of Rivera until the judgment was rendered by the CA. As no formal withdrawal of appearance was timely filed during the pendency of the case, said law firm remains to be the counsel of record entitled to receive court notices and orders. The fact that the counsel of record was given a copy, which in this case was not returned unserved for any reason, is the controlling matter. Notice sent to counsel of record is binding upon the client, and the neglect or failure of counsel to inform his client of an adverse judgment resulting in the loss of right to appeal will not justify the setting aside of a judgment that is valid and regular on its face.

4. ID.; ID.; ID.; ID.; ID.; NEGLIGENCE OF THE COUNSEL BINDS THE CLIENT.— As the counsel of record, the law office of Madrid Cacho Dominguez and Associates is duty bound to protect the cause of Rivera through the timely filing of a motion for reconsideration with the CA. With the lackadaisical attitude of the law firm to properly treat the case, Rivera must necessarily suffer. It is a doctrinal rule that the negligence of the counsel binds the client.

5. ID.; ID.; ID.; ID.; REQUIRES THAT THE REGISTERED MAIL BE DELIVERED TO THE ADDRESEE HIMSELF OR TO A PERSON OF SUFFICIENT DISCRETION TO RECEIVE THE SAME.— Granting that the law office of Madrid Cacho Dominguez and Associates indeed exists in paper rather than in reality, this does not alter the fact that it still received the notice of judgment and a copy of the CA Decision in behalf of Rivera. To stress, all that the rules of procedure require in regard to service by registered mail is to have the postmaster deliver the same to the addressee himself or to a ***person of sufficient discretion*** to receive the same. The paramount consideration is that the registered mail is delivered to the recipient's address and received by a person who would be able to appreciate the importance of the papers delivered to him, even if that person is not a subordinate or employee of

the recipient or authorized by a special power of attorney. Whether Rivera is a client of the law office or only that of Atty. Dominguez, it is undoubted that the ostensible partners of the law firm, which is still existing and not yet dissolved, know by heart the significance of reporting the content of the mail matter to Rivera or, at the very least, notifying him of the receipt thereof.

6. ID.; JUDGMENTS; FINALITY OF A DECISION IS A JURISDICTIONAL EVENT THAT CANNOT BE MADE TO DEPEND ON THE CONVENIENCE OF A PARTY.— Rivera has only himself to blame if the law office still receive court notices and orders in his behalf despite the death of Atty. Dominguez, who is alleged to be personally handling the case. It must be emphasized that he only raised the issue as a mere afterthought in his tardily filed motion for reconsideration when all had already been lost instead of promptly stating the same in his appellee's brief, which was also filed out of time, so that the CA could have been guided accordingly. Further, we have pointed out that in cases like this it is the responsibility of the clients and their counsel to devise a system for the receipt of mail intended for them since the finality of a decision is a jurisdictional event that cannot be made to depend on the convenience of a party. Matters internal to the clients and their counsels are not the concern of this Court.

7. ID.; RULES OF PROCEDURE; UTTER DISREGARD THEREOF CANNOT JUSTLY BE RATIONALIZED BY HARKING ON SUBSTANTIAL JUSTICE AND THE POLICY OF LIBERAL CONSTRUCTION.— In sum, this Court will not allow a party, in the guise of equity, to benefit from his own negligence. Utter disregard of the rules of procedure cannot justly be rationalized by harking on substantial justice and the policy of liberal construction. While the rules are not cast in stone it is equally correct to say that exact adherence thereto is vital to prevent needless delays and for the orderly and expeditious dispatch of judicial business.

APPEARANCES OF COUNSEL

Melecio Virgilio Emata Law Office for petitioner.
Castro Castro & Associates for respondents.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review under Rule 45 of the Revised Rules on Civil Procedure challenging the July 20, 2001 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 51089, which reversed and set aside the August 23, 1995 Decision[2] of the Regional Trial Court of Quezon City, Branch 82, and the January 27, 2003 Resolution[3] denying reconsideration thereof.

On August 25, 1990, private respondents spouses Jose and Corazon Pineda (Spouses Pineda) filed a Complaint for Rescission of Contract, Recovery of Possession and Collection of Rent or Sum of Money against petitioner Jerryco C. Rivera (Rivera). The Complaint alleged that on September 11, 1986 Spouses Pineda and Rivera entered into a contract whereby, in consideration of ₱400,000, the former mortgaged in favor of the latter a 412.30-sq. m. residential lot located at No. 62 Congressional Road, Barangay Bahay Toro, Quezon City, covered by TCT No. 146291. Moreover, stated in the "Deed of Mortgage with Irrevocable Option to Buy"[4] was the right granted to Rivera to exercise the option to buy the mortgaged property for the sum of ₱900,000, by paying the additional amount of ₱500,000, without interest, in accordance with the following schedule of payment:

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Presbitero J. Velasco, Jr. (now Supreme Court Associate Justice) and Bienvenido L. Reyes, concurring.

[2] Penned by Judge Salvador C. Ceguera.

[3] *Rollo*, pp. 51-52.

[4] *Records*, pp. 6-7.

(1) November 9, 1986	₱83,333.35
(2) February 15, 1987	83,333.35
(3) April 15, 1987	83,333.35
(4) June 15, 1987	83,333.35
(5) August 15, 1987	83,333.35
(6) October 15, 1987	83,333.35

Upon execution of the contract, Rivera took possession of the subject property and the owner's duplicate copy of the title over the lot. He was able to pay the first three installments. As to the June 15, 1987 installment, he paid the amount of ₱30,000 in cash on May 16, 1987 and ₱55,000 in check on its due date. The check, however, bounced and was replaced with cash only on August 21, 1987. Thereafter, Rivera never settled the fifth and sixth installments.

Pursuant to a provision in the Deed,[5] Spouses Pineda, through counsel, gave notice[6] to Rivera rescinding the contract and tendering the amount of ₱400,000 which represents the mortgage indebtedness. As the demand was unheeded, they litigated.

In his Answer with Counterclaim,[7] Rivera asserted that Spouses Pineda have no cause of action as he had already paid the last two installments due on August 15, 1987 and October 15, 1987. In fact, he allegedly overpaid them in the amount of ₱79,999.70; hence, he should be reimbursed and an absolute deed of sale must be executed in his favor. Assuming that he was in default, Rivera contended that Spouses Pineda did not make a valid

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[5] The Sixth *Whereas Clause* of the contract states:

WHEREAS, if the Mortgagee fails to pay any of the foregoing installment payments, then 25% of all payments already made prior to the default shall be deemed to have been forfeited in favor of the Mortgagor but the Mortgagee nevertheless shall cause to be paid the mortgage amount of ₱400,000.00, without interest, otherwise, the mortgage shall remain in full force and be enforceable in the manner provided by law.

[6] *Records*, p. 8.

[7] *Id*. at 9-12.

tender of payment of their indebtedness, or even if one was made, they have failed to avail of the legal remedy of consignation. Supposing further that he did not really exercise his option to purchase the subject property, Rivera countered that the mortgage, in effect, remains valid and subsisting due to the failure of Spouses Pineda to pay him ₱400,000 on October 15, 1987, the deadline stated in the Deed, thus, entitling him to foreclose the property. Lastly, even if Spouses Pineda have valid grounds to ask for the rescission of the Deed, Rivera averred that they are still obliged to return everything they have received by virtue of the contract, including the estimated amount of ₱400,000 which he spent for the improvements introduced on the property.

Rivera thus prayed:

> WHEREFORE, it is respectfully prayed that the complaint be dismissed and plaintiffs be ordered to pay defendant ₱79,999.70 and execute an absolute deed of sale in defendant's favor to transfer full ownership of the property in question or, in the alternative, in the event that defendant be found to be in default, that the property mortgaged be judicially foreclosed and the additional payments by defendant be ordered returned to him by plaintiffs and, in either case, that plaintiffs be ordered to pay defendant, jointly and severally, the following:
>
> a. ₱100,000.00 – moral damages;
>
> b. ₱100,000.00 – exemplary damages;
>
> c. ₱30,000.00 – attorney's fees plus ₱800.00 per Court appearance; and
>
> d. The costs of suit.
>
> Other reliefs, just and equitable under the premises, are likewise prayed for.[8]

During the trial, Rivera principally relied on the cash voucher dated June 15, 1987[9] to prove his contention that he has fully paid for the subject property. Said voucher states:

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[8] *Records*, pp. 9-12

[9] Exh. "L" for the plaintiffs and Exh. "6" for the defendant.

CASH VOUCHER

No. _____

Date June 15, 1987

Paid to Mr. Jose N. Pineda & Mrs. Corazon Pineda
Address # 61 Zodiac St. Bel Air, Makati, M.M.
R.C. No. _____ Date Issued _____ Issued At _____

PARTICULARS AMOUNT

Payment for Notary Public document # 245 page No. 49, Book No. 15, Series of 1986 of Atty. Josias K. Guinto between Jerryco C. Rivera & Mr. Jose N. Pineda

Cash on hand . . . . . ₱245,000.00
Metro Bank check # 099408 . . . . . ₱ 55,000.00
TOTAL ₱ 300,000.00

PAID BY: DATE _____
APPROVED BY: (sgd) _____

Received from Jerryco C. Rivera the amount of PESOS Three hundred thousand pesos only (₱300,000.00) in full payment of amount described above.

By: Corazon A. Pineda (sgd.)[10]

On its face, the voucher shows the signature of Corazon Pineda confirming her receipt from Emilio Rivera, petitioner's father, of the total amount of ₱300,000 – ₱245,000 in cash and ₱55,000 in Metrobank check – representing the settlement for the last three installments due. Spouses Pineda, however, denied having received the ₱245,000 cash, reasoning that the mode of payment was always in the form of a check and that they had accepted only the Metrobank check but acknowledged the same in a different voucher. Further, they disputed the genuineness and due execution of the voucher, noting that the signature of Corazon Pineda was forged and that even if such was not the case, the typewritten entries therein were merely intercalated after it was signed to make it appear that Rivera already paid in full.

[10] *Records*, p. 36.

Upon separate motions filed by Spouses Pineda,[11] the questioned voucher was submitted for technical examination to the National Bureau of Investigation (NBI), which later on submitted its findings declaring that the signature of Corazon Pineda in the voucher was not forged since her questioned and standard signatures were written by one and the same person.[12] It concluded, however, that the typewritten entries "Cash on hand . . . . ₱245,000.00," "300,000.00," "Three hundred thousand pesos only," and "300,000.00" were added/intercalated entries.[13]

On August 23, 1995, the trial court rendered its Decision[14] dismissing the case:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the herein Complaint and ordering the plaintiffs to execute an absolute sale of the property herein involved in favor of the defendant, sufficient in form and substance to transfer full ownership thereof to him. FURTHER, the plaintiffs are hereby ordered to pay to the defendant the following: ₱100,000.00 as moral and exemplary damages; ₱20,000.00 as attorney's fees, plus ₱800.00 per court appearance; and the costs.
>
> SO ORDERED.[15]

Despite the arguments posed by Spouses Pineda, the trial court gave more credence to the NBI reports as well as to the testimonies of Rivera's witnesses when it ruled:

> The plaintiffs, however, deny having received the cash of ₱245,000.00 but admit receiving the ₱55,000.00 which they claim to be receipted under a different voucher. Upon their own instance, the plaintiffs were authorized by this Court to submit Exhibit "L" (also Exh. "6" for the defendant) to the Questioned Documents Division of the National Bureau of Investigation (NBI) for examination

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[11] *Records*, pp. 96-99; 157-160.

[12] *Id.* at 144-145.

[13] *Id.* at 236.

[14] *Id.* at 270-277.

[15] *Id*. at 276-277.

and analysis by its handwriting experts to determine if the signature of plaintiff Corazon Pineda therein is genuine or is a forgery, considering that the plaintiffs denied issuing said voucher. Unfortunately for the plaintiffs, the NBI findings were to the effect [that] the signature of the said plaintiff on the questioned voucher was really hers, and this was confirmed on the witness stand by NBI Senior Examiner Emmanuel de Guzman.

Not to be easily discouraged, plaintiffs' counsel tried to salvage [their] case by calling attention to a supposed intercalation indicated by a [misalignment] of certain words in the voucher and succeeded in eliciting testimony from Senior Examiner de Guzman that this could have been deliberate or caused by a defect in the [typewriter] used and that there was no way of determining if the entries were made before or after the execution of the document. The defendant thus presented Daisy Lazaro who testified that she was present when the questioned document was typed in the former office of Lucio Lazaro at 156 K-9 St., Kamias, Quezon City and that an old TM-Olympia [typewriter] was used which had a defective cylinder and, as such, the words typed were not aligned, as in the case of the words "Cash on Hand" thereon.

This Court finds this explanation more worthy of belief and acceptance, especially considering that plaintiffs' assertion that intercalations were made on the document after the same was signed by plaintiff Corazon Pineda came late and contradicts their original stand that the signature thereon was a forgery. Certainly it would defy logic to indulge in a mere supposition or probability without any evidence to support it. Unless clearly overthrown by ample evidence, the presumption that the signed document contains all the terms agreed upon will continue to prevail. And so this Court holds.

Moreover, the due execution and genuineness of Exhibit "L" was confirmed by plaintiffs' own witness, Emilio [Rivera], whose testimony has been adopted by the defendant (his son) as part of the evidence for the defense. Admittedly, this witness had been the one making payments to the plaintiffs and he testified that there has been full payment of the amounts scheduled in the "Deed of Mortgage with Irrevocable Option to Buy". As a clear indication of his honesty and forthrightness, he even admitted that the overpayment his son claims in fact represents penalty for delayed payments.[16]

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[16] *Records*, pp. 274-275.

Spouses Pineda filed a Notice of Appeal on September 25, 1995.[17] They submitted the Appellants' Brief on October 28, 1996 after three consecutive motions for extension of time to file the same, which were all granted.[18] Rivera, however, filed his Appellee's Brief only on April 11, 1997, eight days following the resolution of the CA submitting the case for decision.[19] For the late filing, the appellee's brief was ordered expunged from the records per Resolution of the CA[20] dated May 9, 1997.

The CA ruled in favor of Spouses Pineda. The dispositive portion of its Decision[21] dated July 20, 2001 states:

WHEREFORE, premises considered, the judgment appealed from is hereby **REVERSED** and **SET ASIDE**, and a new one is hereby rendered as follows:

1.) The Deed of Mortgage with Irrevocable Option to Buy is hereby declared rescinded and with no further force and effect;

2.) Defendant-appellee is ordered to restore plaintiffs-appellants to the possession of the property in question and to return Transfer Certificate of Title No. 146291 covering the said property and its improvements;

3.) Defendant-appellee is ordered to pay plaintiffs-appellants the following:

   a.) Rental fee of ₱10,000.00 per month starting from August 16, 1987 plus legal interest;

   b.) Exemplary damages in the amount of ₱20,000.00;

   c.) Attorney's fees of ₱20,000.00, plus ₱500.00 appearance fee per hearing attended by counsel; and

   d.) Costs of suit;

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[17] *Id.* at 278.

[18] CA *Rollo*, pp. 15-37.

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

[20] *Id.* at 66.

[21] *Id.* at 68-79.

4.) The amount of ₱83,333.35 is declared forfeited in favor of plaintiffs-appellants as agreed upon; and

5.) Plaintiffs-appellants are directed to reimburse defendant-appellee the total amount of ₱650,000.00 representing the ₱400,000.00 downpayment and 75% of the paid installments from November 9, 1986 to June 15,1987 in the amount of ₱250,000.05.

SO ORDERED.[22]

The CA differed with the findings of the trial court that there was full payment made on June 15, 1987 and that the alleged overpayment refers to payment of penalty charges due on the delayed installment payment. It held:

We agree with plaintiff-appellant Corazon Pineda. As of June 15, 1987, the remaining amount due from defendant-appellee was merely ₱250,000.05 consisting of three installments due on June 15, 1987, August 15, 1987 and October 15, 1987 at ₱83,333.35 each. Considering that there was an advance payment made on May 16, 1987 in the amount of ₱30,000.00, the balance would have been merely ₱220,000.05.

The defendant-appellee[,] however[,] claimed to have paid the amount of ₱300,000.00 as shown in the voucher in question thereby resulting to an alleged overpayment of ₱79,999.95 which defendant-appellee's father Emilio Rivera claimed to be payment for the penalty charges incurred by defendant-appellee x x x.

The rate of penalty charge for late payment of installment was 14% per annum x x x. Said penalty would have applied to the remaining unpaid amount of ₱53,333.35 for the installment due on June 15, 1987 considering that an advance payment of ₱30,000.00 was made on May 16, 1987. If there was indeed payment of penalty charges, the amount would have been merely ₱1,370.59 or ₱53,333.35 x 14% x 67/365 x x x.

There can be no penalty charges for the installments due on August 15, 1987 and October 15, 1987 since they were allegedly paid on June 15, 1987, and were therefore, advance payments, if indeed made.

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[22] CA *Rollo*, pp. 78-79.

However, if there was indeed full payment made on June 15, 1987, there would have been no need for the defendant-appellee to redeem the dishonored check and to pay plaintiffs-appellants the amount of ₱55,000.00 on August 21, 1987.

The Decision of the CA became final and executory as no appeal or motion for reconsideration was filed by either party. Hence, on August 18, 2001,[23] an Entry of Judgment was issued by the CA.

Almost a year after, on August 9, 2002, Rivera, through a new counsel, Melecio Virgilio Emata Law Offices, filed an Omnibus Motion to Set Aside Entry of Judgment and to Admit Motion for Reconsideration.[24]

Rivera alleged that he was belatedly notified that his counsel of record, Atty. Bernardo T. Dominguez of Madrid Cacho Dominguez and Associates Law Offices, died on April 13, 1994; hence, he had no choice but to personally prepare and file his Appellee's Brief, which was ordered expunged from the records. Moreover, he claimed that it was only on July 23, 2002 that he obtained a copy of the Entry of Judgment, without first receiving the Notice of Judgment prior thereto. Rivera averred that there is nothing in the said Notice that would indicate that he actually received a copy of the CA Decision since the envelope addressed to him containing the judgment was returned unserved by the postmaster. In view of these factors, he asserted that the CA Decision has not yet become final and executory.

The CA, however, resolved to deny the omnibus motion on January 27, 2003,[25] thus:

a.) While it is true that Atty. Bernardo T. Dominguez, counsel of record for appellee, died of cerebral hemorrhage, this did not deprive appellee of sufficient representation since said counsel was a partner in a law firm. Hence, the appellee's brief should have been prepared and reasonably filed by the firm's other partner who could have taken over the case.

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[23] CA *Rollo*, p. 146.

[24] *Id.* at 96-111.

[25] *Id.* at 144.

b.) Appellee cannot argue that he was not notified of the Decision dated July 20, 2001 since it was sent by registered mail and was returned unserved after three (3) postal notices. Section 10 of Rule 13 of the 1997 Revised Rules on Civil Procedure states in part that: [S]ervice by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster…" Therefore, service of said Notice is deemed complete.

c.) New counsel has not filed a Notice of Appearance and therefore has no personality to question the proceedings in this case.[26]

Hence, this petition.

Relevant for our consideration are the following alleged errors of the CA:

I

THAT THE RESPONDENT COURT COMMITTED A GRAVE ABUSE OF ITS DISCRETION IN RESOLVING THE QUESTION OF THE SUPPOSED COMPLETENESS OF SERVICE OF A REGISTERED MAIL MATTER IN A WAY NOT IN ACCORD WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT

II

THAT THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION IN DENYING THE PETITIONER'S OMNIBUS MOTION TO SET ASIDE ENTRY OF JUDGMENT AND ADMIT MOTION FOR RECONSIDERATION ON THE GROUND THAT HIS DECEASED LAWYER'S PARTNERS COULD HAVE TAKEN OVER THE CASE

III

THAT THE RESPONDENT COURT COMMITTED A GRAVE ABUSE OF ITS DISCRETION WHEN IT CAPITALIZED ON NEW COUNSEL'S EXCUSABLE OVERSIGHT TO FILE A NOTICE OF APPEARANCE AS PRECLUDING THE PETITIONER OF HIS RIGHT TO QUESTION THE PROCEEDINGS BELOW, THEREBY DEPRIVING HIM OF DUE PROCESS[27]

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[26] CA *Rollo*, pp. 144-145.

[27] *Rollo*, p. 27.

On the first assigned error, Rivera argues that Sec. 10, Rule 13 of the Revised Rules on Civil Procedure applies only if the content of or the nature of the document contained in the registered mail matter is indicated on its face. He cited *Cayetano v. Ceguerra and Serrano*[28] wherein the Court ruled that actual knowledge of a decision cannot be attributed to the addressee where there is no showing that the registry notice itself contained any indication that the registered letter was a copy of the decision or that the registry notice refers to the case being ventilated.

As to the second ground, Rivera contends that the law office of Madrid Cacho Dominguez and Associates is one of those firms which is not strictly bound by partnership relationship. Like some other law offices, he claims that it uses a firm name "for the sake of convenience and of approximating a colossal appearance before the eyes of the public or in the consciousness of the clients" despite the reality that the apparent partners obtain and handle clients only in their own individual capacities. According to him, this is the reason why no partner in the law office of Atty. Dominguez took over the case after his death.

Anent the third alleged error, Rivera asserts that to deprive him of representation or his right to question the trial court proceedings by the simple inadvertence of his new lawyer to file a notice of appearance is too harsh a verdict, as if the new counsel does not represent the rights and interests of the client who retained him; to strip him of the right of being represented on the basis of a purely technical omission is to divest him of his right to due process.

The petition is denied.

Entrenched is the rule that a court loses jurisdiction over the case once a decision becomes final and executory.[29] As a matter of course, its power is removed to further alter or amend, much less revoke the judgment.[30] Consequently, the subsequent filing

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[28] 121 Phil. 76 (1965).

[29] *Sps. Abadilla v. Hon. Hofileña-Europa*, G.R. No. 146769, August 17, 2007.

[30] *Gardner, et al. v. CA, et al.*, 216 Phil. 542, 554 (1984).

of an appeal or a motion for reconsideration beyond the prescribed period can neither disturb the finality of the decision nor restore jurisdiction to the court.

The rationale is explicable: After a decision is declared final and executory, vested rights are already acquired by the winning party. Just as a losing party has the right to appeal a decision or move for its reconsideration, the winning party also has the correlative right to enjoy its finality.[31]

The Court recognizes though that in exceptional cases the principle may be relaxed in order to remedy manifest injustice attendant to a rigorous application of the rules of procedure but only in instances when the party invoking liberality shows a ***reasonable*** or ***meritorious*** explanation for such non-compliance.[32]

In this case, the Court finds no ample basis to consider the same as falling within the exception.

A review of the records indicated the copy of the CA Decision which was mailed to Rivera bore the notation "returned to sender – unclaimed." Under Sec. 10, Rule 13 of the Revised Rules on Civil Procedure, service by registered mail is deemed completed upon actual receipt by the addressee or after five (5) days from the date the addressee received the ***first*** notice of the postmaster, whichever date is earlier. In the present case, not just one but ***three*** registry notices were sent by the postmaster but the same proved futile. Despite earnest efforts made for Rivera to obtain the mail matter, the latter failed to claim it. This appears to be perplexing considering that Rivera did not even change his address from the time he filed his appellant's brief up to the date the assailed Decision was promulgated. Neither was there allegation on his part that the address written in the registered mail was incorrect.

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[31] *Bello v. NLRC*, G.R. No. 146212, September 5, 2007; *Silliman University v. Fontelo-Paalan*, G.R. No. 170948, June 26, 2007, 525 SCRA 759, 771; and *Manaya v. Alabang Country Club, Incorporated*, G.R. No. 168988, June 19, 2007, 525 SCRA 140, 150.

[32] See *Landbank of the Philippines v. Heirs of Fernando Alsua*, G.R. No. 167361, April 2, 2007, 520 SCRA 132, 138; and *Esguerra v. Trinidad*, G.R. No. 169890, March 12, 2007, 518 SCRA 186, 193.

Parenthetically, *Cayetano v. Ceguerra and Serrano* is not applicable to the instant case. There, plaintiff Catalina Cayetano instituted a civil case for foreclosure of real estate mortgage against defendants-spouses Osmundo Ceguerra and Felina Serrano. Within the reglementary period, defendants filed an Answer in the form of a letter. In spite of the letter-answer, defendants were, upon motion of plaintiff, declared in default and plaintiff was allowed to present her evidence *ex parte*. Eventually, the trial court rendered judgment in favor of the plaintiff. It appeared, however, that the decision never became known to the defendants, as the same had been returned to the court unclaimed. The decision became final and executory. Subsequently, when defendants were served with a copy of a writ of execution, the matter was referred to a counsel, who then filed a petition for relief from judgment. The trial court denied the petition for being filed out of time. On appeal, it was held that:

> This Court, however, cannot justly attribute upon defendants actual knowledge of the decision, because there is no showing that the registry notice itself contained any indication that the registered letter was a copy of the decision, or that the registry notice referred to the case being ventilated. We cannot exact a strict accounting of the rules from ordinary mortals, like defendants.[33]

The ruling is but reasonable considering that defendants were represented by counsel ***only*** at the time of the filing of the petition for relief. Prior thereto, the defendants had no idea as to the import of obtaining a copy of the adverse decision and as to the legal procedures to be observed in order to safeguard their rights.

On the contrary, in this case, it is plausible to think that Rivera's indifference to heed the postmaster's three (3) notices was done deliberately because he already knew of the adverse CA ruling prior to July 23, 2002, purportedly the date when a "friend" belatedly informed him of the Entry of Judgment.

Notably, other than Rivera's self-serving declaration, no supporting affidavit was shown to reveal the identity of his

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[33] *Supra* note 28 at 83.

supposed "friend" who could objectively attest to the details and veracity of his claim. More importantly, the record clearly shows that a notice of judgment and a copy of the Decision were sent not only to Rivera (for his own personal use) but also to the law office of Madrid Cacho Dominguez and Associates, the counsel of record, as well.[34] Hence, this Court cannot easily subscribe to his plea that due consideration must be given to the death of Atty. Dominguez as his (Rivera) case is not a law office account:

First: The rules provide that if a party is appearing by counsel, service upon him shall be made upon his counsel or any one of them, unless service upon the party himself is ordered by the court.[35] In this case, the law office of Madrid Cacho Dominguez and Associates had been appearing in behalf of Rivera until the judgment was rendered by the CA. As no formal withdrawal of appearance was timely filed during the pendency of the case, said law firm remains to be the counsel of record entitled to receive court notices and orders. The fact that the counsel of record was given a copy, which in this case was not returned unserved for any reason, is the controlling matter. Notice sent to counsel of record is binding upon the client, and the neglect or failure of counsel to inform his client of an adverse judgment resulting in the loss of right to appeal will not justify the setting aside of a judgment that is valid and regular on its face.[36]

Second: As the counsel of record, the law office of Madrid Cacho Dominguez and Associates is duty bound to protect the cause of Rivera through the timely filing of a motion for reconsideration with the CA. With the lackadaisical attitude of the law firm to properly treat the case, Rivera must necessarily suffer. It is a doctrinal rule that the negligence of the counsel binds the client.

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[34] CA *Rollo*, p. 67.

[35] Section 2, Rule 13, RULES OF COURT.

[36] *See Trust International Paper Corporation v. Pelaez*, G.R. No. 164871, August 22, 2006, 499 SCRA 552, 561-562, *citing Azucena v. Foreign Manpower Services*, 441 SCRA 346, 355.

Third: Granting that the law office of Madrid Cacho Dominguez and Associates indeed exists in paper rather than in reality, this does not alter the fact that it still received the notice of judgment and a copy of the CA Decision in behalf of Rivera. To stress, all that the rules of procedure require in regard to service by registered mail is to have the postmaster deliver the same to the addressee himself or to a ***person of sufficient discretion*** to receive the same.[37] The paramount consideration is that the registered mail is delivered to the recipient's address and received by a person who would be able to appreciate the importance of the papers delivered to him, even if that person is not a subordinate or employee of the recipient or authorized by a special power of attorney.[38] Whether Rivera is a client of the law office or only that of Atty. Dominguez, it is undoubted that the ostensible partners of the law firm, which is still existing and not yet dissolved, know by heart the significance of reporting the content of the mail matter to Rivera or, at the very least, notifying him of the receipt thereof.

And Fourth: Rivera has only himself to blame if the law office still receive court notices and orders in his behalf despite the death of Atty. Dominguez, who is alleged to be personally handling the case. It must be emphasized that he only raised the issue as a mere afterthought in his tardily filed motion for reconsideration when all had already been lost instead of promptly stating the same in his appellee's brief, which was also filed out of time, so that the CA could have been guided accordingly. Further, we have pointed out that in cases like this it is the responsibility of the clients and their counsel to devise a system for the receipt of mail intended for them since the finality of a decision is a jurisdictional event that cannot be made to depend on the convenience of a party.[39] Matters internal to the clients and their counsels are not the concern of this Court.

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[37] *Landbank of the Philippines v. Heirs of Fernando Alsua*, G.R. No. 167361, April 2, 2007, 520 SCRA 132, 136-137.

[38] *Id.* at 137.

[39] *Supra* note 37 at 137-138.

In sum, this Court will not allow a party, in the guise of equity, to benefit from his own negligence.

Utter disregard of the rules of procedure cannot justly be rationalized by harking on substantial justice and the policy of liberal construction. While the rules are not cast in stone it is equally correct to say that exact adherence thereto is vital to prevent needless delays and for the orderly and expeditious dispatch of judicial business.[40]

WHEREFORE, the petition is *DENIED*. The Decision dated July 20, 2001 and the Resolution dated January 27, 2003 of the Court of Appeals are hereby *AFFIRMED*. No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 157287. February 12, 2008]

WT CONSTRUCTION, INC., *petitioner, vs.* **HON. ULRIC R. CAÑETE, Presiding Judge, RTC, Mandaue City, Branch 55, and the ESTATE OF ALBERTO CABAHUG, thru its Administratrix, JULIANA *VDA. DE* CABAHUG,** *respondents.*

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[40] *See Col. Ferrer (Ret.) v. Atty. Villanueva*, G.R. No. 155025, August 24, 2007; and *Sps. Dela Cruz v. Andres*, G.R. No. 161864, April 27, 2007, 522 SCRA 585, 590-591.

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; WRIT OF EXECUTION; SHERIFF HAS NO DISCRETION AS TO THE AMOUNT TO BE PAID OR EXECUTED ON UNDER THE WRIT OF EXECUTION.— As correctly held by the CA, there was no discretion given to the sheriff as to the amount to be paid or executed on under the writ of execution. While the writ of execution did say ". . . the sum of ₱4,259,400.00, . . . minus the expenses incurred by WT Construction in ejecting the occupants of the land," this simply means that petitioner was being given a chance by the court to reduce the aforementioned amount upon proof of said deductible expenses, after which an *alias* writ would be issued. In the absence of such proof, the sheriff would have to execute for the full amount. And as noted by the CA, petitioner failed to prove such expenses within the period given by the probate/estate court. The issue is, therefore, moot.

2. ID.; SPECIAL PROCEEDINGS; PROBATE; PROBATE COURTS CAN ENFORCE OBLIGATION UNDER THE DEED OF SALE OF A PROPERTY ORDERED SOLD TO PAY THE DEBTS OF THE ESTATE.— As to petitioner's argument that the probate/estate court cannot adjudicate the rights and obligations of the parties under the deed of sale, the CA rightly found that this was a new issue not raised in the probate/estate court. Furthermore, the deed of sale in question is the sale of the property of the estate to pay for taxes, a matter definitely within the power of the probate/estate court to order. It is but logical that probate/estate courts can enforce obligations under such a deed of sale. Otherwise, they would not be able to secure the proceeds to pay for the taxes and this would defeat the purpose of the proceedings to settle the estate. Stated otherwise, the power to enforce obligations under the deed of sale of a property ordered sold to pay debts of the estate is but a necessary incident of the power of a probate/estate court to order and effect such sale in the first place.

APPEARANCES OF COUNSEL

M.B. Mahinay & Associates and *Pizarras & Associates Law Offices* for petitioner.
Mario D. Ortiz for Estate of A. Cabahug.
Gabriel J. Canete for A. Cabahug and Juliana *Vda. de* Cabahug.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review[1] of the Decision and Resolution of the Court of Appeals (CA), dated July 25, 2002 and February 12, 2003, respectively, in CA-G.R. SP No. 65592 entitled "*WT Construction, Inc. vs. Hon. Ulric R. Cañete, in his capacity as Presiding Judge of the Regional Trial Court of Mandaue City, Branch 55, et al*."

The facts are as follows:[2]

Juliana *vda. de* Cabahug filed a case for the settlement of the estate of her deceased husband, Alberto Cabahug,[3] before the Regional Trial Court (RTC) of Mandaue City, Branch 55, presided by public respondent, Judge Ulric R. Cañete.

On January 10, 1992, Ciriaco Cabahug, the administrator of the estate and heir of Alberto, was granted the authority to sell one of the properties of the estate to defray the expenses for the payment of taxes due from the estate. The property to be sold was the parcel of land subject of the petition, Lot 1, FLS-322-D, situated in Looc, Mandaue City, covered by Tax Declaration No. 00272 with an estimated area of 17,382 square meters.

Ciriaco entered into an Agreement for Sale of Land with Downpayment with petitioner for ₱8,691,000 on

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

[2] *Rollo*, pp. 241-244.

[3] The case, entitled "*In the Matter of the Intestate Estate Alberto Cabahug*," was docketed as SP Proc. No. 3562-R.

September 23, 1996. In accordance with the agreement, petitioner made a down payment of fifty percent (50%) of the purchase price or ₱4,431,600 [should be ₱4,345,500]. The balance of the purchase price was to be paid "immediately after the land is free from all occupants/obstructions." The contract likewise stipulated the following:

> 5. That the seller shall undertake the clearing of the land herein sold of its present occupants and/or eject the squatters therein within a period of one (1) year reckoned from the receipt of the advance payment, provided however, that if the buyer will be the one to handle the clearing or ejectment of occupants, all the expenses incurred thereto shall be charged to and be deducted from the remaining balance payable.
>
> 6. Upon receipt of the 50% advance payment of the purchase price, the buyer shall be authorized to enter the property, utilize the same and introduce improvements thereon….

Subsequently, petitioner took steps in clearing the property of its occupants by filing a complaint for ejectment in 1998 with the Municipal Trial Court in Cities, Branch 3, Mandaue City.

It was later discovered that Ciriaco did not inform his co-heirs of the sale. He appropriated the amount paid by petitioner, so public respondent issued an Order on August 19, 1997, relieving Ciriaco of his functions as administrator and directing him to render an accounting of all the properties and assets of the estate.

Consequently, Administrator Linda Cabahug-Antigue, along with her co-heirs, demanded from petitioner the payment of the balance of the purchase price. Referring to the provision of the agreement relating to the payment of the balance of the purchase price conditioned upon the removal of occupants and obstructions in the property, petitioner refused to pay the remaining balance.

On July 6, 2000, public respondent issued an Order,[4] stating:

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[4] *Rollo*, pp. 82-84.

WHEREFORE, premises considered, WT Construction is ordered to manifest in court within five (5) days from receipt of this order whether it wants the Contract of Sale rescinded.

If no manifestation is filed within said period, WT Construction is further ordered to pay the estate of Alberto Cabahug the amount of ₱4,259,400.00 less expenses incurred in the ejectment case within a period of fifteen (15) days, otherwise, failure to do so will prompt the court to issue a writ of execution as prayed for by movant-administratrix.

Petitioner filed a Motion for Reconsideration and/or Extension of Time to Manifest Option to Rescind on July 31, 2000. An Opposition to the motion was filed by private respondent on August 2, 2000.[5]

The motion for reconsideration was denied, and a Writ of Execution[6] to implement the above Order[7] was issued by public respondent on October 5, 2000. The writ issued to Sheriff IV of RTC, Branch 55, Mandaue City, Veronico C. Ouano, stated the following:

WHEREFORE, you are hereby commanded that of the goods and chattels of WT CONSTRUCTION, not exempt from execution, you cause to be made the sum of ₱4,259,400.00, liable to pay the estate of Alberto Cabahug minus the expenses incurred by WT Construction in ejecting the occupants of the land.

But if sufficient personal properties could be found to satisfy this writ, then of the land and buildings of the defendants you cause to be made the said sums of money in the manner required of you by law.[8]

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[5] *Id.* at 85.

[6] *Id.*

[7] When this Order was issued, petitioner had already obtained a decree of ejectment from the MTCC. A week before the writ of execution in the ejectment case was served on the occupants, the estate was able to obtain its own Order from Judge Cañete denying the motion for reconsideration of petitioner and ordering the latter, in view of the lapse of the grace period, to pay the stated amount less expenses (CA Decision, p. 4; *rollo*, p. 147).

[8] *Rollo*, p. 86.

On November 17, 2000, petitioner filed an Urgent Motion to Quash the Writ of Execution claiming that the issuance of the writ is premature for the following reasons: (1) the expenses to be deducted from the purchase price could not be ascertained as there are still squatters on the land who have yet to be evicted; (2) the existence of an action for Quieting of Title, Injunction and Damages[9] for ownership and possession of a portion of the property in question or 4,690 square meters; and (3) the balance of the purchase price would be significantly reduced if the claim of the plaintiffs in the aforesaid action will be granted.[10]

During the pendency of the motion, the plaintiffs in the action for quieting of title, namely, Antonia Flores, Andrea Lumapas, Emilio Omobong and Constancia O. Tolo, filed a Motion for Leave to Intervene contending that they have a right to a portion or to 4,690 square meters of the subject lot. The group also moved for the quashing of the writ of execution.[11]

On May 15, 2001, public respondent issued an Order denying petitioner's motion:

> There being no merits to the urgent Motion to Quash the Writ of Execution, the same is denied.
>
> SO ORDERED.[12]

Petitioner's motion for reconsideration was likewise denied in an Order dated June 28, 2001.

Petitioner went to the CA on a petition for *certiorari* under Rule 65 but the CA dismissed the petition on July 25, 2002. The pertinent portions of the Decision of the CA read:

> The resolution of the ejectment case came in the wake of apparently persistent efforts of the estate to collect the balance of the purchase price from the petitioner. The developments were

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[9] Docketed as Civil Case No. MAN-2630, entitled "*Antonia Flores, et al. v. Ciriaco Cabahug, et al*.," Branch 56, RTC-Mandaue City.

[10] *Rollo*, pp. 87-90.

[11] The motion was not yet resolved at the time the petition was filed.

[12] *Rollo*, p. 68.

chronicled in an Order of July 6, 2000 issued by respondent Judge Ulric O. Cañete. It appears that on October 15, 1999, he directed petitioner to pay ₱4,259,400 to the estate minus expenses incurred by it in ejecting the occupants of the land. The implementation of the Order was held in abeyance when the petitioner went on *certiorari* to the Court of Appeals. The Fifteenth Division of the Court dismissed the petition prompting the estate to pray for the immediate execution of the Order of October 15, 1999. But it also asked that the petitioner's Willy Te be required to manifest if he would prefer to have the sale rescinded and the amount advanced returned. Judge Cañete was thus constraint on July 6, 2000 to give the petitioner an opportunity within a certain period to manifest its willingness to rescind the agreement. He finally said:

> "If no manifestation is filed within said period, WT Construction is further ordered to pay the estate of Alberto Cabahug the amount of ₱4,259,400.00 less expenses incurred in the ejectment case within a period of fifteen (15) days, otherwise, failure to do so will prompt the court to issue writ of execution as prayed for by movant-administratrix."

When the Order was issued, the petitioner had already obtained a decree of ejectment from the MTCC. A week before the writ of execution in the ejectment case was served on the occupants, the estate was able to obtain its own Order from Judge Cañete denying the motion for reconsideration of the petitioner and ordering the latter, in view of the lapse of the grace period, to pay the stated amount less expenses. On October 5, 2000, the writ of execution was issued.

The determination of petitioner to resist payment of the balance was as dogged as ever. In November 2000, it filed a motion to quash the writ, citing the existence of a complaint filed by third parties for ownership and possession of a portion of the property in question and the failure of the estate to exclude another portion from the computation of the balance as allegedly stipulated in the sales agreement. In February 2001, some parties sought to intervene in the Special Proceedings 3562-R and asked, in so many words, that their interest in the purchase price to be paid to the estate be recognized and respected.

On May 15, 2001, the assailed Order was handed down denying the Motion to Quash Writ of Execution, followed by the Order of

June 28, 2001 denying the Motion for Reconsideration. The petitioner arrayed several issues against these Orders, to wit:[13]

> "1. Public respondent gravely abused his discretion in failing to state the facts and the law which served as the basis for his Order of June 28, 2001 denying herein petitioner's urgent motion to quash writ of execution;
>
> 2. Public respondent gravely abused his discretion in not quashing the writ of execution for being prematurely issued;
>
> 3. Public respondent gravely abused his discretion in not quashing the writ of execution on the ground that the Order sought to be executed was conditional and incomplete; and
>
> 4. Public respondent gravely abused his discretion in not quashing the writ of execution on the ground that a change in the situation of the parties had occurred."

We rule against the petitioner.

The disposition of the first argument turns on an understanding of the kind of issuances that must contain the relevant facts and law that support them. The requirement appears in Section 4, Article 8 of the 1987 Constitution which says that "no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based," and Section 1, Rule 36 of the 1997 Rules of Civil Procedure, that "a judgment or final order determining the merits of the case shall… (state) clearly and distinctly the facts and the law on which it is based. In fine, only decisions and final orders on the merits need to reflect the relevant facts and law. The second paragraph of the cited provision of the Constitution specifies two other issuances to which a different requirement applies. These are denials of petitions for review and motions for reconsiderations of decisions, for which it is enough that the legal basis is stated. The Constitution and the Rules of Court are silent as to all other issuances.

There are nonetheless Supreme Court decisions, promulgated before the 1987 Constitution, which frown on minute orders by trial courts. In *Continental Bank vs. Tiangco*, 94 SCRA 715, the order

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[13] *Id*. at 51-52.

did not contain any reason for granting a motion to dismiss a complaint, in *Eastern Assurance and Surety Corporation vs. Cui*, 195 SCRA 622, it only said that the motion to dismiss a third-party complaint was well-taken, and in *Barrera vs. Militante*, 114 SRA (sic) 325, it held that the motion for reconsideration of an order of dismissal was without merit. These orders were actually reviewed by the High Court in spite of the fact that they were found to be minute orders, and the third was upheld for being supported with good reasons.

Subsequent cases have taken the concept of legal basis in a liberal light. Lack of merit was considered a legal basis for the denial of a motion for reconsideration of a decision. *Prudential Bank vs. Castro*, 158 SCRA 646, and order of dismissal of appeal, *United Placement International vs. NLRC*, 257 SCRA 404, while it should be deemed inferred from the statement of the High Court, in refusing due course to a petition for *certiorari*, that the petitioner had failed to show grave abuse of discretion in the action taken below. *Nunal vs. Commission on Audit*, 169 SCRA 356.

Applying these precepts, it is clear that the assailed Order of May 15, 2001, being merely a resolution of the motion to quash the writ of execution, is neither a decision nor a final order on the merits. As stated in *Puertollano vs. Intermediate Appellate Court*, 156 SCRA 188, a final judgment or order is one that finally disposes of and determines the rights of the parties, either on the entire controversy or a segment thereof, and concludes them until it is revised or set aside. The Order in question does not purport to settle a right but assumes it already. The respondents are correct in pointing out that it was the Order of October 15, 1999 that settled the rights of the parties to the matter of the balance of the purchase price and became the subject of the writ of execution. The intervening proceeding was nothing more than an attempt by the trial court to thresh out a settlement by the parties, which did not push through because of the intransigence of the petitioner, leaving the court no choice but to enforce the terms of the original order upon motion of the estate. On the basis of present jurisprudential trends, the expression *no merit* may safely be used for ordinary motions such as the one in issue here.

Neither may it be said that the writ had been prematurely issued, simply because the ejectment case, the expenses of which were to be deducted from the balance of the purchase price, was not yet terminated. The respondent estate had correctly pointed out that

the litigation expenses could be determined beforehand.... To allow petitioner to defer payment until it wound up the ejectment case would only place in its hands a potestative power to determine the enforceability of its own obligations under the contract.

The order sought to be enforced by the writ is not, as argued, the Order of July 6, 2000. Even a cursory reading of this issuance will tell us that what the estate was praying for was the enforcement of the October 15, 1999 Order. The trial court categorically stated that it would grant the writ "as prayed for by movant-administratrix" if petitioner would not exercise the option extended to it by the estate within a certain period. Nowhere do we see an instruction that the enforcement of the order of payment would have to defend (sic) on the eviction of the occupants.

Finally, it is not meet for petitioner to argue its way out of its obligation by citing the intervention of other parties in the case to claim a portion of the property. As it appears in their pleading, these parties expect to be prejudiced by the turnover of the purchase price to the estate. They can take care of themselves, and evidently, they are doing so by such intervention."

IN VIEW OF THE FOREGOING, the petition is dismissed.

SO ORDERED.

Petitioner's motion for reconsideration was denied in a resolution dated February 12, 2003.

Petitioner raises the following issues:[14]

I

WHETHER OR NOT THE TRIAL COURT CAN DELEGATE THE AUTHORITY TO HEAR AND DETERMINE THE AMOUNT TO BE LEVIED IN A WRIT OF EXECUTION TO THE SHERIFF; AND

II

WHETHER OR NOT A PROBATE COURT HAS THE JURISDICTION TO DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES IN A CONTRACT, ONE OF WHICH IS A PRIVATE CORPORATION.

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

Petitioner argues as follows:

1. the writ of execution dated October 5, 2000 sought to be quashed by petitioner is inherently defective, as it gives the sheriff the authority to determine the amount to be levied in violation of the mandatory provision of Section 8(e), Rule 39 of the 1997 Rules of Civil Procedure;
2. the quashal of the writ of execution issued by public respondent is necessary and proper because, aside from being inherently defective, it is the product of a null and void proceedings because the jurisdiction to determine the rights and obligations of petitioner and private respondent under the "Agreement for Sale of Land with Downpayment" exclusively belongs to courts of general jurisdiction;
3. the writ of execution sought to be quashed by petitioner is not one of those allowed to be issued by probate courts under Section 6, Rule 88; Section 3, Rule 90 and Section 13, Rule 142 of the Revised Rules of Court;
4. the writ of execution violates the doctrine that a contract is the law between parties, and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, customs or public policy;
5. there was a supervening cause which made the implementation of the subject writ of execution unjust and inequitable; and
6. *certiorari* is the appropriate remedy to assail the subject orders of public respondent for being issued outside or in excess of his jurisdiction.

The petition is denied.

As correctly held by the CA, there was no discretion given to the sheriff as to the amount to be paid or executed on under the writ of execution. While the writ of execution did say ". . . the sum of ₱4,259,400.00, . . . minus the expenses incurred by WT Construction in ejecting the occupants of the land," this simply means that petitioner was being given a chance by the court to reduce the aforementioned amount upon proof of said deductible expenses, after which an *alias* writ would be issued. In the absence of such proof, the sheriff would have to execute

for the full amount. And as noted by the CA, petitioner failed to prove such expenses within the period given by the probate/estate court. The issue is, therefore, moot.

As to petitioner's argument that the probate/estate court cannot adjudicate the rights and obligations of the parties under the deed of sale, the CA rightly found that this was a new issue not raised in the probate/estate court. Furthermore, the deed of sale in question is the sale of the property of the estate to pay for taxes, a matter definitely within the power of the probate/estate court to order.

It is but logical that probate/estate courts can enforce obligations under such a deed of sale. Otherwise, they would not be able to secure the proceeds to pay for the taxes and this would defeat the purpose of the proceedings to settle the estate. Stated otherwise, the power to enforce obligations under the deed of sale of a property ordered sold to pay debts of the estate is but a necessary incident of the power of a probate/estate court to order and effect such sale in the first place.

In fine, this Court sees no error on the part of the CA in dismissing petitioner's special civil action for *certiorari*.

WHEREFORE, the petition is *DENIED* and the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 65592 dated July 25, 2002 and February 12, 2003, respectively, are hereby *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 158768. February 12, 2008]

TITAN-IKEDA CONSTRUCTION & DEVELOPMENT CORPORATION, *petitioner, vs.* **PRIMETOWN PROPERTY GROUP, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS; PRESENT IN CASE AT BAR.— As a general rule, only questions of law may be raised in a petition for review on *certiorari.* Factual issues are entertained only in exceptional cases such as where the findings of fact of the CA and the trial court are conflicting. Here, a glaring contradiction exists between the factual findings of the RTC and the CA. The trial court found that respondent contributed to the project's delay because it belatedly communicated the modifications and failed to deliver the necessary materials on time. The CA, however, found that petitioner incurred delay in the performance of its obligation. It relied on ITI's report which stated that petitioner had accomplished only 48.71% of the project as of October 12, 1995.

2. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; *SOLUTIO INDEBITI*; REQUISITES.— Because petitioner acknowledged that it had been overpaid, it was obliged to return the excess to respondent. Embodying the principle of *solutio indebiti*, Article 2154 of the Civil Code provides: Article 2154. If something is received when there is no right to demand it and it was unduly delivered through mistake, the obligation to return it arises. For the extra-contractual obligation of *solutio indebiti* to arise, the following requisites must be proven: 1. the absence of a right to collect the excess sums and 2. the payment was made by mistake.

3. ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR.— With regard to the first requisite, because the supplemental agreement had been extinguished by the mutual agreement of the parties,

petitioner became entitled only to the cost of services it actually rendered (*i.e.,* that fraction of the project cost in proportion to the percentage of its actual accomplishment in the project). It was not entitled to the excess (or extent of overpayment). On the second requisite, Article 2163 of the Civil Code provides: Article 2163. It is presumed that **there was a mistake in the payment if something which had never been due** or had already been paid **was delivered**; but, he from whom the return is claimed may prove that the delivery was made out of liberality or for any other just cause. In this instance, respondent paid part of the contract price under the assumption that petitioner would complete the project within the stipulated period. However, after the supplemental agreement was extinguished, petitioner ceased working on the project. Therefore, the compensation petitioner received in excess of the cost of its actual accomplishment as of October 12, 1995 was never due. The condominium units and parking slots corresponding to the said excess were mistakenly delivered by respondent and were therefore not due to petitioner. Stated simply, respondent erroneously delivered excess units to petitioner and the latter, pursuant to Article 2154, was obliged to return them to respondent. Article 2160 of the Civil Code provides: xxx. One who receives payment by mistake in good faith is, as a general rule, only liable to return the thing delivered. If he benefited therefrom, he is also liable for the impairment or loss of the thing delivered and its accessories and accessions. If he sold the thing delivered, he should either deliver the proceeds of the sale or assign the action to collect to the other party.

4. ID.; ID.; ID.; CANNOT BE INVOKED BY THE CONTRACTOR WHO FAILED TO SECURE THE OWNER'S WRITTEN AUTHORITY TO CHANGES IN THE WORK OR WRITTEN ASSENT TO THE ADDITIONAL COST TO BE INCURRED.— In addition, petitioner's project coordinator Estellita Garcia testified that respondent never approved any change order. Thus, under Article 1724 and pursuant to our ruling in *Powton Conglomerate, Inc.,* petitioner cannot recover the cost it incurred in effecting the design modifications. A contractor who fails to secure the owner or developer's written authority to changes in the work or written assent to the additional cost to be incurred cannot invoke the principle of unjust enrichment.

5. ID.; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; DELAY; ONCE THE CREDITOR MAKES A DEMAND, THE DEBTOR INCURS DELAY; PETITIONER DID NOT INCUR DELAY IN THE PERFORMANCE OF ITS OBLIGATION.— *Mora* or delay is the failure to perform the obligation in due time because of *dolo* (malice) or *culpa* (negligence). A debtor is deemed to have violated his obligation to the creditor from the time the latter makes a demand. Once the creditor makes a demand, the debtor incurs *mora* or delay. xxx. Respondent never sent petitioner a written demand asking it to accelerate work on the project and reduce, if not eliminate, slippage. If delay had truly been the reason why respondent took over the project, it would have sent a written demand as required by the construction contract. Moreover, according to the October 12, 1995 letter-agreement, respondent took over the project for the sole reason that such move was part of its (respondent's) long-term plan. Respondent, on the other hand, relied on ITI's September 7, 1995 report. The construction contract named GEMM, not ITI, as construction manager. Because petitioner did not consent to the change of the designated construction manager, ITI's September 7, 1995 report could not bind it. In view of the foregoing, we hold that petitioner did not incur delay in the performance of its obligation.

6. ID.; ID.; WORK AND LABOR; CONTRACT FOR A PIECE OF WORK; RECOVERY OF ADDITIONAL COSTS INCURRED DUE TO CHANGES IN THE SCOPE OF WORK, WHEN ALLOWED.— The supplemental agreement was a contract for a stipulated price. In such contracts, the recovery of additional costs (incurred due to changes in plans or specifications) is governed by Article 1724 of the Civil Code. xxx. In *Powton Conglomerate, Inc. v. Agcolicol,* we reiterated that a claim for the cost of additional work arising from changes in the scope of work can only be allowed upon the: 1. written authority from the developer/owner ordering/ allowing the changes in work; and 2. written agreement of parties with regard to the increase in cost (or price) due to the change in work or design modification. Furthermore: **Compliance with the two requisites of Article 1724, a specific provision governing additional works, is a condition precedent of the recovery**. The absence of one or the other bars the recovery of additional costs. Neither the authority for the changes made

nor the additional price to be paid therefor may be proved by any other evidence for purposes of recovery. Petitioner submitted neither one.

7. CIVIL LAW; DAMAGES; COMPENSATORY DAMAGES; THE ACTUAL AMOUNT OF THE ALLEGED LOSS MUST BE PROVED BY PREPONDERANCE OF EVIDENCE.— Indemnification for damages comprehends not only the loss suffered (actual damages or *damnum emergens*) but also the claimant's lost profits (compensatory damages or *lucrum cessans*). For compensatory damages to be awarded, it is necessary to prove the actual amount of the alleged loss by preponderance of evidence. The RTC awarded compensatory damages based on the rental pool rates submitted by petitioner and on the premise that all those units would have been leased had respondent only finished the project by December 31, 1995. However, other than bare assertions, petitioner submitted no proof that the rental pool was in fact able to lease out the units. We thus hold that the "losses" sustained by petitioner were merely speculative and there was no basis for the award.

APPEARANCES OF COUNSEL

Jose Angelito B. Bulao for petitioner.
Amado Paolo C. Dimayuga for respondent.
Wilfredo Topacio Garcia & Associates for M.G. Co.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari*[1] seeks to set aside the decision of the Court of Appeals (CA) in CA-G.R. CV No. 61353[2] and its resolution[3] denying reconsideration.

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

[2] Penned by Associate Justice Godardo A. Jacinto (retired) and concurred in by Associate Justices Eloy R. Bello, Jr. (retired) and Josefina Guevara-Salonga of the Fifth Division of the Court of Appeals. Dated March 15, 2002. *Rollo,* pp. 10-18, 34-42, 81-89.

[3] Dated May 29, 2003. *Id.,* pp. 20-23, 91-94.

In 1992, respondent Primetown Property Group, Inc. awarded the contract for the structural works[4] of its 32-storey Makati Prime Tower (MPT) to petitioner Titan-Ikeda Construction and Development Corporation.[5] The parties formalized their agreement in a construction contract[6] dated February 4, 1993.[7]

Upon the completion of MPT's structural works, respondent awarded the ₱130,000,000 contract for the tower's architectural works[8] (project) to petitioner. Thus, on January 31, 1994, the parties executed a supplemental agreement.[9] The salient portions thereof were:

1. the [project] shall cover the scope of work of the detailed construction bid plans and specifications and bid documents dated 28 September 1993, attached and forming an integral part hereof as Annex A.
2. the contract price for the said works shall be ₱130 million.
3. the payment terms shall be "full swapping" or full payment in condominium units. The condominium units earmarked for the [petitioner] are shown in the attached Annex B.
4. the [respondent] shall transfer and surrender to [petitioner] the condominium units abovestated in accordance with the following schedule:
   (a) 80% of units — upon posting and acceptance by [respondent] of the performance bond [and]
   (b) 20% or remaining balance — upon completion of the project as provided in the construction contract and simultaneous with the posting by [petitioner] of the reglementary guarantee bond.

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[4] Refers to the foundation of the building, particularly the concrete and steel works up to the topping of the last floor without any finishing.

[5] *Rollo*, pp. 55, 200, 255.

[6] Exhibit "A", records, pp. 474-488.

[7] *Id.*, p. 1.

[8] Refers to all the finishing works including putting up partitions, doors, windows and interior and exterior finishes.

[9] Exhibit "B", records, pp. 490-492.

5. the contract period shall be fifteen (15) months reckoned from the release of the condominium certificates of title (CCTs) covering eighty percent (80%) of the units transferable to [petitioner] as aforesaid[.]

Significantly, the supplemental agreement adopted those provisions of the construction contract which it did not specifically discuss or provide for.[10] Among those carried over was the designation of GEMM Construction Corporation (GEMM) as the project's construction manager.[11]

Petitioner started working on the project in February 1994.

On June 30, 1994, respondent executed a deed of sale[12] (covering 114 condominium units and 20 parking slots of the

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[10] Exhibit "B-2", *id*., p. 492. Paragraph 10 of the supplemental agreement provided:

10. All other terms and conditions appearing in the construction contract, not otherwise in conflict with the above terms, shall remain in full force and binding upon the Parties insofar as they may be applicable with the [project] contemplated therein.

[11] Exhibit "A-1", *id*., p. 234. Art. I, par. 1.4. (Definition of Terms) of the construction contract provided:

1.4. CONSTRUCTION MANAGER GEMM Construction and Management and its duly authorized representatives

See Exhibit "A-10", *id*., p. 484. Art. XIX of the construction contract provided:

ARTICLE XIX

CONSTRUCTION MANAGER'S STATUS

19.1. **The construction managers shall have general management, inspection, monitoring and administration of the** [**project**]. They shall have the authority to stop the [project] whenever such stoppage may be necessary to ensure the proper execution of this contract. The construction managers, in consultation with [RESPONDENT] and ARCHITECT, shall decide on matters pertaining to architectural and engineering designs, workmanship, materials and construction.

19.2. The construction managers shall interpret the terms and conditions of this contract and shall mediate between and recommend decide on all claims of [RESPONDENT] or [PETITIONER] and shall resolve such other matters relating to the execution and progress of the works.

[12] Exhibit "8", *id*., pp. 506-509 and *rollo*, p. 23.

MPT collectively valued by the parties at ₱112,416,716.88)[13] in favor of petitioner pursuant to the "full-swapping" payment provision of the supplemental agreement.

Shortly thereafter, petitioner sold some of its units to third persons.[14]

In September 1995, respondent engaged the services of Integratech, Inc. (ITI), an engineering consultancy firm, to evaluate the progress of the project.[15] In its September 7, 1995 report,[16] ITI informed respondent that petitioner, at that point, had only accomplished 31.89% of the project (or was 11 months and six days behind schedule).[17]

Meanwhile, petitioner and respondent were discussing the possibility of the latter's take over of the project's supervision. Despite ongoing negotiations, respondent did not obtain petitioner's consent in hiring ITI as the project's construction manager. Neither did it inform petitioner of ITI's September 7, 1995 report.

On October 12, 1995, petitioner sought to confirm respondent's plan to take over the project.[18] Its letter stated:

> The mutual agreement arrived at sometime in the last week of August 1995 for [respondent] to take over the construction supervision of the balance of the [project] from [petitioner's] [e]ngineering staff and complete [the] same by December 31, 1995 as promised by [petitioner's] engineer.
>
> The [petitioner's] accomplished works as of this date of [t]ake over is of acceptable quality in materials and workmanship.
>
> **This mutual agreement on the take over should not be misconstrued in any other way except that the take over is part**

[13] *See* Deed of Absolute Sale. Exhibit "E", records, pp. 380-383. This value exceeded 80% of the contract price. (The amount paid was equivalent to 86% of the contract price.)

[14] Exhibits "13-P", "13-Q", "13-R", "13-S", and "13-T", records, pp. 537-541.

[15] *Rollo*, p. 201.

[16] Exhibit "F", records, pp. 383-409.

[17] *Id*., p. 384.

[18] *Id*.

of the long range plan of [**respondent**] that [petitioner], in the spirit of cooperation, agreed to hand over the construction supervision to [respondent] as requested. (emphasis supplied)[19]

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[19] Exhibit "C", *id*., p. 499.

Contra, Exhibit "A-9", *id*., pp. 483-484. The construction contract provided:

ARTICLE XVII

RESCISSION OF CONTRACT

17. It is understood that in case of **failure on the part of** [**PETITIONER**] **to complete the** [**project**] **herein stipulated and agreed on**, or if the [project] to be done under this contract is abandoned by [PETITIONER] or the latter fails to insure its completion within the required time, including any extension thereof, and in any of these cases, [**RESPONDENT**] **shall have the right to rescind this contract by giving notice in writing to that effect to** [**PETITIONER**] **and its bondsmen**. [RESPONDENT] shall then take over the [project] and proceed to complete the same on its own account.

17.1. It is further agreed and understood that in case of rescission, [RESPONDENT] shall ascertain and fix the value of the [project] completed by [PETITIONER] such usable materials on the [project] taken.

17.2. In the event that the total expenditures of [RESPONDENT] supplying the scope of [PETITIONER'S] work to complete the project, including all charges against the project prior to rescission of the contract, and not in excess of the contract price, then the difference between the said total expenditures of [RESPONDENT] and the contract price may be applied to settle claims, if any, with the conformity of [PETITIONER] filed by workmen employed on the project and by suppliers furnishing materials therefor. The balance, if any should be paid, to the [PETITIONER] but no amount in excess of the combined value of the unpaid completed work and retained percentage at the time of the rescission of this contract shall be paid. No claim for prospective profits on the work done after rescission of this contract shall be considered or allowed.

17.3. [PETITIONER] and its sureties shall likewise be liable to [RESPONDENT] for any loss caused to [RESPONDENT] in excess of the contract price. (emphasis supplied)

"Rescission" under article XVII of the construction contract never took place. Respondent notified neither petitioner nor its bondsmen that it was invoking its right to rescind under the contract. On the contrary, it was petitioner who drafted the October 12, 1995 letter-agreement. (The said letter was printed on petitioner's letterhead.) Thus, the succeeding paragraphs quoted above are inapplicable in this case.

Engineers Antonio Co, general construction manager of respondent, and Luzon Y. Tablante, project manager of petitioner, signed the letter.

INTEGRATECH'S (ITI'S) REPORT

In its September 7, 1995 report, ITI estimated that petitioner should have accomplished 48.71% of the project as of the October 12, 1995 takeover date.[20] Petitioner repudiated this figure[21] but qualifiedly admitted that it did not finish the project.[22] Records showed that respondent did not merely take over the supervision of the project but took full control thereof.[23]

Petitioner consequently conducted an inventory.[24] On the basis thereof, petitioner demanded from

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[20] Exhibit "F-1", *id*., p. 386.

[21] TSN, December 19, 1997, pp. 67-68.

[22] *Id*., pp. 94-95 and records, pp. 95-96.

[23] *Id*. Petitioner did not protest the new arrangement. In fact, it detailed a project engineer at site who monitored only the progress of works in its condominium units.

[24] Exhibits "5-E" and "5-F", *id*., pp. 502-503.

Petitioner's letter dated October 17, 1995 provided a detailed account of the respondent's liabilities. That letter was duly acknowledged by respondent.

	Change Orders	
a)	CO #1	₱ 7,496,125.80
b)	CO #2	160,975.87
c)	CO #3	167,191.15
d)	CO #4	311,799.71
e)	Penthouse rework (structural)	1,228,781.08
f)	Equipment support for MOS precast items	605,788.38
	Architectural Works	
g)	Structural additive CO #1	41,400.00
h)	Structural additive CO #2	276,177.00
i)	VAT for structural (42,077,577 x 0.07)	2,945,430.39
j)	VAT for architectural (May 31)	1,849,640.00
k)	[Respondent's] share in modular cabinets	2,694,400.00
l)	Letter dated October 2, 1995 under "A" Nos. 1, 8, 12, 16	37,688.00
m)	Letter dated October 2, 1995 under "B" Nos. 4, 11, 12, 17, 18 19, 22 & 23 and VAT for modular cabinets	726,878.05
n)	Letter dated September 28, 1995 under "B" - #28	10,349.78
o)	Letter dated October 12, 1995— A, B, C, D	7,668,131.76
	SUB-TOTAL	₱26,220,756.97

respondent the payment of its balance amounting to ₱1,779,744.85.[25]

On February 19, 1996, petitioner sent a second letter to respondent demanding ₱2,023,876.25. This new figure included

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	Others	
a)	Labor adjustment for architectural 290,000 x 27	7,830,000.00
	VAT	
a)	VAT for e and f (above) - 1,834,569.46 x 0.07	128,419.86
b)	VAT for o (above) - 7,688.131.75 x 0.07	536,769.22
c)	VAT for nos. 4, 11, 22 & 23 (under "B" letter Oct. 2, 1995) - 145,223.52 x 0.04	5,808.94
d)	VAT for architectural as of June to December 31, 1995 Accomplished as of Dec. 31, 1995 100.00% Less: accomplishment as of May 1, 1995 35.57 Accomplishment as of June to Dec. 1995 64.43% VAT = 130,000,000 x 0.6643 x 0.04	3,350,360.00
e)	VAT for 1 above I	1,507.52
f)	VAT for A above: labor adjustment for architectural	313,200.00
g)	Misc. additive (refer to attached) A. 2, 5, 7, 9, 10, 11, 13, 14, 16, 17, & B-25	648,211.78
	SUB-TOTAL	₱12,814,277.32
	Total change orders and other claim	₱39,035,033.29
ADD:	Balances from other projects:	
	Balance from Citadel project	₱ 196,379.44
	Sunnette Tower expenses advanced by [petitioner]	418,413.61
	Balance due to [petitioner] from Citadel units sold by [respondent]	240,785.82
	CWT and document stamp [taxes] advanced by [petitioner]	680,850.17
	Balance due from 100% swapping MPT architectural contract	894,902.15
	Balance from [petitioner] supplied concrete mix for [MPT] project	20,164.50
	Balances from other projects	2,451,495.69
	LESS: Advances and payable to petitioner	18,065,212.90
	AMOUNT DUE FROM RESPONDENT	₱23,421,316.08

[25] Demand letter dated October 26, 1997. Exhibits "6" and "7", records, pp. 500-504. The breakdown of the accounts is as follows:

	The remaining balance as of October 12, 1995 (refer to the attached) is	₱ 5,499,233.82
Plus:	Amount still payable to [petitioner] to SUBCONS (labor and materials)	16,244,635.38
	Amount still needed as of October 20, 1995	₱21,743,869.20
Less:	Letter [dated] October 17, 1995 [amount due to petitioner] (*supra* note 24)	23,422,316.08
	AMOUNT PAYABLE TO [PETITIONER] BY [RESPONDENT]	₱ 1,677,446.85
	Plus: Material deliveries from October 20 to 25, 1995	102,298.00
	REVISED AMOUNT	₱ 1,779,744.85

the cost of materials (₱244,331.40) petitioner advanced from December 5, 1995 to January 26, 1996.[26]

On November 22, 1996, petitioner demanded from respondent the delivery of MPT's management certificate[27] and the keys to the condominium units and the payment of its (respondent's) balance.[28]

Because respondent ignored petitioner's demand, petitioner, on December 9, 1996, filed a complaint for specific performance[29] in the Housing and Land Use Regulatory Board (HLURB).

While the complaint for specific performance was pending in the HLURB, respondent sent a demand letter to petitioner asking it to reimburse the actual costs incurred in finishing the project (or ₱69,785,923.47).[30] In view of the pendency of the HLURB case, petitioner did not heed respondent's demands.

On April 29, 1997, the HLURB rendered a decision in favor of petitioner.[31] It ruled that the instrument executed on

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[26] Exhibit "7", *id*., p. 505.

Balance as of October 26, 1995	₱1,779,744.85
Add: Cost of materials delivered from December 6, 1995 to January 25, 1996	244,131.40
AMOUNT PAYABLE TO [PETITIONER] BY [RESPONDENT]	₱2,023,867.25

Records show that at the time petitioner was working on the (MPT) project, it was also working on respondent's Sunnette Tower and Citadel projects. It is unclear in relation to which project this cost was incurred.

[27] A management certificate attests to the fact that the condominium corporation is at least 60% Filipino (or that foreigners own not more than 40% of that corporation). It is a condition precedent to the issuance of condominium certificates of title.

[28] *Rollo*, pp. 62-63.

[29] Docketed as HLRB Case No. 9657. Petitioner prayed for the issuance of the management certificate and condominium certificates of title and the delivery of keys to its respective buyers. Records, pp. 48-53.

[30] Exhibit "G", *id.,* pp. 410-412.

[31] Penned by housing and land use arbiter Emmanuel T. Pontejos. *Rollo*, pp. 113-119.

June 30, 1994 was a deed of absolute sale because the conveyance of the condominium units and parking slots was not subject to any condition.[32] Thus, it ordered respondent to issue MPT's management certificate and to deliver the keys to the condominium units to petitioner.[33] Respondent did not appeal this decision. Consequently, a writ of execution was issued upon its finality.[34]

Undaunted by the finality of the HLURB decision, respondent filed a complaint for collection of sum of money[35] against petitioner in the Regional Trial Court (RTC) of Makati City, Branch 58 on July 2, 1997. It prayed for the reimbursement of the value of the project's unfinished portion amounting to ₱66,677,000.[36]

During trial, the RTC found that because respondent modified the MPT's architectural design, petitioner had to adjust the scope of work.[37] Moreover, respondent belatedly informed petitioner of those modifications. It also failed to deliver the concrete mix and rebars according to schedule. For this reason, petitioner was not responsible for the project's delay.[38] The trial court thus allowed petitioner to set-off respondent's other outstanding liabilities with respondent's excess payment in the project.[39] It concluded that respondent owed petitioner ₱2,023,876.25.[40] In addition, because respondent refused to

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[32] *Id*., pp. 116-117.

[33] *Id*.

[34] Records, pp. 518-519. It is not clear whether the said writ was implemented.

[35] Docketed as Civil Case No. 97-1501. *Id*., pp. 1-6 and *rollo*, p. 12.

[36] ITI assessed the unfinished portion of the project at using the formula:

Contract price x (100% - projected % of work to be accomplished in MPT project)

₱130,000,000 x (100% - 48.71%)

[37] Refer to paragraph 1 of the supplemental agreement.

[38] *Rollo*, p. 97.

[39] See notes 24, 25 and 26. Respondent's liabilities did not only pertain to the MPT project (both structural and architectural works) but included those incurred in the Sunnette Tower and Citadel projects.

[40] *Rollo*, p. 98.

deliver the keys to the condominium units and the management certificate to petitioner, the RTC found that petitioner lost rental income amounting to US$1,665,260.[41] The dispositive portion of the RTC decision stated:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered dismissing [respondent's] [c]omplaint for lack of merit. On the other hand, finding preponderance of evidence to sustain [petitioner's] counterclaim, judgment is hereby rendered in favor of [petitioner] ordering [respondent] to pay the former:
>
> 1. The unpaid balance of the consideration for [petitioner's] services in [the project] in the amount of ₱2,023,867.25 with legal interest from the date of demand until fully paid;
>
> 2. Compensatory damages in the amount of US$1,665,260 or its peso equivalent at the current foreign exchange rate representing lost rental income due only as of July 1997 and the accrued lost earnings from then on until the date of actual payment, with legal interest from the date of demand until fully paid; and
>
> 3. Attorney's fees in the amount of ₱100,000 as acceptance fee, ₱1,000 appearance fee per hearing and 25% of the total amount awarded to [petitioner].
>
> With costs against the [respondent].
>
> SO ORDERED.[42]

[41] *Id*., pp. 109-110. In a rental pool agreement, the owners of several condominium units agree to lease their respective units at stipulated rates and divide the rent (or their earnings) proportionately according to the area of their respective units.

MPT rental pool's daily rates

	Rate		No. of Units
Studio type	US$	75	
1-bedroom unit		115	
2-bedroom unit		135	
3-bedroom unit		180	
Total Number of units			114 units
Lost rental income as of July 1997			US$1,665,260

[42] Penned by Judge Escolatico U. Cruz, Jr. of RTC Branch 58, Makati City. Dated August 5, 1998. *Id*., pp. 95-112.

Respondent appealed the RTC decision to the CA.[43] The appellate court found that respondent fully performed its obligation when it executed the June 30, 1994 deed of absolute sale in favor of petitioner.[44] Moreover, ITI's report clearly established that petitioner had completed only 48.71% of the project as of October 12, 1995, the takeover date. Not only did it incur delay in the performance of its obligation but petitioner also failed to finish the project. The CA ruled that respondent was entitled to recover the value of the unfinished portion of the project under the principle of unjust enrichment.[45] Thus:

WHEREFORE, the appealed decision is **REVERSED** and a new one entered dismissing [petitioner's] counterclaims of ₱2,023,867.25 representing unpaid balance for [its] services in [the project]; US$1,665,260 as accrued lost earnings, and attorney's fees. [Petitioner] is hereby ordered to return to [respondent] the amount of ₱66,677,000 representing the value of unfinished [portion of the

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[43] CA *rollo*, pp. 50-87. Under Rule 41 of the Rules of Court.

[44] *Rollo*, p. 15.

[45] *Id*.

See CIVIL CODE, Art. 22. The article provides:

Article 22. Every person who through an act or performance by another, or by any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

See also 1 Jose B.L. Reyes and Ricardo C. Puno, AN OUTLINE OF PHILIPPINE CIVIL LAW, 1957 ed., 42-43. The following are the essential requisites of the action (*action in rem verso*):

1. enrichment by direct acquisition of "plus value";
2. impoverishment of another;
3. correlation between enrichment and impoverishment (*i.e.,* a relation of cause and effect);
4. absence of justifiable cause for either enrichment or impoverishment; and
5. lack of other remedy.

The principle of unjust enrichment is inapplicable in this instance since petitioner received the condominium units and parkings slots as advance payment for services it should have rendered pursuant to the supplemental agreement. There was therefore a justifiable cause for the delivery of excess properties.

project], plus legal interest thereon until fully paid. Upon payment by [petitioner] of the aforementioned amount, [respondent] is hereby ordered to deliver the keys and [m]anagement [c]ertificate of the [Makati Prime Tower] paid to [petitioner] as consideration for the [project].[46]

Petitioner moved for reconsideration but it was denied. Hence, this petition.

Petitioner contends that the CA erred in giving weight to ITI's report because the project evaluation was commissioned only by respondent,[47] in disregard of industry practice. Project evaluations are agreed upon by the parties and conducted by a disinterested third party.[48]

We grant the petition.

REVIEW OF CONFLICTING FACTUAL FINDINGS

As a general rule, only questions of law may be raised in a petition for review on *certiorari*. Factual issues are entertained only in exceptional cases such as where the findings of fact of the CA and the trial court are conflicting.[49]

Here, a glaring contradiction exists between the factual findings of the RTC and the CA. The trial court found that respondent contributed to the project's delay because it belatedly communicated the modifications and failed to deliver the necessary materials on time. The CA, however, found that petitioner incurred delay in the performance of its obligation. It relied on ITI's report which stated that petitioner had accomplished only 48.71% of the project as of October 12, 1995.

JANUARY 31, 1994 SUPPLEMENTAL AGREEMENT WAS EXTINGUISHED

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

[47] *Id*., pp. 67-70.

[48] *Id*.

[49] *Austria v. Gonzales, Jr.,* 465 Phil. 355, 364 (2004).

A contract is a meeting of the minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.[50] This case involved two contracts entered into by the parties with regard to the project.

The parties first entered into a contract for a piece of work[51] when they executed the supplemental agreement. Petitioner as contractor bound itself to execute the project for respondent, the owner/developer, in consideration of a price certain (₱130,000,000). The supplemental agreement was reciprocal in nature because the obligation of respondent to pay the entire contract price depended on the obligation of petitioner to complete the project (and *vice versa*).

Thereafter, the parties entered into a second contract. They agreed to extinguish the supplemental agreement as evidenced by the October 12, 1995 letter-agreement which was duly acknowledged by their respective representatives.[52]

While the October 12, 1995 letter-agreement stated that respondent was to take over merely the supervision of the project, it actually took over the whole project itself. In fact, respondent subsequently hired two contractors in petitioner's stead.[53] Moreover, petitioner's project engineer at site only monitored the progress of architectural works undertaken in its condominium units.[54] Petitioner never objected to this arrangement; hence, it voluntarily surrendered its participation in the project. Moreover, it judicially admitted in its answer that respondent took over the entire project, not merely its supervision, pursuant to its (respondent's) long-range plans.[55]

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[50] CIVIL CODE, Art. 1305.

[51] *See* CIVIL CODE, Art. 1713. The article provides:

Art. 1713. By the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his labor or skill or also furnish the material.

[52] Evidence "G", records, p. 499.

[53] TSN, December 19, 1997, pp. 94-97.

[54] *Id*.

[55] Records, pp. 95-96.

Because the parties agreed to extinguish the supplemental agreement, they were no longer required to fully perform their respective obligations. Petitioner was relieved of its obligation to complete the project while respondent was freed of its obligation to pay the entire contract price. However, respondent, by executing the June 30, 1994 deed of absolute sale, was deemed to have paid ₱112,416,716.88. Nevertheless, because petitioner applied part of what it received to respondent's outstanding liabilities,[56] it admitted overpayment.

Because petitioner acknowledged that it had been overpaid, it was obliged to return the excess to respondent. Embodying the principle of *solutio indebiti*, Article 2154 of the Civil Code provides:

> Article 2154. If something is received when there is no right to demand it and it was unduly delivered through mistake, the obligation to return it arises.

For the extra-contractual obligation of *solutio indebiti* to arise, the following requisites must be proven:

1. the absence of a right to collect the excess sums and
2. the payment was made by mistake.[57]

With regard to the first requisite, because the supplemental agreement had been extinguished by the mutual agreement of the parties, petitioner became entitled only to the cost of services it actually rendered (*i.e.,* that fraction of the project cost in proportion to the percentage of its actual accomplishment in the project). It was not entitled to the excess (or extent of overpayment).

On the second requisite, Article 2163 of the Civil Code provides:

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[56] See notes 24, 25 and 26.

[57] *Velez v. Balzarza*, 73 Phil. 630 (1942). *See also City of Cebu v. Judge Piccio*, 110 Phil. 558 (1960). *See also Andres v. Manufacturer's Hanover Trust*, G.R. No. 82670, 15 September 1989, 177 SCRA 618.

Article 2163. It is presumed that **there was a mistake in the payment if something which had never been due** or had already been paid **was delivered**; but, he from whom the return is claimed may prove that the delivery was made out of liberality or for any other just cause. (emphasis supplied)

In this instance, respondent paid part of the contract price under the assumption that petitioner would complete the project within the stipulated period. However, after the supplemental agreement was extinguished, petitioner ceased working on the project. Therefore, the compensation petitioner received in excess of the cost of its actual accomplishment as of October 12, 1995 was never due. The condominium units and parking slots corresponding to the said excess were mistakenly delivered by respondent and were therefore not due to petitioner.

Stated simply, respondent erroneously delivered excess units to petitioner and the latter, pursuant to Article 2154, was obliged to return them to respondent.[58] Article 2160 of the Civil Code provides:

Article 2160. He who in good faith accepts an undue payment of a thing certain and determinate shall only be responsible for the impairment or loss of the same or its accessories and accessions insofar as he has thereby been benefited. If he has alienated it, he shall return the price or assign the action to collect the sum.

One who receives payment by mistake in good faith is, as a general rule, only liable to return the thing delivered.[59] If he benefited therefrom, he is also liable for the impairment or loss of the thing delivered and its accessories and accessions.[60] If he sold the thing delivered, he should either deliver the proceeds of the sale or assign the action to collect to the other party.[61]

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[58] To compute the value of the unfinished portion of the project, the formula below should be used:

Total project cost x (100% - % of project actually accomplished)

[59] Refer to Article 2154.

[60] Refer to Article 2160.

[61] *Id*. *See also* Melencio S. Sta. Maria, Jr., *OBLIGATIONS AND CONTRACTS*: *TEXT AND CASES*, 1st ed., p. 509.

The situation is, however, complicated by the following facts:

a) the basis of the valuation (₱112,416,716.99) of the condominium units and parking slots covered by the June 30, 1994 deed of sale is unknown;

b) the percentage of petitioner's actual accomplishment in the project has not been determined and

c) the records of this case do not show the actual number of condominium units and parking slots sold by petitioners.

Because this Court is not a trier of facts, the determination of these matters should be remanded to the RTC for reception of further evidence.

The RTC must first determine the percentage of the project petitioner actually completed and its proportionate cost.[62] This will be the amount due to petitioner. Thereafter, based on the stipulated valuation in the June 30, 1994 deed of sale, the RTC shall determine how many condominium units and parking slots correspond to the amount due to petitioner. It will only be the management certificate and the keys to these units that petitioner will be entitled to. The remaining units, having been mistakenly delivered by respondent, will therefore be the subject of *solutio indebiti*.

What exactly must petitioner give back to respondent? Under Article 2160 in relation to Article 2154, it should return to respondent the condominium units and parking slots in excess of the value of its actual accomplishment (*i.e.,* the amount due to it) as of October 12, 1995. If these properties include units and/or slots already sold to third persons, petitioner shall deliver the proceeds of the sale thereof or assign the actions for collection to respondent as required by Article 2160.

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[62] In order to determine the proportionate cost of the petitioner's actual accomplishment in the project, the formula below must be used:

Total project cost ₱130,000,000 (refer to paragraph 2 of the construction contract)	x	% of the project petitioner actually accomplished (to be determined by the RTC)

DELAY IN THE COMPLETION OF THE PROJECT

Mora or delay is the failure to perform the obligation in due time because of *dolo* (malice) or *culpa* (negligence).[63] A debtor is deemed to have violated his obligation to the creditor from the time the latter makes a demand. Once the creditor makes a demand, the debtor incurs *mora* or delay.[64]

The construction contract[65] provided a procedure for protesting delay:

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[63] 4 Jose B.L. Reyes and Ricardo C. Puno, *AN OUTLINE OF PHILIPPINE CIVIL LAW*, 1957 ed., 28. *See Philippine Export and Foreign Loan Guarantee Corporation v. V.P. Eusebio Construction, Inc.,* 478 Phil. 269, 290 (2004).

See CIVIL CODE, Art. 1169. The article provides:

Article 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, demand by the creditor shall not be necessary in order that delay may exist:

1) When the obligation or the law expressly declares; or
2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the obligation; or
3) When demand would be be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[64] *Solid Homes v. Tan,* G.R. Nos. 145156-57, 29 July 2005, 465 SCRA 137, 147-148.

[65] *Supra* note 10. The supplementary agreement clearly stated the construction contract, save those matters explicitly discussed in the former, governed the project.

Article XIV
DELAYS AND ABANDONMENT

15.1. **If at any time during the effectivity of this contract**, [**PETITIONER**] **shall incur unreasonable delay or slippages of more than fifteen percent (15%) of the scheduled work program**, [**RESPONDENT**] **should notify** [**PETITIONER**] **in writing to accelerate the work and reduce, if not erase, slippage**. If after the lapse of sixty (60) days from receipt of such notice, [PETITIONER] fails to rectify the delay or slippage, [RESPONDENT] shall have the right to terminate this contract except in cases where the same was caused by *force majeure*. "*FORCE MAJEURE*" as contemplated herein, and in determination of delay includes, but is not limited to, typhoon, flood, earthquake, *coup d'etat*, rebellion, sedition, transport strike, stoppage of work, mass public action that prevents workers from reporting for work, and such other causes beyond [PETITIONER'S] control.[66] (emphasis supplied)

x x x x x x x x x

Respondent never sent petitioner a written demand asking it to accelerate work on the project and reduce, if not eliminate, slippage. If delay had truly been the reason why respondent took over the project, it would have sent a written demand as required by the construction contract. Moreover, according to the October 12, 1995 letter-agreement, respondent took over the project for the sole reason that such move was part of its (respondent's) long-term plan.

Respondent, on the other hand, relied on ITI's September 7, 1995 report. The construction contract named GEMM, not ITI, as construction manager.[67] Because petitioner did not consent to the change of the designated construction manager, ITI's September 7, 1995 report could not bind it.

In view of the foregoing, we hold that petitioner did not incur delay in the performance of its obligation.

RECOVERY OF ADDITIONAL COSTS RESULTING FROM CHANGES

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[66] Exhibit "A-7", records, p. 481.

[67] *Supra* note 11.

The supplemental agreement was a contract for a stipulated price.[68] In such contracts, the recovery of additional costs (incurred due to changes in plans or specifications) is governed by Article 1724 of the Civil Code.

Article 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of higher cost of labor or materials, save when there has been a change in plans and specifications, provided:

1. such change has been authorized by the proprietor in writing; and
2. the additional price to be paid to the contractor has been determined in writing by both parties**.**

In *Powton Conglomerate, Inc. v. Agcolicol,*[69] we reiterated that a claim for the cost of additional work arising from changes in the scope of work can only be allowed upon the:

1. written authority from the developer/owner ordering/allowing the changes in work; and
2. written agreement of parties with regard to the increase in cost (or price) due to the change in work or design modification.[70]

Furthermore:

Compliance with the two requisites of Article 1724, a specific provision governing additional works, is a condition precedent of the recovery. The absence of one or the other bars the recovery of additional costs. Neither the authority for the changes made nor the additional price to be paid therefor may be proved by any other evidence for purposes of recovery.[71] (emphasis supplied)

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[68] Refer to paragraph 2 of the January 31, 1994 supplemental agreement.

[69] 448 Phil. 643 (2003).

[70] *Id*., pp. 652-653 *citing Weldon Construction Corporation v. Court of Appeals,* G.R. No. L-35721, 12 October 1987, 154 SCRA 618, 632-634.

[71] *Id*., p. 633.

Petitioner submitted neither one. In addition, petitioner's project coordinator Estellita Garcia testified that respondent never approved any change order.[72] Thus, under Article 1724 and pursuant to our ruling in *Powton Conglomerate, Inc.,* petitioner cannot recover the cost it incurred in effecting the design modifications. A contractor who fails to secure the owner or developer's written authority to changes in the work or written assent to the additional cost to be incurred cannot invoke the principle of unjust enrichment.[73]

RECOVERY OF COMPENSATORY DAMAGES

Indemnification for damages comprehends not only the loss suffered (actual damages or *damnum emergens*) but also the claimant's lost profits (compensatory damages or *lucrum cessans*). For compensatory damages to be awarded, it is necessary to prove the actual amount of the alleged loss by preponderance of evidence.[74]

The RTC awarded compensatory damages based on the rental pool rates submitted by petitioner[75] and on the premise that all those units would have been leased had respondent only finished the project by December 31, 1995.[76] However, other than bare

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See also *San Diego v. Sayson*, 112 Phil. 1073 (1961). We explained the rationale of Article 1724.

"That the requirement for a written authorization is not merely to prohibit admission of oral testimony against the objection of the adverse party can be inferred from the fact that the provision is not included among those specified in the Statute of Frauds, Article 1403 of the Civil Code. As it does not appear to have been intended as an extension of the Statute of Frauds, it must have been adopted as a substantive provision or a condition precedent to recovery."

[72] TSN, December 18, 1997, pp. 127-128. The records contain neither a document allowing a change order or an agreement as to increase in cost.

[73] *Powton Conglomerate, Inc. v. Agcolicol, supra* note 69 at 655-656.

[74] *Integrated Packing Corporation v. Court of Appeals,* 388 Phil. 835, 846 (2000). *See also Smith Kline Beckman Corporation v. Court of Appeals,* 456 Phil. 213, 225-226 (2003).

[75] *Supra* note 41.

[76] *Rollo,* p. 111.

assertions, petitioner submitted no proof that the rental pool was in fact able to lease out the units. We thus hold that the "losses" sustained by petitioner were merely speculative and there was no basis for the award.

REMAND OF OTHER CLAIMS

Since respondent did not repudiate petitioner's other claims stated in the inventory[77] in the RTC and CA, it is estopped from questioning the validity thereof.[78] However, because some of petitioner's claims have been disallowed, we remand the records of this case to the RTC for the computation of respondent's liability.[79]

WHEREFORE, the petition is hereby *GRANTED*.

The March 15, 2002 decision and May 29, 2003 resolution of the Court of Appeals in CA-G.R. CV No. 61353 and the August 5, 1998 decision of the Regional Trial Court, Branch 58, Makati City in Civil Case No. 97-1501 are hereby *SET ASIDE*. New judgment is entered:

1. ordering petitioner Titan-Ikeda Construction and Development Corporation to return to respondent Primetown Property Group, Inc. the condominium units and parking slots corresponding to the payment made in excess of the proportionate (project) cost of its actual accomplishment as of October 12, 1995, subject to its (petitioner's) allowable claims as stated in the inventory and
2. dismissing petitioner Titan-Ikeda Construction and Development Corporation's claims for the cost of additional work (or change order) and damages.

The records of this case are remanded to the Regional Trial Court of Makati City, Branch 58 for:

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[77] *Supra* note 24.

[78] Reyes and Puno, *supra* note 63 at 274. This case involves **estoppel by judgment**. Estoppel by judgment bars the parties from raising any question that should have been put in issue and decided in previous proceedings.

[79] See *Metro Manila Transit Corporation v. D.M. Consortium, Inc.,* G.R. No. 147594, 7 March 2007, 517 SCRA 632, 642.

1. the reception of additional evidence to determine
   (a) the percentage of the architectural work actually completed by petitioner Titan-Ikeda Construction and Development Corporation as of October 12, 1995 on the Makati Prime Tower and
   (b) the number of condominium units and parking slots sold by petitioner Titan-Ikeda Construction and Development Corporation to third persons;
2. the computation of petitioner Titan-Ikeda Construction and Development Corporation's actual liability to respondent Primetown Property Group, Inc. or vice-versa, and the determination of imposable interests and/or penalties, if any.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 160613. February 12, 2008]

APOLINARDITO C. QUINTANILLA and PERFECTA C. QUINTANILLA, *petitioners, vs.* **PEDRO ABANGAN and DARYL'S COLLECTION INT'L. INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; EASEMENT; LEGAL EASEMENT OF RIGHT OF WAY; REQUISITES.— It should be remembered that to be entitled to a legal easement of right of way, the following requisites must be satisfied: (1) the dominant estate is surrounded by other immovables and has no adequate

outlet to a public highway; (2) proper indemnity has been paid; (3) the isolation was not due to acts of the proprietor of the dominant estate; and (4) the right of way claimed is at the point least prejudicial to the servient estate.

2. ID.; ID.; ID.; ID.; GENERAL RULE; WHERE THE CRITERION OF LEAST PREJUDICE TO THE SERVIENT ESTATE AND THE CRITERION OF SHORTEST DISTANCE DOES NOT CONCUR IN A SINGLE TENEMENT, THE FORMER PREVAILS OVER THE LATTER.— We are in full accord with the ruling of the CA when it aptly and judiciously held, to wit: As provided for under the provisions of Article 650 of the New Civil Code, the easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest. Where there are several tenements surrounding the dominant estate, and the easement may be established on any of them, the one where the way is shortest and will cause the least damage should be chosen. *But if these two circumstances do not concur in a single tenement,* as in the instant case, *the way which will cause the least damage should be used, even if it will not be the shortest. The criterion of least prejudice to the servient estate must prevail over the criterion of shortest distance.* The court is not bound to establish what is the shortest; a longer way may be established to avoid injury to the servient tenement, such as when there are constructions or walls which can be avoided by a round-about way, as in the case at bar. xxx Such pronouncement by the CA is in line with this Court's ruling in *Quimen v. Court of Appeals*, where we held that as between a right of way that would demolish a store of strong materials to provide egress to a public highway, and another right of way which, although longer, will only require an avocado tree to be cut down, the second alternative should be preferred.

3. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE COURT OF APPEALS, AFFIRMING THOSE OF THE TRIAL COURT, ARE GENERALLY FINAL AND CONCLUSIVE; EXCEPTIONS NOT PRESENT IN CASE AT BAR.— As a rule, findings of fact of the CA, affirming those of the trial court, are generally final and conclusive on this Court. While this Court has recognized several

exceptions to this rule, none of these exceptions finds application in this case. *Ergo*, we find no cogent reason and reversible error to disturb the unanimous findings of the RTC and the CA as these are amply supported by the law and evidence on record.

APPEARANCES OF COUNSEL

Florido & Largo Law Office for Daryl's Collection International, Inc.

Paterno S. Compra for P. Abangan.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated April 21, 2003, which affirmed the Decision[3] of the Regional Trial Court (RTC), Branch 57 of Cebu City, dated June 21, 2000.

This controversy flows from a case for Easement of Right of Way filed by petitioner Apolinardito C. Quintanilla (Apolinardito) and his mother, petitioner Perfecta C. Quintanilla (Perfecta) against respondent Pedro Abangan (Pedro) and respondent Daryl's Collection International, Inc. (DARYL'S).

Sometime in the 1960s, Perfecta bought Lot No. 3771-B-1-A, with an area of 2,244 square meters, located at Inayawan, Cebu City (the dominant estate) from one Dionisio Abasolo, who formerly owned all the properties therein. Thereafter, Perfecta donated the dominant estate to Apolinardito, who is now the

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[1] Dated October 24, 2003, *rollo*, pp. 3-18.

[2] Particularly docketed as CA-G.R. CV No. 68349, penned by Associate Justice Rodrigo V. Cosico with Associate Justices Juan Q. Enriquez, Jr. and Hakim S. Abdulwahid, concurring; *rollo,* pp. 19-26.

[3] Particularly docketed as Civil Case No. CEB-16081; *id*. at 27-30.

registered owner thereof.[4] Petitioners own QC Rattan Inc., a domestic corporation engaged in the manufacture and export of rattan-made furniture. In the conduct of their business, they use vans to haul and transport raw materials and finished products. As they wanted to expand their business and construct a warehouse on their property (the dominant estate), they asked for a right of way from Pedro sometime in April 1994.

However, it appears that Pedro, who was the owner of Lot No. 3771-A-1, containing an area of 1,164 square meters[5] (the servient estate) and a lot near the dominant estate, sold the same to DARYL'S on March 24, 1994,[6] and thereafter, DARYL'S constructed a warehouse over the servient estate, enclosing the same with a concrete fence.

Petitioners, thus, sought the imposition of an easement of right of way, six (6) meters in width, or a total area of 244 square meters, over the servient estate.

On June 21, 2000, the RTC dismissed the case for lack of merit. The RTC held that petitioners failed to establish that the imposition of the right of way was the least prejudicial to the servient estate. The RTC noted that there is already a concrete fence around the area and that six (6) meters from the said concrete fence was a concrete warehouse. Thus, substantial damage and substantial reduction in area would be caused the servient estate. Moreover, the RTC observed that petitioners' insistence on passing through the servient estate would make for easy and convenient access to the main thoroughfare for their vans. Otherwise, if the right of way were to be constituted on any of the other surrounding properties, their vans would have to make a turn. On this premise, the RTC opined that mere convenience to the dominant estate was not necessarily the basis for setting up a compulsory easement of right of way.

Aggrieved, petitioners went to the CA on appeal.

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[4] Covered by Transfer Certificate of Title (TCT) No. 133582; Folder of Exhibits, p. 1.

[5] Covered by TCT No. 99281; *id* at 29.

[6] Pedro's Manifestation; *rollo,* pp. 59-60.

In its Decision dated April 21, 2003, the CA affirmed the RTC Decision, holding that the criterion of least prejudice to the servient estate must prevail over the shortest distance. A longer way may, thus, be established to avoid injury to the servient tenement, such as when there are constructions or walls which can be avoided by a round-about way,[7] as in this case. Petitioners filed a Motion for Reconsideration,[8] but the same was denied in the CA Resolution[9] dated September 24, 2003.

Hence, the instant petition based on the following grounds:

a) IN A COMPULSORY EASEMENT OF RIGHT OF WAY, AS SET FORTH IN THE PRECONDITIONS UNDER ARTICLES 649[10] AND 650[11] OF THE NEW CIVIL CODE, THE DETERMINATION OF THE LEAST PREJUDICIAL OR LEAST DAMAGE TO THE SERVIENT ESTATE SHOULD BE AT THE TIME OF THE FILING OF THE ORIGINAL COMPLAINT AND NOT AFTER THE FILING,

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[7] Citing II Arturo M. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* 390 (1992).

[8] Dated May 27, 2003; CA *rollo*, pp. 71-78.

[9] *Rollo*, p. 31.

[10] Article 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

[11] Article 650. The easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be shortest.

ESPECIALLY WHEN THE OWNER OF THE SERVIENT ESTATE IS GUILTY OF ABUSE OF RIGHTS CONSIDERED AS THE GREATEST OF ALL POSSIBLE WRONGS OR BAD FAITH BY CONSTRUCTING A CONCRETE FENCE AND WAREHOUSE THEREON THROUGH MISREPRESENTATION TO THE OFFICE OF THE CEBU CITY BUILDING OFFICIAL THAT IT HAD GRANTED A RIGHT OF WAY OF SIX (6) METERS TO PETITIONERS; AND

b) WHETHER OR NOT COMPLIANCE WITH THE PRECONDITIONS SET FORTH IN ARTICLES 649 AND 650 OF THE NEW CIVIL CODE IS SUPERIOR TO THE "MERE CONVENIENCE RULE AGAINST THE OWNER OF THE DOMINANT ESTATE."

Petitioners claim that DARYL'S constructed the concrete fence only after petitioners filed the case for an Easement of Right of Way against Pedro on May 27, 1994. They submit that the criterion of least prejudice should be applied at the time of the filing of the original complaint; otherwise, it will be easy for the servient estate to evade the burden by subsequently constructing structures thereon in order to increase the damage or prejudice.[12] Moreover, they pointed out that a Notice of *Lis Pendens* was annotated on Pedro's title. Thus, petitioners aver that DARYL'S is in bad faith and is guilty of abuse of rights as provided under Article 19[13] of the New Civil Code.[14]

On the other hand, DARYL'S counters that petitioners belatedly imputed bad faith to it since petitioners' pre-trial brief filed with the RTC contained no allegation of bad faith or misrepresentation. Moreover, DARYL'S reiterates its position that establishing a right of way over the servient estate would cause substantial damage, considering that a concrete fence has already been erected thereon. Most importantly, DARYL'S submits that petitioners can have adequate ingress to or egress from the dominant estate by passing through other surrounding

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[12] Reply dated February 14, 2005; *rollo*, pp. 66-70.

[13] Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[14] *Supra* note 1.

vacant lots. Lastly, DARYL'S points out that when Perfecta bought the dominant estate from Dionisio Abasolo, the surrounding lots were also owned by the latter.[15]

For his part, Pedro manifests that he is adopting all the defenses invoked by DARYL'S in the belief that he is no longer a party to the instant case as he had already sold the servient estate to DARYL'S and a title already issued in the latter's name.[16]

The instant petition lacks merit.

We hold that Apolinardito as owner of the dominant estate together with Perfecta failed to discharge the burden of proving the existence and concurrence of all the requisites in order to validly claim a compulsory right of way against respondents.[17]

It should be remembered that to be entitled to a legal easement of right of way, the following requisites must be satisfied: (1) the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway; (2) proper indemnity has been paid; (3) the isolation was not due to acts of the proprietor of the dominant estate; and (4) the right of way claimed is at the point least prejudicial to the servient estate.[18]

The fourth requisite is absent.

We are in full accord with the ruling of the CA when it aptly and judiciously held, to wit:

As provided for under the provisions of Article 650 of the New Civil Code, the easement of right of way shall be established at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest. Where there are several tenements

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[15] DARYL'S Comment dated February 11, 2004; *rollo*, pp. 44-50.

[16] *Supra* note 6.

[17] *Costabella Corporation v. Court of* Appeals, G.R. No. 80511, January 25, 1991, 193 SCRA 333, 340.

[18] *Woodridge School, Inc., and Miguela Jimenez-Javier v. ARB Construction Co., Inc.*, G.R. No. 157285, February 16, 2007, citing *Costabella Corporation v. Court of Appeals*, *supra*.

surrounding the dominant estate, and the easement may be established on any of them, the one where the way is shortest and will cause the least damage should be chosen. *But if these two circumstances do not concur in a single tenement,* as in the instant case, *the way which will cause the least damage should be used, even if it will not be the shortest. The criterion of least prejudice to the servient estate must prevail over the criterion of shortest distance.* The court is not bound to establish what is the shortest; a longer way may be established to avoid injury to the servient tenement, such as when there are constructions or walls which can be avoided by a round-about way, as in the case at bar.

As between a right of way that would demolish a fence of strong materials to provide ingress and egress to a public highway and another right of way which although longer will only require a van or vehicle to make a turn, the second alternative should be preferred. Mere convenience for the dominant estate is not what is required by law as the basis for setting up a compulsory easement. Even in the face of necessity, if it can be satisfied without imposing the easement, the same should not be imposed.

Finally, worthy of note, is the undisputed fact that there is already a newly opened public road barely fifty (50) meters away from the property of appellants, which only shows that another requirement of the law, that is, there is no adequate outlet, has not been met to establish a compulsory right of way.

Such pronouncement by the CA is in line with this Court's ruling in *Quimen v. Court of Appeals*,[19] where we held that as between a right of way that would demolish a store of strong materials to provide egress to a public highway, and another right of way which, although longer, will only require an avocado tree to be cut down, the second alternative should be preferred.

As a rule, findings of fact of the CA, affirming those of the trial court, are generally final and conclusive on this Court.[20]

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[19] 326 Phil. 969, 979 (1996).

[20] *Solidbank Corporation/Metropolitan Bank and Trust Company v. Spouses Peter and Susan Tan*, G.R. No. 167346, April 2, 2007, citing *Bordalba v. Court of Appeals*, 425 Phil. 407 (2002).

While this Court has recognized several exceptions[21] to this rule, none of these exceptions finds application in this case. *Ergo*, we find no cogent reason and reversible error to disturb the unanimous findings of the RTC and the CA as these are amply supported by the law and evidence on record.

WHEREFORE, the instant Petition is *DENIED* for lack of merit. The assailed Court of Appeals Decision, dated April 21, 2003, and Resolution dated September 24, 2003 are hereby *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

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

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[21] The exceptions are: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the CA 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 CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, will justify a different conclusion.

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

THIRD DIVISION

[G.R. No. 162739. February 12, 2008]

AMA COMPUTER COLLEGE-SANTIAGO CITY, INC., *petitioner, vs.* **CHELLY P. NACINO, substituted by the Heirs of Chelly P. Nacino,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN MAY BE GRANTED DESPITE THE AVAILABILITY OF APPEAL.— We are not unmindful of instances when *certiorari* was granted despite the availability of appeal, such as (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. However, none of these recognized exceptions attends the case at bar.

2. ID.; ID.; ID.; MAY BE TREATED AS HAVING BEEN FILED UNDER RULE 45 OF THE RULES OF COURT, IN THE INTEREST OF JUSTICE; REGLEMENTARY PERIOD.— While it is true that, in accordance with the liberal spirit which pervades the Rules of Court and in the interest of justice, a petition for *certiorari* may be treated as having been filed under Rule 45, the petition for *certiorari* filed by petitioner before the CA cannot be treated as such, without the exceptional circumstances mentioned above, because it was filed way beyond the 15-day reglementary period within which to file the Petition for Review. AMA received the assailed Decision of the Voluntary Arbitrator on April 15, 2003 and it filed the petition for *certiorari* under Rule 65 before the CA only on June 16, 2003. By parity of reasoning, the same reglementary period should apply to appeals taken from the decisions of Voluntary Arbitrators under Rule 43.

3. ID.; RULES OF PROCEDURE; NOT TO BE DISDAINED AS MERE TECHNICALITIES AND MAY NOT BE IGNORED TO SUIT THE CONVENIENCE OF A PARTY.— Verily, rules of procedure exist for a noble purpose, and to disregard

such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.

APPEARANCES OF COUNSEL

Almazan Veloso Festejo Mira & Partners for petitioner.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Resolution[2] dated June 23, 2003, the dispositive portion of which provides:

WHEREFORE**,** for being procedurally flawed, this petition for *certiorari* is hereby **DENIED DUE COURSE**, and consequently **DISMISSED**. Needless to say, the prayer for temporary restraining order, being merely an adjunct to the main suit, must be *pro tanto* **DENIED.**

SO ORDERED.

and of the CA Resolution[3] dated March 3, 2004 which denied petitioner's motion for reconsideration.

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[1] Dated April 27, 2004; *rollo*, pp. 8-39.

[2] Particularly docketed as CA-G.R. SP No. 77508, penned by Associate Justice Renato C. Dacudao (retired), with Associate Justices Godardo A. Jacinto and Danilo B. Pine (both retired), concurring; *id*. at 48.

[3] *Id*. at 43-45.

Petitioner AMA Computer College – Santiago City, Inc. (AMA) employed Chelly P. Nacino (Nacino) as Online Coordinator of the college. On October 30, 2002, ostensibly upon inspection, the Human Resources Division Supervisor, Mariziel C. San Pedro (San Pedro) found Nacino absent from his post. On the same day, San Pedro issued a Memorandum[4] requiring Nacino to explain his absence. Nacino filed with San Pedro a written explanation[5] claiming that he had to rush home at 1315 hours (1:15 PM) because he was suffering from LBM (loose bowel movement) and that the facilities in the school were inadequate and inefficient, but he had gone back to the school at 1410 hours (2:10 PM). Not satisfied with the explanation, San Pedro sought another explanation because the earlier explanation "does not conform to a previous investigation conducted."[6] Nacino furnished San Pedro the same written explanation he had earlier submitted. San Pedro then filed a formal complaint against Nacino for false testimony, in addition to the charge of abandonment. An Investigating Committee[7] was constituted to investigate the complaint and, pending investigation, Nacino was placed under preventive suspension for a maximum of thirty (30) days, effective November 8, 2002.[8] The Investigating Committee found Nacino guilty as charged, and was dismissed from the service on December 5, 2002.[9]

Aggrieved, Nacino filed on December 13, 2002 a Complaint[10] for Illegal Suspension and Termination before the National Conciliation and Mediation Board (NCMB) in Tuguegarao City. On January 10, 2003, Maria Luanne M. Jali-jali (Jali-jali), AMA's representative, signed the submission Agreement, accepting the

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[4] Memorandum, *id*. at 83.

[5] Written Explanation; *id*. at 84.

[6] Memorandum, dated November 5, 2002; *id*. at 85.

[7] Memorandum, dated November 7, 2002; *id*. at. 88.

[8] *Rollo*, p. 89.

[9] Memorandum, *id*. at 91.

[10] *Rollo*, p. 93.

jurisdiction of Voluntary Arbitrator Nicanor Y. Samaniego (Voluntary Arbitrator) over the controversy.

Before the Voluntary Arbitrator, the parties agreed to settle the case amicably, with Nacino discharging and releasing AMA from all his claims in consideration of the sum of ₱7,719.81. The Decision[11] embodying the Compromise Agreement and the corresponding Quitclaim and Release,[12] both dated February 21, 2003, were duly prepared and signed, but the check in payment of the consideration for the settlement had yet to be released.

On April 1, 2003, Nacino died in an accident. On April 15, 2003, the Voluntary Arbitrator rendered the assailed Decision,[13] ordering Nacino's reinstatement and the payment of his backwages and 13th month pay. Therein, the Voluntary Arbitrator manifested that, due to AMA's failure to pay the sum of ₱7,719.81, Nacino withdrew from the Compromise Agreement, as shown by the conduct of a hearing on March 15, 2003 where both parties appeared and were directed to file their position papers. The Voluntary Arbitrator also stated that Nacino complied, but AMA failed to file its position paper and to appear before him despite summons. On May 7, 2003, the Voluntary Arbitrator issued a Writ of Execution[14] upon motion of Nacino's surviving spouse, one Bernadeth V. Nacino. AMA filed a Motion to Quash the said Writ but the Voluntary Arbitrator allegedly refused to receive the same.[15] Thus, on May 22, 2003, the heirs of Nacino were able to garnish AMA's bank deposits in the amount of ₱52,021.70.

On June 16, 2003, AMA filed a Petition[16] for *Certiorari* under Rule 65 before the CA. On June 23, 2003, the CA dismissed the said petition because it was a wrong mode of review. It

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[11] Decision in NCMB-RB2-VA Case No. 01-001-2003; *id*. at 95-96.

[12] *Rollo,* p. 94.

[13] *Id*. at 76-79.

[14] *Id*. at 80-81.

[15] Affidavit of one Dennis Salvador, messenger of AMA dated March 19, 2003; *id*. at 82.

[16] *Id*. at 51-74.

held that the proper remedy was an appeal by way of Rule 43 of the Rules of Civil Procedure. Accordingly, the CA opined, an erroneous appeal shall be dismissed outright pursuant to Section 2, Rule 50 of the Rules of Civil Procedure.

AMA filed its Motion for Reconsideration but the CA denied it in its Resolution dated March 3, 2004.

Hence, this petition based on the sole ground that:

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN DISMISSING THE PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE FILED BY HEREIN PETITIONER.

AMA claims that Jali-jali was misinformed and misled in signing the Submission Agreement, subjecting AMA to the jurisdiction of the Voluntary Arbitrator; that the Voluntary Arbitrator's Decision was issued under the Labor Code and, as such, the same is not appealable under Rule 43, as provided for by Section 2[17] thereof, but under Rule 65 of the Rules of Civil Procedure; and that the petition for *certiorari* is the only plain, speedy and adequate remedy in this case since the Voluntary Arbitrator acted with grave abuse of discretion in disregarding the parties' compromise agreement, in rendering the assailed Decision, and in issuing the Writ of Execution without affording AMA its right to due process.

On the other hand, the heirs of Nacino refused to receive this Court's Resolution requiring them to file their Comment[18] and, as such, were considered to have waived their right to file the same.[19]

The instant petition lacks merit.

Pertinent is our ruling in *Centro Escolar University Faculty and Allied Workers Union-Independent v. Court of Appeals*,[20] where we held:

[17] Rule 43, SEC. 2. *Cases not covered.* — This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines.

[18] Resolution, April 11, 2005; *rollo*, p. 117.

[19] Resolution, August 15, 2005; *id*. at 123.

[20] G.R. No. 165486, May 31, 2006, 490 SCRA 61, 69-70, citing *Luzon Development Bank v. Association of Luzon Development Bank Employees,* 249 SCRA 162 (1995).

We find that the Court of Appeals did not err in holding that petitioner used a wrong remedy when it filed a special civil action on *certiorari* under Rule 65 instead of an appeal under Rule 43 of the 1997 Rules of Civil Procedure. The Court held in *Luzon Development Bank v. Association of Luzon Development Bank Employees* that decisions of the voluntary arbitrator under the Labor Code are appealable to the Court of Appeals. In that case, the Court observed that the Labor Code was silent as regards the appeals from the decisions of the voluntary arbitrator, unlike those of the Labor Arbiter which may be appealed to the National Labor Relations Commission. The Court noted, however, that the voluntary arbitrator is a government instrumentality within the contemplation of Section 9 of *Batas Pambansa Blg.* (BP) 129 which provides for the appellate jurisdiction of the Court of Appeals. The decisions of the voluntary arbitrator are akin to those of the Regional Trial Court, and, therefore, should first be appealed to the Court of Appeals before being elevated to this Court. This is in furtherance and consistent with the original purpose of Circular No. 1-91 to provide a uniform procedure for the appellate review of adjudications of all quasi-judicial agencies not expressly excepted from the coverage of Section 9 of BP 129. Circular No. 1-91 was later revised and became Revised Administrative Circular No. 1-95. The Rules of Court Revision Committee incorporated said circular in Rule 43 of the 1997 Rules of Civil Procedure. The inclusion of the decisions of the voluntary arbitrator in the Rule was based on the Court's pronouncements in *Luzon Development Bank v. Association of Luzon Development Bank Employees*. Petitioner's argument, therefore, that the ruling in said case is inapplicable in this case is without merit.

We are not unmindful of instances when *certiorari* was granted despite the availability of appeal, such as (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.[21] However, none of these recognized exceptions attends the case at bar. AMA has sadly failed to show circumstances that would justify a deviation from the general rule.

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[21] *Chua v. Santos*, G.R. No. 132467, October 18, 2004, 440 SCRA 365, 374-375.

While it is true that, in accordance with the liberal spirit which pervades the Rules of Court and in the interest of justice, a petition for *certiorari* may be treated as having been filed under Rule 45, the petition for *certiorari* filed by petitioner before the CA cannot be treated as such, without the exceptional circumstances mentioned above, because it was filed way beyond the 15-day reglementary period within which to file the Petition for Review.[22] AMA received the assailed Decision of the Voluntary Arbitrator on April 15, 2003 and it filed the petition for *certiorari* under Rule 65 before the CA only on June 16, 2003.[23] By parity of reasoning, the same reglementary period should apply to appeals taken from the decisions of Voluntary Arbitrators under Rule 43. Based on the foregoing disquisitions, the assailed Decision of the Voluntary Arbitrator had already become final and executory and beyond the purview of this Court to act upon.[24]

Verily, rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.[25]

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[22] *First Corporation v. Former Sixth Division of the Court of Appeals*, G.R. No. 171989, July 4, 2007.

[23] *Supra* note 16, at 53-54.

[24] *Zacate v. Commission on Elections*, G.R. No. 144678, March 1, 2001, 353 SCRA 441, 449.

[25] *Audi Ag v. Hon. Jules A. Mejia, in his capacity as Executive Judge of the Regional Trial Court, Alaminos City; Auto Prominence Corporation; and Proton Pilipinas Corporation*, G.R. No. 167533, July 27, 2007.

WHEREFORE, the instant Petition is *DENIED* for lack of merit. The assailed Court of Appeals Resolutions dated June 23, 2003 and March 3, 2004 are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 164110. February 12, 2008]

LEONOR B. CRUZ, *petitioner, vs.* **TEOFILA M. CATAPANG,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY; CO-OWNERSHIP; A CO-OWNER CANNOT, WITHOUT THE CONSENT OF THE OTHER CO-OWNERS, GIVE A VALID CONSENT TO A THIRD PERSON TO CONSTRUCT A HOUSE ON THE CO-OWNED PROPERTY; REASONS.— As to the issue of whether or not the consent of one co-owner will warrant the dismissal of a forcible entry case filed by another co-owner against the person who was given the consent to construct a house on the co-owned property, we have held that a co-owner cannot devote common property to his or her exclusive use to the prejudice of the co-ownership. In our view, a co-owner cannot give valid consent to another to build a house on the co-owned property, which is an act tantamount to devoting the property to his or her exclusive use. xxx. Article 486 states each co-owner may use the thing owned in common provided he does so in

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

accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. Giving consent to a third person to construct a house on the co-owned property will injure the interest of the co-ownership and prevent other co-owners from using the property in accordance with their rights. Under Article 491, none of the co-owners shall, without the consent of the others, make alterations in the thing owned in common. It necessarily follows that none of the co-owners can, without the consent of the other co-owners, validly consent to the making of an alteration by another person, such as respondent, in the thing owned in common. Alterations include any act of strict dominion or ownership and any encumbrance or disposition has been held implicitly to be an act of alteration. The construction of a house on the co-owned property is an act of dominion. Therefore, it is an alteration falling under Article 491 of the Civil Code. There being no consent from all co-owners, respondent had no right to construct her house on the co-owned property.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; ENTRY INTO THE LAND EFFECTED CLANDESTINELY WITHOUT THE KNOWLEDGE OF THE OTHER CO-OWNERS CAN BE CATEGORIZED AS POSSESSION BY STEALTH.— Consent of only one co-owner will not warrant the dismissal of the complaint for forcible entry filed against the builder. The consent given by Norma Maligaya in the absence of the consent of petitioner and Luz Cruz did not vest upon respondent any right to enter into the co-owned property. Her entry into the property still falls under the classification "through strategy or stealth." The Court of Appeals held that there is no forcible entry because respondent's entry into the property was not through strategy or stealth due to the consent given to her by one of the co-owners. We cannot give our imprimatur to this sweeping conclusion. Respondent's entry into the property without the permission of petitioner could appear to be a secret and clandestine act done in connivance with co-owner Norma Maligaya whom respondent allowed to stay in her house. Entry into the land effected clandestinely without the knowledge of the other co-owners could be categorized as possession by stealth. Moreover, respondent's act of getting only the consent of one co-owner, her sister

Norma Maligaya, and allowing the latter to stay in the constructed house, can in fact be considered as a strategy which she utilized in order to enter into the co-owned property. As such, respondent's acts constitute forcible entry.

3. ID.; ID.; ID.; POSSESSION BY STEALTH; ONE-YEAR PERIOD FOR FILING THE COMPLAINT IS COUNTED FROM THE TIME PETITIONER LEARNED ABOUT IT.— Petitioner's filing of a complaint for forcible entry, in our view, was within the one-year period for filing the complaint. The one-year period within which to bring an action for forcible entry is generally counted from the date of actual entry to the land. However, when entry is made through stealth, then the one-year period is counted from the time the petitioner learned about it. Although respondent constructed her house in 1992, it was only in September 1995 that petitioner learned of it when she visited the property. Accordingly, she then made demands on respondent to vacate the premises. Failing to get a favorable response, petitioner filed the complaint on January 25, 1996, which is within the one-year period from the time petitioner learned of the construction.

APPEARANCES OF COUNSEL

Wilfredo M. Bolito for petitioner.
Triste & Tenorio Law Office for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review seeks the reversal of the Decision[1] dated September 16, 2003 and the Resolution[2] dated June 11, 2004 of the Court of Appeals in CA-G.R. SP No. 69250. The Court of Appeals reversed the Decision[3] dated October 22, 2001 of the

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[1] *Rollo*, pp. 53-59. Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Romeo A. Brawner and Jose C. Reyes, Jr. concurring.

[2] *Id*. at 64-66.

[3] Records, pp. 96-101. Penned by Executive Judge Benjamin P. Martinez.

Regional Trial Court (RTC), Branch 86, Taal, Batangas, which had earlier affirmed the Decision[4] dated September 20, 1999 of the 7th Municipal Circuit Trial Court (MCTC) of Taal, Batangas ordering respondent to vacate and deliver possession of a portion of the lot co-owned by petitioner, Luz Cruz and Norma Maligaya.

The antecedent facts of the case are as follows.

Petitioner Leonor B. Cruz, Luz Cruz and Norma Maligaya are the co-owners of a parcel of land covering an area of 1,435 square meters located at Barangay Mahabang Ludlod, Taal, Batangas.[5] With the consent of Norma Maligaya, one of the aforementioned co-owners, respondent Teofila M. Catapang built a house on a lot adjacent to the abovementioned parcel of land sometime in 1992. The house intruded, however, on a portion of the co-owned property.[6]

In the first week of September 1995, petitioner Leonor B. Cruz visited the property and was surprised to see a part of respondent's house intruding unto a portion of the co-owned property. She then made several demands upon respondent to demolish the intruding structure and to vacate the portion encroaching on their property. The respondent, however, refused and disregarded her demands.[7]

On January 25, 1996, the petitioner filed a complaint[8] for forcible entry against respondent before the 7th MCTC of Taal, Batangas. The MCTC decided in favor of petitioner, ruling that consent of only one of the co-owners is not sufficient to justify defendant's construction of the house and possession of the portion of the lot in question.[9] The dispositive portion of the MCTC decision reads:

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[4] *Id*. at 67-72. Penned by Acting Presiding Judge Pio M. Pasia.

[5] *Rollo*, p. 53.

[6] *Id*.

[7] *Id*. at 53-54.

[8] Records, pp. 2-6.

[9] *Id*. at 71.

WHEREFORE, judgment is hereby rendered ordering the defendant or any person acting in her behalf to vacate and deliver the possession of the area illegally occupied to the plaintiff; ordering the defendant to pay plaintiff reasonable attorney's fees of ₱10,000.00, plus costs of suit.

SO ORDERED.[10]

On appeal, the RTC, Branch 86, Taal, Batangas, affirmed the MCTC's ruling in a Decision dated October 22, 2001, the dispositive portion of which states:

Wherefore, premises considered, the decision [appealed] from is hereby affirmed *in toto*.

SO ORDERED.[11]

After her motion for reconsideration was denied by the RTC, respondent filed a petition for review with the Court of Appeals, which reversed the RTC's decision. The Court of Appeals held that there is no cause of action for forcible entry in this case because respondent's entry into the property, considering the consent given by co-owner Norma Maligaya, cannot be characterized as one made through strategy or stealth which gives rise to a cause of action for forcible entry.[12] The Court of Appeals' decision further held that petitioner's remedy is not an action for ejectment but an entirely different recourse with the appropriate forum. The Court of Appeals disposed, thus:

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. The challenged Decision dated 22 October 2001 as well as the Order dated 07 January 2002 of the Regional Trial Court of Taal, Batangas, Branch 86, are hereby **REVERSED** and **SET ASIDE** and, in lieu thereof, another is entered **DISMISSING** the complaint for forcible entry docketed as Civil Case No. 71-T.

SO ORDERED.[13]

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[10] *Id*. at 71-72.

[11] *Id*. at 101.

[12] *Rollo*, p. 58.

[13] *Id*. at 59.

After petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution dated June 11, 2004, she filed the instant petition.

Raised before us for consideration are the following issues:

I.

WHETHER OR NOT THE KNOWLEDGE AND CONSENT OF CO-OWNER NORMA MALIGAYA IS A VALID LICENSE FOR THE RESPONDENT TO ERECT THE BUNGALOW HOUSE ON THE PREMISES OWNED PRO-INDIVISO SANS CONSENT FROM THE PETITIONER AND OTHE[R] CO-OWNER[.]

II.

WHETHER OR NOT RESPONDENT, BY HER ACTS, HAS ACQUIRED EXCLUSIVE OWNERSHIP OVER THE PORTION OF THE LOT SUBJECT OF THE PREMISES PURSUANT TO THE CONSENT GRANTED UNTO HER BY CO-OWNER NORMA MALIGAYA TO THE EXCLUSION OF THE PETITIONER AND THE OTHER CO-OWNER.[14]

III.

. . . WHETHER OR NOT RESPONDENT IN FACT OBTAINED POSSESSION OF THE PROPERTY IN QUESTION BY MEANS OF SIMPLE STRATEGY.[15]

Petitioner prays in her petition that we effectively reverse the Court of Appeals' decision.

Simply put, the main issue before us is whether consent given by a co-owner of a parcel of land to a person to construct a house on the co-owned property warrants the dismissal of a forcible entry case filed by another co-owner against that person.

In her memorandum,[16] petitioner contends that the consent and knowledge of co-owner Norma Maligaya cannot defeat the action for forcible entry since it is a basic principle in the law

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[14] *Id*. at 101.

[15] *Id*. at 110.

[16] *Id*. at 96-105.

of co-ownership that no individual co-owner can claim title to any definite portion of the land or thing owned in common until partition.

On the other hand, respondent in her memorandum[17] counters that the complaint for forcible entry cannot prosper because her entry into the property was not through strategy or stealth due to the consent of one of the co-owners. She further argues that since Norma Maligaya is residing in the house she built, the issue is not just *possession de facto* but also one of *possession de jure* since it involves rights of co-owners to enjoy the property.

As to the issue of whether or not the consent of one co-owner will warrant the dismissal of a forcible entry case filed by another co-owner against the person who was given the consent to construct a house on the co-owned property, we have held that a co-owner cannot devote common property to his or her exclusive use to the prejudice of the co-ownership.[18] In our view, a co-owner cannot give valid consent to another to build a house on the co-owned property, which is an act tantamount to devoting the property to his or her exclusive use.

Furthermore, Articles 486 and 491 of the Civil Code provide:

> Art. 486. Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied.
>
> Art. 491. None of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom. However, if the withholding of the consent by one or more of the co-owners is clearly prejudicial to the common interest, the courts may afford adequate relief.

Article 486 states each co-owner may use the thing owned in common provided he does so in accordance with the purpose

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[17] *Id*. at 108-112.

[18] See *De Guia v. Court of Appeals*, G.R. No. 120864, October 8, 2003, 413 SCRA 114, 127.

for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. Giving consent to a third person to construct a house on the co-owned property will injure the interest of the co-ownership and prevent other co-owners from using the property in accordance with their rights.

Under Article 491, none of the co-owners shall, without the consent of the others, make alterations in the thing owned in common. It necessarily follows that none of the co-owners can, without the consent of the other co-owners, validly consent to the making of an alteration by another person, such as respondent, in the thing owned in common. Alterations include any act of strict dominion or ownership and any encumbrance or disposition has been held implicitly to be an act of alteration.[19] The construction of a house on the co-owned property is an act of dominion. Therefore, it is an alteration falling under Article 491 of the Civil Code. There being no consent from all co-owners, respondent had no right to construct her house on the co-owned property.

Consent of only one co-owner will not warrant the dismissal of the complaint for forcible entry filed against the builder. The consent given by Norma Maligaya in the absence of the consent of petitioner and Luz Cruz did not vest upon respondent any right to enter into the co-owned property. Her entry into the property still falls under the classification "through strategy or stealth."

The Court of Appeals held that there is no forcible entry because respondent's entry into the property was not through strategy or stealth due to the consent given to her by one of the co-owners. We cannot give our imprimatur to this sweeping conclusion. Respondent's entry into the property without the permission of petitioner could appear to be a secret and clandestine act done in connivance with co-owner Norma Maligaya whom respondent allowed to stay in her house. Entry into the land effected clandestinely without the knowledge of the other co-owners could be categorized as possession by stealth.[20] Moreover,

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[19] *Gala v. Rodriguez*, 70 Phil. 124 (1940).

[20] *Go, Jr. v. Court of Appeals*, G.R. No. 142276, August 14, 2001, 362 SCRA 755, 768.

respondent's act of getting only the consent of one co-owner, her sister Norma Maligaya, and allowing the latter to stay in the constructed house, can in fact be considered as a strategy which she utilized in order to enter into the co-owned property. As such, respondent's acts constitute forcible entry.

Petitioner's filing of a complaint for forcible entry, in our view, was within the one-year period for filing the complaint. The one-year period within which to bring an action for forcible entry is generally counted from the date of actual entry to the land. However, when entry is made through stealth, then the one-year period is counted from the time the petitioner learned about it.[21] Although respondent constructed her house in 1992, it was only in September 1995 that petitioner learned of it when she visited the property. Accordingly, she then made demands on respondent to vacate the premises. Failing to get a favorable response, petitioner filed the complaint on January 25, 1996, which is within the one-year period from the time petitioner learned of the construction.

WHEREFORE, the petition is *GRANTED*. The Decision dated September 16, 2003 and the Resolution dated June 11, 2004 of the Court of Appeals in CA-G.R. SP No. 69250 are *REVERSED* and *SET ASIDE*. The Decision dated October 22, 2001 of the Regional Trial Court, Branch 86, Taal, Batangas is *REINSTATED*. Costs against respondent.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[21] *Bongato v. Malvar*, G.R. No. 141614, August 14, 2002, 387 SCRA 327, 338; *Elaine v. Court of Appeals*, G.R. No. 80638, April 26, 1989, 172 SCRA 822.

FIRST DIVISION

[G.R. No. 164299. February 12, 2008]

MANILA INTERNATIONAL AIRPORT AUTHORITY, *petitioner*, *vs*. **POWERGEN, INC.,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; APPLICATION FOR INJUNCTIVE WRIT IS NOT A CAUSE OF ACTION IN ITSELF BUT ONLY A PROVISIONAL REMEDY, A MERE ADJUNCT TO THE MAIN SUIT.— In assessing the issue of whether the injunction was proper, both the trial court and the CA closely examined whether the notice to proceed in fact amended the PGA. A careful perusal of the records, however, shows that such a determination touched essentially on the merits of the main action. Part of the relief requested by respondent in the trial court was to "[direct] the [petitioner] MIAA to comply with the [PGA] and purchase from and pay to respondent the minimum guaranteed energy consumption of four million KWH in accordance with Article 7.3 of the PGA." It must be borne in mind that an injunction is a preservative remedy for the protection of one's substantive right or interest, issued to preserve the *status quo* of the things subject of the action or the relations between the parties during the pendency of the suit. The application for the injunctive writ is not a cause of action in itself but only a provisional remedy, a mere adjunct to the main suit.

2. ID.; ID.; ID.; ID.; COURTS SHOULD AVOID ISSUING A WRIT OF PRELIMINARY INJUNCTION WHICH IN EFFECT DISPOSES OF THE MAIN CASE WITHOUT TRIAL.— Moreover, as held in *Ortigas & Company Limited Partnership v. CA*: **In general, courts should avoid issuing a writ of preliminary injunction which in effect disposes of the main case without trial.** This is precisely the effect of the writ of preliminary mandatory injunction issued by the respondent appellate court. Having granted through a writ of preliminary mandatory injunction the main prayer of the complaint, there is practically nothing left for the trial court to try except the

plaintiffs' claim for damages. If this Court affirms the trial court and the CA, that is, if we decide the issue of whether the notice to proceed indeed amended the PGA, we will essentially be disposing of the main action and the trial court will have nothing more to try except what rate respondent should charge petitioner. Thus, we decline to issue judgment on a case which has not gone through trial. Under the circumstances, a full blown trial is necessary in order to assess the true intention of the parties and to determine whether respondent's acceptance indeed modified the obligation under Article 7.3.

3. ID.; ID.; ID.; ISSUANCE THEREOF CANNOT BE JUSTIFIED ABSENT A CLEAR SHOWING OF EXTREME URGENCY TO PREVENT IRREPARABLE INJURY AND OF A CLEAR AND UNMISTAKABLE RIGHT TO IT, FREE FROM DOUBT AND DISPUTE.— To grant the injunction sought by respondent will not preserve the *status quo* as it will give respondent the right to collect from petitioner more than what it has been collecting, without the benefit of trial. Without a clear showing of extreme urgency to prevent irreparable injury and of a clear and unmistakable right to it, free from doubt and dispute, the injunction sought cannot be justified. Respondent's allegation of extreme urgency is not supported by concrete proof of irreparable injury. Nothing is offered except sweeping conclusions about the alleged possibility of financial ruin. Moreover, respondent makes much of the "threat" of petitioner to transfer its operations to Terminal 3 and thus consume less energy to respondent's detriment, an argument that is speculative at best as petitioner has not transferred its operations nor can it possibly do so. Terminal 3 is still subject of a protracted litigation and will not conceivably open anytime soon. Thus, respondent's claim of urgency cannot be believed.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari*[1] assails the October 16, 2003 decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76415 and its June 25, 2004 resolution[3] denying reconsideration. The decision affirmed the trial court's January 21, 2003 order for the issuance of preliminary injunction,[4] January 23, 2003 writ of preliminary mandatory injunction[5] and March 24, 2003 order[6] denying reconsideration.

The antecedent facts follow.

In the early 1990s, the entire Metro Manila, including the airport area, started experiencing daily power outages, split power interruptions, voltage fluctuations and power surges. All this impaired the efficient functioning of the airport facilities and equipment, and essential public services.

Consequently, petitioner Manila International Airport Authority (MIAA) (which was then totally dependent on the Manila Electric Company [MERALCO] for its power requirements) had to remedy the situation. Its management decided to install a baseload power plant to provide all airport facilities continuous and adequate electric supply. As petitioner lacked both expertise and capability to undertake such a project, its management solicited contractors to build and operate this power plant on a Build-Operate-Own

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

[2] Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Eloy R. Bello (retired) and Arturo D. Brion (now Secretary of Labor) of the Sixteenth Division of the Court of Appeals. *Rollo*, pp. 71-83.

[3] *Id*., p. 84.

[4] Penned by Judge Leticia Querubin Ulibarri of the Regional Trial Court of Pasig City, Branch 168. *Id*., pp. 57-61.

[5] *Id*., pp. 63-64.

[6] *Id*., pp. 66-69.

scheme. Petitioner prepared the terms of reference[7] and conducted a public bidding for the construction of the proposed power plant.

Respondent Powergen, Inc. submitted its bid. On April 4, 1994, petitioner issued a notice of award[8] to respondent. Thereafter, petitioner and respondent entered into a Power Generation Agreement (PGA).[9] Article 7.3 of the PGA stated:

> 7.3 MIAA OBLIGATIONS
>
> (i) The purchase and the payment of [Powergen, Inc.] of the minimum guaranteed energy consumption of Four Million KWH (4,000,000) per month at the privilege discount rate.
> (ii) The purchase and payment of the energy requirement of MIAA above the minimum guaranteed energy consumption in accordance with the Sixth Schedule.
> (iii) To answer for whatever amount supply (sic) MERALCO may charge for the use on a standby basis of its power supply.

The agreement further provided that petitioner shall pay respondent energy fees based on the Sixth Schedule, to wit:

> SIXTH SCHEDULE
>
> DELIVERY OF POWER AND ENERGY
>
> 1. Obligations of Parties
> [Powergen, Inc.] hereby agrees to generate all the electric energy requirements of MIAA and MIAA hereby agrees to take at the high voltage side of the main transformer its electric-energy requirements delivered by [Powergen, Inc.] until the end of this Agreement.
>
> 2. Delivered Energy
> [Powergen, Inc.] shall generate electric energy and deliver it to MIAA, and MIAA shall take such electricity from [Powergen, Inc.]. The energy delivered shall be paid for by

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[7] *Id.*, pp. 85-89.

[8] *Id.*, pp. 168-169.

[9] *Id.*, pp. 90-125.

the MIAA pursuant to the terms and conditions as provided in No. 3 of this Schedule.

3. Terms of Payment
MIAA will be billed on a monthly basis for the total consumed electrical energy taking into consideration the minimum guaranteed consumption whichever is higher.

3.1 All Energy Fees payable to [Powergen, Inc.] by MIAA during the fifteen-year Cooperation Period, including the period of Testing/Commissioning, will be computed as per the MERALCO Billing System less Forty Percent (40%) discount. Thus:

DISCOUNT RATE=MERALCO's Prevailing Rate at Time of the Billing x 0.60

3.2 Guaranteed Minimum Energy Off-Take. The guaranteed minimum energy consumption of MIAA shall be 4,000,000 KWK/month and the corresponding energy fee will be computed as per the above formula.

On December 18, 1995, petitioner gave respondent a notice to proceed[10] which provided:

With reference to the signed [PGA] between [MIAA] and [Powergen, Inc.], you are hereby notified to proceed with the above referenced Project in accordance with our Agreement, subject to the following conditions:

1. The construction of an initial 7.250 MW (2 x 3.625) Power Station that will service our priority circuits within the MIAA complex;

2. The above initial Power Station shall be part of the original bid proposal that was submitted to MIAA during the bidding and as such shall be subject to the conditions of the [PGA] with respect to pricing and other relevant provisions of it. Provided, however:

   a. That the maximum (sic) guaranteed energy consumption of Four Million (4,000,000) KWH per month of MIAA, stipulated in Article 7.3 of the said contract, shall be ignored and MIAA shall not be liable to the purchase of such guaranteed consumption. Meanwhile, only the actual energy consumed

[10] *Id*., pp. 126-127.

KWH by MIAA shall be the basis for the computation of the operating fees.

b. That Article 7.3 shall be reimposed only when the KW capacity stipulated on the BOO Contract is attained.

c. The [Powergen, Inc.] shall abide by the relevant terms stipulated in the contract and in the Notice of Award for the operation of the diesel power station.

On the same day, respondent, through its president, Luisito C. Magpayo, signed the "Certified Acknowledgment of Receipt and Acceptance."

Thereafter, the power station was constructed and operated by respondent, and petitioner paid the energy fees in accordance with the billings made by respondent. However, sometime in June 2000, petitioner discovered that MERALCO was charging a rate (₱2.03 per KWH) lower than that respondent was collecting (₱2.22 per KWH). Consequently, petitioner used the lower rate of ₱2.03 per KWH in its payments.

Complaining that petitioner did not comply with its contractual obligation under the PGA, respondent, on January 4, 2001, sued for reformation of contract in the Regional Trial Court of Pasig City, Branch 168. It asked the court to fix the rate at which petitioner should pay respondent; to reform the PGA and to direct petitioner to comply with the PGA and purchase from and pay to respondent the guaranteed minimum energy consumption of four million KWH in accordance with Article 7.3 of the PGA.[11] On July 24, 2001, respondent amended the complaint to include an application for temporary restraining order or preliminary injunction to enjoin petitioner from deducting from respondent's future billings the alleged "overpayments" on the energy charge until the court finally decided the case.[12] On November 12, 2002, respondent filed an urgent motion for issuance of preliminary injunction[13] to compel petitioner to comply

[11] Complaint, *id*., pp. 128-139.

[12] Amended Complaint, *id*., pp. 218-230.

[13] Urgent Motion, *id*., pp. 305-312.

with its obligation under Article 7.3 of the PGA *vis-à-vis* the guaranteed minimum four million KWH of energy from respondent.

On January 21, 2003, the trial court issued an order granting respondent's urgent motion.[14] Subsequently, on January 23, 2003, a writ of preliminary mandatory injunction was issued.[15]

Petitioner sought reconsideration with a motion to set aside the order of preliminary mandatory injunction and a motion to quash/lift the writ of preliminary injunction. It was denied.[16] Petitioner went up to the CA on a petition for *certiorari*.[17] The petition was dismissed. Petitioner then filed a motion for reconsideration which was again dismissed.[18] Hence, this petition.[19]

The issue centers on whether respondent is entitled to a preliminary mandatory injunction.

On one hand, petitioner contends that respondent has no right to the injunction because no irreparable injury or right to be protected exists. In granting respondent the writ of mandatory injunction, the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction. On the other hand, respondent maintains its right to insist on petitioner's compliance with its contractual obligation. It asserts that the notice to proceed did not amend the PGA. In addition, respondent underscores the extreme urgency for the issuance of the preliminary mandatory injunction. Respondent claims that it will only be able to grant petitioner the discounted rates and preserve its own financial

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[14] *Id*., pp. 57-61.

[15] *Id*., pp. 63-64.

[16] *Id*., pp. 66-69.

[17] Under Rule 65 of the Rules of Court. Docketed as CA-G.R. SP No. 76415. *Id*., pp. 71-82.

[18] *Id*., p. 84.

[19] Adjunct to this petition, petitioner prayed for issuance of a preliminary mandatory and prohibitory injunction and/or temporary restraining order pending the consideration of the merits of the petition. Since this prayer has not been acted upon when the reply was submitted, it is deemed denied.

viability if the guaranteed minimum energy consumption agreed upon in Article 7.3 of the PGA is complied with. Moreover, should MIAA transfer its operation to Terminal 3, respondent will be ruined financially and may even close shop altogether.

We rule in favor of petitioner.

In assessing the issue of whether the injunction was proper, both the trial court and the CA closely examined whether the notice to proceed in fact amended the PGA. A careful perusal of the records, however, shows that such a determination touched essentially on the merits of the main action. Part of the relief requested by respondent in the trial court was to "[direct] the [petitioner] MIAA to comply with the [PGA] and purchase from and pay to respondent the minimum guaranteed energy consumption of four million KWH in accordance with Article 7.3 of the PGA."[20]

It must be borne in mind that an injunction is a preservative remedy for the protection of one's substantive right or interest,[21] issued to preserve the *status quo* of the things subject of the action or the relations between the parties during the pendency of the suit.[22] The application for the injunctive writ is not a cause of action in itself but only a provisional remedy, a mere adjunct to the main suit.[23]

Moreover, as held in *Ortigas & Company Limited Partnership v. CA*:[24]

In general, courts should avoid issuing a writ of preliminary injunction which in effect disposes of the main case without trial. This is precisely the effect of the writ of preliminary mandatory injunction issued by the respondent appellate court. Having granted through a writ of preliminary mandatory injunction the main prayer

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[20] Amended Complaint, *rollo*, p. 229.

[21] *Sy v. CA*, 372 Phil. 207 (1999).

[22] *Yujuico v. Quiambao*, G.R. No. 168639, 29 January 2007, 518 SCRA 243.

[23] *PAL, Inc. v. NLRC*, 351 Phil. 172, 181 (1998).

[24] G.R. No. 79128, 16 June 1988, 162 SCRA 165.

of the complaint, there is practically nothing left for the trial court to try except the plaintiffs' claim for damages. (emphasis supplied)[25]

If this Court affirms the trial court and the CA, that is, if we decide the issue of whether the notice to proceed indeed amended the PGA, we will essentially be disposing of the main action and the trial court will have nothing more to try except what rate respondent should charge petitioner. Thus, we decline to issue judgment on a case which has not gone through trial. Under the circumstances, a full blown trial is necessary in order to assess the true intention of the parties and to determine whether respondent's acceptance indeed modified the obligation under Article 7.3.

If only to emphasize our point, we recall our decision in *Capitol Medical Center, Inc. v. CA*[26] on the purpose of an injunctive writ:

The sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the *status quo* until the merits of the case can be heard. The *status quo* is the last actual peaceable uncontested status which preceded the controversy. It may only be resorted to by a litigant for the preservation or protection of his rights or interests and for no other purpose during the pendency of the principal action. It should only be granted if the party asking for it is clearly entitled thereto. (emphasis supplied)[27]

In that case, the Court enunciated a clear-cut policy on when a mandatory injunctive writ may issue:

Inasmuch as a mandatory injunction tends to do more than to maintain the *status quo,* it is generally improper to issue such an injunction prior to the final hearing. It may however, issue "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and

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[25] *Id*., p. 169.

[26] G.R. No. 82499, 16 June 1989, 178 SCRA 493.

[27] *Id*., p. 503 (citations omitted).

where the effect of a mandatory injunction is rather to reestablish and maintain an preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation. Indeed, the writ should not be denied the complainant when he makes out a clear case, free from doubt and dispute."[28]

To grant the injunction sought by respondent will not preserve the *status quo* as it will give respondent the right to collect from petitioner more than what it has been collecting, without the benefit of trial. Without a clear showing of extreme urgency to prevent irreparable injury and of a clear and unmistakable right to it, free from doubt and dispute, the injunction sought cannot be justified.

Respondent's allegation of extreme urgency is not supported by concrete proof of irreparable injury. Nothing is offered except sweeping conclusions about the alleged possibility of financial ruin. Moreover, respondent makes much of the "threat" of petitioner to transfer its operations to Terminal 3 and thus consume less energy to respondent's detriment, an argument that is speculative at best as petitioner has not transferred its operations nor can it possibly do so. Terminal 3 is still subject of a protracted litigation and will not conceivably open anytime soon. Thus, respondent's claim of urgency cannot be believed.

WHEREFORE, the petition is hereby *GRANTED*. The decision dated October 16, 2003 of the Court of Appeals and its resolution dated June 25, 2004 are *REVERSED* and *SET ASIDE*. The order dated January 21, 2003, the writ of preliminary mandatory injunction dated January 23, 2003 and the order dated March 24, 2003 of the Regional Trial Court of Pasig City, Branch 168 are *ANNULLED* and likewise *SET ASIDE*. This case is remanded to the trial court for further proceedings.

SO ORDERED.

Sandoval-Gutierrez, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

Puno, C.J., no part due to relationship to counsel.

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[28] *Id*., p. 504 (citations omitted).

THIRD DIVISION

[G.R. No. 164763. February 12, 2008]

ZENON R. PEREZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; MALVERSATION; ELEMENTS; PRESENT IN CASE AT BAR.— Malversation is defined and penalized under Article 217 of the Revised Penal Code. The acts punished as malversation are: (1) *appropriating* public funds or property, (2) *taking* or *misappropriating* the same, (3) *consenting*, or through *abandonment* or *negligence, permitting* any other person to take such public funds or property, and (4) being *otherwise* guilty of the misappropriation or malversation of such funds or property. There are four elements that must concur in order that one may be found guilty of the crime. They 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 involved were public funds or property *for which he is accountable*; and (d) That he has appropriated, took or misappropriated or consented or, through abandonment or negligence, permitted another person to take them. Evidently, the first three elements are present in the case at bar. At the time of the commission of the crime charged, petitioner was a public officer, being then the acting municipal treasurer of Tubigon, Bohol. By reason of his public office, he was accountable for the public funds under his custody or control. The question then is whether or not petitioner has appropriated, took or misappropriated, or consented or through abandonment or negligence, permitted another person to take such funds. We rule in the affirmative.

2. ID.; ID.; AN ACCOUNTABLE PUBLIC OFFICER MAY BE CONVICTED THEREOF EVEN IF THERE IS NO DIRECT EVIDENCE OF MISAPPROPRIATION; *PRIMA FACIE* PRESUMPTION OF CONVERSION, WHEN IT ARISES.— In malversation, all that is necessary to prove is that the defendant received in his possession public funds; that he could not

account for them and did not have them in his possession; and that he could not give a reasonable excuse for its disappearance. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is shortage in his accounts which he has not been able to explain satisfactorily. Verily, an accountable public officer may be found guilty of malversation even if there is no direct evidence of malversation because the law establishes a presumption that mere failure of an accountable officer to produce public funds which have come into his hands on demand by an officer duly authorized to examine his accounts is *prima facie* case of conversion.

3. ID.; ID.; ID.; ID.; PRESUMPTION MAY BE OVERCOME BY PROOF TO THE CONTRARY; ACCUSED MUST PRODUCE EVIDENCE THAT HE HAS NOT PUT THE PUBLIC FUNDS TO PERSONAL USE.— Because of the *prima facie* presumption in Article 217, the burden of evidence is shifted to the accused to adequately explain the location of the funds or property under his custody or control in order to rebut the presumption that he has appropriated or misappropriated for himself the missing funds. Failing to do so, the accused may be convicted under the said provision. However, the presumption is merely *prima facie* and a rebuttable one. The accountable officer may overcome the presumption by proof to the contrary. If he adduces evidence showing that, in fact, he has not put said funds or property to personal use, then that presumption is at end and the *prima facie* case is destroyed. In the case at bar, petitioner was not able to present any credible evidence to rebut the presumption that he malversed the missing funds in his custody or control.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; ASSISTANCE OF COUNSEL IS NOT INDISPENSABLE.— True it is that petitioner filed another Answer on March 2, 1989 with the Office of the Provincial Treasurer of Bohol, substantially changing the contents of his earlier answer of February 22, 1989. xxx The sudden turnaround of petitioner fails to convince Us. To Our mind, petitioner only changed his story to exonerate himself, after realizing that his first Answer put him in a hole, so to speak. It is contended that petitioner's first Answer of February 22, 1989 should not

have been given probative weight because it was executed without the assistance of counsel. There is no law, jurisprudence or rule which mandates that an employee should be assisted by counsel in an administrative case. On the contrary, jurisprudence is in unison in saying that assistance of counsel is not indispensable in administrative proceedings.

5. ID.; ID.; ID.; RIGHT TO COUNSEL IS NOT IMPERATIVE IN AN ADMINISTRATIVE INVESTIGATION.— The right to counsel, which cannot be waived unless the waiver is in writing and in the presence of counsel, is a right afforded a suspect or accused during custodial investigation. It is not an absolute right and may be invoked or rejected in a criminal proceeding and, with more reason, in an administrative inquiry. ***Ang karapatang magkaroon ng abogado, na hindi maaaring talikdan malibang ang* waiver *ay nakasulat at sa harap ng abogado, ay karapatang ibinibigay sa suspek o nasasakdal sa isang custodial investigation. Ito ay hindi lubos na karapatan at maaring hingin o tanggihan sa isang prosesong kriminal, at lalo na sa isang administratibong pagsisiyasat.*** While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that under existing laws, a party in an administrative inquiry *may or may not be assisted by counsel,* irrespective of the nature of the charges and of respondent's capacity to represent himself, and no duty rests on such body to furnish the person being investigated with counsel. Thus, the right to counsel is not imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.

6. ID.; ID.; ID.; ASSISTANCE OF LAWYER IN A NON-LITIGATION PROCEEDINGS, WHILE DESIRABLE, IS NOT INDISPENSABLE.— There is nothing in the Constitution that says that a party in a non-litigation proceeding is entitled to be represented by counsel and that, without such representation, he shall not be bound by such proceedings. The assistance of lawyers, while desirable, is not indispensable. The legal profession was not engrafted in the due process clause such that without the participation of its members, the safeguard is deemed ignored

or violated. The ordinary citizen is not that helpless that he cannot validly act at all except only with a lawyer at his side.

7. REMEDIAL LAW; EVIDENCE; ADMISSIONS AND CONFESSIONS; ACT, CONDUCT AND DECLARATIONS OF A PARTY, WHEREVER MADE, ARE ADMISSIBLE AGAINST HIM, PROVIDED THEY ARE VOLUNTARY.— More than that, petitioner's first Answer may be taken against him, as he executed it in the course of the administrative proceedings below. This is pursuant to Rule 130, Section 26 of the Rules of Court which provides that the "act, declaration or omission of a party as to a relevant fact may be given against him." In *People v. Lising*, the Court held: Extrajudicial statements are as a rule, admissible as against their respective declarants, pursuant to the rule that the act, declaration or omission of a party as to a relevant fact may be given against him. This is based upon the presumption that no man would declare anything against himself, unless such declarations were true. A man's act, conduct and declarations wherever made, provided they be voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth and it is his fault if they are not.

8. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS OF LAW; ESSENCE.— Due process of law as applied to judicial proceedings has been interpreted to mean "a law which hears before it condemns, which proceeds on inquiry, and renders judgment only after trial." Petitioner cannot complain that his right to due process has been violated. He was given all the chances in the world to present his case, and the Sandiganbayan rendered its decision only after considering all the pieces of evidence presented before it.

9. ID.; ID.; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO SPEEDY TRIAL AND DISPOSITION OF THE CASE; WHEN DEEMED VIOLATED; FACTORS TO CONSIDER; NO VIOLATION OF THE RIGHT IN CASE AT BAR.— The 1987 Constitution guarantees the right of an accused to speedy trial. Both the 1973 Constitution in Section 16 of Article IV and the 1987 Constitution in Section 16 of Article III, Bill of Rights, are also explicit in granting to the accused the

right to speedy disposition of his case. xxx. In 1991, in *Gonzales v. Sandiganbayan*, this Court ruled: It must be here emphasized that the right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered. Subsequently, in *Dela Peña v. Sandiganbayan*, this Court again enumerated the factors that should be considered and balanced, namely: (1) length of delay; (2) reasons for the delay; (3) assertion or failure to assert such right by the accused; and (4) prejudice caused by the delay. xxx. Moreover, the determination of whether the delays are of said nature is relative and cannot be based on a mere mathematical reckoning of time. Measured by the foregoing yardstick, We rule that petitioner was not deprived of his right to a speedy disposition of his case.

10. ID.; ID.; ID.; ID.; RIGHT AGAINST CRUEL AND UNUSUAL PUNISHMENT; NOT VIOLATED IN CASE AT BAR; CRUEL AND UNUSUAL PUNISHMENT, EXPLAINED.— What constitutes cruel and unusual punishment has not been exactly defined. The Eighth Amendment of the United States Constitution, the source of Section 19, Article III of the Bill of Rights of our own Constitution, has yet to be put to the test to finally determine what constitutes cruel and inhuman punishment. Cases that have been decided described, rather than defined, what is meant by cruel and unusual punishment. This is explained by the pronouncement of the United States Supreme Court that "[t]he clause of the Constitution, in the opinion of the learned commentators, may be therefore progressive, and is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice." In *Wilkerson v. Utah,* Mr. Justice Clifford of the

United States Supreme Court opined that "[d]ifficulty would attend the effort to define with exactness the extent of the constitutional provision which provides that cruel and unusual punishments shall not be inflicted; but it is safe to affirm that punishments of torture, xxx and all others in the same line of unnecessary cruelty, are forbidden by that amendment to the constitution." In *In Re: Kemmler*, Mr. Chief Justice Fuller of that same Court stated that "[p]unishments are cruel when they involve torture or a lingering death; but the punishment of death is not cruel within the meaning of that word as used in the constitution. It implies xxx something more inhuman and barbarous, something more than the mere extinguishment of life." xxx. In *Echegaray v. Executive Secretary*, this Court in a *per curiam* Decision held that Republic Act No. 8177, even if it does not provide in particular the details involved in the execution by lethal injection, is not cruel, degrading or inhuman, and is thus constitutional. Any infliction of pain in lethal injection is merely incidental in carrying out the execution of the death penalty and does not fall within the constitutional proscription against cruel, degrading or inhuman punishment. The Court adopted the American view that what is cruel and unusual is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by humane justice and must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.

11. POLITICAL LAW; STATUTES; PRESUMED VALID AND CONSTITUTIONAL.— There is strong presumption of constitutionality accorded to statutes. It is established doctrine that a statute should be construed whenever possible in harmony with, rather than in violation of, the Constitution. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law. It is presumed that the legislature has acted within its constitutional powers. So, it is the generally accepted rule that every statute, or regularly accepted act, is, or will be, or should be, presumed to be valid and constitutional. He who attacks the constitutionality of a law has the *onus probandi* to show why such law is repugnant to the Constitution. Failing to overcome its presumption of constitutionality, a claim that a

law is cruel, unusual, or inhuman, like the stance of petitioner, must fail.

12. CRIMINAL LAW; MALVERSATION; PAYMENT OR REIMBURSEMENT IS NOT A DEFENSE BUT MAYBE CONSIDERED AS A MITIGATING CIRCUMSTANCE; DAMAGES IS NOT AN ELEMENT OF THE CRIME.— What is punished by the crime of malversation is the act of a 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 and 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. Payment or reimbursement is not a defense for exoneration in malversation; it may only be considered as a mitigating circumstance. This is because damage is not an element of malversation.

13. ID.; ID.; IMPOSABLE PENALTY WHERE THE COMMISSION OF THE CRIME WAS ATTENDED BY TWO MITIGATING CIRCUMSTANCES.— The amount malversed totalled ₱72,784.57. The prescribed penalty is *reclusion temporal* in its maximum period to *reclusion perpetua*, which has a range of seventeen (17) years, four (4) months and one (1) day to forty (40) years. However, the commission of the crime was attended by the mitigating circumstance akin to voluntary surrender. As correctly observed by the Sandiganbayan, petitioner restituted the full amount even before the prosecution could present its evidence. That is borne by the records. It bears stressing that the full restitution of the amount malversed will not in any way exonerate an accused, as payment is not one of the elements of extinction of criminal liability. Under the law, the refund of the sum misappropriated, even before the commencement of the criminal prosecution, does not exempt the guilty person from liability for the crime. At most, then, payment of the amount malversed will only serve as a mitigating circumstance akin to voluntary surrender, as provided for in paragraph 7 of Article 13 in relation to paragraph 10 of the same Article of the Revised Penal Code. But the Court also holds that aside from voluntary surrender, petitioner is entitled to the mitigating circumstance of no intention to

commit so grave a wrong, again in relation to paragraph 10 of Article 13. The records bear out that petitioner misappropriated the missing funds under his custody and control because he was impelled by the genuine love for his brother and his family. Per his admission, petitioner used part of the funds to pay off a debt owed by his brother. Another portion of the misappropriated funds went to his medications for his debilitating diabetes. Further, as shown earlier, petitioner restituted all but Eight Thousand Pesos (₱8,000.00) of the funds in less than one month and a half and said small balance in three (3) months from receipt of demand of COA on January 5, 1999. Evidently, there was no intention to commit so grave a wrong. Of course, the end does not justify the means. To condone what petitioner has done because of the nobility of his purpose or financial emergencies will become a potent excuse for malefactors and open the floodgates for more corruption in the government, even from "small fry" like him. The bottom line is a guilty person deserves the penalty given the attendant circumstances and commensurate with the gravity of the offense committed. Thus, a reduction in the imposable penalty by one degree is in order. xxx. Considering that there are two mitigating circumstances, the prescribed penalty is reduced to *prision mayor* in its maximum period to *reclusion temporal* in its medium period, to be imposed in any of its periods. The new penalty has a range of ten (10) years and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the maximum term could be ten (10) years and one (1) day of *prision mayor* maximum, while the minimum term is again one degree lower and could be four (4) years, two (2) months and one (1) day of *prision correccional* maximum.

APPEARANCES OF COUNSEL

Roland B. Inting for petitioner.

D E C I S I O N

REYES, R.T., *J.*:

PETITIONER Zenon R. Perez seeks a review[1] of his conviction by the Sandiganbayan[2] for malversation of public funds[3] under Article 217 of the Revised Penal Code.

This is not a big case but its implications are wide-ranging and the issues We resolve include the rights to speedy trial and speedy disposition of a criminal case, the balancing test, due process, and cruel and unusual punishment.

The Facts

On December 28, 1988, an audit team headed by Auditor I Arlene R. Mandin, Provincial Auditor's Office, Bohol,[4] conducted a cash examination on the account of petitioner, who was then the acting municipal treasurer of Tubigon, Bohol.

Petitioner was absent on the first scheduled audit at his office on December 28, 1988. A radio message was sent to Loon, the town where he resided, to apprise him of the on-going audit. The following day, the audit team counted the cash contained in the safe of petitioner in his presence. In the course of the audit, the amount of ₱21,331.79 was found in the safe of petitioner.

The audit team embodied their findings in the Report of Cash Examination,[5] which also contained an inventory of cash items. Based on the said audit, petitioner was supposed to have on

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[1] Under Rule 45 of the Rules of Court per A.M. No. 00-5-03-SC.

[2] Penned by Associate Justice Diosdado M. Peralta, with Associate Justices Teresita Leonardo-De Castro (now a member of this Court) and Francisco H. Villaruz, Jr., concurring; *rollo,* pp. 25-38.

[3] Criminal Case No. 14230.

[4] Pursuant to Office Order No. 88-55 dated December 22, 1988 issued by Provincial Auditor Fausto P. De La Serna. (Annex "B")

[5] Exhibit "C".

hand the total amount of ₱94,116.36, instead of the ₱21,331.79, incurring a shortage of ₱72,784.57.[6]

The report also contained the Cash Production Notice[7] dated January 4, 1989, where petitioner was informed and required to produce the amount of ₱72,784.57, and the cash count sheet signed and acknowledged by petitioner indicating the correctness of the amount of ₱21,331.79 found in his safe and counted in his presence. A separate demand letter[8] dated January 4, 1989 requiring the production of the missing funds was sent and received by petitioner on January 5, 1989.

When asked by the auditing team as to the location of the missing funds, petitioner verbally explained that part of the money was used to pay for the loan of his late brother, another portion was spent for the food of his family, and the rest for his medicine.[9]

As a result of the audit, Arlene R. Mandin prepared a memorandum[10] dated January 13, 1989 addressed to the Provincial Auditor of Bohol recommending the filing of the appropriate criminal case against petitioner.

On January 16, 1989, petitioner remitted to the Office of the Provincial Treasurer of Bohol the amounts of ₱10,000.00 and ₱15,000.00, respectively. On February 14, 1989, petitioner again remitted to the Provincial Treasurer an additional amount of ₱35,000.00, followed by remittances made on February 16, 1989 in the amounts of ₱2,000.00 and ₱2,784.00.

An administrative case was filed against petitioner on February 13, 1989. He filed an Answer[11] dated February 22, 1989 reiterating his earlier verbal admission before the audit team.

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[6] Exhibit "E".

[7] Exhibit "D".

[8] Exhibit "F".

[9] TSN, June 25, 1990, p. 25.

[10] Exhibit "E".

[11] Exhibit "G".

On April 17, 1989, petitioner again remitted the amount of ₱8,000.00 to the Provincial Treasurer of Bohol. Petitioner had then fully restituted his shortage in the amount of ₱72,784.57. The full restitution of the missing money was confirmed and shown by the following receipts:[12]

Official Receipt No.	Date Issued and Received	Amount
8266659	January 16, 1989	₱10,000.00
8266660	January 16, 1989	₱15,000.00
8266662	February 14, 1989	₱35,000.00
8266667	February 16, 1989	₱ 2,000.00
8266668	February 16, 1989	₱ 2,784.00
8266675	April 17, 1989	₱ 8,000.00
	TOTAL -	₱72,784.57

Later, petitioner was charged before the Sandiganbayan with malversation of public funds, defined and penalized by Article 217 of the Revised Penal Code in an Information that read:

That on or about the period covering from December 28, 1988 to January 5, 1989, and for sometime prior thereto, in the Municipality of Tubigon, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Zenon R. Perez, a public officer being then Acting Municipal Treasury of the said Municipality, by reason of the duties of his official position was accountable for the public funds collected and received by him, with grave abuse of confidence did then and there willfully, unlawfully and feloniously misappropriate, misapply, embezzle and take away from the said funds the total amount of SEVENTY-TWO THOUSAND SEVEN HUNDRED EIGHTY-FOUR PESOS and 57/100 (₱72,784.57), which said fund was appropriated and converted by the said accused to his own personal use and benefit to the damage and prejudice of the government in the aforementioned amount.

CONTRARY TO LAW.[13] (Underscoring supplied)

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[12] Exhibits "H" & "H-1" to "H-5".

[13] *Rollo,* pp. 25-26.

On March 1, 1990, petitioner, duly assisted by counsel *de parte,* entered a plea of "not guilty."[14]

Pre-trial was initially set on June 4-5, 1990 but petitioner's counsel moved for postponement. The Sandiganbayan, however, proceeded to hear the case on June 5, 1990, as previously scheduled, due to the presence of prosecution witness Arlene R. Mandin, who came all the way from Bohol.

On said date, the Sandiganbayan dispensed with pre-trial and allowed the prosecution to present its witness. Arlene R. Mandin testified as narrated above.

The defense presented evidence through petitioner Zenon R. Perez himself. He denied the contents of his first Answer[15] to the administrative case filed against him by the audit team. He claimed it was prepared without the assistance of counsel and that at the time of its preparation and submission, he was not in peak mental and physical condition, having been stricken with diabetes mellitus.[16]

He then revoked his Answer dated February 22, 1989 and filed his second Answer dated March 2, 1989.[17] In the latter, he vehemently denied that he incurred a cash shortage ₱72,784.57.

According to petitioner, the alleged shortage was in the possession and custody of his accountable personnel at the time of the audit examination. Several amounts totalling ₱64,784.00 were remitted to him on separate dates by his accountable officer, starting January 16, 1989 to February 16, 1989. The same were turned over by him to the Office of the Provincial Treasurer, leaving an unremitted sum of ₱8,000.00 as of February 16, 1989.[18] He remitted the ₱8,000.00 on April 17, 1989 to the Provincial Treasurer of Bohol, fully restoring the cash shortage.

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[14] *Id*. at 26.

[15] Exhibit "G".

[16] Exhibits "1" to "3".

[17] Exhibit "5-B".

[18] Exhibit "5".

Petitioner further testified that on July 30, 1989, he submitted his Position Paper[19] before the Office of the Ombudsman, Cebu City and maintained that the alleged cash shortage was only due to oversight. Petitioner argued that the government did not suffer any damage or prejudice since the alleged cash shortage was actually deposited with the Office of the Provincial Treasurer as evidenced by official receipts.[20]

Petitioner completed his testimony on September 20, 1990. He rested his case on October 20, 1990.[21]

Sandiganbayan Disposition

On September 24, 2003, the Sandiganbayan rendered a judgment of conviction with a *fallo* reading:

> WHEREFORE, judgment is hereby rendered finding the accused ZENON R. PEREZ, **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds as defined in and penalized by Article 217 of the Revised Penal Code and, there being one mitigating circumstance without any aggravating circumstance to offset the same, is hereby sentenced to suffer an indeterminate penalty of from TEN (10) YEARS and ONE (1) DAY of *prision mayor* as the minimum to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of *reclusion temporal* as the maximum and to suffer perpetual special disqualification. The accused Zenon R. Perez is likewise ordered to pay a FINE equal to the total amount of the funds malversed, which is Seventy-Two Thousand Seven Hundred Eighty-Four Pesos and Fifty-Seven Centavos (₱72,784.57).
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> SO ORDERED.[22] (Emphasis in the original)

On January 13, 2004, petitioner filed a motion for reconsideration[23] which the prosecution opposed on

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[19] Exhibit "7".

[20] Exhibits "7-a" to "7-f".

[21] *Rollo,* p. 26.

[22] *Id*. at 37.

[23] *Id*. at 39-44.

January 28, 2004.[24] Petitioner replied[25] to the opposition. On August 6, 2004, petitioner's motion was denied with finality.

On September 23, 2004, petitioner resorted to the instant appeal[26] raising the following issues, to wit:

> I. THE HON. SANDIGANBAYAN BY UNDULY AND UNREASONABLY DELAYING THE DECISION OF THE CASE FOR OVER THIRTEEN (13) YEARS VIOLATED THE PETITIONER'S RIGHT TO SPEEDY DISPOSITION OF HIS CASE AND DUE PROCESS.
>
> II. THE LAW RELIED UPON IN CONVICTING THE PETITIONER AND THE SENTENCE IMPOSED IS CRUEL AND THEREFORE VIOLATES SECTION 19 OF ARTICLE III (BILL OF RIGHTS) OF THE CONSTITUTION.[27] (Underscoring supplied)

Our Ruling

Before addressing petitioner's twin assignment of errors, We first tackle the propriety of petitioner's conviction for malversation of public funds.

I. Petitioner was correctly convicted of malversation.

Malversation is defined and penalized under Article 217 of the Revised Penal Code. The acts punished as malversation are: (1) *appropriating* public funds or property, (2) *taking* or *misappropriating* the same, (3) *consenting*, or through *abandonment* or *negligence, permitting* any other person to take such public funds or property, and (4) being *otherwise* guilty of the misappropriation or malversation of such funds or property.[28]

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[24] *Id*. at 45-48.

[25] *Id*. at 49-52.

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

[27] *Id*. at 17.

[28] Reyes, L.B., *The Revised Penal Code* (Book II), 15th ed., rev. 2001, pp. 393-394.

There are four elements that must concur in order that one may be found guilty of the crime. They 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 involved were public funds or property *for which he is accountable*; and

(d) That he has appropriated, took or misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[29]

Evidently, the first three elements are present in the case at bar. At the time of the commission of the crime charged, petitioner was a public officer, being then the acting municipal treasurer of Tubigon, Bohol. By reason of his public office, he was accountable for the public funds under his custody or control.

The question then is whether or not petitioner has appropriated, took or misappropriated, or consented or through abandonment or negligence, permitted another person to take such funds.

We rule in the affirmative.

In malversation, all that is necessary to prove is that the defendant received in his possession public funds; that he could not account for them and did not have them in his possession; and that he could not give a reasonable excuse for its disappearance. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is shortage in his accounts which he has not been able to explain satisfactorily.[30]

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[29] *Id*. at 394. See also *Nizurtado v. Sandiganbayan,* G.R. No. 107838, December 7, 1994, 239 SCRA 33, 42; *Peñanueva, Jr. v. Sandiganbayan,* G.R. Nos. 98000-02, June 30, 1993, 224 SCRA 86, 92.

[30] *De Guzman v. People,* G.R. No. 54288, December 15, 1982, 119 SCRA 337, 347 (emphasis ours), citing Aquino, *The Revised Penal Code*, Vol. II, 1976 ed., citing *People v. Mingoa,* 92 Phil. 856 (1953); *U.S. v. Javier,* 6 Phil. 334 (1906); *U.S. v. Melencio,* 4 Phil. 331 (1905). See also *Quizo v. Sandiganbayan,* G.R. No. 77120, April 6, 1987, 149 SCRA 108.

Verily, an accountable public officer may be found guilty of malversation even if there is no direct evidence of malversation because the law establishes a presumption that mere failure of an accountable officer to produce public funds which have come into his hands on demand by an officer duly authorized to examine his accounts is *prima facie* case of conversion.[31]

Because of the *prima facie* presumption in Article 217, the burden of evidence is shifted to the accused to adequately explain the location of the funds or property under his custody or control in order to rebut the presumption that he has appropriated or misappropriated for himself the missing funds. Failing to do so, the accused may be convicted under the said provision.

However, the presumption is merely *prima facie* and a rebuttable one. The accountable officer may overcome the presumption by proof to the contrary. If he adduces evidence showing that, in fact, he has not put said funds or property to personal use, then that presumption is at end and the *prima facie* case is destroyed.[32]

In the case at bar, petitioner was not able to present any credible evidence to rebut the presumption that he malversed the missing funds in his custody or control. What is extant in the records is that the prosecution, through witness Arlene R. Mandin, was able to prove that petitioner malversed the funds under his custody and control. As testified by Mandin:

Atty. Caballero:
Q: Was Mr. Zenon Perez actually and physically present during the time of your cash examination?

Witness:
A. Yes, Sir.

Q: From December 28, to January 5, 1989?
A: He was present on December 28, 1988 and January 4 and 5, 1989, Sir.

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[31] *Quizo v. Sandiganbayan, supra* at 113, citing *U.S. v. Catolico,* 18 Phil. 504 (1911).

[32] *Id*.

Q: **Did he not make any verbal explanation as the reason why he was short of about ₱72,000.00, after you conducted the cash count on January 5, 1989?**
A: **Yes, Sir, he did.**

Q: **What did he tell you?**
A: **He told us that he used some of the money to pay for the loan of his brother and the other portion was spent for food of his family; and the rest for his medicine**.[33] (Emphasis supplied)

Petitioner gave himself away with his first Answer filed at the Office of the Provincial Treasurer of Bohol in the administrative case filed against him.

In that Answer, petitioner narrated how he disposed of the missing funds under his custody and control, to wit: (1) about ₱30,000.00 was used to pay the commercial loan of his late brother; (2) he spent ₱10,000.00 for the treatment of his toxic goiter; and (3) about ₱32,000.00 was spent for food and clothing of his family, and the education of his children. He there stated:

1. That the circumstances surrounding the cash shortage in the total amount of ₱72,784.57 during the examination of the respondent's cash accounts by the Commission on Audit on December 28-29, 1988 and January 4-5, 1989 are as follows, to wit:

(a) That **respondent paid the amount of about ₱30,000.00 to the Philippine National Bank, Tagbilaran Branch as interests of the commercial loan of his late brother Carino R. Perez** using respondent's house and lot as collateral thereof. If the interests would not be paid, the loan would be foreclosed to respondent's great prejudice and disadvantage considering that he and his family are residing in said house used as collateral;

(b) That **respondent spent the amount of ₱10,000.00 in connection with the treatment of his toxic goiter**;

(c) That the **rest of the amount amounting to about ₱32,000.00 was spent by him for his family's foods,**

[33] TSN, June 5, 1990, p. 25.

clothings (sic), **and education of his children** because his monthly salary is not enough for the needs of his family.[34]

By the explicit admission of petitioner, coupled with the testimony of Arlene R. Mandin, the fourth element of the crime of malversation was duly established. His conviction thus stands in *terra firma*.

True it is that petitioner filed another Answer on March 2, 1989 with the Office of the Provincial Treasurer of Bohol, substantially changing the contents of his earlier answer of February 22, 1989. His second Answer averred:

3. That the truth of the matter is that the alleged total cash shortage of ₱72,784.57 were still in the possession and custody of his accountable personnel at the time of the examination held by the auditor of the Commission on Audit;

4. That out of the alleged cash shortage of ₱72,784.57, almost all of said amount were already remitted to him by his accountable personnel after January 5, 1989, and only the remaining amount of ₱8,000.00 remains to be remitted to him by his accountable personnel.[35]

The sudden turnaround of petitioner fails to convince Us. To Our mind, petitioner only changed his story to exonerate himself, after realizing that his first Answer put him in a hole, so to speak.

It is contended that petitioner's first Answer of February 22, 1989 should not have been given probative weight because it was executed without the assistance of counsel.[36]

There is no law, jurisprudence or rule which mandates that an employee should be assisted by counsel in an administrative case. On the contrary, jurisprudence is in unison in saying that assistance of counsel is not indispensable in administrative proceedings.

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[34] Exhibit "G".

[35] Exhibit "5".

[36] TSN, September 20, 1990, pp. 37-39.

Walang batas, hurisprudensiya, o tuntunin na nagsasabi na ang isang kawani ay dapat may tulong ng abogado sa isang kasong administratibo. Sa katunayan, ang hurisprudensiya ay iisa ang sinasabi na ang pagtulong ng isang abogado ay hindi kailangang-kailangan sa kasong administratibo.

The right to counsel, which cannot be waived unless the waiver is in writing and in the presence of counsel, is a right afforded a suspect or accused during custodial investigation. It is not an absolute right and may be invoked or rejected in a criminal proceeding and, with more reason, in an administrative inquiry.[37]

Ang karapatang magkaroon ng abogado, na hindi maaaring talikdan malibang ang* waiver *ay nakasulat at sa harap ng abogado, ay karapatang ibinibigay sa suspek o nasasakdal sa isang custodial investigation. Ito ay hindi lubos na karapatan at maaring hingin o tanggihan sa isang prosesong kriminal, at lalo na sa isang administratibong pagsisiyasat.

While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that under existing laws, a party in an administrative inquiry *may or may not be assisted by counsel,* irrespective of the nature of the charges and of respondent's capacity to represent himself, and no duty rests on such body to furnish the person being investigated with counsel.[38]

Thus, the right to counsel is not imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.[39]

Kung gayon, ang karapatang magkaroon ng abogado ay hindi sapilitan sa isang administratibong imbestigasyon

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[37] *Id*. at 138-139.

[38] *Lumiqued v. Exevea,* G.R. No. 117565, November 18, 1997, 282 SCRA 125, 140, citing *Bancroft v. Board of Governors of Registered Dentists of Oklahoma,* 210 P. 2d 666 (1949).

[39] *Id*. at 141.

sapagkat ito ay ginagawa lamang upang malaman kung may sapat na batayan na patawan ng disiplina ang nagkasalang opisyal o empleyado, para mapanatili ang dignidad ng paglilingkod sa pamahalaan.

There is nothing in the Constitution that says that a party in a non-litigation proceeding is entitled to be represented by counsel and that, without such representation, he shall not be bound by such proceedings. The assistance of lawyers, while desirable, is not indispensable. The legal profession was not engrafted in the due process clause such that without the participation of its members, the safeguard is deemed ignored or violated. The ordinary citizen is not that helpless that he cannot validly act at all except only with a lawyer at his side.[40]

More than that, petitioner's first Answer may be taken against him, as he executed it in the course of the administrative proceedings below. This is pursuant to Rule 130, Section 26 of the Rules of Court which provides that the "act, declaration or omission of a party as to a relevant fact may be given against him." In *People v. Lising*,[41] the Court held:

> Extrajudicial statements are as a rule, admissible as against their respective declarants, pursuant to the rule that the act, declaration or omission of a party as to a relevant fact may be given against him. This is based upon the presumption that no man would declare anything against himself, unless such declarations were true. A man's act, conduct and declarations wherever made, provided they be voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth and it is his fault if they are not.

There is also no merit in the contention that petitioner's sickness affected the preparation of his first Answer. He presented no convincing evidence that his disease at the time he formulated that answer diminished his capacity to formulate a true, clear

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[40] *Nera v. The Auditor General,* G.R. No. L-24957, August 3, 1988, 164 SCRA 1.

[41] G.R. Nos. 106210-11, January 30, 1998, 285 SCRA 595, 624, citing Vicente, F., *Evidence*, 1990 ed., p. 305.

and coherent response to any query. In fact, its contents merely reiterated his verbal explanation to the auditing team on January 5, 1989 on how he disposed of the missing funds.

II. There is no violation of the rights to a speedy disposition of the case and to due process of law.

We now discuss the right to a speedy trial and disposition, the balancing test, due process, and cruel and unusual punishment.

Petitioner asserts that his right to due process of law and to speedy disposition of his case was violated because the decision of the Sandiganbayan was handed down after the lapse of more than twelve years. The years that he had to wait for the outcome of his case were allegedly spent in limbo, pain and agony.[42]

We are not persuaded.

Due process of law as applied to judicial proceedings has been interpreted to mean "a law which hears before it condemns, which proceeds on inquiry, and renders judgment only after trial."[43] Petitioner cannot complain that his right to due process has been violated. He was given all the chances in the world to present his case, and the Sandiganbayan rendered its decision only after considering all the pieces of evidence presented before it.

Petitioner's claim of violation of his right to a speedy disposition of his case must also fail.

The 1987 Constitution[44] guarantees the right of an accused to speedy trial. Both the 1973 Constitution in Section 16 of

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[42] *Rollo,* p. 19. Petitioner claims that he had to wait for more than thirteen (13) years. However, this is erroneous. The records would show that he rested his case on October 20, 1990, while the Sandiganbayan handed down its questioned Decision on September 24, 2003, or after the lapse of twelve (12) years and eleven (11) months.

[43] 16C C.J.S. Constitutional Law, Sec. 946.

[44] Bill of Rights of the Constitution (1987), Art. III, Sec. 14 provides:

(1) No person shall be heard to answer for a criminal offense without due process of law.

Article IV and the 1987 Constitution in Section 16 of Article III, Bill of Rights, are also explicit in granting to the accused the right to speedy disposition of his case.[45]

In *Barker v. Wingo*,[46] the United States Supreme Court was confronted for the first time with two "rigid approaches" on speedy trial as "ways of eliminating some of the uncertainty which courts experience protecting the right."[47]

The first approach is the "**fixed-time period**" which holds the view that "the Constitution requires a criminal defendant to be offered a trial within a specified time period."[48] The second approach is the "**demand-waiver rule**" which provides that "a defendant waives any consideration of his right to speedy trial for any period prior to which he has not demanded trial. Under this rigid approach, a prior demand is a necessary condition to the consideration of the speedy trial right."[49]

The fixed-time period was rejected because there is "no constitutional basis for holding that the speedy trial can be quantified into a specific number of days or months."[50] The demand-waiver rule was likewise rejected because aside from the fact that it is "inconsistent with this Court's pronouncements

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(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, **to have a speedy, impartial, and public trial,** to meet the witness face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Emphasis supplied)

[45] "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."

[46] 407 US 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972).

[47] *Barker v. Wingo, id*. at 112.

[48] *Id*.

[49] *Id*. at 114.

[50] *Id*. at 113.

on waiver of constitutional rights,"[51] "it is insensitive to a right which we have deemed fundamental."[52]

The Court went on to adopt a middle ground: the "**balancing test**," in which "the conduct of both the prosecution and defendant are weighed."[53] Mr. Justice Powell, *ponente,* explained the concept, thus:

A balancing test necessarily compels courts to approach speedy trial cases on an *ad hoc* basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. **Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant**.

The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. **Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case**. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge.

Closely related to length of delay is the reason the government assigns to justify the delay. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay. **We have already discussed the third factor, the defendant's responsibility to assert his right**. Whether and how a defendant asserts his right is closely related to

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[51] *Id.* at 114.

[52] *Id.* at 116.

[53] *Id.*

the other factors we have mentioned. **The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences**. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. **We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial**.

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified **three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired**. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.[54] (Emphasis supplied)

Philippine jurisprudence has, on several occasions, adopted the balancing test.

In 1991, in *Gonzales v. Sandiganbayan*,[55] this Court ruled:

It must be here emphasized that the right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the

[54] *Id*. at 116-118.

[55] G.R. No. 94750, July 16, 1991, 199 SCRA 298, 307.

conduct of both the prosecution and the defendant are weighed, and such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered. (Underscoring supplied)

Subsequently, in *Dela Peña v. Sandiganbayan*,[56] this Court again enumerated the factors that should be considered and balanced, namely: (1) length of delay; (2) reasons for the delay; (3) assertion or failure to assert such right by the accused; and (4) prejudice caused by the delay.[57]

Once more, in *Mendoza-Ong v. Sandiganbayan*,[58] this Court reiterated that the right to speedy disposition of cases, like the right to speedy trial, is violated only when the proceedings are attended by vexatious, capricious and oppressive delays.[59] In the determination of whether said right has been violated, particular regard must be taken of the facts and circumstances peculiar to each case.[60] The conduct of both the prosecution and defendant, the length of the delay, the reasons for such delay, the assertion or failure to assert such right by accused, and the prejudice caused by the delay are the factors to consider and balance.[61]

Moreover, the determination of whether the delays are of said nature is relative and cannot be based on a mere mathematical reckoning of time.[62]

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[56] G.R. No. 144542, June 29, 2001, 360 SCRA 478.

[57] *Dela Peña v. Sandiganbayan, id*. at 485, citing *Blanco v. Sandiganbayan,* G.R. Nos. 136757-58, November 27, 2000, 346 SCRA 108; *Dansal v. Fernandez, Sr.,* G.R. No. 126814, March 2, 2000, 327 SCRA 145, 153; *Alvizo v. Sandiganbayan,* G.R. No. 101689, March 17, 1993, 220 SCRA 55, 63.

[58] G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423, 425-426.

[59] *Mendoza-Ong v. Sandiganbayan, id*., citing *Dimayacyac v. Court of Appeals,* G.R. No. 136264, May 28, 2004, 430 SCRA 121.

[60] *Id*., citing *Rodriguez v. Sandiganbayan,* G.R. No. 141710, March 3, 2004, 424 SCRA 236.

[61] *Id*., citing *Ty-Dazo v. Sandiganbayan,* G.R. Nos. 143885-86, January 21, 2002, 374 SCRA 200, 203.

[62] *Id*., citing *Binay v. Sandiganbayan,* G.R. Nos. 120681-83 & 128136, October 1, 1999, 316 SCRA 65.

Measured by the foregoing yardstick, We rule that petitioner was not deprived of his right to a speedy disposition of his case.

More important than the absence of serious prejudice, petitioner himself did not want a speedy disposition of his case.[63] Petitioner was duly represented by counsel *de parte* in all stages of the proceedings before the Sandiganbayan. From the moment his case was deemed submitted for decision up to the time he was found guilty by the Sandiganbayan, however, petitioner has not filed a single motion or manifestation which could be construed even remotely as an indication that he wanted his case to be dispatched without delay.

Petitioner has clearly slept on his right. The matter could have taken a different dimension if during all those twelve years, petitioner had shown signs of asserting his right to a speedy disposition of his case or at least made some overt acts, like filing a motion for early resolution, to show that he was not waiving that right.[64]

Currit tempus contra decides et sui juris contempores: Time runs against the slothful and those who neglect their rights. ***Ang panahon ay hindi panig sa mga tamad at pabaya sa kanilang karapatan.*** *Vigilantis sed non dormientibus jura in re subveniunt*. The law aids the vigilant and not those who slumber in their rights. ***Ang batas ay tumutulong sa mga mapagbantay at hindi sa mga humihimbing sa kanilang karapatan.***

Pending his conviction by the Sandiganbayan, petitioner may have truly lived in suspicion and anxiety for over twelve years. However, any prejudice that may have been caused to him in all those years was only minimal. The supposed gravity of agony experienced by petitioner is more imagined than real.

This case is analogous to *Guerrero v. Court of Appeals*.[65] There, the Court ruled that there was no violation of petitioner's

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[63] See *Barker v. Wingo, supra* note 46.

[64] See *Dela Peña v. Sandiganbayan, supra* note 56, at 488.

[65] G.R. No. 107211, June 28, 1996, 257 SCRA 703, 715-716.

right to speedy trial and disposition of his case inasmuch as he failed seasonably to assert his rights:

In the present case, there is no question that petitioner raised the violation against his own right to speedy disposition only when the respondent trial judge reset the case for rehearing. It is fair to assume that he would have just continued to sleep on his right – a situation amounting to laches – had the respondent judge not taken the initiative of determining the non-completion of the records and of ordering the remedy precisely so he could dispose of the case. The matter could have taken a different dimension if during all those ten years between 1979 when accused filed his memorandum and 1989 when the case was re-raffled, the accused showed signs of asserting his right which was granted him in 1987 when the new Constitution took effect, or at least made some overt act (like a motion for early disposition or a motion to compel the stenographer to transcribe stenographic notes) that he was not waiving it. As it is, his silence would have to be interpreted as a waiver of such right.

While this Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, at the same time, we hold that a party's individual rights should not work against and preclude the people's equally important right to public justice. In the instant case, three people died as a result of the crash of the airplane that the accused was flying. It appears to us that the delay in the disposition of the case prejudiced not just the accused but the people as well. Since the accused has completely failed to assert his right seasonably and inasmuch as the respondent judge was not in a position to dispose of the case on the merits due to the absence of factual basis, we hold it proper and equitable to give the parties fair opportunity to obtain (and the court to dispense) substantial justice in the premises.

III. The law relied upon in convicting petitioner is not cruel and unusual. It does not violate Section 19, Article III of the Bill of Rights.

What constitutes cruel and unusual punishment has not been exactly defined.[66] The Eighth Amendment of the United States Constitution,[67] the source of Section 19, Article III of the Bill of Rights[68] of our own Constitution, has yet to be put to the test to finally determine what constitutes cruel and inhuman punishment.[69]

Cases that have been decided described, rather than defined, what is meant by cruel and unusual punishment. This is explained by the pronouncement of the United States Supreme Court that "[t]he clause of the Constitution, in the opinion of the learned commentators, may be therefore progressive, and is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice."[70]

In *Wilkerson v. Utah*,[71] Mr. Justice Clifford of the United States Supreme Court opined that "[d]ifficulty would attend the effort to define with exactness the extent of the constitutional provision which provides that cruel and unusual punishments

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[66] *Weems v. U.S.,* 217 US 349, 30 S. Ct. 544, 54 L. Ed. 793, 19 Am. Ann. Cas. 705 (1910).

[67] The Eighth Amendment of the United States Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed, **nor cruel and unusual punishments inflicted**. (Emphasis supplied)

[68] Bill of Rights of the Constitution (1987), Art. III, Sec. 19 provides:

Sec. 19. (1) Excessive fines shall not be imposed, **nor cruel**, **degrading or inhuman punishment inflicted**. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee, or the use of substandard or inadequate penal facilities under subhuman condition shall be dealt with by law. (Emphasis supplied)

[69] See note 43.

[70] *Weems v. U.S., supra* note 66, citing *Mackin v. U.S.,* 117 US 348, 350, 29 L. Ed. 909, 910, 6 S. Ct. Rep. 777; *Ex parte Wilson,* 114 US 417, 427, 29 L. Ed. 89, 92.

[71] 99 US 130.

shall not be inflicted; but it is safe to affirm that punishments of torture, x x x and all others in the same line of unnecessary cruelty, are forbidden by that amendment to the constitution."[72]

In *In Re: Kemmler*,[73] Mr. Chief Justice Fuller of that same Court stated that "[p]unishments are cruel when they involve torture or a lingering death; but the punishment of death is not cruel within the meaning of that word as used in the constitution. It implies x x x something more inhuman and barbarous, something more than the mere extinguishment of life."[74]

Again, in *Weems v. U.S.*,[75] Mr. Justice McKenna held for the Court that *cadena temporal* and its accessory penalties "has no fellow in American legislation. Let us remember that it has come to us from a government of a different form and genus from ours. It is cruel in its excess of imprisonment and that which accompanies and follows imprisonment. It is unusual in character. Its punishments come under the condemnation of the Bill of Rights, both on account of their degree and kind. And they would have those bad attributes even if they were found in a Federal enactment, and not taken from an alien source."

In *Echegaray v. Executive Secretary*,[76] this Court in a *per curiam* Decision held that Republic Act No. 8177,[77] even if it does not provide in particular the details involved in the execution

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[72] *Wilkerson v. Utah, id*. at 135.

[73] 136 US 436, 10 S. Ct. 930, 34 L. Ed. 519.

[74] *In Re: Kemmler, id*. at 524.

[75] *Supra* note 66.

[76] G.R. No. 132601, October 12, 1998, 297 SCRA 754.

[77] An Act Designating Death by *Lethal Injection* as the Method of Carrying Out Capital Punishment, Amending For the Purpose Article 81 of the Revised Penal Code, As Amended by Section 24 of Republic Act No. 7659. Sections 17 and 19 of the Rules and Regulations to Implement Republic Act No. 8177 were, however, declared INVALID: (a) Section 17 because it "contravenes Article 83 of the Revised Penal Code, as amended by Section 25 of Republic Act No. 7659;" and (b) Section 19 because it "fails to provide for review and approval of the Lethal Injection Manual by the Secretary of Justice, and unjustifiably makes the manual confidential, hence, unavailable to interested parties including the accused/convict and counsel."

by lethal injection, is not cruel, degrading or inhuman, and is thus constitutional. Any infliction of pain in lethal injection is merely incidental in carrying out the execution of the death penalty and does not fall within the constitutional proscription against cruel, degrading or inhuman punishment.[78]

The Court adopted the American view that what is cruel and unusual is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by humane justice and must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.[79]

In his last ditch effort to exculpate himself, petitioner argues that the penalty meted for the crime of malversation of public funds "that ha[ve] been replenished, remitted and/or returned" to the government is cruel and therefore unconstitutional, "as government has not suffered any damage."[80]

The argument is specious on two grounds.

First. What is punished by the crime of malversation is the act of a 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 and 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.[81]

Payment or reimbursement is not a defense for exoneration in malversation; it may only be considered as a mitigating circumstance. This is because damage is not an element of malversation.

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[78] *Echegaray v. Executive Secretary, supra* at 777.

[79] *Id*. at 778-779, citing *Ex Parte Granvel,* 561 SW 2d 503, 509 (1978), citing *Trop v. Dulles,* 356 US 86, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958); *Estella v. Gamble,* 429 US 97, 97 S. Ct. 285, 290, 50 L. Ed. 2d 251, 258-259 (1976).

[80] *Rollo,* p. 22.

[81] See Revised Penal Code, Art. 217.

Second. There is strong presumption of constitutionality accorded to statutes.

It is established doctrine that a statute should be construed whenever possible in harmony with, rather than in violation of, the Constitution.[82] The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.[83] It is presumed that the legislature has acted within its constitutional powers. So, it is the generally accepted rule that every statute, or regularly accepted act, is, or will be, or should be, presumed to be valid and constitutional.[84]

He who attacks the constitutionality of a law has the *onus probandi* to show why such law is repugnant to the Constitution. Failing to overcome its presumption of constitutionality, a claim that a law is cruel, unusual, or inhuman, like the stance of petitioner, must fail.

IV. On the penalty

The Sandiganbayan sentenced petitioner to an indeterminate sentence of ten (10) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum. In imposing the penalty, it found that petitioner was entitled to the mitigating circumstance of payment which is akin to voluntary surrender.

Article 217 penalizes malversation in the following tenor:

Article 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 and misappropriate or shall

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[82] *Cruz v. Secretary of Environment and Natural Resources,* G.R. No. 135385, December 6, 2000, 347 SCRA 128, citing *San Miguel Corporation v. Avelino,* G.R. No. L-39699, March 14, 1979, 89 SCRA 69; *Phil. Long Distance Telephone Co. v. Collector of Internal Revenue,* 90 Phil. 674 (1952); *Teehankee v. Rovira,* 75 Phil. 634 (1945).

[83] *Id*., citing *In re Guarina,* 24 Phil. 37 (1913).

[84] 16A C.J.S. Constitutional Law, Sec. 96(a).

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.

x x x x x x x x x

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than 12,000 but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses. (Underscoring supplied)

The amount malversed totalled ₱72,784.57. The prescribed penalty is *reclusion temporal* in its maximum period to *reclusion perpetua*, which has a range of seventeen (17) years, four (4) months and one (1) day to forty (40) years.

However, the commission of the crime was attended by the mitigating circumstance akin to voluntary surrender. As correctly observed by the Sandiganbayan, petitioner restituted the full amount even before the prosecution could present its evidence. That is borne by the records.

It bears stressing that the full restitution of the amount malversed will not in any way exonerate an accused, as payment is not one of the elements of extinction of criminal liability. Under the law, the refund of the sum misappropriated, even before the commencement of the criminal prosecution, does not exempt the guilty person from liability for the crime.[85] At

[85] *U.S. v. Reyes,* 14 Phil. 718 (1910). See also *People v. Livara,* 94 Phil. 771 (1954).

most, then, payment of the amount malversed will only serve as a mitigating circumstance[86] akin to voluntary surrender, as provided for in paragraph 7 of Article 13[87] in relation to paragraph 10[88] of the same Article of the Revised Penal Code.

But the Court also holds that aside from voluntary surrender, petitioner is entitled to the mitigating circumstance of no intention to commit so grave a wrong,[89] again in relation to paragraph 10 of Article 13.[90]

The records bear out that petitioner misappropriated the missing funds under his custody and control because he was impelled by the genuine love for his brother and his family. Per his admission, petitioner used part of the funds to pay off a debt owed by his brother. Another portion of the misappropriated funds went to his medications for his debilitating diabetes.

Further, as shown earlier, petitioner restituted all but Eight Thousand Pesos (₱8,000.00) of the funds in less than one month and a half and said small balance in three (3) months from receipt of demand of COA on January 5, 1999. Evidently, there was no intention to commit so grave a wrong.

Of course, the end does not justify the means. To condone what petitioner has done because of the nobility of his purpose or financial emergencies will become a potent excuse for

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[86] *Estamos con el. Hon. Procurador General en que ha lugar a estimar la devolución hecha por e apelante de la cantidad defraudada como circumstancia atenuante especial sin ninguna agravante que la compense. Esto así, procede condenar al apelante a sufrir en su grado minímo la pena señalada por la ley.* (*People v. Velasquez,* 72 Phil. 98, 100 [1941]) (Italics supplied)

[87] Revised Penal Code, Art. 13, Par. 7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

[88] *Id*., Sec. 10. And, finally, any other circumstance of a similar nature and analogous to those above mentioned.

[89] Revised Penal Code, Art. 13, Par. 3. That the offender had no intention to commit so grave a wrong as that committed.

[90] *Supra* note 88.

malefactors and open the floodgates for more corruption in the government, even from "small fry" like him.

The bottom line is a guilty person deserves the penalty given the attendant circumstances and commensurate with the gravity of the offense committed. Thus, a reduction in the imposable penalty by one degree is in order. Article 64 of the Revised Penal Code is explicit:

> Art. 64. Rules for the application of penalties which contain three periods. – In cases in which the penalties prescribed by law contains three periods, whether it be a single divisible penalty or composed of three difference penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty, the following rules, according to whether there are no mitigating or aggravating circumstances:
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> x x x x x x x x x
>
> 5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances. (Underscoring supplied)

Considering that there are two mitigating circumstances, the prescribed penalty is reduced to *prision mayor* in its maximum period to *reclusion temporal* in its medium period, to be imposed in any of its periods. The new penalty has a range of ten (10) years and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law,[91] the

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[91] Act No. 4103, as amended, otherwise known as the Indeterminate Sentence Law, provides:

> Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, 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 said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence

maximum term could be ten (10) years and one (1) day of *prision mayor* maximum, while the minimum term is again one degree lower[92] and could be four (4) years, two (2) months and one (1) day of *prision correccional* maximum.

In the 1910 case of *U.S. v. Reyes*,[93] the trial judge entered a judgment of conviction against the accused and meted to him the penalty of "three years' imprisonment, to pay a fine of ₱1,500.00, and in case of insolvency to suffer subsidiary imprisonment at the rate of one day for every ₱2.50 that he failed to pay, which subsidiary imprisonment, however, should not exceed one third of the principal penalty" and to be "perpetually disqualified for public office and to pay the costs." This was well within the imposable penalty then under Section 1 of Act No. 1740,[94] which is "imprisonment for not less than two months nor more than ten years and, in the discretion of the court, by a fine of not more than the amount of such funds and the value of such property."

On appeal to the Supreme Court, the accused's conviction was affirmed but his sentence was modified and reduced to six months. The court, *per* Mr. Justice Torres, reasoned thus:

> For the foregoing reasons the several unfounded errors assigned to the judgment appealed from have been fully refuted, since in conclusion it is fully shown that the accused unlawfully disposed of a portion of the municipal funds, putting the same to his own use, and to that of other persons in violation of Act. No. 1740, and consequently he has incurred the penalty therein established as principal of the crime of misappropriation; and even though in imposing it, it is not necessary to adhere to the rules of the Penal Code, the court in using its discretional powers as authorized by law, believes that the circumstances present in the commission of

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the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and shall not be less than the minimum term prescribed by the same. (As amended by Act. No. 4225)

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

[93] 14 Phil. 718, 721 (1910).

[94] Enacted on October 3, 1907.

crimes should be taken into consideration, and in the present case the amount misappropriated was refunded at the time the funds were counted.[95] (Underscoring supplied)

We opt to exercise an analogous discretion.

WHEREFORE, the Decision of the Sandiganbayan dated September 24, 2003 is *AFFIRMED* with the *MODIFICATION* that petitioner is hereby sentenced to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum term, to ten (10) years and one (1) day of *prision mayor*, as maximum term, with perpetual special disqualification. He is likewise *ORDERED* to pay a fine of ₱72,784.57, the amount equal to the funds malversed.

Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169737. February 12, 2008]

BLUE CROSS HEALTH CARE, INC., *petitioner, vs.* **NEOMI* and DANILO OLIVARES,** *respondents*.

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[95] *Id*. at 725-726.

* Vice Associate Justice Minita V. Chico-Nazario. Justice Nazario is on official leave per Special Order No. 484 dated January 11, 2008.

* The petition spelled the name of respondent as Noemi Olivares but in the decision of the Court of Appeals, Neomi was used since she signed as such in the verification and certificate of non-forum shopping attached to her complaint.

SYLLABUS

1. COMMERCIAL LAW; INSURANCE; HEALTH CARE AGREEMENT IS IN THE NATURE OF A NON-LIFE INSURANCE; LIMITATIONS OF LIABILITY MUST BE CONSTRUED STRICTLY AGAINST THE INSURER; DOCTRINE APPLICABLE TO HEALTH CARE AGREEMENT.— In *Philamcare Health Systems, Inc. v. CA*, we ruled that a health care agreement is in the nature of a non-life insurance. It is an established rule in insurance contracts that when their terms contain limitations on liability, they should be construed strictly against the insurer. These are contracts of adhesion the terms of which must be interpreted and enforced stringently against the insurer which prepared the contract. This doctrine is equally applicable to health care agreements.

2. ID.; ID.; HEALTH CARE AGREEMENT; LIMITATION OF LIABILITY MUST BE CONSTRUED IN SUCH A WAY AS TO PRECLUDE THE HEALTH CARE PROVIDER FROM EVADING ITS OBLIGATION.— Furthermore, as already stated, limitations of liability on the part of the insurer or health care provider must be construed in such a way as to preclude it from evading its obligations. Accordingly, they should be scrutinized by the courts with "**extreme jealousy**" and "**care**" and with a "**jaundiced eye**." Since petitioner had the burden of proving exception to liability, it should have made its own assessment of whether respondent Neomi had a pre-existing condition when it failed to obtain the attending physician's report. It could not just passively wait for Dr. Saniel's report to bail it out. The mere reliance on a disputable presumption does not meet the strict standard required under our jurisprudence.

3. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; EVIDENCE WILLFULLY SUPPRESSED WOULD BE ADVERSE IF PRODUCED; EXCEPTIONS; PRESENT IN CASE AT BAR.— Petitioner never presented any evidence to prove that respondent Neomi's stroke was due to a pre-existing condition. It merely speculated that Dr. Saniel's report would be adverse to Neomi, based on her invocation of the doctor-patient privilege. This was a disputable presumption at best. Section 3 (e), Rule 131 of the Rules of Court states:

Sec. 3. Disputable presumptions. The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: xxx xxx xxx (e) That evidence willfully suppressed would be adverse if produced. Suffice it to say that this presumption does not apply if (a) the evidence is at the disposal of both parties; (b) the suppression was not willful; (c) it is merely corroborative or cumulative and (d) the **suppression is an exercise of a privilege.** Here, respondents' refusal to present or allow the presentation of Dr. Saniel's report was justified. It was privileged communication between physician and patient.

4. ID.; ID.; FACTUAL FINDINGS OF THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS ARE BINDING AND CONCLUSIVE.— The RTC and CA found that there was a factual basis for the damages adjudged against petitioner. They found that it was guilty of bad faith in denying a claim based merely on its own perception that there was a pre-existing condition: xxx. This is a factual matter binding and conclusive on this Court. We see no reason to disturb these findings.

APPEARANCES OF COUNSEL

Teng & Cruz Law Offices for petitioner.

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for respondents.

D E C I S I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of a decision[2] and resolution[3] of the Court of Appeals (CA) dated July 29, 2005 and September 21, 2005, respectively, in CA-G.R. SP No. 84163 which affirmed the decision of the Regional Trial Court (RTC),

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

[2] Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Martin S. Villarama, Jr. and Edgardo F. Sundiam of the Former Fifteenth Division of the Court of Appeals; *rollo*, pp. 17-25.

[3] *Id*., pp. 27-28.

Makati City, Branch 61 dated February 2, 2004 in Civil Case No. 03-1153,[4] which in turn reversed the decision of the Metropolitan Trial Court (MeTC), Makati City, Branch 66 dated August 5, 2003 in Civil Case No. 80867.[5]

Respondent Neomi T. Olivares applied for a health care program with petitioner Blue Cross Health Care, Inc., a health maintenance firm. For the period October 16, 2002 to October 15, 2003,[6] she paid the amount of ₱11,117. For the same period, she also availed of the additional service of limitless consultations for an additional amount of ₱1,000. She paid these amounts in full on October 17, 2002. The application was approved on October 22, 2002. In the health care agreement, ailments due to "pre-existing conditions" were excluded from the coverage.[7]

On November 30, 2002, or barely 38 days from the effectivity of her health insurance, respondent Neomi suffered a stroke and was admitted at the Medical City which was one of the hospitals accredited by petitioner. During her confinement, she underwent several laboratory tests. On December 2, 2002, her attending physician, Dr. Edmundo Saniel,[8] informed her that she could be discharged from the hospital. She incurred hospital expenses amounting to ₱34,217.20. Consequently, she requested from the representative of petitioner at Medical City a letter of authorization in order to settle her medical bills. But petitioner refused to issue the letter and suspended payment pending the submission of a certification from her attending physician that the stroke she suffered was not caused by a pre-existing condition.[9]

She was discharged from the hospital on December 3, 2002. On December 5, 2002, she demanded that petitioner pay her medical bill. When petitioner still refused, she and her husband,

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[4] Penned by Judge Romeo F. Barza; *id*., pp. 38-43.

[5] Penned by Judge Perpetua Atal-Paño; *id*., pp. 44-47.

[6] *Id*., p. 178.

[7] *Id*., p. 39.

[8] *Id*., p. 18.

[9] *Id*., p. 39.

respondent Danilo Olivares, were constrained to settle the bill.[10] They thereafter filed a complaint for collection of sum of money against petitioner in the MeTC on January 8, 2003.[11] In its answer dated January 24, 2003, petitioner maintained that it had not yet denied respondents' claim as it was still awaiting Dr. Saniel's report.

In a letter to petitioner dated February 14, 2003, Dr. Saniel stated that:

> This is in response to your letter dated February 13, 2003. [Respondent] Neomi T. Olivares called by phone on January 29, 2003. She stated that she is invoking patient-physician confidentiality. That she no longer has any relationship with [petitioner]. And that I should not release any medical information concerning her neurologic status to anyone without her approval. Hence, the same day I instructed my secretary to inform your office thru Ms. Bernie regarding [respondent's] wishes.
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> x x x x x x x x x[12]

In a decision dated August 5, 2003, the MeTC dismissed the complaint for lack of cause of action. It held:

> xxx the best person to determine whether or not the stroke she suffered was not caused by "pre-existing conditions" is her attending physician Dr. Saniel who treated her and conducted the test during her confinement. xxx But since the evidence on record reveals that it was no less than [respondent Neomi] herself who prevented her attending physician from issuing the required certification, petitioner cannot be faulted from suspending payment of her claim, for until and unless it can be shown from the findings made by her attending physician that the stroke she suffered was not due to pre-existing conditions could she demand entitlement to the benefits of her policy.[13]

On appeal, the RTC, in a decision dated February 2, 2004, reversed the ruling of the MeTC and ordered petitioner to pay

[10] *Id*., p. 109.

[11] *Id*., p. 38.

[12] *Id*., p. 29.

[13] *Id*., p. 47.

respondents the following amounts: (1) ₱34,217.20 representing the medical bill in Medical City and ₱1,000 as reimbursement for consultation fees, with legal interest from the filing of the complaint until fully paid; (2) ₱20,000 as moral damages; (3) ₱20,000 as exemplary damages; (4) ₱20,000 as attorney's fees and (5) costs of suit.[14] The RTC held that it was the burden of petitioner to prove that the stroke of respondent Neomi was excluded from the coverage of the health care program for being caused by a pre-existing condition. It was not able to discharge that burden.[15]

Aggrieved, petitioner filed a petition for review under Rule 42 of the Rules of Court in the CA. In a decision promulgated on July 29, 2005, the CA affirmed the decision of the RTC. It denied reconsideration in a resolution promulgated on September 21, 2005. Hence this petition which raises the following issues: (1) whether petitioner was able to prove that respondent Neomi's stroke was caused by a pre-existing condition and therefore was excluded from the coverage of the health care agreement and (2) whether it was liable for moral and exemplary damages and attorney's fees.

The health care agreement defined a "pre-existing condition" as:

> x x x a disability which existed before the commencement date of membership whose natural history can be clinically determined, whether or not the Member was aware of such illness or condition. Such conditions also include disabilities existing prior to reinstatement date in the case of lapse of an Agreement. Notwithstanding, the following disabilities but not to the exclusion of others are considered pre-existing conditions including their complications when occurring during the first year of a Member's coverage:
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> I. Tumor of Internal Organs
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> II. Hemorrhoids/Anal Fistula
>
> III. Diseased tonsils and sinus conditions requiring surgery

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

[15] *Id*., p. 42.

IV. Cataract/Glaucoma

V. Pathological Abnormalities of nasal septum or turbinates

VI. Goiter and other thyroid disorders

VII. Hernia/Benign prostatic hypertrophy

VIII. Endometriosis

IX. Asthma/Chronic Obstructive Lung disease

X. Epilepsy

XI. Scholiosis/Herniated disc and other Spinal column abnormalities

XII. Tuberculosis

XIII. Cholecysitis

XIV. Gastric or Duodenal ulcer

XV. Hallux valgus

XVI. Hypertension and other Cardiovascular diseases

XVII. Calculi

XVIII. Tumors of skin, muscular tissue, bone or any form of blood dyscracias

XIX. Diabetes Mellitus

XX. Collagen/Auto-Immune disease

After the Member has been continuously covered for 12 months, this pre-existing provision shall no longer be applicable except for illnesses specifically excluded by an endorsement and made part of this Agreement.[16]

Under this provision, disabilities which existed before the commencement of the agreement are excluded from its coverage if they become manifest within one year from its effectivity. Stated otherwise, petitioner is not liable for pre-existing conditions if they occur within one year from the time the agreement takes effect.

[16] *Id*., p. 114.

Petitioner argues that respondents prevented Dr. Saniel from submitting his report regarding the medical condition of Neomi. Hence, it contends that the presumption that evidence willfully suppressed would be adverse if produced should apply in its favor.[17]

Respondents counter that the burden was on petitioner to prove that Neomi's stroke was excluded from the coverage of their agreement because it was due to a pre-existing condition. It failed to prove this.[18]

We agree with respondents.

In *Philamcare Health Systems, Inc. v. CA*,[19] we ruled that a health care agreement is in the nature of a non-life insurance.[20] It is an established rule in insurance contracts that when their terms contain limitations on liability, they should be construed strictly against the insurer. These are contracts of adhesion the terms of which must be interpreted and enforced stringently against the insurer which prepared the contract. This doctrine is equally applicable to health care agreements.[21]

Petitioner never presented any evidence to prove that respondent Neomi's stroke was due to a pre-existing condition. It merely speculated that Dr. Saniel's report would be adverse to Neomi, based on her invocation of the doctor-patient privilege. This was a disputable presumption at best.

Section 3 (e), Rule 131 of the Rules of Court states:

Sec. 3. Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

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[17] *Id*., p. 195.

[18] *Id*., p. 214.

[19] 429 Phil. 82 (2002).

[20] *Id*., p. 90.

[21] *Id*., pp. 93-94, citations omitted.

(e) That evidence willfully suppressed would be adverse if produced.

Suffice it to say that this presumption does not apply if (a) the evidence is at the disposal of both parties; (b) the suppression was not willful; (c) it is merely corroborative or cumulative and (d) the **suppression is an exercise of a privilege**.[22] Here, respondents' refusal to present or allow the presentation of Dr. Saniel's report was justified. It was privileged communication between physician and patient.

Furthermore, as already stated, limitations of liability on the part of the insurer or health care provider must be construed in such a way as to preclude it from evading its obligations. Accordingly, they should be scrutinized by the courts with "**extreme jealousy**"[23] and "**care**" and with a "**jaundiced eye**."[24] Since petitioner had the burden of proving exception to liability, it should have made its own assessment of whether respondent Neomi had a pre-existing condition when it failed to obtain the attending physician's report. It could not just passively wait for Dr. Saniel's report to bail it out. The mere reliance on a disputable presumption does not meet the strict standard required under our jurisprudence.

Next, petitioner argues that it should not be held liable for moral and exemplary damages, and attorney's fees since it did not act in bad faith in denying respondent Neomi's claim. It insists that it waited in good faith for Dr. Saniel's report and that, based on general medical findings, it had reasonable ground

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[22] *People v. Andal*, 344 Phil. 889, 912 (1997), citing *People v. Ducay*, G.R. No. 86939, 2 August 1993, 225 SCRA 1 and *People v. Navaja*, G.R. No. 104044, 30 March 1993, 220 SCRA 624, 633.

[23] *DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc.*, G.R. No. 147039, 27 January 2006, 480 SCRA 314, 322, citing *Malayan Insurance Corporation v. Court of Appeals*, 336 Phil. 977, 989 (1997).

[24] *Western Guaranty Corporation v. Court of Appeals*, G.R. No. 91666, 20 July 1990, 187 SCRA 652, 659-660, citing *Taurus Taxi Co., Inc. v. The Capital Ins. & Surety Co., Inc.*, G.R. No. L-23491, 31 July 1968, 24 SCRA 454 and *Eagle Star Insurance, Ltd. v. Chia Yu*, 96 Phil. 696 (1955).

to believe that her stroke was due to a pre-existing condition, considering it occurred only 38 days after the coverage took effect.[25]

We disagree.

The RTC and CA found that there was a factual basis for the damages adjudged against petitioner. They found that it was guilty of bad faith in denying a claim based merely on its own perception that there was a pre-existing condition:

> [Respondents] have sufficiently shown that [they] were forced to engage in a dispute with [petitioner] over a legitimate claim while [respondent Neomi was] still experiencing the effects of a stroke and forced to pay for her medical bills during and after her hospitalization despite being covered by [petitioner's] health care program, thereby suffering in the process extreme mental anguish, shock, serious anxiety and great stress. [They] have shown that because of the refusal of [petitioner] to issue a letter of authorization and to pay [respondent Neomi's] hospital bills, [they had] to engage the services of counsel for a fee of ₱20,000.00. Finally, **the refusal of petitioner to pay respondent Neomi's bills smacks of bad faith,** as its refusal [was] merely based on its own perception that a stroke is a pre-existing condition. (emphasis supplied)

This is a factual matter binding and conclusive on this Court.[26] We see no reason to disturb these findings.

WHEREFORE, the petition is hereby *DENIED*. The July 29, 2005 decision and September 21, 2005 resolution of the Court of Appeals in CA-G.R. SP No. 84163 are *AFFIRMED*.

Treble costs against petitioner.

SO ORDERED.

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

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[25] *Rollo*, pp. 196-198.

[26] *PAL, Inc. v. CA*, 326 Phil. 824, 835 (1996), citations omitted.

SECOND DIVISION

[G.R. No. 172812. February 12, 2008]

AMELIA R. ENRIQUEZ and REMO SIA, *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS and LUIS A. PUENTEVELLA, AVP,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; TECHNICALITIES SHOULD NEVER BE USED TO DEFEAT THE SUBSTANTIVE RIGHTS OF THE OTHER PARTY.— After assiduously weighing the arguments of the parties, we find that a liberal construction of the rules is in order. To serve the interest of justice, compelling reason obtains to address respondents' arguments and brush aside technicality. The Court frowns upon the practice of dismissing cases purely on procedural grounds. Instructive is our pronouncement in the case of *Bank of the Philippine Islands v. Court of Appeals*, thus: 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. x x x **We see no circumvention of these objectives by the vice president's signing the verification and certification without express authorization from any existing board resolution.** xxx. While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and the swift unclogging of court dockets is a laudable objective, it nevertheless must not be met at the expense of substantial justice. This Court has time and again reiterated the doctrine that the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.

Considering that there was substantial compliance, a liberal interpretation of procedural rules in this labor case is more in keeping with the constitutional mandate to secure social justice.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; LOSS OF TRUST AND CONFIDENCE; REQUISITES TO BE A VALID GROUND FOR DISMISSAL.— There is no denying that loss of trust and confidence is a valid ground for termination of employment. Hence, the basic requisite for dismissal on the ground of loss of confidence is that the employee concerned holds a position of trust and confidence or is routinely charged with the care and custody of the employer's money or property. Moreover, the breach must be related to the performance of the employee's function. Also, it must be shown that the employee is a managerial employee, since the term "trust and confidence" is restricted to said class of employees.

3. ID.; ID.; ID.; POWER TO DISMISS AN EMPLOYEE IS A MANAGEMENT'S PREROGATIVE.— It is well-settled that the power to dismiss an employee is a recognized prerogative that is inherent in the employer's right to freely manage and regulate his business. An employer cannot be expected to retain an employee whose lack of morals, respect and loyalty to his employer or regard for his employer's rules and appreciation of the dignity and responsibility of his office has so plainly and completely been bared. Thus, to compel respondent bank to keep petitioners in its employ after the latter have betrayed the confidence given to them would be unjust to respondent bank. The expectation of trust is more so magnified in the instant case in light of the nature of respondent bank's business. The banking industry is imbued with public interest and is mandated by law to serve its clients with extraordinary care and diligence. To be able to fulfill this duty, it in turn must rely on the honesty and loyalty of its employees.

4. ID.; ID.; ID.; ID.; AN EMPLOYER HAS EVERY RIGHT TO DISMISS ITS MANAGER FOR BREACH OF TRUST, LOSS OF CONFIDENCE AND DISHONESTY WHERE THE LATTER CONCEALED THE COMMISSION OF AN OFFENSE PREJUDICIAL TO THE EMPLOYER'S INTEREST, BY A SUBORDINATE UNDER HIS

SUPERVISION.— Clearly, as a measure of self-preservation against acts patently inimical to its interests, respondent bank had every right to dismiss petitioners for breach of trust, loss of confidence and dishonesty. Indeed, in cases of this nature, the fact that petitioners had been employees of BPI for a long time, if it is to be considered at all, should be taken against them. Their manifest condonation and even concealment of an offense prejudicial to their employer's interest committed by a subordinate under their supervision reflect a regrettable lack of loyalty which they should have reinforced, instead of betrayed. So *Sosito v. Aguinaldo Development Corporation* prescribes: While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, this Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded us to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.

5. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; PROPER REMEDY TO CORRECT ERRORS OF LAW COMMITTED BY THE COURT OF APPEALS.— Besides, the province of the instant Rule 45 petition for review is to correct errors of law committed by the Court of Appeals. After a judicious and meticulous review of the records of the case, we are convinced that the Court of Appeals did not err in finding that petitioners were validly terminated from employment.

APPEARANCES OF COUNSEL

Torres Ravina & Sy Law Offices for petitioners.
Rayala Alonso and *Partners* for respondents.

D E C I S I O N

TINGA, *J.*:

In this petition for review on *certiorari*, petitioners Amelia R. Enriquez (Enriquez) and Remo L. Sia (Sia) assail the Decision[1] of the Court of Appeals dated 30 November 2005 affirming *in toto* the Decision[2] of the Fourth Division of the National Labor Relations Commission (NLRC), Cebu City which dismissed their complaint for illegal dismissal and money claims. The NLRC had earlier reversed and set aside the decision of Executive Labor Arbiter Danilo C. Acosta finding that petitioners were illegally dismissed by respondent Bank of the Philippine Islands (BPI).

The antecedents, as culled from the records, are as follows:

Enriquez and Sia were the branch manager and assistant branch manager, respectively, of the BPI-Bacolod Singcang Branch. Enriquez was first employed by respondent bank in 1971 and had been an employee thereof for 32 years at the time of her termination,[3] whereas Sia had been in respondent bank's employ since 1974, or for a total of 29 years at the time of his dismissal.[4] Respondent Luis A. Puentevella (Puentevella) is one of respondent's principal officers and was impleaded in his personal capacity.

Petitioners maintain that on 27 December 2002, their branch experienced a heavy volume of transactions owing to the fact that it was the last banking day of the year. When banking hours came to a close, teller Geraldine Descartin (Descartin) purportedly discovered that she had a cash shortage of ₱36,000.00

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[1] *Rollo*, pp. 40-49; penned by Associate Justice Enrico A. Lanzanas and concurred in by Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos.

[2] *Id*. at 305-313; penned by Commissioner Oscar S. Uy and concurred in by Presiding Commissioner Gerardo C. Nograles, dated 7 October 2004.

[3] *Id*. at 86.

[4] *Id*. at 108.

and informed Sia about it. Sia, in turn, informed Enriquez of the problem and was directed to review the day's transactions to trace its cause.[5]

Descartin claimed that the discrepancy was due to an innocent oversight and recalled that the unaccounted shortage was due to the failure of her mother-in-law, Remedios Descartin (Remedios), to sign the withdrawal slip when the latter withdrew ₱36,000.00 earlier that day. With that explanation, Enriquez directed Descartin and her co-teller Evelyn Fregil (Fregil) to submit their written memorandum of the incident. Descartin was permitted to leave the bank to look for Remedios so that the latter could sign the withdrawal slip. At around 7:00 p.m., she returned to the bank with the signed withdrawal slip and debited the amount from the client's account. Thus, petitioners aver, the transaction was regularized before the end of the day.[6]

It is the position of petitioners that as there was neither shortage nor loss to the bank because the initial discrepancy was accounted for and that it was due to a mere oversight, they put the matter to rest. In the meantime, Sia began to wind up his affairs as 27 December 2002 was his last working day with the bank before going on terminal leave prior to his optional retirement.

Respondents, however, have a different version of what transpired on 27 December 2002. According to them, teller Descartin's shortage of ₱36,000.00, which she confided to her co-teller Fregil, was incurred because she had temporarily borrowed the money that week to pay her financial obligations but intended to return the same on the first week of January. Teller Fregil reported the matter to Sia and Enriquez, both of whom suggested that teller Descartin fill the shortage with a loan from her family. Teller Descartin replied that her family did not have the money, she instead borrowed the amount from her in-laws. Thus, at 5:21 p.m., teller Descartin posted the unsigned withdrawal slip for the amount of ₱36,000.00 against the joint account of her parents-in-law. As the amount exceeded

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[5] *Id*. at 5.

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

the floor limit for tellers which would require the approval of a superior officer, either Enriquez or Sia approved the transaction at 5:22 p.m. as reflected on the account records. Teller Descartin thereafter left the bank to secure the signature of her mother-in-law Remedios and returned at past 7:00 p.m. with the signed withdrawal slip.[7]

On 28 December 2002, teller Fregil was allegedly informed that teller Descartin was going to prepare a "white lie" report, to be signed by both of them, stating that teller Descartin had inadvertently misplaced the withdrawal slip of her mother-in-law and that the transaction was regularized within the same day. On 2 January 2003, teller Fregil signed the report. However, in February 2003, teller Fregil bumped into a colleague assigned to the BPI-Bacolod Main Branch and confided to the latter her uneasiness about the 27 December 2002 incident. The matter was reported and ultimately brought to the attention of respondent Puentevella.[8]

Thus, sometime in February 2003, respondent Puentevella initiated further investigation on the incident. Later, on 3 March 2003, teller Fregil retracted her original statement and instead executed another letter claiming that there was a cover-up of the shortage on the day in question. Respondents assert that the investigation conducted by the Auditing Division of BPI bolstered teller Fregil's claims of irregularity as the audit report disclosed that petitioners failed to make the necessary report on the shortage and instead assisted in covering-up teller Descartin's wrongdoing.

On 25 April 2003, petitioners were instructed to report to the BPI head office for polygraph testing. While they expressed their willingness to be interviewed, petitioners objected to the polygraph test. On 27 June 2003, petitioners received show-cause memos directing them to explain in writing why they should not be sanctioned for conflict of interest and breach of trust. Petitioners submitted their respective replies in which they denied the charges against them. On 14 July 2003, a committee

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[7] *Id*. at 432-436.

[8] *Id*. at 437-438.

of respondent bank conducted a hearing of the case and as part of the investigation, separately interviewed petitioners and tellers Descartin and Fregil. On 3 September 2003, petitioners were dismissed from employment on grounds of breach of trust and confidence and dishonesty.

Hence, on 4 September 2003, petitioners filed their respective Complaints[9] for illegal dismissal against respondents and prayed for reinstatement or, in lieu thereof, payment of separation pay. Additionally, they sought backwages, retirement pay, attorney's fees and moral and exemplary damages in the amount of ₱10,000,000.00.

After the submission by the parties of their position papers, Labor Arbiter Acosta rendered a Decision[10] on 29 March 2004 finding that petitioners had been illegally dismissed. The dispositive portion of the decision states:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. DECLARING that complainants were illegally dismissed by respondents;
>
> 2. ORDERING respondents to reinstate complainants to their former position without loss of seniority rights and to pay them their corresponding full back wages inclusive of allowances and other benefits as computed, in the sum of Pesos: **ONE MILLION ONE HUNDRED SEVENTY-THREE THOUSAND, FOUR HUNDRED THIRTY-FOUR AND 50/100 ONLY (₱1,173,434.50);**
>
> 3. ORDERING respondents to jointly and severally pay complainants moral and exemplary damages in the amount of **₱3,000,000.00** each or a total of **₱6,000,000.00;**
>
> 4. ORDERING respondents to jointly and severally pay attorney's fees in the amount of **₱717,343.45** which is equivalent to 10% of the total judgment award, thereby making a total of **SEVEN MILLION EIGHT HUNDRED NINETY THOUSAND, SEVEN HUNDRED SEVENTY-SEVEN AND 95/100 ONLY**

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[9] CA *rollo*, pp. 73-76.

[10] *Id*. at 191-207.

(₱7,890,777.95), the same to be deposited with the Cashier of this Office within ten (10) calendar days from receipt of this Decision;

5. ORDERING respondents to jointly and severally pay complainants in case they reach the compulsory retirement age of 60 years old pending final resolution of this case, their Retirement pay equivalent to two (2) months latest salary for every year of service and their Separation pay equivalent to one (1) month salary for every year of service computed from the time they were hired up to their retirement period.[11]

Aggrieved, respondents appealed to the NLRC. Finding that the records substantiated the conclusion that petitioners tried to cover up teller Descartin's infraction instead of taking the appropriate action thereon, the NLRC ruled that respondents had just cause to terminate their employment. Hence, the NLRC reversed and set aside the challenged decision and although it dismissed the complaint, it ordered respondents to give petitioners financial assistance equivalent to one-half month's pay for every year of service.[12]

Petitioners thereafter elevated the case to the Court of Appeals. The appellate court, agreeing with the NLRC, denied petitioners' appeal and affirmed *in toto* the latter's assailed decision.

Before us, petitioners raise the following assignment of errors:

THE COURT OF APPEALS ERRED IN NOT DECLARING THAT RESPONDENTS' APPEAL TO THE NLRC WAS DEFECTIVE FOR FAILING TO COMPLY WITH RULE VI, SECTION 4 OF THE NLRC RULES OF PROCEDURE.

THE APPEALED DECISION AND RESOLUTION OF THE COURT OF APPEALS ARE MANIFESTLY ERRONEOUS AND RENDERED IN DISREGARD OF THE EVIDENCE IN RECORD AND EXISTING JURISPRUDENCE.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN CONCLUDING THAT PETITIONERS WERE VALIDLY TERMINATED FROM EMPLOYMENT.

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[11] *Id*. at 206-207.

[12] *Rollo*, p. 313.

THE COURT OF APPEALS ERRED IN AFFIRMING THE NLRC'S DECISION AND RESOLUTION THAT ARE IRREGULAR AND ANOMALOUS.[13]

The petition should be denied.

Petitioners maintain that the Memorandum of Appeal[14] filed by respondents before the NLRC should have been dismissed due to a defect in its verification. In particular, petitioners assert that the document was signed by Puentevella alone, who did not show any board resolution authorizing him to represent the corporation on appeal, in violation of Rule VI, Section 4 of the NLRC Rules of Procedure which provides:

> Section 4. REQUISITES FOR PERFECTION OF APPEAL. A) The appeal shall be filed within the reglementary period as provided in Section 1 of this Rules, shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court x x x.

For their part, respondents argue that the board of directors of a corporation, in vesting authority to another person or body, does not necessarily have to be express and in writing at all times. They cited the following excerpt from the case of *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*[15] to support their contention:

> The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. A corporation is a juridical person, separate and distinct from its stockholders and members, "having xxx powers, attributes and properties expressly authorized by law or incident to its existence."
>
> Being a juridical entity, a corporation may act through its board of directors, which exercises almost all corporate powers, lays down all corporate business policies and is responsible for the efficiency of management, as provided in Section 23 of the Corporation Code of the Philippines:
>
> x x x x x x x x x

[13] *Id*. at 14.

[14] *Id*. at 469-470.

[15] 357 Phil. 850 (1998).

Under this provision, the power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents. The **authority of such individuals** to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or **acquiescence in the general course of business**, *viz*.:

> "A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred."

x x x **Apparent authority** is derived not merely from practice. Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the **acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers.** x x x[16]

Therefore, according to respondents, there was acquiescence on the part of BPI which amounted to a valid authority as it never showed any indication that it had not given its authority to respondent Puentevella to act on its behalf in the filing of the appeal with the NLRC.

After assiduously weighing the arguments of the parties, we find that a liberal construction of the rules is in order. To serve the interest of justice, compelling reason obtains to address

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[16] *Id*. at 862-864.

respondents' arguments and brush aside technicality. The Court frowns upon the practice of dismissing cases purely on procedural grounds.[17] Instructive is our pronouncement in the case of *Bank of the Philippine Islands v. Court of Appeals*,[18] thus:

> 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. x x x **We see no circumvention of these objectives by the vice president's signing the verification and certification without express authorization from any existing board resolution.**
>
> As explained in BPI's Motion for Reconsideration, he was actually authorized to sign the verification and the certification, as shown by the written confirmation attached to the Motion. Furthermore, he is presumed to know the requirements for validly signing those documents. (Emphasis supplied)[19]

While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and the swift unclogging of court dockets is a laudable objective, it nevertheless must not be met at the expense of substantial justice.[20] This Court has time and again reiterated the doctrine that the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. A strict and rigid application of the rules must always be eschewed when it would subvert

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[17] *Penaranda v. Baganga Plywood Corporation and Chua*, G.R. No. 159577, 3 May 2006, 489 SCRA 94, 101, citing *Pacific Life Assurance Corporation v. Sison*, 359 Phil. 332; *Empire Insurance Company v. National Labor Relations Commission*, 355 Phil. 694, 14 August 1998; *People Security Inc. v. National Labor Relations Commission*, 226 SCRA 146, 8 September 1993; *Tamargo v. Court of Appeals,* 209 SCRA 518, 3 June 1992.

[18] 450 Phil. 532 (2003).

[19] *Id*. at 540, citing *Shipside Incorporated v. Court of Appeals*, 352 SCRA 334, 346, 20 February 2001. Emphasis ours.

[20] *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, 15 November 2005, 475 SCRA 41, citing *Wack Wack Golf and Country Club v. NLRC*, G.R. No.149793, 15 April 2005, 456 SCRA 280; *General Milling Corporation v. NLRC*, G.R. No. 153199, 17 December 2002, 394 SCRA 207.

the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[21] Considering that there was substantial compliance, a liberal interpretation of procedural rules in this labor case is more in keeping with the constitutional mandate to secure social justice.[22]

Having disposed of the procedural matter raised by petitioners, we now address the merits of the petition. There is no denying that loss of trust and confidence is a valid ground for termination of employment.[23] Hence, the basic requisite for dismissal on the ground of loss of confidence is that the employee concerned holds a position of trust and confidence[24] or is routinely charged with the care and custody of the employer's money or property.[25] Moreover, the breach must be related to the performance of the employee's function.[26] Also, it must be shown that the employee is a managerial employee, since the term "trust and confidence" is restricted to said class of employees.[27] In reviewing this petition, we have fully taken into account the foregoing considerations.

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[21] *Id*. citing *Reyes v. Court of Appeals*, G.R. No. 149580, 16 March 2005, 453 SCRA 498; *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 139034, 6 June 2001, 358 SCRA 501.

[22] *Penaranda v. Baganga Plywood Corporation and Chua*, *supra*; citing CONST., Art. II, Sec. 18 and Art. XIII, Sec. 3 and *Ablaza v. Court of Industrial Relations*, 126 SCRA 247, 21 December 1983.

[23] *Villanueva v. NLRC (Third Division)*, 354 Phil. 1056, 1060, citing *Madlos v. NLRC*, 254 SCRA 248 (1996); *Zamboanga City Electric Cooperative v. Buat*, 243 SCRA 47 (1997).

[24] *Id*. at 1061, citing *NASUREFCO v. NLRC*, G.R. No. 122277, 24 February 1998.

[25] *Id*., citing *Mabeza v. NLRC*, 271 SCRA 670 (1997).

[26] *Id*., citing *Quezon Electric Cooperative v. NLRC*, 172 SCRA 94 (1989).

[27] *Id*., citing *De la Cruz v. NLRC*, 268 SCRA 458 (1997).

Petitioners challenge the reliance of the assailed decisions on the letters and affidavits executed by Teller Fregil, which retracted her original statement dated 28 December 2002 consistent with petitioners' version of the facts. While retractions are generally looked upon with disfavor by the courts, there may exist instances, as in the case at bar, when a retraction may be accepted. Before doing so, it is necessary to examine the circumstances surrounding it and the possible motives for reversing the previous declaration.

We find sufficient basis in evidence to accord full probative value to Teller Fregil's retraction letter which she later affirmed through subsequent affidavits. The independent audit conducted by the auditing division of BPI notably supports her claim that the wrongdoing was concealed by petitioners from respondent bank. Moreover, a review of the teller's transaction summary[28] of teller Descartin reinforces the conclusion that the shortage in her pico box was due to a "temporary borrowing," the cover-up of which was sanctioned by petitioners.

It is likewise asserted by petitioners that under BPI's bank policy, failure to report a shortage is not a ground to terminate employment. The argument is short-sighted.

BPI's policy on tellers' shortages is unambiguous. It requires that **all** shortages be declared properly and booked accordingly on the same day they are incurred.[29] Furthermore, the same must be reported by the branch head to the designated bank officers and departments not later than the second banking day from the date of booking.[30]

The pertinent provisions of BPI's Personnel Policies and Benefits Manual, in Chapter IV, Section 20 (B) thereof, provides:

2.1 Breach of Trust and Confidence; Dishonesty

x x x x x x x x x

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[28] CA *rollo*, pp. 377-380.

[29] USC Policy No. 94/029 with date last revised 09/02/94. See *rollo*, p. 167.

[30] *Id*.

2.1.2 Misappropriation, malversation or withholding of funds.

1st offense – dismissal

x x x x x x x x x

2.2 Violation of Operating Procedures

2.2.1 Willful non-observance of standard operating procedures in the handling of any transaction or work assignment for purposes of personal gain, profit, or advantage of another person.

1st offense – dismissal

x x x x x x x x x

3.5 Any employee who knowingly aids, abets, or conceals or otherwise deliberately permits the commission of any irregular or fraudulent act directed against the Unibank will be considered equally guilty as the principal perpetuators of the fraud or irregularity, and will be dealt with accordingly.

3.5.1 Management will not tolerate violations of banking and/or established procedures by an employee where there is a conflict-of-interest situation and where the irregular transaction or omission is intended to benefit the officer concerned or a related interest, at the Unibank's expense or risk. x x x[31]

Taken together with the attending circumstances of the case, the failure of petitioners to report the cash shortage of teller Descartin, even if done in good faith, nonetheless resulted in their abetting the dishonesty committed by the latter. Under the personnel policies of respondent bank, this act of petitioners justifies their dismissal even on the first offense. Even assuming the version of petitioners as the truth, the fact remains that they willfully decided against reporting the shortage that occurred. As a result, in either situation, petitioners' acts have caused respondents to have a legitimate reason to lose the trust reposed in them as senior managerial employees. Their participation in the cover-up of the misconduct of teller Descartin makes them unworthy of the trust and confidence demanded by their positions.

[31] *Rollo*, pp. 171-172.

It is well-settled that the power to dismiss an employee is a recognized prerogative that is inherent in the employer's right to freely manage and regulate his business. An employer cannot be expected to retain an employee whose lack of morals, respect and loyalty to his employer or regard for his employer's rules and appreciation of the dignity and responsibility of his office has so plainly and completely been bared.[32] Thus, to compel respondent bank to keep petitioners in its employ after the latter have betrayed the confidence given to them would be unjust to respondent bank. The expectation of trust is more so magnified in the instant case in light of the nature of respondent bank's business. The banking industry is imbued with public interest and is mandated by law to serve its clients with extraordinary care and diligence. To be able to fulfill this duty, it in turn must rely on the honesty and loyalty of its employees.[33]

As a final challenge to the decision of the appellate court, petitioners maintain that irregularity and anomaly attended the disposition of respondents' appeal before the NLRC. In particular, petitioners bewail the alleged "breakneck speed" at which the appeal was resolved by Commissioner Oscar Uy who, they claim, took an unusual interest in the case. Petitioners' counsel even filed a complaint against Commissioner Uy before the Ombudsman.

We must sustain the appellate court in treating such suppositions as mere allegations pending the result of the formal investigation by the Ombudsman. Absent a definitive finding on the accusations of irregularity, we cannot in this case consider petitioners' arguments on the matter. It is a separate matter in itself which has to be addressed first by the Ombudsman in the case pending before it. At all events, the assailed decision at bar is basically sound, aligned with law and jurisprudence, and supported by the evidence on record.

Besides, the province of the instant Rule 45 petition for review is to correct errors of law committed by the Court of Appeals.

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[32] See *Perez v. The Medical City General Hospital*, G.R. No. 150198, 6 March 2006, 484 SCRA 138, 145.

[33] *Villanueva v. Citytrust Banking Corporation*, 413 Phil. 776, 785 (2001).

After a judicious and meticulous review of the records of the case, we are convinced that the Court of Appeals did not err in finding that petitioners were validly terminated from employment.

Clearly, as a measure of self-preservation against acts patently inimical to its interests, respondent bank had every right to dismiss petitioners for breach of trust, loss of confidence and dishonesty. Indeed, in cases of this nature, the fact that petitioners had been employees of BPI for a long time, if it is to be considered at all, should be taken against them. Their manifest condonation and even concealment of an offense prejudicial to their employer's interest committed by a subordinate under their supervision reflect a regrettable lack of loyalty which they should have reinforced, instead of betrayed.[34] So *Sosito v. Aguinaldo Development Corporation*[35] prescribes:

> While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its own rights which, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, this Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded us to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.[36]

WHEREFORE, finding no reversible error, the instant petition is *DENIED*.

SO ORDERED.

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

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[34] See *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 893 (2003), citing *Flores v. National Labor Relations Commission*, 219 SCRA 350 (1993).

[35] No. L-48926, 14 December 1987, 156 SCRA 392.

[36] *Id*. at 396.

SECOND DIVISION

[G.R. No. 174055. February 12, 2008]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SPOUSES WILFREDO and ESTELA ENCINA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; CAUSE OF ACTION; ELEMENTS.— A cause of action exists if the following elements are present, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.

2. ID.; MOTION TO DISMISS; FAILURE TO STATE A CAUSE OF ACTION; TO SUSTAIN A DISMISSAL ON GROUND THEREOF, THE INSUFFICIENCY OF THE CAUSE OF ACTION MUST APPEAR ON THE FACE OF THE COMPLAINT.— In order to sustain a dismissal on the ground that the complaint states no cause of action, the insufficiency of the cause of action must appear on the face of the complaint, and the test of the sufficiency of the facts alleged in the complaint to constitute a cause of action is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint. For this purpose, the motion to dismiss must hypothetically admit the truth of the facts alleged in the complaint.

3. ID.; ID.; ID.; ID.; INQUIRY IS INTO THE SUFFICIENCY, NOT THE VERACITY, OF THE MATERIAL ALLEGATIONS.— Nothing is more settled than the rule that in a motion to dismiss for failure to state a cause of action, the inquiry is into the sufficiency, not the veracity, of the material allegations. If the motion assails, directly or indirectly, the veracity of the allegations in the complaint, it is improper

to grant the motion upon the assumption that the averments in the motion are true and those in the complaint are not. The sufficiency of the motion should be tested on the strength of the allegations of fact contained in the complaint and no other. If the allegations of the complaint are sufficient in form and substance but their veracity and correctness are assailed, it is incumbent upon the court to deny the motion to dismiss and require the defendant to answer and go to trial to prove his defense. The veracity of the assertions of the parties can be ascertained at the trial of the case on the merits.

4. ID.; ID.; ID.; THE STATEMENT OF A MERE CONCLUSION OF LAW RENDERS A COMPLAINT VULNERABLE TO A MOTION TO DISMISS ON THE GROUND OF FAILURE TO STATE A CAUSE OF ACTION.— As regards the third cause of action, we deem the allegations in the complaint groundless as well. The complaint merely reproduced the provision of Act 3135 which the Encina spouses claim PNB had violated but failed to state the ultimate facts constituting such violation. The statement of a mere conclusion of law renders a complaint vulnerable to a motion to dismiss on the ground of failure to state a cause of action.

5. ID.; EVIDENCE; JUDICIAL NOTICE; THE REPEAL OF THE USURY LAW IS WITHIN THE RANGE OF JUDICIAL NOTICE WHICH COURTS ARE BOUND TO TAKE INTO ACCOUNT.— It should be definitively ruled in this regard that the Usury Law had been rendered legally ineffective by Resolution No. 224 dated 3 December 1982 of the Monetary Board of the Central Bank, and later by Central Bank Circular No. 905 which took effect on 1 January 1983 and removed the ceiling on interest rates for secured and unsecured loans regardless of maturity. The effect of these circulars is to allow the parties to agree on any interest that may be charged on a loan. The virtual repeal of the Usury Law is within the range of judicial notice which courts are bound to take into account. After all, the fundamental tenet is that the law is deemed part of the contract. Thus, the trial court was correct in ruling that the second cause of action was without basis.

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.
Tabalingcos & Associates Law Office for respondents.

D E C I S I O N

TINGA, *J.*:

The Philippine National Bank (PNB) assails the Decision[1] of the Court of Appeals dated 15 May 2005, rendered in CA-G.R. CV No. 79094 which, among others, declared null and void the interest rate imposed by PNB on the loan obtained from it by respondents and the consequent extrajudicial foreclosure of the properties offered as security for the loan.

The facts are summarized by the appellate court, thus:

On September 13, 1995, as additional capital for their metal craft business, plaintiffs-appellants ENCINA obtained a ₱500,000.00 loan with defendant-appellee PNB, secured by a promissory note, a real estate mortgage, and a credit agreement, on parcels of land covered by Transfer Certificate of Title (TCT) Nos. T-6788 and T-6789 located at Occidental Mindoro.

Thereafter, or on September 6, 1996, plaintiffs-appellants obtained an additional ₱200,000.00 loan with defendant-appellee PNB as additional capital for *palay* production, embodied in a credit agreement and a promissory note, secured by the same parcels of land. The loan obligations of plaintiffs-appellants ENCINA were fully paid on February 4, 1997.

Another loan in the amount of ₱400,000.00 as capital for a common carrier business was obtained by plaintiffs-appellants ENCINA with defendant-appellee PNB, secured by a promissory note and a time loan commercial credit agreement, likewise secured by the parcels of land covered by TCT Nos. T-6788 and T-6789.

Defendant-appellee PNB subsequently granted a ₱1,250,000.00 all purpose credit facility to plaintiffs-appellants ENCINA to be

[1] *Rollo*, pp. 9-20; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr.

used by plaintiffs-appellants ENCINA exclusively for their metal craft business. Plaintiffs-appellants ENCINA availed of the amount of ₱1,050,000.00 of the credit facility, evidenced by a promissory note dated February 13, 1998 secured by the same parcels of land as well. Plaintiffs-appellants ENCINA later on availed of the remaining ₱200,000.00 credit facility, secured by a promissory note dated May 22, 1998.

On the maturity date of the ₱1,250,000.00 loan obligation, plaintiffs-appellants ENCINA failed to pay, prompting defendant-appellee PNB to demand the same from plaintiffs-appellants ENCINA, in letters dated January 5, 1999, January 21, 1999, March 5, 1999, April 16, 1999, and May 27, 1999. Demands from defendant-appellee PNB were left unheeded, prompting defendant appellee PNB to file a petition for sale of the mortgaged properties with defendant-appellee *Ex-Officio* Sheriff of the Regional Trial Court of San Jose, Occidental Mindoro on September 20, 1999.

The extra-judicial sale of the mortgaged properties of plaintiff-appellant ENCINA was published in "The Island Observer," a newspaper of general circulation in the province of Occidental Mindoro, on October 4, 11, and 18, 1999. A notice of extra-judicial sale was issued on October 4, 1999. The foreclosure sale was thereafter conducted on November 15, 1999 with defendant-appellee PNB as the highest bidder. A certificate of sale dated November 16, 1999 was then issued in favor of defendant-appellee PNB.

Thereafter, or on January 22, 2001, titles to the subject properties were consolidated in defendant-appellee PNB's name, to which TCT Nos. 16919 and 16920 were issued.

On November 15, 2001, a contract of lease was executed between defendant-appellee PNB and plaintiffs-appellants ENCINA over the subject properties, pursuant to a request made by plaintiffs-appellants ENCINA that they be allowed by defendant-appellee PNB to lease the subject premises for a monthly rental of ₱7,500.00.

Finally, on July 18, 2002, plaintiffs-appellants ENCINA sued defendants-appellees in an action for the nullification of foreclosure sale and damages, with prayer for extension and/or grace period, with the RTC of San Jose, Occidental [Mindoro], Branch 46, docketed as Civil Case No. R-1304, alleging that their loan obligations, being agricultural, hence, with longer gestation periods, should have been restructured by defendant-appellee PNB for a longer period of at

least seven years; that no penalties should have been imposed by defendant-appellee PNB; that the extra-judicial foreclosure sale of their properties was null and void; that for being in violation of the Usury Law, the loan contracts and all accessory contracts pertaining thereto were null and void; and that the foreclosure proceedings under RA 3135 were not complied with, hence, the entire foreclosure proceedings were null and void.

In the motion to dismiss filed by defendant-appellee PNB on October 11, 2002, it averred that plaintiffs-appellants ENCINA could no longer seek for (sic) longer gestation periods for their agricultural loans, since plaintiffs-appellants ENCINA's agricultural loans dated September 13, 1995 and February 13, 1998 have already been fully paid by them on February 4, 1997; that plaintiffs-appellants ENCINA failed to settle their loan for metal craft business and not their agricultural loans; that the Usury Law was inapplicable being legally non-existent; that defendant-appellee PNB complied with the requirements of posting and publication set forth in RA 3135; and that plaintiffs-appellants ENCINA had already waived their right to question PNB's title to the properties, considering that plaintiffs-appellants [ENCINA] requested from PNB that they be allowed to lease the subject premises from PNB.[2]

In its Order[3] dated 10 March 2003, the trial court dismissed the complaint.

The dismissal was reversed by the Court of Appeals principally on its finding that there was no definite agreement as to the interest rate to be imposed on the loan. Therefore, the loan cannot be said to have matured so as to justify the extrajudicial foreclosure of the mortgaged properties. The appellate court denied reconsideration in its Resolution[4] dated August 4, 2006.

PNB contends that the Court of Appeals should not have rendered a decision on the merits considering that the parties have not offered evidence on their respective claims and defenses, the complaint having been dismissed by the trial court on PNB's motion. It also argues that respondents should be deemed to

[2] *Id*. at 10-13.

[3] *Id*. at 87-91.

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

have admitted PNB's ownership over and title to the foreclosed properties when they leased the foreclosed properties from PNB.

It insists that the determination of the applicable interest rate was not left to its sole will because respondents agreed that the interest rates are to be set by PNB's management for each of the interest periods and the latter had the option to accept or reject the rate imposed on their loan. It further avers that there is nothing on record to support the appellate court's conclusion that the foreclosure proceedings, the public sale, and the certificate of sale are null and void.[5]

Respondents insist on the nullity of the provision in the promissory notes to the effect that the rate of interest "will be set by the Management" of PNB, echoing the appellate court's declaration that this provision violates the principle of mutuality of contracts.[6]

The case before the Court of Appeals was filed pursuant to Rule 41 of the 1997 Rules of Civil Procedure which provides that an ordinary appeal may be filed to question a judgment or final order of the Regional Trial Court rendered in the exercise of its original jurisdiction. The appeal limits the questions to be reviewed to errors of fact or law committed by the trial court.

In this case, the issue presented to the appellate court was the propriety of the dismissal of respondents' complaint principally on the ground that it states no cause of action. The appellate court was called upon to review the sufficiency of the allegations made in the complaint constituting the cause of action and thereafter to determine whether the trial court erred in dismissing the complaint.

A cause of action exists if the following elements are present, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant

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[5] *Id*. at 245-264; Memorandum dated 12 June 2007.

[6] *Id*. at 221-233; Memorandum dated 16 April 2007.

violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[7]

In order to sustain a dismissal on the ground that the complaint states no cause of action, the insufficiency of the cause of action must appear on the face of the complaint, and the test of the sufficiency of the facts alleged in the complaint to constitute a cause of action is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint. For this purpose, the motion to dismiss must hypothetically admit the truth of the facts alleged in the complaint.[8]

In their complaint, respondents averred:

FIRST CAUSE OF ACTION:

5. The loan is an agricultural loan to be used as operating capital in *palay* production as evidenced by the Credit Agreement (hereto attached as Annex "H");

6. Being an agricultural loan with long gestation period, the loan should have been restructured for a longer period of at least seven (7) years and no penalties should have been imposed pursuant to Central Bank Circulars and the Agricultural Modernization Act of 1997;

7. Inspite of the request of the Plaintiffs to restructure the loan or for a grace period, the Defendant Bank failed and refused to do so. Furthermore, penalty charges should not have been imposed;

8. The Plaintiffs requested for a detailed computation of the amount due considering the payments that were made but the Defendant Bank failed and refused to do so;

9. That in view of the violation of the Central Bank Circulars and the Agricultural Modernization Act of 1997, the Extra-judicial Foreclosure Sale of the subject properties issued in favor of the Defendant Bank is null and void, including all proceedings thereto.

[7] *Balo v. Court of Appeals*, G.R. No. 129704, 30 September 2005, 471 SCRA 227, 236-237.

[8] *Danfoss, Inc. v. Continental Cement Corporation*, G.R. No. 143788, 9 September 2005, 469 SCRA 505, 512.

SECOND CAUSE OF ACTION

10. Considering that all the loan covered by the said Promissory Notes are secured with a mortgage upon registered real estate, all those contracts of loan are null and void because they are in violation of or contrary to the provisions of the Usury Law (Act No. 2655, as amended) particularly Section 2 thereof which is photocopied hereunder from Philippine Permanent and General Statutes, to wit:

x x x x x x x x x

11. In view of the violation of the Usury Law, the contracts of loan, and its accessory contracts are likewise null and void, namely: a) Real Estate Mortgage Contract, as well as Promissory Notes executed therewith are also null and void.

12. That in view of the nullity of the contracts of loan and the real estate mortgage contracts, the Extra-judicial Foreclosure Sale of subject property issued in favor of the Defendant Bank is also null and void, including all proceedings thereto, the minutes and the subsequent Certificate of Sale is also void;

THIRD CAUSE OF ACTION

13. The Extra-judicial foreclosure proceedings and public auction sale of the properties of the Plaintiffs failed to comply with the provisions of Section 3, of Act No. 3135, as amended, which provides:

> Section 3. Notice shall be given by ***posting notices*** of the sale for not less than twenty days ***in at least three public places of the municipality or city where the property is situated,*** and if such property is worth more than four hundred pesos, such notice shall also ***be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.***

14. The failure of the Defendants to comply with the foreclosure proceedings under Section 3 of Act 3135, as amended, would render the foreclosure proceedings null and void;[9]

PNB should be deemed to have admitted the foregoing averments, at least hypothetically, when it filed a motion to dismiss the complaint. Its motion, however, assails the veracity of these allegations, claiming that the foreclosure of the mortgaged

[9] *Rollo*, pp. 65-68.

properties was due to the non-payment by the Encina spouses of their metal craft business loan and not their agricultural loan.

Nothing is more settled than the rule that in a motion to dismiss for failure to state a cause of action, the inquiry is into the sufficiency, not the veracity, of the material allegations. If the motion assails, directly or indirectly, the veracity of the allegations in the complaint, it is improper to grant the motion upon the assumption that the averments in the motion are true and those in the complaint are not. The sufficiency of the motion should be tested on the strength of the allegations of fact contained in the complaint and no other. If the allegations of the complaint are sufficient in form and substance but their veracity and correctness are assailed, it is incumbent upon the court to deny the motion to dismiss and require the defendant to answer and go to trial to prove his defense. The veracity of the assertions of the parties can be ascertained at the trial of the case on the merits.[10]

Assuming the facts alleged in the complaint to be true, *i.e.,* that the Encina spouses incurred an agricultural loan which, under the Agricultural Modernization Act of 1997, has a long gestation period and is not subject to imposition of penalties, the trial court may render a valid judgment. Thus, we find that, at least as regards the first cause of action, the complaint sufficiently establishes a cause of action. The trial court should not have dismissed the same regardless of the defenses averred by PNB. It is incumbent upon PNB to disprove the existence of the cause of action by evidence whether at the trial or at the preliminary hearing of affirmative defenses.

The Court of Appeals, however, exacerbated the error by going beyond the issues in the appeal and resolving the case on the basis only of the pleadings of the parties. Worse, the appellate court reversed the trial court's decision on the ground that the mechanism for setting the interest rate as stipulated in the loan contract violated the principle of mutuality of contracts—an

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[10] *Balo v. Court of Appeals*, *supra* note 7, citing *Galeon v. Galeon*, 49 SCRA 516.

issue which was never raised in the complaint nor even in the Encina spouses' brief as plaintiffs-appellants. PNB was obviously deprived of its right to be heard on this issue.

As borne by the records, the Encina spouses never challenged the validity of their loan and the accessory contracts with PNB on the ground that they violated the principle of mutuality of contracts in view of the provision therein that the interest rate shall "be set by management." Their only contention concerning the interest rate was that the charges imposed by the bank violated the Usury Law. This was the essence of the second cause of action alleged in the complaint.

It should be definitively ruled in this regard that the Usury Law had been rendered legally ineffective by Resolution No. 224 dated 3 December 1982 of the Monetary Board of the Central Bank, and later by Central Bank Circular No. 905 which took effect on 1 January 1983 and removed the ceiling on interest rates for secured and unsecured loans regardless of maturity. The effect of these circulars is to allow the parties to agree on any interest that may be charged on a loan. The virtual repeal of the Usury Law is within the range of judicial notice which courts are bound to take into account.[11] After all, the fundamental tenet is that the law is deemed part of the contract.[12] Thus, the trial court was correct in ruling that the second cause of action was without basis.

In any event, the Court of Appeals ruled that even if there was no stipulated interest rate, the mortgage itself remained valid. If that is so, the foreclosure proceedings cannot be invalidated based solely on the alleged violation of the principle of mutuality. The appellate court held:

> The promissory notes and the real estate mortgages however remain valid even assuming *arguendo* that there was no stipulated interest rate that was agreed upon. The obligation of plaintiffs-appellants

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[11] *Tan v. Court of Appeals*, 356 Phil. 1058 (1998).

[12] *Department of Health v. C.V. Canchela and Associates*, G.R. Nos. 151373-74, November 17, 2005, 475 SCRA 218; *Airline Pilots Association of the Philippines v. NLRC*, 328 Phil. 814 (1996).

ENCINA to pay the principal loan is nevertheless valid even if the interest is void. This is so because a contract of loan should be divided into two parts: (1) the principal and (2) the accessory stipulations – the principal one is to pay the debt and the accessory stipulation is to pay interest thereon. The two stipulations are ***divisible*** and the principal can still stand without the stipulation on the interest. The prestation of the debtor to pay the principal debt, which is the cause of the contract, is not illegal. ***The illegality lies only in the failure to stipulate or agree on the interest – leaving it to only one of the parties to fix or determine. Being separable, only the interest unilaterally fixed by one party should be deemed void,*** which cannot be interpreted to mean forfeiture even of the principal, for this would unjustly enrich the borrower at the expense of the lender.

Plaintiffs-appellants ENCINA freely and voluntarily agreed to the provisions in regard to repayment of the principal when they affixed their signatures thereto. Thus, the said mortgage contract binds them because Article 1159 of the New Civil Code provides that obligations arising from contracts have the force of law between the contracting parties.

Since the promissory notes and the real estate mortgage are valid and only the unilaterally imposed interest rates are wholly void, plaintiffs-appellants ENCINA have still to be directed to pay defendant-appellee PNB the principal amount of the loan which remains valid with interest at the legal rate of 12% per annum from the date the loan was granted up to full payment, less payments already made, within ninety (90) days from the finality of the decision, otherwise, the defendant-appellee PNB shall be entitled to foreclose the mortgaged property and sell the same at public auction to satisfy the loan.(Emphasis not ours)[13]

Curiously, even as they assert that the principle of mutuality was violated by the failure to stipulate an interest rate, the Encina spouses concurred with the appellate court and even reproduced verbatim the latter's discussion on the validity of the promissory notes and real estate mortgages,[14] effectively admitting that these contracts are binding on them.

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[13] *Rollo*, pp. 18-19.

[14] *Id*. at 193-194; Comment of respondents.

As regards the third cause of action, we deem the allegations in the complaint groundless as well. The complaint merely reproduced the provision of Act 3135 which the Encina spouses claim PNB had violated but failed to state the ultimate facts constituting such violation. The statement of a mere conclusion of law renders a complaint vulnerable to a motion to dismiss on the ground of failure to state a cause of action.[15]

In sum, in view of the factual issues raised by PNB in its motion to dismiss, the just and fair resolution of the present controversy demands further proceedings in the RTC with regard to the first cause of action mentioned in the complaint. We shall refrain from taking them up in this Decision.

WHEREFORE, premises considered, the petition is *GRANTED IN PART*. The Decision of the Court of Appeals dated 15 May 2005 and its Resolution dated 4 August 2006 are *REVERSED* and *SET ASIDE*. This case is ordered *REMANDED* to the court of origin which is directed to resolve the same with dispatch only with respect to the first cause of action alleged in the Complaint. Costs against petitioner.

SO ORDERED.

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

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[15] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, G.R. No. 143896, 8 July 2005, 463 SCRA 64; *Abacan v. Northwestern University, Inc*., G.R. No. 140777, 8 April 2005, 455 SCRA 136.

EN BANC

[A.M. NO. P-07-2398. February 13, 2008]
(Formerly OCA IPI NO. 03-1621-P)

IRENEO GERONCA, *complainant, vs.* **VINCENT HORACE V. MAGALONA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; NOT ALLOWED TO RECEIVE GRATUITIES OR VOLUNTARY PAYMENTS FROM PARTIES THEY ARE ORDERED TO ASSIST IN THE COURSE OF THEIR DUTIES.— A sheriff may collect fees for his expenses from the party requesting the execution of a writ but only in accordance with the procedure rule laid down in the aforecited provision. Thus, a sheriff must (1) make an estimate of expenses; (2) obtain court approval for such estimated expenses and (3) liquidate his expenses within the same period for rendering a return on the writ. In respondent's case, not only did he fail to observe the proper procedure but he also made false representations to the complainant so he could collect money from him. The evidence supports the complainant's allegation that respondent served the writ in Bacolod City and not in Dumaguete City as he claimed. Respondent's insistence that the complainant voluntarily gave the money to him did not make his misconduct any less reprehensible. A sheriff is not allowed to receive gratuities or voluntary payments from parties they are ordered to assist in the course of their duties.

2. ID.; ID.; ID.; ID.; REFUSAL TO SURRENDER THE PROCEEDS OF THE AUCTION SALE CONSTITUTES GRAVE MISCONDUCT AND DISHONESTY.— Moreover, respondent's refusal to turn over the proceeds of the auction sale and the keys of the motorcycles despite repeated demands showed his lack of integrity, uprightness and honesty in the discharge of his duties. Pocketing the proceeds of the auction

and the ₱10,000 execution fee was reprehensible and unbecoming of a public servant like respondent. Indeed, for respondent's failure to observe the procedures in Rule 141, he was guilty of dereliction of duty. He was likewise liable for grave misconduct and dishonesty when he (1) unlawfully collected the ₱10,000 execution fee; (2) refused to surrender the proceeds of the auction sale and (3) failed to turn over the motorcycle keys to the complainant despite the latter's demands.

3. ID.; ID.; ID.; ID.; GRAVE MISCONDUCT; ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW OR FLAGRANT DISREGARD OF ESTABLISHED RULE MUST BE MANIFEST; DISHONESTY, DEFINED.— Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of official duties. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest. Corruption as an element of grave misconduct consists in the act of an official who unlawfully uses his station or character to procure some benefit for himself. On the other hand, dishonesty means "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

4. ID.; ID.; ID.; ID.; SHOULD AT ALL TIMES SHOW A HIGH DEGREE OF HONESTY AND PROFESSIONALISM IN THE PERFORMANCE OF THEIR DUTIES.— Respondent ought to be reminded that he is an officer of the court and should at all times show a high degree of honesty and professionalism in the performance of his duties. As a front-line representative of the judicial system, he must always demonstrate integrity in his conduct for once he loses the people's trust, he also diminishes the people's faith in the entire judiciary. In one case, we held: At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored

in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.

5. ID.; ID.; ID.; ID.; DERELICTION OF DUTY; IMPOSABLE PENALTY; GRAVE MISCONDUCT AND DISHONESTY; IMPOSABLE PENALTY.— Under the Uniform Rules on Administrative Cases in the Civil Service, dereliction of duty calls for a suspension of one month and one day to six months. On the other hand, grave misconduct and dishonesty (both classified as grave offense) carry the penalty of dismissal from service. Nonetheless, Section 55 thereof states that, if the respondent is found guilty of two or more charges, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. This Court, made up of men and women who were, at some point of their careers, either in private practice or in the administration of justice in the lower courts, is not unmindful of the "SOP" practiced by a number of sheriffs in extorting money from judgment creditors (to enforce writs) or judgment debtors (not to enforce writs), or both (*lagaring hapon*). We condemn this practice and will not hesitate to dismiss those found guilty thereof.

R E S O L U T I O N

***PER CURIAM*:**

Before us is an administrative case for gross misconduct, gross dishonesty, neglect of duty and conduct prejudicial to the best interest of the service filed by the complainant Ireneo Geronca against respondent Vicente Horace V. Magalona, Sheriff IV of the Regional Trial Court (RTC), Branch 46 of Bacolod City.

In a sworn complaint[1] dated March 6, 2003, the complainant claimed that he was the judgment obligee in Civil Case No. 4657, entitled *Spouses Ireneo and Mariles Geronca v.*

[1] *Rollo,* pp. 1-7.

Poweroll Construction Co., et al., in which case the RTC of Bacolod City issued a writ of execution. According to the complainant, after the issuance of the writ, respondent asked for ₱10,000 to implement it in Dumaguete City which was 300 kilometers away from Bacolod City. The complainant, however, learned that the writ was served on the judgment obligor nearby, in a place near Bacolod City's Hall of Justice.

The complainant added that respondent levied on three secondhand and dilapidated motorcycles belonging to the judgment obligor even if there were brand new motorcycles available. After the auction sale of the motorcycles, respondent also refused to deliver to him the amount of ₱7,000 paid by the winning bidder. He likewise rejected demands to turn over the keys of the two motorcycles complainant bought at said auction.

In his Comment,[2] respondent repudiated the allegations saying that he did not ask for the ₱10,000 execution fee; rather, it was the complainant who "voluntarily" gave the money to him. He likewise averred that he could not be expected to levy on the brand new motorcycles as these were not registered in the judgment obligor's name.

In a resolution dated June 8, 2005,[3] we adopted the Office of the Court Administrator's (OCA's) recommendation for the executive judge of Bacolod City to conduct an investigation on the matter.

In a report[4] dated August 8, 2005, Judge Roberto S. Chiongson, the investigating judge, informed this Court:

> The Comment of the [r]espondent consists of vague generalities and feeble denials. He alleges that he performed his duty with utmost [d]iligence, [p]rudence and [r]easonable celerity but without any specification or explanation how he performed his duty. He does

[2] Dated 17 August 2004. The OCA twice required respondent to file his Comment but he failed in both instances. It was only after a show-cause order was issued that he finally filed his Comment. *Rollo*, pp. 24-25.

[3] *Rollo*, p. 41.

[4] *Id*., pp. 61-63.

not deny having received the amount of ₱10,000 and nor does he deny his failure to deliver the amount of ₱7,000 which [was] the proceeds of the auction sale.[5]

Judge Chiongson found respondent guilty of dishonesty and gross misconduct, and recommended his suspension for three months without pay. The OCA, on the other hand, held respondent guilty of grave misconduct, dereliction of duty and negligence. In its memorandum[6] to this Court, the OCA stated:

> In fine, respondent's conduct in the implementation of the writ of execution constitutes grave misconduct which under the Civil Service Rules is classified as a grave offense with a penalty of dismissal. Likewise, failure to faithfully comply with the provisions of Rule 141 of the Rules of Court constitutes dereliction of duty and negligence which warrants the imposition of disciplinary measures.
>
> WHEREFORE, it is respectfully submitted for the consideration of the Honorable Court that respondent Vincent Horace U. Magalona, Sheriff IV, RTC, Branch 46, Bacolod City, Negros Occidental, [be found] GUILTY of GRAVE MISCONDUCT, [DERELICTION OF DUTY AND NEGLIGENCE] and [should be] DISMISSED from the SERVICE.

After a careful review of the records of this case, we find respondent guilty of dereliction of duty, grave misconduct and dishonesty.

Rule 141, Section 9 of the Rules of Court provides:

> SEC. 9. — Sheriffs and other persons serving processes xxx
>
> In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriffs expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court

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[5] *Id*., p. 62.

[6] *Id*., pp. 82-88.

and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to the liquidation within the same period for rendering a return on the process. Any unspent amount shall be submitted by the deputy sheriff assigned with his return, and the sheriffs expenses shall be taxed as costs against the judgment debtor.

A sheriff may collect fees for his expenses from the party requesting the execution of a writ but only in accordance with the procedure rule laid down in the aforecited provision. Thus, a sheriff must (1) make an estimate of expenses; (2) obtain court approval for such estimated expenses and (3) liquidate his expenses within the same period for rendering a return on the writ.

In respondent's case, not only did he fail to observe the proper procedure but he also made false representations to the complainant so he could collect money from him. The evidence supports the complainant's allegation that respondent served the writ in Bacolod City and not in Dumaguete City as he claimed.

Respondent's insistence that the complainant voluntarily gave the money to him did not make his misconduct any less reprehensible. A sheriff is not allowed to receive gratuities or voluntary payments from parties they are ordered to assist in the course of their duties.[7]

Moreover, respondent's refusal to turn over the proceeds of the auction sale and the keys of the motorcycles despite repeated demands showed his lack of integrity, uprightness and honesty in the discharge of his duties. Pocketing the proceeds of the auction and the ₱10,000 execution fee was reprehensible and unbecoming of a public servant like respondent.

Indeed, for respondent's failure to observe the procedures in Rule 141, he was guilty of dereliction of duty. He was likewise liable for grave misconduct and dishonesty when he (1) unlawfully collected the ₱10,000 execution fee; (2) refused to surrender the proceeds of the auction sale and (3) failed to turn over the motorcycle keys to the complainant despite the latter's demands.

[7] *Canlas v. Balasbas*, 391 Phil. 706 (2000).

Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of official duties.[8]

In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest. Corruption as an element of grave misconduct consists in the act of an official who unlawfully uses his station or character to procure some benefit for himself.[9]

On the other hand, dishonesty means "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[10]

Respondent ought to be reminded that he is an officer of the court and should at all times show a high degree of honesty and professionalism in the performance of his duties. As a front-line representative of the judicial system, he must always demonstrate integrity in his conduct for once he loses the people's trust, he also diminishes the people's faith in the entire judiciary.[11]

In one case,[12] we held:

At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with litigants, hence, their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone

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[8] *Salazar v. Barriga*, A.M. No. P-05-2016, 19 April 2007.

[9] *Id*.

[10] *Dela Cruz v. Luna,* A.M. No. P-04-1821, 8 August 2007.

[11] *Visitacion, Jr. v. Ediza,* 414 Phil. 699 (2001)

[12] *Vda. De Velayo v. Ramos,* A.M. No. P-99-1332, January 17, 2002, 374 SCRA 313. *See also Vda. De Abellera v. Dalisay,* 335 Phil. 527 (1997).

in the court to maintain its good name and standing as a temple of justice.

Under the Uniform Rules on Administrative Cases in the Civil Service, dereliction of duty calls for a suspension of one month and one day to six months. On the other hand, grave misconduct and dishonesty (both classified as grave offense) carry the penalty of dismissal from service. Nonetheless, Section 55 thereof states that, if the respondent is found guilty of two or more charges, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

This Court, made up of men and women who were, at some point of their careers, either in private practice or in the administration of justice in the lower courts, is not unmindful of the "SOP" practiced by a number of sheriffs in extorting money from judgment creditors (to enforce writs) or judgment debtors (not to enforce writs), or both (*lagaring hapon*). We condemn this practice and will not hesitate to dismiss those found guilty thereof.

WHEREFORE, respondent Vicente Horace V. Magalona is found guilty of dereliction of duty, grave misconduct and dishonesty. Accordingly, he is hereby *DISMISSED* from the service with forfeiture of all his benefits except accrued leave credit and disqualified from reemployment in any government agency, including government-owned or controlled corporations. He is also *ORDERED* to return the ₱10,000 unlawfully exacted from the complainant Ireneo Geronca and to turn over the proceeds of the auction sale and the two keys of the motorcycles to him.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 151413. February 13, 2008]

CAGAYAN VALLEY DRUG CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; RULING IN PREMIUM MARBLE RESOURCES CASE (G.R. NO. 96551, NOVEMBER 4, 1996), NOT APPLICABLE TO CASE AT BAR.— As regards the first issue, we find the CA to have erroneously relied on *Premium*. In said case, the issue tackled was not on whether the president of Premium Marble Resources, Inc. was authorized to sign the verification and certification against forum shopping, but rather on which of the two sets of officers, both claiming to be the legal board of directors of Premium, have the authority to file the suit for and in behalf of the company. The factual antecedents and issues in *Premium* are not on all fours with the instant case and is, therefore, not applicable.

2. ID.; ID.; ID.; AUTHORIZED SIGNATORIES TO THE VERIFICATION AND NON-FORUM CERTIFICATION ON BEHALF OF THE CORPORATION, WITHOUT NEED OF A BOARD RESOLUTION; RATIONALE.— With respect to an individual litigant, there is no question that litigants must sign the sworn verification and certification unless they execute a power of attorney authorizing another person to sign it. With respect to a juridical person, Sec. 4, Rule 7 on verification and Sec. 5, Rule 7 on certification against forum shopping are silent as to who the authorized signatory should be. Said rules do not indicate if the submission of a board resolution authorizing the officer or representative is necessary. It must be borne in mind that Sec. 23, in relation to Sec. 25 of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. A corporation has a separate

and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors. This has been our constant holding in cases instituted by a corporation. In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines, Inc., v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd.* (*Lepanto*), we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization. In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case. While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."

3. ID.; ID.; ID.; ONLY INDIVIDUALS VESTED WITH AUTHORITY BY A VALID BOARD RESOLUTION MAY SIGN THE CERTIFICATE OF NON-FORUM SHOPPING

ON BEHALF OF A CORPORATION; REQUIREMENTS OF THE RULES SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.— In *Philippine Airlines v. Flight Attendants and Stewards Association of the Philippines*, we ruled that only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping on behalf of a corporation. The action can be dismissed if the certification was submitted unaccompanied by proof of the signatory's authority. We believe that appending the board resolution to the complaint or petition is the better procedure to obviate any question on the authority of the signatory to the verification and certification. The required submission of the board resolution is grounded on the basic precept that corporate powers are exercised by the board of directors, and not solely by an officer of the corporation. Hence, the power to sue and be sued in any court or quasi-judicial tribunal is necessarily lodged with the said board. **There is substantial compliance with Rule 7, Secs. 4 and 5.** In the case at bar, we so hold that petitioner substantially complied with Secs. 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure. *First*, the requisite board resolution has been submitted albeit belatedly by petitioner. *Second*, we apply our ruling in *Lepanto* with the rationale that the President of petitioner is in a position to verify the truthfulness and correctness of the allegations in the petition. *Third*, the President of petitioner has signed the complaint before the CTA at the inception of this judicial claim for refund or tax credit. Consequently, the petition in CA-G.R. SP No. 59778 ought to be reinstated. However, in view of the enactment of RA 9282 which made the decisions of the CTA appealable to this Court, we will directly resolve the second issue which is a purely legal one.

4. TAXATION; TAX CREDIT; PRIVATE ESTABLISHMENTS ARE ENTITLED TO A TAX CREDIT FOR THE 20% SALES DISCOUNTS GRANTED TO QUALIFIED SENIOR CITIZENS UNDER RA 7432.— The pith of the dispute between petitioner and respondent is whether petitioner is entitled to a tax refund or tax credit of 20% sales discount granted to senior citizens under RA 7432 or whether the discount should be treated as a deduction from gross income. This issue is not new, as the Court has resolved several cases involving the very same issue. In *Commissioner of Internal Revenue v. Central*

Luzon Drug Corporation (*Central Luzon*), we held that private drug companies are entitled to a tax credit for the 20% sales discounts they granted to qualified senior citizens under RA 7432 and nullified Secs. 2.i and 4 of RR 2-94. In *Bicolandia Drug Corporation (formerly Elmas Drug Corporation) v. Commissioner of Internal Revenue*, we ruled that petitioner therein is entitled to a tax credit of the "cost" or the full 20% sales discounts it granted pursuant to RA 7432. In the related case of *Commissioner of Internal Revenue v. Bicolandia Drug Corporation*, we likewise ruled that respondent drug company was entitled to a tax credit, and we struck down RR 2-94 to be null and void for failing to conform with the law it sought to implement. A perusal of the April 26, 2000 CTA Decision shows that the appellate tax court correctly ruled that the 20% sales discounts petitioner granted to qualified senior citizens should be deducted from petitioner's income tax due and not from petitioner's gross sales as erroneously provided in RR 2-94. However, the CTA erred in denying the tax credit to petitioner on the ground that petitioner had suffered net loss in 1995, and ruling that the tax credit is unavailing.

5. ID.; ID.; NET LOSS FOR A TAXABLE YEAR DOES NOT BAR THE GRANT OF THE TAX CREDIT TO A TAXPAYER; TAX LIABILITY OR PRIOR TAX PAYMENTS ARE NOT REQUIRED FOR THE GRANT OF A TAX CREDIT; CASE AT BAR.— It is true that petitioner did not pay any tax in 1995 since it suffered a net loss for that taxable year. This fact, however, without more, does not preclude petitioner from availing of its statutory right to a tax credit for the 20% sales discounts it granted to qualified senior citizens. The law then applicable on this point is clear and without any qualification. Sec. 4 (a) of RA 7432 pertinently provides: Sec. 4. *Privileges for the Senior citizens*.—The senior citizens shall be entitled to the following: a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishments, restaurants and recreation centers and purchase of medicines anywhere in the country: *Provided*, That **private establishments may claim the cost as tax credit**. The fact that petitioner suffered a net loss in 1995 will not make the tax credit due to petitioner unavailable. This is the core issue resolved in *Central Luzon*, where we ruled that the net loss for a taxable year does not bar

the grant of the tax credit to a taxpayer pursuant to RA 7432 and that prior tax payments are not required for such grant. We explained: Although this *tax credit* benefit is available, it need not be used by losing ventures, since there is no tax liability that calls for its application. Neither can it be reduced to nil by the quick yet callow stroke of an administrative pen, simply because no reduction of taxes can instantly be effected. By its nature, the *tax credit* may still be deducted from a *future*, not a *present*, tax liability, without which it does not have any use. x x x x x x While a tax liability is essential to the *availment or use* of any *tax credit*, prior tax payments are not. On the contrary, for the *existence or grant* solely of such credit, neither a tax liability nor a prior tax payment is needed. The Tax Code is in fact replete with provisions granting or allowing *tax credits*, even though no taxes have been previously paid. It is thus clear that petitioner is entitled to a tax credit for the full 20% sales discounts it extended to qualified senior citizens for taxable year 1995. Considering that the CTA has not disallowed the PhP 123,083 sales discounts petitioner claimed before the BIR and CTA, we are constrained to grant them as tax credit in favor of petitioner. Consequently, petitioner's appeal before the CA in CA-G.R. SP No. 59778 must be granted, and, necessarily, the April 26, 2000 CTA Decision in C.T.A. Case No. 5581 reversed and set aside.

APPEARANCES OF COUNSEL

Edsel R. Manuel for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This petition for review under Rule 45 of the Rules of Court seeks the recall of the August 31, 2000 Resolution[1] of the Court of Appeals (CA) in CA-G.R. SP No. 59778, which dismissed petitioner Cagayan Valley Drug Corporation's petition for review

[1] *Rollo*, pp. 77-78. Penned by Associate Justice Ramon A. Barcelona and concurred in by Associate Justices Marina L. Buzon and Edgardo P. Cruz.

of the April 26, 2000 Decision[2] of the Court of Tax Appeals (CTA) in C.T.A. Case No. 5581 on the ground of defective verification and certification against forum shopping.

The Facts

Petitioner, a corporation duly organized and existing under Philippine laws, is a duly licensed retailer of medicine and other pharmaceutical products. It operates two drugstores, one in Tuguegarao, Cagayan, and the other in Roxas, Isabela, under the name and style of "Mercury Drug."

Petitioner alleged that in 1995, it granted 20% sales discounts to qualified senior citizens on purchases of medicine pursuant to Republic Act No. (RA) 7432[3] and its implementing rules and regulations.

In compliance with Revenue Regulation No. (RR) 2-94, petitioner treated the 20% sales discounts granted to qualified senior citizens in 1995 as deductions from the gross sales in order to arrive at the net sales, instead of treating them as tax credit as provided by Section 4 of RA 7432.

On December 27, 1996, however, petitioner filed with the Bureau of Internal Revenue (BIR) a claim for tax refund/tax credit of the full amount of the 20% sales discount it granted to senior citizens for the year 1995, allegedly totaling to PhP 123,083 in accordance with Sec. 4 of RA 7432.

The BIR's inaction on petitioner's claim for refund/tax credit compelled petitioner to file on March 18, 1998 a petition for review before the CTA docketed as C.T.A. Case No. 5581 in order to forestall the two-year prescriptive period provided under Sec. 230[4] of the 1977 Tax Code, as amended. Thereafter, on March 31, 2000, petitioner amended its petition for review.

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[2] *Id*. at 37-44. Penned by Associate Judge Ramon O. De Veyra and concurred in by Associate Judge Amancio Q. Saga. Presiding Judge Ernesto D. Acosta dissented.

[3] "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes" (1992).

[4] Now Sec. 229 of RA 8424 entitled "An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes" (1997).

The Ruling of the Court of Tax Appeals

On April 26, 2000, the CTA rendered a Decision dismissing the petition for review for lack of merit.[5]

The CTA sustained petitioner's contention that pursuant to Sec. 4 of RA 7432, the 20% sales discounts petitioner extended to qualified senior citizens in 1995 should be treated as tax credit and not as deductions from the gross sales as erroneously interpreted in RR 2-94. The CTA reiterated its consistent holdings that RR 2-94 is an invalid administrative interpretation of the law it purports to implement as it contravenes and does not conform to the standards RA 7432 prescribes.

Notwithstanding petitioner's entitlement to a tax credit from the 20% sales discounts it extended to qualified senior citizens in 1995, the CTA nonetheless dismissed petitioner's action for refund or tax credit on account of petitioner's net loss in 1995. First, the CTA rejected the refund as it is clear that RA 7432 only grants the 20% sales discounts extended to qualified senior citizens as tax credit and not as tax refund. Second, in rejecting the tax credit, the CTA reasoned that while petitioner may be qualified for a tax credit, it cannot be so extended to petitioner on account of its net loss in 1995.

The CTA ratiocinated that on matters of tax credit claim, the government applies the amount determined to be reimbursable after proper verification against any sum that may be due and collectible from the taxpayer. However, if no tax has been paid or if no amount is due and collectible from the taxpayer, then a tax credit is unavailing. Moreover, it held that before allowing recovery for claims for a refund or tax credit, it must first be established that there was an actual collection and receipt by the government of the tax sought to be recovered. In the instant case, the CTA found that petitioner did not pay any tax by virtue of its net loss position in 1995.

Petitioner's Motion for Reconsideration was likewise denied through the appellate tax court's June 30, 2000 Resolution.[6]

[5] *Supra* note 2, at 44.

[6] *Rollo*, p. 50.

The Ruling of the Court of Appeals

Aggrieved, petitioner elevated the matter before the CA, docketed as CA-G.R. SP No. 59778. On August 31, 2000, the CA issued the assailed Resolution[7] dismissing the petition on procedural grounds. The CA held that the person who signed the verification and certification of absence of forum shopping, a certain Jacinto J. Concepcion, President of petitioner, failed to adduce proof that he was duly authorized by the board of directors to do so.

As far as the CA was concerned, the main issue was whether or not the verification and certification of non-forum shopping signed by the President of petitioner is sufficient compliance with Secs. 4 and 5, Rule 7 of the 1997 Rules of Civil Procedure.

The verification and certification in question reads:

> I, JACINTO J. CONCEPCION, of legal age with office address at 2nd Floor, Mercury Drug Corporation, No. 7 Mercury Ave, Bagumbayan, Quezon City, under oath, hereby state that:
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> 1. I am the President of Cagayan Valley Drug Corporation, Petitioner in the above-entitled case and am duly authorized to sign this Verification and Certification of Absence of Forum Shopping by the Board of Director.
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> x x x x x x x x x

The CA found no sufficient proof to show that Concepcion was duly authorized by the Board of Directors of petitioner. The appellate court anchored its disposition on our ruling in *Premium Marble Resources, Inc. v. Court of Appeals* (*Premium*), that "[i]n the absence of an authority from the Board of Directors, no person, not even the officers of the corporation, can validly bind the corporation."[8]

Hence, we have this petition.

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[7] *Supra* note 1.

[8] G.R. No. 96551, November 4, 1996, 264 SCRA 11, 18.

The Issues

Petitioner raises two issues: *first*, whether petitioner's president can sign the subject verification and certification sans the approval of its Board of Directors. And *second*, whether the CTA committed reversible error in denying and dismissing petitioner's action for refund or tax credit in C.T.A. Case No. 5581.

The Court's Ruling

The petition is meritorious.

***Premium* not applicable**

As regards the first issue, we find the CA to have erroneously relied on *Premium*. In said case, the issue tackled was not on whether the president of Premium Marble Resources, Inc. was authorized to sign the verification and certification against forum shopping, but rather on which of the two sets of officers, both claiming to be the legal board of directors of Premium, have the authority to file the suit for and in behalf of the company. The factual antecedents and issues in *Premium* are not on all fours with the instant case and is, therefore, not applicable.

With respect to an individual litigant, there is no question that litigants must sign the sworn verification and certification unless they execute a power of attorney authorizing another person to sign it. With respect to a juridical person, Sec. 4, Rule 7 on verification and Sec. 5, Rule 7 on certification against forum shopping are silent as to who the authorized signatory should be. Said rules do not indicate if the submission of a board resolution authorizing the officer or representative is necessary.

Corporate powers exercised through board of directors

It must be borne in mind that Sec. 23, in relation to Sec. 25 of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. A corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without

authority from the board of directors. This has been our constant holding in cases instituted by a corporation.

In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping;[9] in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company;[10] in *Novelty Philippines, Inc., v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate;[11] and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd.* (*Lepanto*), we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.[12]

In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or

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[9] G.R. No. 139495, November 27, 2000, 346 SCRA 126, 132-133.

[10] G.R. No. 143389, May 25, 2001, 358 SCRA 240, 246-248.

[11] G.R. No. 146125, September 17, 2003, 411 SCRA 211, 217-220.

[12] G.R. No. 153885, September 24, 2003, 412 SCRA 101, 109.

certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."[13]

Authority from board of directors required

In *Philippine Airlines v. Flight Attendants and Stewards Association of the Philippines*, we ruled that only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping on behalf of a corporation. The action can be dismissed if the certification was submitted unaccompanied by proof of the signatory's authority.[14] We believe that appending the board resolution to the complaint or petition is the better procedure to obviate any question on the authority of the signatory to the verification and certification. The required submission of the board resolution is grounded on the basic precept that corporate powers are exercised by the board of directors,[15] and not solely by an officer of the corporation. Hence, the power to sue and be sued in any court or quasi-judicial tribunal is necessarily lodged with the said board.

There is substantial compliance with Rule 7, Secs. 4 and 5

In the case at bar, we so hold that petitioner substantially complied with Secs. 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure. *First*, the requisite board resolution has been submitted albeit belatedly by petitioner. *Second*, we apply our ruling in *Lepanto* with the rationale that the President of petitioner is in a position to verify the truthfulness and correctness of the allegations in the petition. *Third*, the President of petitioner has signed the complaint before the CTA at the inception of this judicial claim for refund or tax credit.

Consequently, the petition in CA-G.R. SP No. 59778 ought to be reinstated. However, in view of the enactment of RA 9282 which made the decisions of the CTA appealable to this Court, we will directly resolve the second issue which is a purely legal one.

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[13] *Pfizer v. Galan*, *supra* note 10, at 247.

[14] G.R. No. 143088, January 24, 2006, 479 SCRA 605, 608.

[15] CORPORATION CODE, Sec. 23.

Petitioner entitled to tax credit

The pith of the dispute between petitioner and respondent is whether petitioner is entitled to a tax refund or tax credit of 20% sales discount granted to senior citizens under RA 7432 or whether the discount should be treated as a deduction from gross income.

This issue is not new, as the Court has resolved several cases involving the very same issue. In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation* (*Central Luzon*),[16] we held that private drug companies are entitled to a tax credit for the 20% sales discounts they granted to qualified senior citizens under RA 7432 and nullified Secs. 2.i and 4 of RR 2-94. In *Bicolandia Drug Corporation (formerly Elmas Drug Corporation) v. Commissioner of Internal Revenue*,[17] we ruled that petitioner therein is entitled to a tax credit of the "cost" or the full 20% sales discounts it granted pursuant to RA 7432. In the related case of *Commissioner of Internal Revenue v. Bicolandia Drug Corporation*,[18] we likewise ruled that respondent drug company was entitled to a tax credit, and we struck down RR 2-94 to be null and void for failing to conform with the law it sought to implement.

A perusal of the April 26, 2000 CTA Decision shows that the appellate tax court correctly ruled that the 20% sales discounts petitioner granted to qualified senior citizens should be deducted from petitioner's income tax due and not from petitioner's gross sales as erroneously provided in RR 2-94. However, the CTA erred in denying the tax credit to petitioner on the ground that petitioner had suffered net loss in 1995, and ruling that the tax credit is unavailing.

Net loss in a taxable year does not preclude grant of tax credit

It is true that petitioner did not pay any tax in 1995 since it suffered a net loss for that taxable year. This fact, however, without more, does not preclude petitioner from availing of its

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[16] G.R. No. 159647, April 15, 2005, 456 SCRA 414.

[17] G.R. No. 142299, June 22, 2006, 492 SCRA 159.

[18] G.R. No. 148083, July 21, 2006, 496 SCRA 176.

statutory right to a tax credit for the 20% sales discounts it granted to qualified senior citizens. The law then applicable on this point is clear and without any qualification. Sec. 4 (a) of RA 7432 pertinently provides:

> Sec. 4. *Privileges for the Senior citizens*.—The senior citizens shall be entitled to the following:
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> a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishments, restaurants and recreation centers and purchase of medicines anywhere in the country: *Provided*, That **private establishments may claim the cost as tax credit**. (Emphasis ours.)

The fact that petitioner suffered a net loss in 1995 will not make the tax credit due to petitioner unavailable. This is the core issue resolved in *Central Luzon*, where we ruled that the net loss for a taxable year does not bar the grant of the tax credit to a taxpayer pursuant to RA 7432 and that prior tax payments are not required for such grant. We explained:

> Although this *tax credit* benefit is available, it need not be used by losing ventures, since there is no tax liability that calls for its application. Neither can it be reduced to nil by the quick yet callow stroke of an administrative pen, simply because no reduction of taxes can instantly be effected. By its nature, the *tax credit* may still be deducted from a *future*, not a *present*, tax liability, without which it does not have any use. x x x
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> While a tax liability is essential to the *availment or use* of any *tax credit*, prior tax payments are not. On the contrary, for the *existence or grant* solely of such credit, neither a tax liability nor a prior tax payment is needed. The Tax Code is in fact replete with provisions granting or allowing *tax credits*, even though no taxes have been previously paid.[19]

It is thus clear that petitioner is entitled to a tax credit for the full 20% sales discounts it extended to qualified senior citizens for taxable year 1995. Considering that the CTA has not disallowed

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[19] *Supra* note 16, at 429-430.

the PhP 123,083 sales discounts petitioner claimed before the BIR and CTA, we are constrained to grant them as tax credit in favor of petitioner.

Consequently, petitioner's appeal before the CA in CA-G.R. SP No. 59778 must be granted, and, necessarily, the April 26, 2000 CTA Decision in C.T.A. Case No. 5581 reversed and set aside.

WHEREFORE, the petition is *GRANTED*. The August 31, 2000 CA Resolution in CA-G.R. SP No. 59778 is *ANNULLED* and *SET ASIDE*. The April 26, 2000 CTA Decision in C.T.A. Case No. 5581 dismissing petitioner's claim for tax credit is accordingly *REVERSED AND SET ASIDE*. The Commissioner of Internal Revenue is *ORDERED* to issue a Tax Credit Certificate in the name of petitioner in the amount of PhP 123,083. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 153510. February 13, 2008]

R.B. MICHAEL PRESS and ANNALENE REYES ESCOBIA, *petitioners, vs.* **NICASIO C. GALIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF QUASI-JUDICIAL AGENCIES, LIKE THE NLRC, ARE ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY;

EXCEPTIONS.— It is well settled that findings of fact of quasi-judicial agencies, like the NLRC, are accorded not only respect but even finality if the findings are supported by substantial evidence. This is especially so when such findings of the labor arbiter were affirmed by the CA. However, this is not an iron-clad rule. Though the findings of fact by the labor arbiter may have been affirmed and adopted by the NLRC and the CA as in this case, it cannot divest the Court of its authority to review the findings of fact of the lower courts or quasi-judicial agencies when it sees that justice has not been served, more so when the lower courts or quasi-judicial agencies' findings are contrary to the evidence on record or fail to appreciate relevant and substantial evidence presented before it.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; JUST CAUSE; HABITUAL TARDINESS; A FORM OF NEGLECT OF DUTY.— Habitual tardiness is a form of neglect of duty. Lack of initiative, diligence, and discipline to come to work on time everyday exhibit the employee's deportment towards work. Habitual and excessive tardiness is inimical to the general productivity and business of the employer. This is especially true when the tardiness and/or absenteeism occurred frequently and repeatedly within an extensive period of time.

3. ID.; ID.; ID.; MANAGEMENT'S PREROGATIVE TO DISCIPLINE EMPLOYEES AND IMPOSE PUNISHMENT IS A LEGAL RIGHT WHICH CANNOT BE IMPLIEDLY WAIVED; BURDEN OF PROVING THAT THE EMPLOYER WAIVED ITS RIGHT TO IMPOSE SANCTIONS FOR BREACH OF COMPANY RULES RESTS WITH THE EMPLOYEE.— The mere fact that the numerous infractions of respondent have not been immediately subjected to sanctions cannot be interpreted as condonation of the offenses or waiver of the company to enforce company rules. A waiver is a voluntary and intentional relinquishment or abandonment of a known legal right or privilege. It has been ruled that "a waiver to be valid and effective must be couched in clear and unequivocal terms which leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him." Hence, the management prerogative to discipline employees and impose

punishment is a legal right which cannot, as a general rule, be impliedly waived. In *Cando v. NLRC*, the employee did not report for work for almost five months when he was charged for absenteeism. The employee claimed that such absences due to his handling of union matters were condoned. The Court held that the employee did not adduce proof to show condonation coupled with the fact that the company eventually instituted the administrative complaint relating to his company violations. Thus it is incumbent upon the employee to adduce substantial evidence to demonstrate condonation or waiver on the part of management to forego the exercise of its right to impose sanctions for breach of company rules. In the case at bar, respondent did not adduce any evidence to show waiver or condonation on the part of petitioners. Thus the finding of the CA that petitioners cannot use the previous absences and tardiness because respondent was not subjected to any penalty is bereft of legal basis.

4. ID.; ID.; ID.; NONPAYMENT OF THE DAILY WAGE ON THE DAYS THE EMPLOYEE WAS ABSENT, NOT CONSTRUED AS A PENALTY.— The CA however reasoned out that for respondent's absences, deductions from his salary were made and hence to allow petitioners to use said absences as ground for dismissal would amount to "double jeopardy." This postulation is incorrect. Respondent is admittedly a daily wage earner and hence is paid based on such arrangement. For said daily paid workers, the principle of "a day's pay for a day's work" is squarely applicable. Hence it cannot be construed in any wise that such nonpayment of the daily wage on the days he was absent constitutes a penalty.

5. ID.; ID.; ID.; WILLFUL DISOBEDIENCE; ELEMENTS TO BE CONSIDERED A VALID CAUSE FOR DISMISSAL.— While the CA is correct that the charge of serious misconduct was not substantiated, the charge of insubordination however is meritorious. For willful disobedience to be a valid cause for dismissal, these two elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

6. ID.; ID.; ID.; ID.; THE EMPLOYER MAY LEGALLY COMPEL HIS EMPLOYEES TO PERFORM OVERTIME WORK AGAINST THEIR WILL TO PREVENT SERIOUS LOSS OR DAMAGE; RESPONDENT'S REFUSAL TO RENDER OVERTIME WORK DESPITE A VALID ORDER TO DO SO CONSIDERED WILLFUL; TERM "WILLFULNESS," EXPLAINED; CASE AT BAR.— In the present case, there is no question that petitioners' order for respondent to render overtime service to meet a production deadline complies with the second requisite. Art. 89 of the Labor Code empowers the employer to legally compel his employees to perform overtime work against their will to prevent serious loss or damage: xxx In the present case, petitioners' business is a printing press whose production schedule is sometimes flexible and varying. It is only reasonable that workers are sometimes asked to render overtime work in order to meet production deadlines. Dennis Reyes, in his Affidavit dated May 3, 1999, stated that in the morning of February 22, 1999, he approached and asked respondent to render overtime work so as to meet a production deadline on a printing job order, but respondent refused to do so for no apparent reason. Respondent, on the other hand, claims that the reason why he refused to render overtime work was because he was not feeling well that day. The issue now is, whether respondent's refusal or failure to render overtime work was willful; that is, whether such refusal or failure was characterized by a wrongful and perverse attitude. In *Lakpue Drug Inc. v. Belga*, willfulness was described as "characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination." The fact that respondent refused to provide overtime work despite his knowledge that there is a production deadline that needs to be met, and that without him, the offset machine operator, no further printing can be had, shows his wrongful and perverse mental attitude; thus, there is willfulness. Respondent's excuse that he was not feeling well that day is unbelievable and obviously an afterthought. He failed to present any evidence other than his own assertion that he was sick. Also, if it was true that he was then not feeling well, he would have taken the day off, or had gone home earlier, on the contrary, he stayed and continued to work all day, and even tried to go to work the next day, thus belying his excuse, which is, at most, a self-serving statement.

7. ID.; ID.; ID.; ID.; DISMISSAL OF THE RESPONDENT FROM THE SERVICE, PROPER IN CASE AT BAR.— After a re-examination of the facts, we rule that respondent unjustifiably refused to render overtime work despite a valid order to do so. The totality of his offenses against petitioner R.B. Michael Press shows that he was a difficult employee. His refusal to render overtime work was the final straw that broke the camel's back, and, with his gross and habitual tardiness and absences, would merit dismissal from service.

8. ID.; ID.; ID.; TWIN-NOTICE REQUIREMENT; MUST BE COMPLIED WITH TO ENSURE THAT THE EMPLOYEE IS AFFORDED DUE PROCESS.— Under the twin notice requirement, the employees must be given two (2) notices before his employment could be terminated: (1) a first notice to apprise the employees of their fault, and (2) a second notice to communicate to the employees that their employment is being terminated. Not to be taken lightly of course is the hearing or opportunity for the employee to defend himself personally or by counsel of his choice. xxx. In addition, if the continued employment poses a serious and imminent threat to the life or property of the employers or of other employees like theft or physical injuries, and there is a need for preventive suspension, the employers can immediately suspend the erring employees for a period of not more than 30 days. Notwithstanding the suspension, the employers are tasked to comply with the twin notice requirement under the law. The preventive suspension cannot replace the required notices. Thus, there is still a need to comply with the twin notice requirement and the requisite hearing or conference to ensure that the employees are afforded due process even though they may have been caught *in flagrante* or when the evidence of the commission of the offense is strong.

9. ID.; ID.; ID.; ID.; NOT COMPLIED WITH IN CASE AT BAR; A LEGALLY DISMISSED EMPLOYEE IS ENTITLED TO THE PAYMENT OF NOMINAL DAMAGES WHERE HIS STATUTORY RIGHT TO DUE PROCESS HAS BEEN VIOLATED.— A scrutiny of the disciplinary process undertaken by petitioners leads us to conclude that they only paid lip service to the due process requirements. The undue haste in effecting respondent's termination shows that the

termination process was a mere simulation—the required notices were given, a hearing was even scheduled and held, but respondent was not really given a real opportunity to defend himself; and it seems that petitioners had already decided to dismiss respondent from service, even before the first notice had been given. Anent the written notice of charges and hearing, it is plain to see that there was merely a general description of the claimed offenses of respondent. The hearing was immediately set in the afternoon of February 23, 1999—the day respondent received the first notice. Therefore, he was not given any opportunity at all to consult a union official or lawyer, and, worse, to prepare for his defense. Regarding the February 23, 1999 afternoon hearing, it can be inferred that respondent, without any lawyer or friend to counsel him, was not given any chance at all to adduce evidence in his defense. At most, he was asked if he did not agree to render overtime work on February 22, 1999 and if he was late for work for 197 days. He was never given any real opportunity to justify his inability to perform work on those days. This is the only explanation why petitioners assert that respondent **admitted** all the charges. In the February 24, 1999 notice of dismissal, petitioners simply justified respondent's dismissal by citing his admission of the offenses charged. It did not specify the details surrounding the offenses and the specific company rule or Labor Code provision upon which the dismissal was grounded. In view of the infirmities in the proceedings, we conclude that termination of respondent was railroaded in serious breach of his right to due process. And as a consequence of the violation of his statutory right to due process and following *Agabon*, petitioners are liable jointly and solidarily to pay nominal damages to the respondent in the amount of PhP 30,000.

APPEARANCES OF COUNSEL

Ralph P. Tua for petitioner.
Abelardo James A. Sonico for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Year in, year out, a copious number of illegal dismissal cases reach the Court of Appeals (CA) and eventually end up with this Court. This petition for review under Rule 45 registered by petitioners R.B. Michael Press and Annalene Reyes Escobia against their former machine operator, respondent Nicasio C. Galit, is among them. It assails the November 14, 2001 Decision of the CA in CA-G.R. SP No. 62959, finding the dismissal of respondent illegal. Likewise challenged is the May 7, 2002 Resolution denying reconsideration.

The Facts

On May 1, 1997, respondent was employed by petitioner R.B. Michael Press as an offset machine operator, whose work schedule was from 8:00 a.m. to 5:00 p.m., Mondays to Saturdays, and he was paid PhP 230 a day. During his employment, Galit was tardy for a total of 190 times, totaling to 6,117 minutes, and was absent without leave for a total of nine and a half days.

On February 22, 1999, respondent was ordered to render overtime service in order to comply with a job order deadline, but he refused to do so. The following day, February 23, 1999, respondent reported for work but petitioner Escobia told him not to work, and to return later in the afternoon for a hearing. When he returned, a copy of an Office Memorandum was served on him, as follows:

To	:	Mr. Nicasio Galit
From	:	ANNALENE REYES-ESCOBIA
Re	:	WARNING FOR DISMISSAL; NOTICE OF HEARING

This warning for dismissal is being issued for the following offenses:

(1) habitual and excessive tardiness

(2) committing acts of discourtesy, disrespect in addressing superiors

(3) failure to work overtime after having been instructed to do so

(4) Insubordination — willfully disobeying, defying or disregarding company authority

The offenses you've committed are just causes for termination of employment as provided by the Labor Code. You were given verbal warnings before, but there had been no improvement on your conduct.

Further investigation of this matter is required, therefore, you are summoned to a hearing at 4:00 p.m. today. The hearing will determine your employment status with this company.

(SGD) ANNALENE REYES-ESCOBIA
Manager[1]

On February 24, 1999, respondent was terminated from employment. The employer, through petitioner Escobia, gave him his two-day salary and a termination letter, which reads:

February 24, 1999

Dear Mr. Nicasio Galit,

I am sorry to inform you that your employment with this company has been terminated effective today, February 24, 1999. This decision was not made without a thorough and complete investigation.

You were given an office memo dated February 23, 1999 warning you of a possible dismissal. You were given a chance to defend yourself on a hearing that was held in the afternoon of the said date.

During the hearing, Mrs. Rebecca Velasquez and Mr. Dennis Reyes, were present in their capacity as Production Manager and Supervisor, respectively.

Your admission to your offenses against the company and the testimonies from Mrs. Velasquez and Mr. Reyes justified your dismissal from this company;

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[1] *Rollo*, p. 71.

Please contact Ms. Marly Buita to discuss 13th-Month Pay disbursements.

Cordially,

(SGD) Mrs. Annalene Reyes-Escobia[2]

Respondent subsequently filed a complaint for illegal dismissal and money claims before the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. IV, which was docketed as NLRC Case No. RAB IV-2-10806-99-C. On October 29, 1999, the labor arbiter rendered a Decision,

WHEREFORE, premises considered, there being a finding that complainant was illegally dismissed, respondent RB MICHAEL PRESS/Annalene Reyes-Escobia is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other benefits, and be paid his full backwages computed from the time he was illegally dismissed up to the time of his actual reimbursement.

All other claims are DISMISSED for lack of evidence.

SO ORDERED.[3]

On January 3, 2000, petitioners elevated the case to the NLRC and their appeal was docketed as NLRC NCR CA No. 022433-00. In the April 28, 2000 Decision, the NLRC dismissed the appeal for lack of merit.

Not satisfied with the ruling of the NLRC, petitioners filed a Petition for *Certiorari* with the CA. On November 14, 2001, the CA rendered its judgment affirming with modification the NLRC's Decision, thus:

WHEREFORE, the petition is **DISMISSED** for lack of merit. The Decision of public respondent is accordingly modified in that the basis of the computation of the backwages, 13th month pay and incentive pay should be respondent's daily wage of ₱230.00; however, backwages should be computed from February 22, 1999 up to the

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[2] *Id*. at 72.

[3] *Id*. at 59-60.

finality of this decision, plus the 13th month and service incentive leave pay.[4]

The CA found that it was not the tardiness and absences committed by respondent, but his refusal to render overtime work on February 22, 1999 which caused the termination of his employment. It ruled that the time frame in which respondent was afforded procedural due process is dubitable; he could not have been afforded ample opportunity to explain his side and to adduce evidence on his behalf. It further ruled that the basis for computing his backwages should be his daily salary at the time of his dismissal which was PhP 230, and that his backwages should be computed from the time of his dismissal up to the finality of the CA's decision.

On December 3, 2001, petitioners asked for reconsideration[5] but was denied in the CA's May 7, 2002 Resolution.

Persistent, petitioners instituted the instant petition raising numerous issues which can be summarized, as follows: first, whether there was just cause to terminate the employment of respondent, and whether due process was observed in the dismissal process; and second, whether respondent is entitled to backwages and other benefits despite his refusal to be reinstated.

The Court's Ruling

It is well settled that findings of fact of quasi-judicial agencies, like the NLRC, are accorded not only respect but even finality if the findings are supported by substantial evidence. This is especially so when such findings of the labor arbiter were affirmed by the CA.[6] However, this is not an iron-clad rule. Though the findings of fact by the labor arbiter may have been affirmed

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[4] *Id*. at 47. The Decision was penned by Associate Justice Eugenio S. Labitoria, and concurred in by Associate Justices Teodoro P. Regino and Rebecca de Guia-Salvador.

[5] CA *rollo*, pp. 130-132.

[6] *Nautica Canning Corp. et al. v. Roberto C. Yumul*, G.R. No. 164588, Ocotber 19, 2005, 473 SCRA 415, 423-424; *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 604.

and adopted by the NLRC and the CA as in this case, it cannot divest the Court of its authority to review the findings of fact of the lower courts or quasi-judicial agencies when it sees that justice has not been served, more so when the lower courts or quasi-judicial agencies' findings are contrary to the evidence on record or fail to appreciate relevant and substantial evidence presented before it.[7]

Petitioners aver that Galit was dismissed due to the following offenses: (1) habitual and excessive tardiness; (2) commission of discourteous acts and disrespectful conduct when addressing superiors; (3) failure to render overtime work despite instruction to do so; and (4) insubordination, that is, willful disobedience of, defiance to, or disregard of company authority.[8] The foregoing charges may be condensed into: (1) tardiness constituting neglect of duty; (2) serious misconduct; and (3) insubordination or willful disobedience.

Respondent's tardiness cannot be considered condoned by petitioners

Habitual tardiness is a form of neglect of duty. Lack of initiative, diligence, and discipline to come to work on time everyday exhibit the employee's deportment towards work. Habitual and excessive tardiness is inimical to the general productivity and business of the employer. This is especially true when the tardiness and/or absenteeism occurred frequently and repeatedly within an extensive period of time.

In resolving the issue on tardiness, the labor arbiter ruled that petitioners cannot use respondent's habitual tardiness and unauthorized absences to justify his dismissal since they had already deducted the corresponding amounts from his salary. Furthermore, the labor arbiter explained that since respondent was not subjected to any admonition or penalty for tardiness, petitioners then had condoned the offense or that the infraction

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[7] See *Basilisa Dungaran v. Arleni Koschnicke*, G.R. No. 161048, August 31, 2005, 468 SCRA 676, 685; *Larena v. Mapili*, G.R. No. 146341, August 7, 2003, 408 SCRA 484, 488-489.

[8] *Rollo*, p. 71.

is not serious enough to merit any penalty. The CA then supported the labor arbiter's ruling by ratiocinating that petitioners cannot draw on respondent's habitual tardiness in order to dismiss him since there is no evidence which shows that he had been warned or reprimanded for his excessive and habitual tardiness.

We find the ruling incorrect.

The mere fact that the numerous infractions of respondent have not been immediately subjected to sanctions cannot be interpreted as condonation of the offenses or waiver of the company to enforce company rules. A waiver is a voluntary and intentional relinquishment or abandonment of a known legal right or privilege.[9] It has been ruled that "a waiver to be valid and effective must be couched in clear and unequivocal terms which leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him."[10] Hence, the management prerogative to discipline employees and impose punishment is a legal right which cannot, as a general rule, be impliedly waived.

In *Cando v. NLRC*,[11] the employee did not report for work for almost five months when he was charged for absenteeism. The employee claimed that such absences due to his handling of union matters were condoned. The Court held that the employee did not adduce proof to show condonation coupled with the fact that the company eventually instituted the administrative complaint relating to his company violations.

Thus it is incumbent upon the employee to adduce substantial evidence to demonstrate condonation or waiver on the part of management to forego the exercise of its right to impose sanctions for breach of company rules.

In the case at bar, respondent did not adduce any evidence to show waiver or condonation on the part of petitioners. Thus

[9] *Castro v. Del Rosario, et al.*, G.R. No. L-17915, January 31, 1967, 19 SCRA 196, 203.

[10] *Thomson v. Court of Appeals*, G.R. No. 116631, October 28, 1998, 298 SCRA 280, 293-294.

[11] G.R. No. 91344, September 14, 1990, 189 SCRA 666, 671.

the finding of the CA that petitioners cannot use the previous absences and tardiness because respondent was not subjected to any penalty is bereft of legal basis. In the case of *Filipio v. The Honorable Minister Blas F. Ople*,[12] the Court, quoting then Labor Minister Ople, ruled that past infractions for which the employee has suffered the corresponding penalty for each violation cannot be used as a justification for the employee's dismissal for that would penalize him twice for the same offense. At most, it was explained, "these collective infractions could be used as supporting justification to a subsequent similar offense." In contrast, the petitioners in the case at bar did not impose any punishment for the numerous absences and tardiness of respondent. Thus, said infractions can be used collectively by petitioners as a ground for dismissal.

The CA however reasoned out that for respondent's absences, deductions from his salary were made and hence to allow petitioners to use said absences as ground for dismissal would amount to "double jeopardy."

This postulation is incorrect.

Respondent is admittedly a daily wage earner and hence is paid based on such arrangement. For said daily paid workers, the principle of "a day's pay for a day's work" is squarely applicable. Hence it cannot be construed in any wise that such nonpayment of the daily wage on the days he was absent constitutes a penalty.

Insubordination or willful disobedience

While the CA is correct that the charge of serious misconduct was not substantiated, the charge of insubordination however is meritorious.

For willful disobedience to be a valid cause for dismissal, these two elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and

[12] G.R. No. 72129, February 7, 1990, 182 SCRA 1, 3-4.

must pertain to the duties which he had been engaged to discharge.[13]

In the present case, there is no question that petitioners' order for respondent to render overtime service to meet a production deadline complies with the second requisite. Art. 89 of the Labor Code empowers the employer to legally compel his employees to perform overtime work against their will to prevent serious loss or damage:

> Art. 89. EMERGENCY OVERTIME WORK
>
> Any employee may be required by the employer to perform overtime work in any of the following cases:
>
> x x x x x x x x x
>
> (c) When there is urgent work to be performed on machines, installations, or equipment, in order to avoid serious loss or damage to the employer or some other cause of similar nature;
>
> x x x x x x x x x

In the present case, petitioners' business is a printing press whose production schedule is sometimes flexible and varying. It is only reasonable that workers are sometimes asked to render overtime work in order to meet production deadlines.

Dennis Reyes, in his Affidavit dated May 3, 1999, stated that in the morning of February 22, 1999, he approached and asked respondent to render overtime work so as to meet a production deadline on a printing job order, but respondent refused to do so for no apparent reason. Respondent, on the other hand, claims that the reason why he refused to render overtime work was because he was not feeling well that day.

The issue now is, whether respondent's refusal or failure to render overtime work was willful; that is, whether such refusal or failure was characterized by a wrongful and perverse attitude. In *Lakpue Drug Inc. v. Belga*, willfulness was described as "characterized by a wrongful and perverse mental attitude

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[13] *Micro Sales Operation Network v. NLRC*, G.R. No. 155279, October 11, 2005, 472 SCRA 328, 335-336.

rendering the employee's act inconsistent with proper subordination."[14] The fact that respondent refused to provide overtime work despite his knowledge that there is a production deadline that needs to be met, and that without him, the offset machine operator, no further printing can be had, shows his wrongful and perverse mental attitude; thus, there is willfulness.

Respondent's excuse that he was not feeling well that day is unbelievable and obviously an afterthought. He failed to present any evidence other than his own assertion that he was sick. Also, if it was true that he was then not feeling well, he would have taken the day off, or had gone home earlier, on the contrary, he stayed and continued to work all day, and even tried to go to work the next day, thus belying his excuse, which is, at most, a self-serving statement.

After a re-examination of the facts, we rule that respondent unjustifiably refused to render overtime work despite a valid order to do so. The totality of his offenses against petitioner R.B. Michael Press shows that he was a difficult employee. His refusal to render overtime work was the final straw that broke the camel's back, and, with his gross and habitual tardiness and absences, would merit dismissal from service.

Due process: twin notice and hearing requirement

On the issue of due process, petitioners claim that they had afforded respondent due process. Petitioners maintain that they had observed due process when they gave respondent two notices and that they had even scheduled a hearing where he could have had explained his side and defended himself.

We are not persuaded.

We held in *Agabon v. NLRC*:

Procedurally, (1) if the dismissal is based on a just cause under Article 282, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought a hearing or an opportunity to be heard

[14] G.R. No. 166379, October 20, 2005, 473 SCRA 617, 624.

and after hearing or opportunity to be heard, a notice of the decision to dismiss; and (2) if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation.[15]

Under the twin notice requirement, the employees must be given two (2) notices before his employment could be terminated: (1) a first notice to apprise the employees of their fault, and (2) a second notice to communicate to the employees that their employment is being terminated. Not to be taken lightly of course is the hearing or opportunity for the employee to defend himself personally or by counsel of his choice.

In *King of Kings Transport v. Mamac*,[16] we had the occasion to further elucidate on the procedure relating to the twin notice and hearing requirement, thus:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will

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

[16] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-126.

be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

In addition, if the continued employment poses a serious and imminent threat to the life or property of the employers or of other employees like theft or physical injuries, and there is a need for preventive suspension,[17] the employers can immediately suspend the erring employees for a period of not more than 30 days. Notwithstanding the suspension, the employers are tasked to comply with the twin notice requirement under the law. The preventive suspension cannot replace the required notices.[18] Thus, there is still a need to comply with the twin notice requirement and the requisite hearing or conference to ensure that the employees are afforded due process even though they may have been caught *in flagrante* or when the evidence of the commission of the offense is strong.

On the surface, it would seem that petitioners observed due process (twin notice and hearing requirement): On February 23, 1999 petitioner notified respondent of the hearing to be conducted later that day. On the same day before the hearing, respondent was furnished a copy of an office memorandum which contained a list of his offenses, and a notice of a scheduled hearing in the afternoon of the same day. The

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[17] RULES IMPLEMENTING THE LABOR CODE, as amended by D.O. 09, June 21, 1997, Book V, Rule XXIII, Secs. 8 & 9.

[18] *Tanala v. National Labor Relations Commission*, G.R. No. 116588, January 24, 1996, 252 SCRA 314, 321.

next day, February 24, 1999, he was notified that his employment with petitioner R.B. Michael Press had been terminated.

A scrutiny of the disciplinary process undertaken by petitioners leads us to conclude that they only paid lip service to the due process requirements.

The undue haste in effecting respondent's termination shows that the termination process was a mere simulation—the required notices were given, a hearing was even scheduled and held, but respondent was not really given a real opportunity to defend himself; and it seems that petitioners had already decided to dismiss respondent from service, even before the first notice had been given.

Anent the written notice of charges and hearing, it is plain to see that there was merely a general description of the claimed offenses of respondent. The hearing was immediately set in the afternoon of February 23, 1999—the day respondent received the first notice. Therefore, he was not given any opportunity at all to consult a union official or lawyer, and, worse, to prepare for his defense.

Regarding the February 23, 1999 afternoon hearing, it can be inferred that respondent, without any lawyer or friend to counsel him, was not given any chance at all to adduce evidence in his defense. At most, he was asked if he did not agree to render overtime work on February 22, 1999 and if he was late for work for 197 days. He was never given any real opportunity to justify his inability to perform work on those days. This is the only explanation why petitioners assert that respondent **admitted** all the charges.

In the February 24, 1999 notice of dismissal, petitioners simply justified respondent's dismissal by citing his admission of the offenses charged. It did not specify the details surrounding the offenses and the specific company rule or Labor Code provision upon which the dismissal was grounded.

In view of the infirmities in the proceedings, we conclude that termination of respondent was railroaded in serious breach

of his right to due process. And as a consequence of the violation of his statutory right to due process and following *Agabon*, petitioners are liable jointly and solidarily to pay nominal damages to the respondent in the amount of PhP 30,000.[19]

WHEREFORE, premises considered, the November 14, 2001 CA Decision in CA-G.R. SP No. 62959, the April 28, 2000 Decision of the NLRC in NLRC NCR CA No. 022433-00, and the October 29, 1999 Decision of the Labor Arbiter in NLRC Case No. RAB IV-2-10806-99-C are hereby *REVERSED* and *SET ASIDE*. The Court declares respondent's dismissal from employment *VALID* and *LEGAL*. Petitioners are, however, ordered jointly and solidarily to pay respondent nominal damages in the amount of PhP 30,000 for violation of respondent's right to due process.

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 153821. February 13, 2008]

FORBES PARK ASSOCIATION, INC., *petitioner, vs.* **PAGREL, INC., PILAR R. DE LAGDAMEO, ENRIQUE B. LAGDAMEO, ATTY. MILA B. FLORES in her capacity as the Register of Deeds of Makati City, and the Hon. CESAR D. SANTAMARIA in his capacity as Presiding Judge of Branch 145 of the RTC of Makati,** *respondents.*

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[19] *Supra* note 15.

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; *LITIS PENDENTIA*; ESSENTIAL ELEMENTS.— *Litis pendentia* or *auter action pendant* is the pendency of another action between the same parties for the same cause. The policy behind *litis pendentia* is that a party should not be allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on sound public policy that the same subject matter should not be the subject of controversy in court more than once in order that possible conflicting judgments may be avoided, for the sake of the stability of the rights and status of persons. In numerous cases, this Court has defined what constitutes *litis pendentia*. The essential elements of *litis pendentia* are as follows: (1) identity of parties or representation in both cases; (2) identity of rights asserted and reliefs prayed for; (3) reliefs founded on the same facts and the same basis; and (4) identity of the two preceding particulars should be such that any judgment, which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

2. ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.— The elements of *litis pendentia* are not present in the cases at bar. For one, there is no identity of parties. In both the *lis pendens* case (G.R. No. 148733) and PAGREL cases (CA-G.R. SP No. 67263), the petitioner is FPA. However with respect to respondents, the similarity ends. In G.R. No. 148733, the respondent is the Makati City Register of Deeds with the CA as public respondent. In CA-G.R. SP No. 67263 (PAGREL cases), the respondents are PAGREL, Inc., De Lagdameo, and Lagdameo with Judge Santamaria as public respondent. Hence, the parties are not the same. For another, there is also no identity of causes of action. In G.R. No. 148733 (*lis pendens* case), the cause of action is the legality of annotating the notice of *lis pendens* pertaining to three (3) HIGC cases, namely: HIGC Case Nos. HOA-97-003, HOA-97-010, and HOA-98-111 on the certificates of title. In CA-G.R. SP No. 67263 (PAGREL cases), however, the cause of action of FPA relates to the annulment of the order of the Makati City RTC, canceling the annotation of the Deed of Restrictions at the back of the titles

of PAGREL, Inc., De Lagdameo, and Lagdameo due to extrinsic fraud by reason of the non-joinder of FPA as an adverse party. The difference between the causes of action between the two sets of cases is obvious. One seeks for the annotation of notices of *lis pendens* relating to several pending cases, while the other is for re-annotations of the liens on the titles of lot owners which were canceled. Indeed, there is a material and substantial difference between the causes of action in the two cases. Lastly, there is no identity of reliefs prayed for. xxx. Since there is no parallellism between the two sets of cases, then the CA erred in dismissing CA-G.R. SP No. 67263 (PAGREL cases) on the ground of *litis pendentia*.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.

Marco M. Lagdameo for PAGREL, Inc. and Pilar and Enrique Lagdameo.

D E C I S I O N

VELASCO, JR., *J.*:

Forbes Park is an exclusive, plush subdivision in Makati City. The members of petitioner Forbes Park Association, Inc. (FPA) agreed to have a deed of restrictions annotated on their Transfer Certificates of Title (TCTs), the pertinent portions of which read:

DEED OF RESTRICTIONS

Annotated on all Transfer [Certificates of Title]

I. The owner of this lot or his successor in interest is required to be and is automatically a member of the Forbes Park Association and must abide by the rules and restrictions laid down by the Association covering the use and occupancy of the lot.

II. Subject to such amendments and additional restrictions, reservations, servitudes, *etc*., as the Forbes Park Association may from time to time adopt and prescribe, this lot is subject to the following restrictions:

x x x x x x x x x

III. The term of the foregoing restrictions is for fifty (50) years from January 1, 1949 and may be extended, amended or cancelled by means of a resolution approved by 2/3 vote of the Forbes Park Association and registered with the Register of Deeds of Rizal.

For a better understanding of the petition before us, we find it necessary to recall the events that transpired prior to December 31, 1998, the expiration date of the restrictions.

On March 25, 1996, FPA, during its annual general meeting, deliberated on the extension of the corporate life of the Association, the extension of the Deed of Restrictions, and the date of the meeting when these matters would be voted on. Consequently, then incumbent FPA President Enrique Lagdameo, herein respondent, called a Special General Meeting on November 26, 1996 and the two items—the extension of the corporate life of FPA and the Deed of Restrictions—were put to a vote. Since the quorum was questioned, another meeting was set for December 8, 1996. With the secretary's certification that there was no quorum during the November 26 meeting, the Board of Governors sent a circular that the matters discussed then were invalid and had no binding effect, including the setting of a meeting for December 8, 1996.

Just the same, on December 8, 1996, Jose Concepcion presided as chairperson of the meeting. The designated commission on elections reported on the attendance and the votes cast during the November 26 and December 8, 1996 meetings.

As a reaction, some FPA members filed separate cases before the Home Insurance Guaranty Corporation (HIGC). In **HIGC Case No. HOA-97-003** entitled *Arturo V. Rocha v. Forbes Park Association, Inc.*, Arturo Rocha sought the annulment of the FPA resolutions passed during the November 26 and December 8, 1996 meetings, extending the corporate life of FPA and the Deed of Restrictions, on the ground of no-quorum. In **HIGC Case No. HOA-97-010** entitled *Jose Concepcion, Jr., Federico V. Borromeo and Jaime Augusto Zobel de Ayala II v. Rosa Caram*, on the other hand, the three (3) complaining

homeowners asked HIGC to enjoin Rosa Caram, the FPA secretary, from misrepresenting that the resolutions passed extending the corporate life of FPA and the Deed of Restrictions were vitiated for lack of quorum. The two cases were consolidated.

Meantime, the Board of Governors of the FPA, chaired by Lagdameo, issued several circulars on the guidelines for the nominations and qualifications of candidates, and validation of proxies for the general assembly and election set for March 30, 1997. The Hearing Panel then canceled the scheduled election and directed the holding of one on June 30, 1997. During the June 30, 1997 election, the FPA members voted for the 25-year extension of FPA's corporate life.

Subsequently, Lagdameo instituted another case before the HIGC docketed as **HIGC Case No. HOA-98-111** and entitled *Enrique B. Lagdameo, Jose M. Cabarrus, Antonio C. Cuyegkeng II, et al. v. Forbes Park Association, Inc., Leonardo Siguion-Reyna and the Register of Deeds of Makati City* that was consolidated with HIGC Case Nos. HOA-97-003 and HOA-97-010. Since, however, the latter two cases had already been submitted for resolution, HIGC Case No. HOA-98-111 was separately heard.

On November 5, 1999, the Hearing Panel, in the consolidated cases, HIGC Case Nos. HOA-97-003, HOA-97-010, and HOA-98-111, ruled that the Deed of Restrictions had not been validly extended because only 407 of the 424 members present, or less than the required two-third (2/3) votes of the members, voted affirmatively. It also declared that the proceedings during the December 8, 1996 meeting and the decision to allow additional members to register and vote were not capable of ratification because the meeting was improperly held. But, the Hearing Panel went on to state, however, that it is essential to ascertain the real will of the members considering that based on the November 26 and December 8, 1996 meetings, albeit held under improper circumstances, more than 2/3 of the general membership, 464 out of 489, including the votes of those who were allowed to register and vote during the December 8 meeting, expressed

approval for the extension of the Deed of Restrictions. The panel ordered a referendum within 30 days.

On appeal to the HIGC Appeals Board which was docketed as HIGC AB Case No. 99-012, the Board reversed the panel's decision, thus:

> WHEREFORE, PREMISES CONSIDERED, the Decision of the Hearing Panel dated November 5, 1999 is hereby REVERSED except insofar as it declared the December 8, 1996 meeting as illegally and improperly held which we hereby affirm.
>
> Therefore, judgment is hereby rendered [declaring as] VALID AND EFFECTIVE the Resolution of the general membership of the Forbes Park Association, Inc. dated June 30, 1997 extending the corporate term of the Association and the Deed of Restrictions of the Forbes Park Subdivision, for another twenty-five (25) years from expiry date.

Unhappy with the outcome, Rocha filed a petition before the Court of Appeals (CA), the recourse docketed as CA-G.R. SP No. 59359. In a Decision dated August 29, 2003, the CA declared the extension of the deed of restrictions and FPA's corporate life for another 25 years to be valid.

Rocha then challenged the CA Decision before this Court in G.R. No. 163869 that was subsequently closed and terminated after his death. The Rocha heirs, on July 8, 2004, manifested that they were no longer interested in pursuing the case.

On August 29, 2003, the Decision of the CA upholding the extension of the Deed of Restrictions and FPA's corporate life became final and executory. Judgment was entered on September 22, 2004.

Forbes Park Association, Inc. v. Register of Deeds of Makati City
(*Lis Pendens* Case), CA-G.R. SP No. 61245
and subsequently G.R. No. 148733

On January 27, 1999, FPA filed an application with the Register of Deeds of Makati City for the registration by FPA of notices of *lis pendens* over certain Forbes Park lots in connection with

HIGC Case Nos. HOA-97-003, HOA-97-010, and HOA-98-111. The issue in the above HIGC cases was the extension of the Deed of Restrictions.

On February 5, 1999, the Register of Deeds denied FPA's application on the ground that a notice of *lis pendens* may only be sought in actions to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or to partition the property, and in any other proceedings of any kind in court directly affecting the title to the land or the use or occupation thereof on the building thereon.[1]

This denial compelled FPA to appeal via a *consulta* with the Land Registration Authority (LRA). This was entitled as *Forbes Park Association, Inc. v. Register of Deeds of Makati City* and docketed as Consulta No. 3038. The principal issue FPA raised before the LRA was whether or not a notice of *lis pendens* can be registered given the circumstances of FPA's application. On August 21, 2000, the LRA issued a resolution denying the appeal filed by FPA and essentially adopting the reasoning of the Register of Deeds.[2]

The denial of the appeal by the LRA prompted FPA to file a petition for review with the CA, docketed as CA-G.R. SP No. 61245. Attached to the petition was a verification and certification against non-forum shopping signed by one Reynaldo N. Rigor, Village Manager of Forbes Park.

On November 28, 2000, the CA, in a single page resolution, dismissed FPA's petition for review on the sole ground that the person who signed the subject verification and certification was not a duly authorized representative of FPA.[3] FPA's motion for reconsideration was denied in the CA's June 25, 2001 Resolution.[4]

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[1] *Rollo* (G.R. No. 148733), p. 55.

[2] *Id.* at 55-57.

[3] *Id.* at 29.

[4] *Id.* at 31.

On April 25, 2005, FPA filed before the Court a petition for review, docketed as **G.R. No. 148733**, assailing the above resolutions of the CA and praying that the CA be directed to give due course to FPA's petition for review on the issue of registration of the notices of *lis pendens* on certain Forbes Park lots. In this recourse, FPA faulted the CA for ruling against the validity of the verification and certification signed by Rigor.

Subsequently, FPA filed a Manifestation and Motion to Withdraw the Petition dated March 15, 2005,[5] contending that the *lis pendens* issue in question has been rendered moot by the development in *Arturo V. Rocha v. FPA*, G.R. No. 163869.

In the *Rocha* case, as may be recalled, the CA Decision in CA-G.R. SP No. 59359, which upheld the extension of the Deed of Restrictions and the corporate life of FPA, became final and executory because of the withdrawal by the Rocha heirs of their appeal in G.R. No. 163869. Thus, according to FPA, the issue in G.R. No. 148733, specifically the registration of notices of *lis pendens*, had essentially become moot and academic.

Acting on FPA's manifestation and motion to withdraw the petition, this Court issued a Resolution dated April 25, 2005, stating that G.R. No. 148733 dismissing the petition was deemed closed and terminated.[6] The entry of judgment in G.R. No. 148733 was made on June 14, 2005.[7]

The PAGREL Cases
(LRC Case Nos. M-4150, M-4151 and M-4152 [CA-G.R. SP No. 67263])
are the subject matters of instant G.R. No. 153821

Earlier, on March 29, 2001, respondent PAGREL, Inc., represented by Gregorio Araneta III, respondent Pilar R. De Lagdameo, and respondent Lagdameo, separately filed *ex parte*

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[5] *Id.* at 157-160.

[6] *Id.* at 185.

[7] *Id.* at 186.

petitions with the Makati City Regional Trial Court[8] (RTC) to cancel the restrictions over their respective lot titles. These were docketed as LRC Case Nos. M-4150, M-4151, and M-4152, respectively (PAGREL cases). They claimed that the Deed of Restrictions had expired and remained so until the time of the filing of their petitions without any extensions or new restrictions registered with the Registry of Deeds of Makati City as of midnight of December 31, 1998. Significantly, FPA was not impleaded as a party in any of the above cases filed with the RTC.

The RTC granted the relief in its April 10, 2001 Order, the *fallo* of which reads:

> WHEREFORE, in view of the foregoing, the Court rules to:
>
> 1.] Give due course and GRANTS the petition filed by Pagrel Inc. as represented herein by Gregorio Araneta III, through counsel in LRC Case No. M-4150. And as prayed for, the Register of Deeds of Makati City is ordered to cancel, remove or delete from Transfer Certificate of Title No. (63307) S-30612 the restriction inscribed therein as primary no. 2655 File T-37356, at the expense of petitioner-Pagrel Inc.;
>
> 2.] Give due course and GRANTS the petition filed by Pilar R. De Lagdameo, through counsel, in LRC Case No. M-4151. And as prayed for the Register of Deeds of Makati City, is ordered to cancel, remove or delete from: [2.a] Transfer Certificate of Title No. (27039) S-80092, the restriction inscribed therein as primary no. 42535, and [2.b] Transfer Certificate of Title No. (252548), the restriction inscribed therein as primary no. 38638 File T-25258, at the expense of the petitioner Pilar R. De Lagdameo; and
>
> 3.] Give due course and GRANTS the petition filed by Petitioner Enrique B. Lagdameo, through counsel, in LRC Case No. M-4152. And as prayed for the Register of Deeds of Makati City is ordered to cancel, remove or delete from Transfer Certificate of Title No. (389324) the primary no. being 25469, at the expense of the petitioner Enrique B. Lagdameo.
>
> SO ORDERED.[9]

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[8] The case was raffled to Branch 145 of the said court, presided over by Judge Cesar D. Santamaria.

[9] *Rollo* (G.R. No. 153821), pp. 85-86.

The order became final and executory on May 3, 2001.

Displeased with the RTC Order, FPA filed on October 19, 2001 with the CA a Petition for Annulment of Final Order with prayer for Temporary Restraining Order (TRO) and Writ of Injunction docketed as CA-G.R. SP No. 67263. According to FPA, PAGREL, Inc., *et al*., as private respondents, committed extrinsic fraud when they did not implead FPA as party-in-interest in the three petitions for cancellation of the restrictions on their respective titles. FPA claimed further that: (1) private respondents, as Forbes Park lot owners and FPA members, are bound by the terms and conditions contained in the Deed of Restrictions; (2) they were aware that at least 2/3 of the members of FPA approved the extension of the corporate life of FPA, and the extension *in toto* of the Deed of Restrictions in question; (3) the Deed of Restrictions was designed to maintain the exclusive residential nature of the village, and to protect the residents and lot owners from the ravages of noise and pollution which commercialization of the lots within Forbes Park would consequently bring;[10] and (4) FPA had successfully defended the extension of its corporate life and the extension of the deed of restrictions before the HIGC.

The Ruling of the Court of Appeals in CA-G.R. SP No. 67263 (PAGREL Cases)

In its March 7, 2002 Resolution,[11] the CA denied FPA's petition for annulment of the final order of the RTC. The CA found that between the PAGREL cases and G.R. No. 148733, the elements of *litis pendentia* existed.

FPA's motion for reconsideration was subsequently denied.

The Issue

FPA's failure in the CA prompted it to file this petition for review under Rule 45 of the Rules of Court on the lone issue formulated as follows:

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[10] *Id*. at 61-63.

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

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN FINDING THAT THE PETITIONER IS GUILTY OF *LITIS PENDENTIA* AND/OR FORUM SHOPPING

In dismissing FPA's petition for annulment in CA-G.R. SP No. 67263 (PAGREL cases), the CA observed that the parties in G.R. No. 148733 (*lis pendens* case) were FPA, as petitioner, and the Register of Deeds, as respondent, while in CA-G.R. SP No. 67263 (PAGREL cases), the parties were FPA, as petitioner, while the respondents were PAGREL, Inc., De Lagdameo, Lagdameo, and Judge Cesar D. Santamaria. Thus, the CA concluded that there was identity of parties since the parties in both actions substantially represented the same interests.

Furthermore, the CA explained that the interests of the parties were founded on the same rights: for the FPA—to enforce a collective agreement to safeguard the interest and welfare of its residents/members by having the lots governed by a set of restrictions, and for respondents—to exercise their rights of ownership. The CA also said that FPA forum-shopped when it filed multiple suits. The appellate court thus concluded that *litis pendentia* was present and consequently dismissed the annulment case.

The elements of *litis pendentia* do not exist in the case at bar

Litis pendentia or *auter action pendant* is the pendency of another action between the same parties for the same cause.[12] The policy behind *litis pendentia* is that a party should not be allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on sound public policy that the same subject matter should not be the subject of controversy in court more than once in order that possible conflicting judgments may be avoided, for the sake of the stability of the rights and status of persons.[13]

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[12] *Bauan v. Lopez*, G.R. No. 75349, October 13, 1986, 145 SCRA 34, 37.

[13] *Sherwill Development Corporation v. Sitio Sto. Niño Residents Association, Inc.*, G.R. No. 158455, June 28, 2005, 461 SCRA 517, 531; *Tirona v. Alejo*, G.R. No. 129313, October 10, 2001, 367 SCRA 17, 33;

In numerous cases, this Court has defined what constitutes *litis pendentia*. The essential elements of *litis pendentia* are as follows: (1) identity of parties or representation in both cases; (2) identity of rights asserted and reliefs prayed for; (3) reliefs founded on the same facts and the same basis; and (4) identity of the two preceding particulars should be such that any judgment, which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[14]

The elements of *litis pendentia* are not present in the cases at bar. For one, there is no identity of parties. In both the *lis pendens* case (G.R. No. 148733) and PAGREL cases (CA-G.R. SP No. 67263), the petitioner is FPA. However with respect to respondents, the similarity ends. In G.R. No. 148733, the respondent is the Makati City Register of Deeds with the CA as public respondent. In CA-G.R. SP No. 67263 (PAGREL cases), the respondents are PAGREL, Inc., De Lagdameo, and Lagdameo with Judge Santamaria as public respondent. Hence, the parties are not the same.

For another, there is also no identity of causes of action. In G.R. No. 148733 (*lis pendens* case), the cause of action is the legality of annotating the notice of *lis pendens* pertaining to three (3) HIGC cases, namely: HIGC Case Nos. HOA-97-003, HOA-97-010, and HOA-98-111 on the certificates of title.

In CA-G.R. SP No. 67263 (PAGREL cases), however, the cause of action of FPA relates to the annulment of the order of the Makati City RTC, canceling the annotation of the Deed of Restrictions at the back of the titles of PAGREL, Inc., De Lagdameo, and Lagdameo due to extrinsic fraud by reason of the non-joinder of FPA as an adverse party.

The difference between the causes of action between the two sets of cases is obvious. One seeks for the annotation of notices of *lis pendens* relating to several pending cases, while

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Tourist Duty Free Shops, Inc. v. Sandiganbayan, G.R. No. 107395, January 26, 2000, 323 SCRA 358.

[14] *Id*.

the other is for re-annotations of the liens on the titles of lot owners which were canceled. Indeed, there is a material and substantial difference between the causes of action in the two cases.

Lastly, there is no identity of reliefs prayed for. In G.R. No. 148733 (*lis pendens* case), the prayer is for the annotation of the notice of *lis pendens* by the Makati City RTC. In CA-G.R. SP No. 67263 (PAGREL cases), FPA asked the following reliefs, namely: (1) issuance of a TRO enjoining the Register of Deeds of Makati City from further canceling the Deed of Restrictions annotated on all other TCTs covering lots in Forbes Park; (2) issuance of an order directing respondent Register of Deeds to annotate notices of *lis pendens* on the original copies of TCT No. (63307) S-30612 in the name of PAGREL, Inc., TCT Nos. (27039) S-80092 and (25258) S-80093 in the name of De Lagdameo; (3) issuance of a TRO enjoining respondents PAGREL, Inc., De Lagdameo, and Lagdameo from disposing of their respective properties covered by TCT Nos. (63307) S-30612, (27039) S-80092, (25258) S-80093, and (380324) S-36620 until the above-mentioned notices of *lis pendens* are annotated on said original TCTs; (4) conduct proceedings to convert the TROs to preliminary injunctions before the expiration of the TROs; (5) after due hearing, set aside the Order dated April 10, 2001 issued by Branch 145 and convert the preliminary injunctions into permanent injunctions; (6) order the Register of Deeds of Makati City to restore the canceled annotations of the deed of restrictions on the TCTs of PAGREL, Inc., De Lagdameo, and Lagdameo canceled by the Order dated April 10, 2001; and (7) order private respondents PAGREL, Inc., De Lagdameo, and Lagdameo to pay moral and exemplary damages, attorney's fees, and the costs of the suit.[15] Thus, there is no parity between the two cases with respect to reliefs prayed for.

Since there is no parallelism between the two sets of cases, then the CA erred in dismissing CA-G.R. SP No. 67263 (PAGREL cases) on the ground of *litis pendentia*.

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[15] *Rollo* (G.R. No. 153821), pp. 33-35.

Lest it be overlooked, this Court, acting on FPA's manifestation and motion to withdraw petition dated March 15, 2005, issued on April 25, 2005 a resolution dismissing the petition in G.R. No. 148733 and considered the case closed and terminated. Thus, there no longer exists any other case that can be used as a bar to CA-G.R. SP No. 67263 (PAGREL cases) on the ground of *litis pendentia*. Necessarily, such obstacle has now been removed and the aforementioned CA petition for annulment can now proceed.

WHEREFORE, the petition is *GRANTED*. The Resolutions of the CA dated March 7, 2002 and June 4, 2002 in CA-G.R. SP No. 67263 are hereby *REVERSED* and *SET ASIDE*. FPA's Petition for Annulment of Final Order in CA-G.R. SP No. 67263 is given due course and the case is remanded to the CA which is ordered to immediately commence proceedings therein and resolve the petition with dispatch.

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 154557. February 13, 2008]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **The HONORABLE COURT OF APPEALS, 12th DIVISION, RICO LIPAO, and RICKSON LIPAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY WHERE THE COURT OF APPEALS ACTED IN AN ARBITRARY AND PATENTLY ERRONEOUS EXERCISE OF JUDGMENT EQUIVALENT TO LACK OF JURISDICTION.— On the issue of the propriety of the resort to a special civil action for *certiorari* under Rule 65 instead of a petition under Rule 45, we find that Rule 65 is the proper remedy. The CA ruled that the RTC was ousted of its jurisdiction as a result of the enactment of RA 7691. While the defense of lack of jurisdiction was never raised by private respondents before the RTC and the CA, the CA nevertheless proceeded to acquit private respondents based on the new law. It is quite glaring from Sec. 7 of RA 7691 that said law has limited retroactivity only to civil cases. As such, the CA indeed committed grave abuse of discretion as it acted in an arbitrary and patently erroneous exercise of judgment equivalent to lack of jurisdiction. Hence, the use of Rule 65 is proper.

2. ID.; ID.; ID.; FAILURE TO FILE A MOTION FOR RECONSIDERATION IS A GROUND FOR DISMISSAL OF THE PETITION; EXCEPTIONS; PRESENT IN CASE AT BAR.— [W]hile it is true that petitioner did not file a motion for reconsideration of the assailed CA Decision which normally is a ground for dismissal for being premature and to accord respondent CA opportunity to correct itself, yet the rule admits of exceptions, such as where, under the circumstances, a motion for reconsideration would be useless, and where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government. In the instant case, these exceptions are present; thus, the propriety of the instant petition. The assailed CA Decision rendered on the ground of lack of jurisdiction clearly bespeaks that any motion for reconsideration is useless. For one, the issue of lack of jurisdiction was never raised by private respondents in their Brief for the Accused-Appellants, but was considered *motu proprio* by the CA. For another, the issues and errors raised by private respondents were not considered and much less touched upon by the CA in its assailed Decision.

3. ID.; ID.; ID.; FILING OF MOTION FOR RECONSIDERATION IS NOT NECESSARY WHEN THE RESPONDENT COURT TOOK ALMOST EIGHT YEARS TO THE DAY TO RESOLVE THE PARTIES' APPEAL.— But of more importance, as this Court held in *Vivo v. Cloribel*, a motion for reconsideration is not necessary before a petition for *certiorari* can be filed when the respondent court took almost eight years to the day to resolve private respondents' appeal. It is not only the accused who has a right to a speedy disposition of his case, but the prosecution or the State representing the People also has and must be accorded the same right. Thus, any further delay would prejudice the interest of the Government to prosecute and bring closure to a criminal case filed way back in early 1992.

4. ID.; PLEADINGS AND PRACTICES; VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING; SIGNATURE BY THE SOLICITOR GENERAL IS A SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENT WHERE THE STATE IS THE REAL PARTY-IN-INTEREST AND IS THE AGGRIEVED PARTY.— On other procedural issues, we also find for petitioner. [W]e reiterate our holding in *Santiago* and *City Warden of the Manila City Jail* that the signature by the Solicitor General on the verification and certification of non-forum shopping in a petition before the CA or with this Court is substantial compliance of the requirement under Sec. 4, Rule 7 of the 1997 Rules of Civil Procedure, considering that the OSG is the legal representative of the Government of the Republic of the Philippines and its agencies and instrumentalities, more so in a criminal case where the People or the State is the real party-in-interest and is the aggrieved party.

5. ID.; COURTS; JURISDICTION; THE PASSAGE OF REPUBLIC ACT 7691 DID NOT *IPSO FACTO* RELIEVE THE REGIONAL TRIAL COURT OF THE JURISDICTION TO HEAR AND DECIDE THE CRIMINAL CASE PENDING BEFORE THE SAME PRIOR TO THE EFFECTIVITY THEREOF.— On the main issue of whether the RTC retained jurisdiction over the criminal case, we agree with petitioner. The passage of RA 7691 did not *ipso facto* relieve the RTC of the jurisdiction to hear and decide the criminal case against private respondents. This issue

has been laid to rest in *People v. Velasco*, where this Court emphatically held: As to the issue of whether or not R.A. 7691 operated to divest the Regional Trial Court of jurisdiction over appellant's case, we rule in the negative. **It has been consistently held as a general rule that the jurisdiction of a court to try a criminal action is to be determined by the law in force at the time of the institution of the action. Where a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the cause is not affected by new legislation placing jurisdiction over such proceedings in another tribunal. The exception to the rule is where the statute expressly provides, or is construed to the effect that it is intended to operate as to actions pending before its enactment. Where a statute changing the jurisdiction of a court has no retroactive effect, it cannot be applied to a case that was pending prior to the enactment of a statute. A perusal of R.A. 7691 will show that its retroactive provisions apply only to civil cases that have not yet reached the pre-trial stage**. **Neither from an express proviso nor by implication can it be understood as having retroactive application to criminal cases pending or decided by the Regional Trial Courts prior to its effectivity.** Thus, the general rule enunciated above is the controlling doctrine in the case at bar. xxx.

6. ID.; ID.; ID.; JURISDICTION CONTINUES UNTIL THE COURT HAS DONE ALL THAT IT CAN DO TO EXERCISE THAT JURISDICTION UNLESS THE LAW PROVIDES OTHERWISE.— Thus, where private respondents had been charged with illegal logging punishable under Articles 309 and 310 of the Revised Penal Code with imprisonment ranging from four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to nine (9) years, four (4) months, and one (1) day of *prision mayor*, as maximum, the RTC clearly had jurisdiction at the inception of the criminal case. Since jurisdiction over the criminal case attached upon the filing of the information, then the RTC is empowered and mandated to try and decide said case notwithstanding a subsequent change in the jurisdiction over criminal cases of the same nature under a new statute. The rule is settled that jurisdiction continues until the court has done all that it can do to exercise that jurisdiction unless the law provides otherwise.

7. ID.; ID.; ID.; JURISDICTION OF THE COURT IS DETERMINED BOTH BY THE LAW IN FORCE AT THE TIME OF THE COMMENCEMENT OF THE ACT AND BY THE ALLEGATIONS IN THE COMPLAINT.— Lastly, the CA committed reversible error in making use of the values adduced during the hearing to determine jurisdiction. It is basic that the jurisdiction of a court is determined both by the law in force at the time of the commencement of the action and by the allegations in the Complaint or Information. Thus, the RTC clearly had jurisdiction when it heard and decided Criminal Case No. 551. The CA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that the RTC was divested of jurisdiction by reason of the enactment of RA 7691.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Public Attorney's Office for public respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Where a court acquired jurisdiction over an action, its jurisdiction continues to the final conclusion of the case. Such jurisdiction is not affected by new legislation placing jurisdiction over such dispute in another court or tribunal unless the statute provides for retroactivity.[1]

Before us is a Petition for *Certiorari* under Rule 65, seeking to nullify the June 13, 2002 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR No. 17275 which set aside the July 25, 1994 Judgment[3] of the Surigao City Regional Trial Court (RTC),

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[1] See *Southern Food Sales Corporation v. Salas*, G.R. No. 56428, February 18, 1992, 206 SCRA 333, 338; citing *Bengzon v. Inciong*, G.R. Nos. L-48706-07, June 29, 1979, 91 SCRA 248, 256.

[2] *Rollo*, pp. 25-31. Penned by Associate Justice Portia Aliño-Hormachuelos (Chairperson) and concurred in by Associate Justices Elvi John S. Asuncion and Edgardo F. Sundiam.

[3] *Id*. at 32-38. Penned by Judge Diomedes M. Eviota.

Branch 32 and dismissed Criminal Case No. 551 entitled *People of the Philippines v. Rico Lipao and Rickson Lipao* for violation of Section 68 of Presidential Decree No. (PD) 705,[4] as amended by Executive Order No. (EO) 277.[5]

On February 24, 1992, private respondents Rico and Rickson Lipao were indicted for and pleaded not guilty to violation of Sec. 68 of PD 705, as amended by EO 277. The Information in Criminal Case No. 551 reads:

> That on or about the 21st day of October 1991 in Cagdianao, Surigao del Norte, Philippines, and within the jurisdiction of this Honorable Court, accused Rico Lipao and Rickson Lipao without legal documents as required under existing forest laws and regulations, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously possess without license eight (8) pieces of round timbers and 160 bundles of firewood with a market value of ₱3,100.00, said forest products not covered with legal transport document, and willfully and unlawfully load these forest products in the pumpboat "Rickjoy" owned by Rico Lipao, nor the accused Rico Lipao and Rickson Lipao holders of a license issued by the DENR, to the prejudice of the government in the sum of ₱3,100.00.
>
> Contrary to law. The offense is punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code, as provided under Section 68 of PD No. 705.[6]

The offense charged is punishable under Art. 309 of the Revised Penal Code which provides:

> Art. 309. *Penalties.*—Any person guilty of theft shall be punished by:

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[4] "Revising Presidential Decree No. 389, Otherwise Known as The Forestry Reform Code of the Philippines" (1975).

[5] "Amending Section 68 of Presidential Decree (P.D.) No. 705, as Amended, Otherwise Known as The Revised Forestry Code of the Philippines, for the Purpose of Penalizing Possession of Timber or Other Forest Products without the Legal Documents Required by Existing Forest Laws, Authorizing the Confiscation of Illegally Cut, Gathered, Removed and Possessed Forest Products, and Granting Rewards to Informers of Violations of Forestry Laws, Rules and Regulations" (1987).

[6] *Rollo*, pp. 32-33.

x x x x x x x x x

2. The penalty of *prision correccional* in its medium and maximum period, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

Prision correccional in its medium period is imprisonment from 2 years, 4 months and 1 day to 4 years and 2 months while *prision correccional* in its maximum period is imprisonment from 4 years, 2 months and 1 day to 6 years.

Parenthetically, during the proceedings in Criminal Case No. 551 and before the RTC rendered its Judgment, Republic Act No. (RA) 7691[7] took effect on April 15, 1994 or 15 days after its publication on March 30, 1994. RA 7691 expanded the exclusive original jurisdiction of the Metropolitan Trial Courts (MeTCs), Municipal Trial Courts (MTCs), and Municipal Circuit Trial Courts (MCTCs) in criminal cases to cover all offenses punishable with imprisonment not exceeding six years irrespective of the amount of fine and regardless of other imposable accessory or other penalties, including civil penalties arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof. Before the amendments of RA 7691, Batas Pambansa Blg. 129 entitled *The Judiciary Reorganization Act of 1980* provided that the MeTC, MTC, and MCTC shall have exclusive original jurisdiction over all offenses punishable with imprisonment of not exceeding four years and two months, or a fine of not more than PhP 4,000, or both such fine and imprisonment, regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof.

On July 25, 1994, the RTC rendered its Judgment, finding private respondents guilty beyond reasonable doubt of the offense charged. The dispositive portion reads:

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[7] "An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa Blg. 129, Otherwise Known as the Judiciary Reorganization Act of 1980."

WHEREFORE, premises considered, the Court finds the accused Rico Lipao and Rickson Lipao both guilty beyond reasonable doubt of the Violation of Section 68 of Presidential Decree No. 705 as amended by Executive Order No. 277, Series of 1987, in relation to Articles 309 and 310 of the Revised Penal Code, and hereby sentences each of them to an indeterminate penalty of from four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prision mayor*, as maximum; and each to pay one-half of the costs.

The posts and firewood in question, or the proceeds thereof if sold at public auction are hereby forfeited in favor of the Government.

SO ORDERED.[8]

Private respondents seasonably interposed their appeal before the CA, docketed as CA-G.R. CR No. 17275. They argued that private respondent Rickson was subjected to an illegal search and seizure of the round posts and firewood which cannot be used as evidence against him. They insisted that the Department of Environment and Natural Resources (DENR) personnel together with some Philippine National Police personnel who stopped private respondent Rickson did not have a search warrant. They also opined that the "plain sight" or "open review" doctrine is inapplicable as the posts and firewood are not incriminatory, more so as firewood is available and sold in public markets without the requirement of any permit from the DENR.

Moreover, private respondents argued that the prosecution failed to prove their lack of license to possess timber. They contended that since private respondent Rico is merely the owner of the pumpboat and was not present when the posts and firewood were seized, he could never be held liable for illegal possession of timber as he was never in possession of the round posts. Relying on *People v. Macagaling*,[9] private respondents asserted that constructive possession of forest products is no longer the rule in successfully prosecuting offenses for violation of the Forestry Code.

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[8] *Supra* note 3, at 37-38.

[9] G.R. Nos. 109131-33, October 3, 1994, 237 SCRA 299.

On June 13, 2002, the CA rendered the assailed Decision, granting the appeal of private respondents and dismissing the case before it on the ground of lack of jurisdiction of the RTC. The decretal portion reads:

> WHEREFORE, upon the premises, the Decision appealed from is SET ASIDE. The instant criminal case is DISMISSED for lack of jurisdiction.
>
> SO ORDERED.[10]

In sustaining the appeal of private respondents, the CA did not rule on the assigned errors or on the merits of the case. It anchored its dismissal of the criminal case on the lack of jurisdiction of the RTC to hear and decide it.

Thus, People of the Philippines filed the instant petition, raising the sole assignment of error that:

> RESPONDENT COURT OF APPEALS ARBITRARILY AND WHIMSICALLY DISMISSED THE CRIMINAL CASE AGAINST PRIVATE RESPONDENTS ON THE GROUND THAT THE REGIONAL TRIAL COURT HAD NO JURISDICTION OVER THE CASE IN VIEW OF REPUBLIC ACT NO. 7691 WHICH BECAME EFFECTIVE ON APRIL 15, 1994.[11]

Petitioner People posits that the passage of RA 7691 did not *ipso facto* take jurisdiction away from the RTC to hear and decide the instant criminal case instituted prior to the passage of said law expanding the jurisdiction of the MTCs.

On the other hand, in their Comment and Memorandum, private respondents do not meet head on the sole issue raised by petitioner on jurisdiction but instead argue that the instant petition should have been outrightly dismissed on the grounds of noncompliance with the requirements for a special civil action of *certiorari* under Rule 65 and the requisites for a valid verification. Private respondents asseverate that the instant petition cannot be entertained as no motion for reconsideration has been

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[10] *Supra* note 2, at 31.

[11] *Rollo*, p. 76.

filed before the CA, which is a plain, speedy, and adequate remedy available to petitioner and an indispensable and jurisdictional requirement for the extraordinary remedy of *certiorari*, relying on *Labudahon v. NLRC*.[12] Moreover, they contend that an action for *certiorari* under Rule 65 is the wrong remedy as the dismissal by the CA on lack of jurisdiction did not constitute double jeopardy and, thus, an appeal through a Petition for Review on *Certiorari* under Rule 45 is the proper remedy. They maintain that the Office of the Solicitor General (OSG), while undoubtedly the counsel for the State and its agencies, cannot arrogate unto itself the authority to execute in its name the certificate of non-forum shopping for a client office, which in the instant case is the DENR.

The arguments of private respondents are unmeritorious.

On the issue of the propriety of the resort to a special civil action for *certiorari* under Rule 65 instead of a petition under Rule 45, we find that Rule 65 is the proper remedy. The CA ruled that the RTC was ousted of its jurisdiction as a result of the enactment of RA 7691. While the defense of lack of jurisdiction was never raised by private respondents before the RTC and the CA, the CA nevertheless proceeded to acquit private respondents based on the new law. It is quite glaring from Sec. 7 of RA 7691 that said law has limited retroactivity only to civil cases. As such, the CA indeed committed grave abuse of discretion as it acted in an arbitrary and patently erroneous exercise of judgment equivalent to lack of jurisdiction. Hence, the use of Rule 65 is proper.

On other procedural issues, we also find for petitioner. *First*, we reiterate our holding in *Santiago* and *City Warden of the Manila City Jail* that the signature by the Solicitor General on the verification and certification of non-forum shopping in a petition before the CA or with this Court is substantial compliance of the requirement under Sec. 4,[13] Rule 7 of the 1997 Rules of Civil Procedure, considering that the OSG is the legal representative of the Government of the Republic of the Philippines and its agencies and

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[12] G.R. No. 112206, December 11, 1995, 251 SCRA 129.

[13] SEC. 4. *Verification*. — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

instrumentalities, more so in a criminal case where the People or the State is the real party-in-interest and is the aggrieved party.

Second, while it is true that petitioner did not file a motion for reconsideration of the assailed CA Decision which normally is a ground for dismissal for being premature[14] and to accord respondent CA opportunity to correct itself,[15] yet the rule admits of exceptions, such as where, under the circumstances, a motion for reconsideration would be useless,[16] and where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government.[17]

In the instant case, these exceptions are present; thus, the propriety of the instant petition. The assailed CA Decision rendered on the ground of lack of jurisdiction clearly bespeaks that any motion for reconsideration is useless. For one, the issue of lack of jurisdiction was never raised by private respondents in their Brief for the Accused-Appellants,[18] but was considered *motu proprio* by the CA. For another, the issues and errors raised by private respondents were not considered and much less touched upon by the CA in its assailed Decision.

But of more importance, as this Court held in *Vivo v. Cloribel*,[19] a motion for reconsideration is not necessary before a petition for

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A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief," or lacks a proper verification shall be treated as an unsigned pleading.

[14] *Villa-Rey Transit v. Bello*, G.R. No. L-18957, April 23, 1963, 7 SCRA 735.

[15] *Gonpu Services Corporation v. NLRC*, G.R. No. 111897, January 27, 1997, 266 SCRA 657.

[16] *People v. Palacio*, 108 Phil. 220 (1960).

[17] *Vivo v. Cloribel*, G.R. No. L-23239, November 23, 1966, 18 SCRA 713; *National Electrification Administration v. Court of Appeals*, G.R. No. L-32490, December 29, 1983, 126 SCRA 394.

[18] *Rollo*, pp. 39-67, dated November 7, 1995.

[19] *Supra* note 17.

certiorari can be filed when the respondent court took almost eight years to the day to resolve private respondents' appeal. It is not only the accused who has a right to a speedy disposition of his case, but the prosecution or the State representing the People also has and must be accorded the same right. Thus, any further delay would prejudice the interest of the Government to prosecute and bring closure to a criminal case filed way back in early 1992.

On the main issue of whether the RTC retained jurisdiction over the criminal case, we agree with petitioner. The passage of RA 7691 did not *ipso facto* relieve the RTC of the jurisdiction to hear and decide the criminal case against private respondents.

This issue has been laid to rest in *People v. Velasco*, where this Court emphatically held:

> As to the issue of whether or not R.A. 7691 operated to divest the Regional Trial Court of jurisdiction over appellant's case, we rule in the negative. **It has been consistently held as a general rule that the jurisdiction of a court to try a criminal action is to be determined by the law in force at the time of the institution of the action. Where a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the cause is not affected by new legislation placing jurisdiction over such proceedings in another tribunal. The exception to the rule is where the statute expressly provides, or is construed to the effect that it is intended to operate as to actions pending before its enactment. Where a statute changing the jurisdiction of a court has no retroactive effect, it cannot be applied to a case that was pending prior to the enactment of a statute.**
>
> **A perusal of R.A. 7691 will show that its retroactive provisions apply only to civil cases that have not yet reached the pre-trial stage**. **Neither from an express proviso nor by implication can it be understood as having retroactive application to criminal cases pending or decided by the Regional Trial Courts prior to its effectivity.** Thus, the general rule enunciated above is the controlling doctrine in the case at bar. At the time the case against the appellant was commenced by the filing of the information on July 3, 1991, the Regional Trial Court had jurisdiction over the offense charged, inasmuch as Section 39 of R.A. 6425 (the Dangerous Drugs Act of 1972 prior to the amendments introduced by R.A. 7659 and R.A. 7691), provided that:

> Sec. 39. Jurisdiction. — The Court of First Instance, Circuit Criminal Court, and Juvenile and Domestic Relations Court shall have concurrent original jurisdiction over all cases involving offenses punishable under this Act: Provided, That in cities or provinces where there are Juvenile and Domestic Relations Courts, the said courts shall take exclusive cognizance of cases where the offenders are under sixteen years of age.
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> x x x x x x x x x

It must be stressed that the abovementioned provision vested concurrent jurisdiction upon the said courts regardless of the imposable penalty. In fine, the jurisdiction of the trial court (RTC) over the case of the appellant was conferred by the aforecited law then in force (R.A. 6425 before amendment) when the information was filed. **Jurisdiction attached upon the commencement of the action and could not be ousted by the passage of R.A. 7691 reapportioning the jurisdiction of inferior courts, the application of which to criminal cases is, to stress, prospective in nature**.[20] (Emphasis supplied.)

This Court categorically reiterated the above ruling in the 2003 case of *Yu Oh v. Court of Appeals*,[21] in the 2004 case of *Alonto v. People*,[22] and in the 2005 case of *Lee v. Court of Appeals*.[23]

Thus, where private respondents had been charged with illegal logging punishable under Articles 309[24] and 310[25] of the Revised

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[20] G.R. No. 110592, January 23, 1996, 252 SCRA 135, 147-148.

[21] G.R. No. 125297, June 6, 2003, 403 SCRA 300.

[22] G.R. No. 140078, December 9, 2004, 445 SCRA 624.

[23] G.R. No. 145498, January 17, 2005, 448 SCRA 455.

[24] ART. 309. *Penalties*.—Any person guilty of theft shall be punished by:

x x x x x x x x x

3. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

[25] ART. 310. *Qualified theft*.—The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding articles, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion

Penal Code with imprisonment ranging from four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to nine (9) years, four (4) months, and one (1) day of *prision mayor*, as maximum, the RTC clearly had jurisdiction at the inception of the criminal case. Since jurisdiction over the criminal case attached upon the filing of the information, then the RTC is empowered and mandated to try and decide said case notwithstanding a subsequent change in the jurisdiction over criminal cases of the same nature under a new statute. The rule is settled that jurisdiction continues until the court has done all that it can do to exercise that jurisdiction unless the law provides otherwise.[26]

While jurisdiction can be challenged at any stage of the proceedings, private respondents did not bother to raise the issue of jurisdiction in their appeal before the CA. In addition, private respondents did not lift a finger to reinforce the CA decision relying on lack of jurisdiction as ground for the dismissal of Criminal Case No. 551 in their submissions before this Court. Indeed, it appears that even respondents are not convinced of the correctness of the CA ruling on the issue of jurisdiction.

Lastly, the CA committed reversible error in making use of the values adduced during the hearing to determine jurisdiction. It is basic that the jurisdiction of a court is determined both by the law in force at the time of the commencement of the action and by the allegations in the Complaint or Information.

Thus, the RTC clearly had jurisdiction when it heard and decided Criminal Case No. 551. The CA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that the RTC was divested of jurisdiction by reason of the enactment of RA 7691.

However, considering that this Court is not a trier of facts, we remand the case to the CA to resolve the appeal in CA-G.R. CR No. 17275 on the merits.

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of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

[26] 20 Am Jur 2d 110.

WHEREFORE, the petition is *GRANTED*. The assailed June 13, 2002 CA Decision in CA-G.R. CR No. 17275 is hereby *REVERSED* and *SET ASIDE*. The CA is directed to resolve the appeal of private respondents on the merits and with dispatch.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 154992. February 13, 2008]

HARRY G. LIM, *petitioner, vs.* **ANIANO DESIERTO, in his capacity as Ombudsman, ANTONIO H. CERILLES, ROSELLER DELA PEÑA, and the COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; THE OMBUDSMAN'S EXERCISE OF DISCRETION IN PROSECUTING OR DISMISSING A COMPLAINT FILED BEFORE IT IS BEYOND THE AMBIT OF THE SUPREME COURT TO REVIEW.— An appeal under Rule 45 should be limited to questions of law only, not questions of facts. Resolving the issues presented by petitioner, however, would require a review of the factual findings of the Ombudsman. The main issue of whether probable cause exists that will warrant the filing of the appropriate complaint is a question of fact. We held in *Alba v. Nitorreda* that "it is beyond the ambit of this Honorable Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it." We further held in *Presidential Commission on*

Good Government v. Desierto: The Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance or, should he find it otherwise, to continue with the inquiry, or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance.

2. ID.; ID.; ID.; ID.; OMBUDSMAN'S DISCRETION IN DETERMINING THE EXISTENCE OF PROBABLE CAUSE IS NOT ABSOLUTE.— While the Ombudsman's discretion in determining the existence of probable cause is not absolute, nevertheless, petitioner must prove that such discretion was gravely abused to warrant the reversal of the Ombudsman's findings by this Court. In this respect, petitioner fails. We find no grave abuse of discretion on the part of the Ombudsman. Petitioner's complaint was duly reviewed and the Ombudsman, in his discretion, determined that it should be dismissed. There is no sufficient proof that the reviewing officers exercised their discretion whimsically, arbitrarily, or capriciously.

3. ID.; ID.; ID.; ID.; OMBUDSMAN'S DISMISSAL OF THE COMPLAINT, PROPER IN CASE AT BAR.— Also, we take judicial notice of the fact that petitioner earlier appealed the DENR Order to the OP. It is in the Ombudsman's discretion to determine whether the issues in the DENR case will affect the prosecution of the complaints, if any will be filed. We agree with the Solicitor General that the controversy in the DENR case, that is, whether the decision of Cerilles and dela Peña should be set aside, is closely linked to the issue of whether the act of reinstating Cantoja's FLA is tainted with irregularities. The affirmation of the October 17, 2000 Order of Cerilles by the OP strongly argues against the idea of irregularity in the issuance of the Order. Conversely, to sustain Corral's Resolution and proceed with the filing of charges against Cerilles and dela Peña would mean that the issuance of the October 17, 2000 Order was tainted with irregularities. Since the quantum of evidence required for the prosecution of the criminal complaint is more than that required for the

DENR case, the Ombudsman's dismissal of the complaint has basis.

4. ID.; ID.; ID.; THE OMBUDSMAN'S DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE, WILL NOT BE INTERFERED WITH ABSENT GRAVE ABUSE OF DISCRETION.— Lastly, petitioner's claim that the Memorandum of August 23, 2001 is incomplete and inadequate compared with Corral's Resolution is untenable. Her Resolution was passed upon by the proper reviewing officers. Petitioner cannot validly insist that Corral's findings should be upheld against the findings of Ombudsman, who, needless to stress, has the power of supervision and control over the investigating officers. We reiterate our pronouncement in *Roxas v. Vasquez*: x x x This Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse of discretion. This observed policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the court will be seriously hampered by innumerable proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant. Thus, finding no strong reason to disturb the factual findings of the Ombudsman, we find no error on the part of the CA in upholding the dismissal of the criminal complaints against Cerilles and dela Peña.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma & Carbonell and Edwin C. Cacayorin Jr., for petitioner.

The Solicitor General for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 which seeks to set aside the August 27, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69044 entitled *Harry G. Lim v. Aniano Desierto, in his capacity as Ombudsman, Antonio H. Cerilles and Roseller dela Peña*. The CA affirmed the August 23, 2001 Memorandum issued by Pelagio S. Apostol, OIC-Director, Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman, as approved by respondent then Ombudsman Aniano Desierto, and the October 30, 2001 Order denying petitioner Harry G. Lim's motion for reconsideration. In essence, the Memorandum and Order dismissed petitioner's complaints against respondents former Secretary Antonio H. Cerilles of the Department of Environment and Natural Resources (DENR) and Undersecretary Roseller dela Peña for violation of Republic Act No. (RA) 3029 and RA 6713 insofar as dela Peña is concerned.

The Facts

Petitioner's complaints against Cerilles and dela Peña can be traced back to the dispute over the foreshore area identified as Lot FLA-XI-5B-000002-D.

DENR Case No. 5231

On November 16, 1989, Roberto Cantoja filed an application for the lease of a foreshore area claiming that it adjoins his property. The DENR approved Cantoja's application and granted the corresponding Foreshore Lease Agreement known as FLA-XI-5B-000002-D.

On March 4, 1994, petitioner filed a protest to annul the FLA on the ground that Cantoja committed fraud and misrepresentation in claiming that the foreshore area adjoins

[1] *Rollo*, pp. 41-53. Penned by Associate Justice Eliezer R. de los Santos and concurred in by Associate Justices Cancio C. Garcia (a retired member of this Court) and Marina L. Buzon.

Cantoja's property. Petitioner alleged that he owns the land in Makar, General Santos City, identified as Lot 2-B (LRC) Psd-210799, covered by Transfer Certificate of Title (TCT) No. 8423, which adjoins the foreshore area subject of the lease agreement. The protest was docketed as DENR Case No. 5231.

On February 1, 1996, the Regional Executive Director of DENR Region XI, Davao City issued an Order dismissing petitioner's protest. Petitioner then moved to reconsider said order which motion was treated as an appeal by the DENR-Quezon City.

On May 2, 2000, the Office of the DENR Secretary gave due course to petitioner's motion and ordered the cancellation of Cantoja's contract on the ground of misrepresentation. Cantoja moved to reconsider this decision.

Pending resolution of the motion for reconsideration in DENR Case No. 5231, the Office of the Solicitor General (OSG) filed Civil Case No. 6438 entitled *Republic of the Philippines v. Harry Lim, et. al.* before the General Santos City Regional Trial Court, Branch 23. This case involved petitioner's property covered by TCT No. 8423 which allegedly adjoins the foreshore area in dispute. Petitioner's counsel offered a compromise to the OSG to the effect that petitioner would surrender and transfer to the Republic of the Philippines more than 1,000 sq.m. of lot covered by TCT No. 8423, the portion actually occupied by the Makar River, provided that the Republic acknowledge the remaining portion of petitioner's property as alienable and not foreshore area. In view of the technical nature of the proposals, the OSG endorsed petitioner's offer of compromise to respondent Cerilles who was then the DENR Secretary. On August 16, 2000, Cerilles, via DENR Special Order No. 2000-820, ordered the formation of a team to conduct an investigation and ocular inspection of the subject lot.

On October 20, 2000, the DENR favorably resolved Cantoja's motion for reconsideration through the October 17, 2000 Order. In that Order, Cerilles set aside the May 2, 2000 Order and gave full force to the FLA on the postulate that petitioner's title

to the lot is void since it covers foreshore area and is a part of the river bed. He further held that the issuance of the FLA to Cantoja could not be considered fraudulent because there was, when it was being processed, no objection made by petitioner. Cerilles noted that petitioner did not object when Cantoja introduced substantial improvements in the area, such as an office building, wharf, and other facilities. In fact, Lim protested the foreshore lease of Cantoja only in 1994 or four years after the lease was issued in 1990.

Petitioner moved to reconsider the October 17, 2000 Order of the DENR, contending that its finding that the land is a foreshore area and river bed has no basis in fact and in law; thus, he asked for a joint survey of the land. In his January 18, 2001 Order, Cerilles denied petitioner's motion on the ground that the order substantially met the minimum requirements of the law and contained a clear-cut recital of facts. He also ordered the Regional Executive Director, DENR-Region XI, Davao City, to coordinate with the Solicitor General towards the cancellation of petitioner's title to the property, TCT No. 8423.

OMB Case No. 0-01-0189

On March 1, 2001, petitioner filed a complaint-affidavit before the Office of the Ombudsman charging Cerilles and dela Peña with violation of RA 3029 and RA 6713 insofar as dela Peña is concerned. Petitioner alleged that Cerilles signed the October 17, 2000 Order even before the team he created to conduct an investigation and ocular inspection could submit its findings. Moreover, Cerilles allegedly issued a "midnight decision" as an outgoing cabinet official, releasing his January 18, 2001 Order only on February 9, 2001 when he was no longer the DENR secretary. Cerilles purportedly preempted the decision of the court in Civil Case No. 6438 for Rescission and Annulment of Title by reinstating the foreshore lease agreement with Cantoja. This allegedly violated Section 3(e) of RA 3019, the *Anti-Graft and Corrupt Practices Act*, which provides:

Sec. 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law,

the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

As regards dela Peña, petitioner alleged that dela Peña recommended the legal services of Atty. Rogelio Garcia to handle the DENR case and other civil cases pending between petitioner and Cantoja. Petitioner said that he accepted Garcia as counsel to please dela Peña.[2] Petitioner later discovered that Garcia was a law partner of dela Peña. This allegedly violated Sec. 4(b) and (d) of RA 6713, known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*, as follows:

Section 4. *Norms of Conduct of Public Officials and Employees*.— (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

x x x x x x x x x

b) Professionalism. — Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

x x x x x x x x x

(d) Political neutrality. — Public officials and employees shall provide service to everyone without unfair discrimination and regardless of party affiliation or preference.

Furthermore, petitioner alleged that during a hearing of Civil Case Nos. 5403 and 5351, Cantoja's counsel presented an

[2] *Id*. at 195.

undated advance copy of the October 17, 2000 Order purportedly signed by dela Peña. Petitioner's counsel, however, received his copy of the said order only in November 2000. According to petitioner, dela Peña's act of releasing a copy of the order in advance allegedly manifests partiality, in violation of the aforequoted Sec. 3(e) of RA 3019, and its Sec. 3(k), which states:

> Sec. 3. Corrupt practices of public officers.—x x x
>
> (k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

In his defense, Cerilles denied issuing a "midnight decision," alleging that all the normal and regular processes were observed in the issuance of the January 18, 2001 Order. It was, so he claimed, released on February 9, 2001 after it was reviewed by the then OIC-Secretary Jomarie Gerochi who gave the authority for its release. As regards the October 17, 2000 Order, Cerilles stated that the only remedy available to petitioner is appeal, which petitioner availed himself of before the Office of the President (OP). Dela Peña, on the other hand, denied having recommended the services of Garcia to petitioner. Garcia did not appear as petitioner's counsel before dela Peña. As for the alleged advance copy of the October 17, 2000 Order, dela Peña claimed that petitioner's delayed receipt of a copy of the order is attributable to the post office. Dela Peña denied giving a copy of the order in advance to Cantoja's lawyer. Lastly, dela Peña averred that the DENR sustained Cantoja's FLA following a verification on the foreshore nature of petitioner's land.[3]

In the June 2, 2001 Resolution,[4] Graft Investigation Officer I Myrna A. Corral recommended the filing of charges against Cerilles and dela Peña for violation of Sec. 3(e) of RA 3019. She recommended that dela Peña be further charged with violation of Sec. 3(k) of RA 3019 and Sec. 4(b) of RA 6713.

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[3] *Id*. at 59-60.

[4] *Id*. at 54-67.

Upon review, Apostol, the OIC/Director of the Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman, recommended that Corral's resolution be disapproved, thus

> I disagree with the findings of GIO on the ground of prematurity. The recognition of the Lease Agreement is a mere reversion to a previous status which does not affect the proceedings in court. Moreover, the issue of nullity of title can be determined only with finality in a cancellation proceeding to be filed by the OSG.[5]

Robert E. Kallos, the Deputy Special Prosecutor and OIC of the Office of the Ombudsman-Preliminary Investigation, Administrative Adjudication and Monitoring Office, who also reviewed the June 2, 2001 Resolution, agreed with Apostol's recommendation. Accordingly, Apostol issued the August 23, 2001 Memorandum,[6] recommending the dismissal of Corral's resolution for lack of probable cause, reasoning as follows:

> This case is bound to fail. The perceived undue injury suffered by the complainant is not apparent. The reversion and cancellation of title is still to be initiated by the State thru the Solicitor General in an appropriate [proceeding]. Moreover, the questioned decision which principally includes the reinstatement of the Foreshore Lease Contract in favor of Roberto Cantoja despite false certification is not yet final as it was finally appealed by the complainant in an appeal to the Office of the President dated February 2, 2001. Furthermore, contrary to the allegation of the complainant, it is inconceivable that no inspection was ever made on the property. In fact, no other than the complainant himself alleged that a Civil Case was already filed by the Republic against him, together with Jacinto Acharon and Ernesto Go for annulment of title and recission.
>
> Likewise, the charge against respondent Roseller dela Peña for recommending Atty. Rogelio dela Peña, his law partner, is purely an administrative matter which can be properly dealt with in the administrative case.[7]

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[5] *Id*. at 67.

[6] *Id*. at 69-71.

[7] *Id*. at 70-71.

Ombudsman Aniano Desierto approved the Memorandum on August 31, 2001. Petitioner's motion for reconsideration was denied by Emily G. Reyes, Graft Investigation Officer II, in the October 30, 2001 Order.[8] The denial of the motion was affirmed by Apostol, Kallos, and Desierto. The October 30, 2001 Order stated:

> As aptly and validly discussed in the assailed Resolution/ Memorandum of this Office, we maintain and reiterate our posture that respondents did not violate RA Nos. 3019 and 6713 in view of the absence of the constitutive elements of said crimes. Be that as it may, after review, this Office found that after the denial by the Office of the DENR Secretary of the complainant/movant's Motion for Reconsideration of the order of respondent Cerilles dated October 17, 2001, complainant filed his Appeal (DENR Case o. (sic) 5231) to the Office of the President.
>
> Under the circumstances, that was the logical action and proper remedy which complainant already resorted to.
>
> We likewise believe that the *denuncia* against respondent dela Peña is administrative in nature and therefore the issued (sic) raised against him can be properly threshed out in an administrative proceeding rather than a criminal one.
>
> WHEREFORE, premises considered, there being no ground warranting a reconsideration of the Resolution/Memorandum dated August 23, 2001, let the subject Motion be, as it is hereby, *DENIED*.

The Ruling of the Court of Appeals

Pending resolution of petitioner's appeal of the October 17, 2000 Order of the DENR to the OP, petitioner went to the CA via a petition for *certiorari* under Rule 65. Petitioner alleged that Desierto committed grave abuse of discretion in disapproving Corral's Resolution which, as earlier indicated, recommended the filing of criminal charges against Cerilles and dela Peña. Petitioner also impleaded Cerilles and dela Peña before the CA.

The CA denied the petition. The dispositive portion of its August 27, 2002 Decision reads:

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

WE find no proof to show that the reviewing officers exercised their discretion in a capricious, whimsical, arbitrary or despotic manner in dismissing the Resolution of GIO Corral to file criminal charges against Antonio Cerilles and Roseller de la Peña. Petitioner failed to substantiate his allegation that the assailed Memorandum and Order were issued with grave abuse of discretion.

Petition DENIED.

SO ORDERED.[9]

Without filing a motion for reconsideration of the CA Decision, petitioner came to this Court via Rule 45.

The Issues

Petitioner submitted the following issues for our consideration:

I.

WHETHER THE OMBUDSMAN, AS AFFIRMED BY THE COURT OF APPEALS, COMMITTED A SERIOUS REVERSIBLE ERROR IN DISMISSING THE COMPLAINT BASED ON WANT OF PROBABLE CAUSE

II.

WHETHER THE OMBUDSMAN, AS AFFIRMED BY THE COURT OF APPEALS, COMMITTED A SERIOUS REVERSIBLE ERROR IN RULING THAT THE PENDENCY OF THE DENR CASE NO. 5231, NOW ON APPEAL BEFORE THE OFFICE OF THE PRESIDENT, PRECLUDES THE FILING OF CRIMINAL CHARGES AGAINST PRIVATE RESPONDENTS CERILLES AND DELA PEÑA FOR VIOLATIONS OF SECTION 3 OF [RA 3019]

III.

WHETHER THE OMBUDSMAN MAY BE COMPELLED TO FILE CRIMINAL CHARGES AGAINST RESPONDENTS CERILLES AND DELA PEÑA FOR VIOLATIONS OF [RA 3019] AND [RA 6713][10]

Petitioner argues that the Ombudsman committed serious reversible error in dismissing his complaint for lack of probable

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[9] *Supra* note 1, at 52.

[10] *Rollo*, p. 27.

cause. In relation to Sec. 3(e) of RA 3019, petitioner claims that he was deprived of his right to property when Cerilles illegally usurped judicial functions by issuing the October 17, 2000 Order and nullifying petitioner's title to his property. Petitioner charges Cerilles with manifest partiality and bad faith for awarding the title to Cantoja.

Petitioner asserts that there is also probable cause to file charges against dela Peña for the evident partiality in releasing a copy of the October 17, 2000 Order in advance to the opposing party, and for favoring Cantoja despite lack of sufficient basis to reinstate the FLA. Petitioner claims that the Ombudsman did not cite any factual or legal basis in finding dela Peña's act of recommending the services of his law partner as an administrative matter.

Lastly, petitioner asserts that the Ombudsman committed serious reversible error in ruling that the appeal of DENR Case No. 5231 to the OP precludes the filing of criminal charges against Cerilles and dela Peña. Petitioner asks this Court to apply the ruling in *Jose Lopez, Jr. v. Office of the Ombudsman*[11] to compel the Ombudsman to file charges against Cerilles and dela Peña by upholding the June 2, 2001 Resolution of Corral.

On behalf of public respondent Desierto, the Solicitor General argued that petitioner raises questions of fact which cannot be reviewed in appeals brought under Rule 45. Also, he claims that petitioner's criminal complaint will have no basis until after the questioned DENR Order becomes final.

Private respondents Cerilles and dela Peña, on the other hand, assert that petitioner at bottom insists on the relitigation of facts which were already passed upon and decided by the Ombudsman and the CA. They claim that Corral's Resolution ignored their defenses. They point out that there was an ocular inspection and verification survey of the property. They note that based on the ocular inspection, the DENR Regional Executive Director found that the property was composed of a river bed and foreshore land. This finding was the basis for the questioned

[11] G.R. No. 140529, September 6, 2001, 364 SCRA 569.

October 17, 2000 Order. They maintain that the property claimed by petitioner is non-registrable, being part of the public dominion. Moreover, they say that before the FLA was awarded to Cantoja, the requirements of the law, such as public bidding, were complied with; however, petitioner neither filed an opposition during the bidding nor sought an injunction to stop its conduct. They denied having committed acts in violation of the Anti-Graft Law.[12]

The Court's Ruling

The petition has no merit.

An appeal under Rule 45 should be limited to questions of law only, not questions of facts. Resolving the issues presented by petitioner, however, would require a review of the factual findings of the Ombudsman. The main issue of whether probable cause exists that will warrant the filing of the appropriate complaint is a question of fact. We held in *Alba v. Nitorreda* that "it is beyond the ambit of this Honorable Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it."[13] We further held in *Presidential Commission on Good Government v. Desierto*:

> The Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance or, should he find it otherwise, to continue with the inquiry, or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance.[14]

While the Ombudsman's discretion in determining the existence of probable cause is not absolute, nevertheless, petitioner must prove that such discretion was gravely abused to warrant the reversal of the Ombudsman's findings by this Court. In this respect, petitioner fails. We find no grave abuse of discretion on the part of the Ombudsman. Petitioner's complaint was duly

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[12] *Rollo*, pp. 89-109.

[13] G.R. No. 120223, March 13, 1996, 254 SCRA 753, 765.

[14] G.R. No. 140358, December 8, 2000, 347 SCRA 561, 567-568.

reviewed and the Ombudsman, in his discretion, determined that it should be dismissed. There is no sufficient proof that the reviewing officers exercised their discretion whimsically, arbitrarily, or capriciously.

Also, we take judicial notice of the fact that petitioner earlier appealed the DENR Order to the OP. It is in the Ombudsman's discretion to determine whether the issues in the DENR case will affect the prosecution of the complaints, if any will be filed. We agree with the Solicitor General that the controversy in the DENR case, that is, whether the decision of Cerilles and dela Peña should be set aside, is closely linked to the issue of whether the act of reinstating Cantoja's FLA is tainted with irregularities. The affirmation of the October 17, 2000 Order of Cerilles by the OP strongly argues against the idea of irregularity in the issuance of the Order. Conversely, to sustain Corral's Resolution and proceed with the filing of charges against Cerilles and dela Peña would mean that the issuance of the October 17, 2000 Order was tainted with irregularities. Since the quantum of evidence required for the prosecution of the criminal complaint is more than that required for the DENR case, the Ombudsman's dismissal of the complaint has basis.

Lastly, petitioner's claim that the Memorandum of August 23, 2001 is incomplete and inadequate compared with Corral's Resolution is untenable. Her Resolution was passed upon by the proper reviewing officers. Petitioner cannot validly insist that Corral's findings should be upheld against the findings of Ombudsman, who, needless to stress, has the power of supervision and control over the investigating officers.[15]

We reiterate our pronouncement in *Roxas v. Vasquez*:

> x x x This Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse of discretion. This observed policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Office

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[15] *Vda. de Jacob v. Puno*, G.R. Nos. 61554-55, July 31, 1984, 131 SCRA 144, 149.

of the Ombudsman but upon practicality as well. Otherwise, the functions of the court will be seriously hampered by innumerable proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[16]

Thus, finding no strong reason to disturb the factual findings of the Ombudsman, we find no error on the part of the CA in upholding the dismissal of the criminal complaints against Cerilles and dela Peña.

WHEREFORE, we *AFFIRM **IN TOTO*** the August 27, 2002 CA Decision in CA-G.R. SP No. 69044. Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 155408. February 13, 2008]

JULIO A. VIVARES and MILA G. IGNALING, *petitioners, vs.* **ENGR. JOSE J. REYES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE PARTY WHO ALLEGES FRAUD HAS THE BURDEN TO PROVE IT.— Petitioners miserably failed to adduce clear,

[16] G.R. No. 114944, June 19, 2001, 358 SCRA 636, 646.

convincing, and hard evidence to show the alleged fraud in the transfers and the antedating of said transfers. The fact that the transfers were dated prior to the demise of Torcuato on May 12, 1992 does not necessarily mean the transfers were attended by fraud. He who alleges fraud has the burden to prove it. Moreover, respondent has adduced documentary proof that Torcuato himself similarly conveyed several lots in the estate of Severino based on the oral partition between the siblings. To lend credence to the transfers executed by Torcuato but distrust to those made by respondent would be highly inequitable as correctly opined by the court *a quo*.

2. ID.; SPECIAL PROCEEDINGS; RECEIVERSHIP; WHEN MAY BE GRANTED; CASE AT BAR.— Indeed, receivership is a harsh remedy to be granted only in extreme situations. As early as 1914, the Court already enunciated the doctrinal pronouncement in *Velasco & Co. v. Gochuico & Co.* that courts must use utmost circumspection in allowing receivership, thus: The power to appoint a receiver is a delicate one and should be exercised with extreme caution and only under circumstances requiring summary relief or where the court is satisfied that there is imminent danger of loss, lest the injury thereby caused be far greater than the injury sought to be averted. The court should consider the consequences to all of the parties and the power should not be exercised when it is likely to produce irreparable injustice or injury to private rights or the facts demonstrate that the appointment will injure the interests of others whose rights are entitled to as much consideration from the court as those of the complainant. Petitioners cannot now impugn the oral partition entered into by Torcuato and respondent and hence cannot also assail the transfers made by respondent of the lots which were subject of said agreement, considering that Torcuato also sold properties based on said verbal arrangement. Indeed, the parties agreed that the civil action does not encompass the properties covered by the oral partition. In this factual setting, petitioners cannot convince the Court that the alleged fraudulent transfers of the lots made by respondent, which purportedly form part of his share in Severino's estate based on the partition, can provide a strong basis to grant the receivership.

3. ID.; ID.; ID.; RECALL OF THE RECEIVER UPON OFFER TO POST A COUNTER BOND, NOT MANDATORY OR MINISTERIAL ON THE PART OF THE TRIAL COURT.— Petitioners advance the issue that the receivership should not be recalled simply because the adverse party offers to post a counterbond. At the outset, we find that this issue was not raised before the CA and therefore proscribed by the doctrine that an issue raised for the first time on appeal and not timely raised in the proceedings in the lower court is barred by estoppel. Even if we entertain the issue, the contention is nevertheless devoid of merit. The assailed CA decision supported the discharge of the receiver with several reasons including the posting of the counterbond. While the CA made a statement that the trial court should have discharged the appointed receiver on the basis of the proposed counterbond, such opinion does not jibe with the import of Sec. 3, Rule 59. The rule states that the "application may be denied or the receiver discharged." In statutory construction, the word "may" has always been construed as permissive. If the intent is to make it mandatory or ministerial for the trial court to order the recall of the receiver upon the offer to post a counterbond, then the court should have used the word "shall." Thus, the trial court has to consider the posting of the counterbond in addition to other reasons presented by the offeror why the receivership has to be set aside.

4. ID.; ID.; ID.; ANNOTATION ON THE TITLES OF THE PROPERTIES OF THE NOTICE OF *LIS PENDENS*, THE POSTING OF COUNTERBOND, AND THE ABSENCE OF SUFFICIENT CAUSE PRECLUDE THE APPOINTMENT OF A RECEIVER.— Since a notice of *lis pendens* has been annotated on the titles of the disputed properties, the rights of petitioners are amply safeguarded and preserved since "there can be no risk of losing the property or any part of it as a result of any conveyance of the land or any encumbrance that may be made thereon posterior to the filing of the notice of *lis pendens*." Once the annotation is made, any subsequent conveyance of the lot by the respondent would be subject to the outcome of the litigation since the fact that the properties are under *custodia legis* is made known to all and sundry by operation of law. Hence, there is no need for a receiver to look after the disputed properties. On the issue of *lis pendens*,

petitioners argue that the mere fact that a notice of *lis pendens* was annotated on the titles of the disputed properties does not preclude the appointment of a receiver. It is true that the notice alone will not preclude the transfer of the property *pendente lite*, for the title to be issued to the transferee will merely carry the annotation that the lot is under litigation. Hence, the notice of *lis pendens*, by itself, may not be the "most convenient and feasible means of preserving or administering the property in litigation." However, the situation is different in the case at bar. A counterbond will also be posted by the respondent to answer for all damages petitioners may suffer by reason of any transfer of the disputed properties in the future. As a matter of fact, petitioners can also ask for the issuance of an injunctive writ to foreclose any transfer, mortgage, or encumbrance on the disputed properties. These considerations, plus the finding that the appointment of the receiver was without sufficient cause, have demonstrated the vulnerability of petitioners' postulation.

5. ID.; ID.; ID.; APPOINTMENT OF A RECEIVER NOT PROPER WHERE THE RIGHT OF THE PARTIES, ONE OF WHOM IS IN POSSESSION OF THE PROPERTY, ARE STILL TO BE DETERMINED BY THE TRIAL COURT.— It is undisputed that respondent has actual possession over some of the disputed properties which are entitled to protection. Between the possessor of a subject property and the party asserting contrary rights to the properties, the former is accorded better rights. In litigation, except for exceptional and extreme cases, the possessor ought not to be deprived of possession over subject property. Article 539 of the New Civil Code provides that "every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court." In *Descallar v. Court of Appeals*, we ruled that the appointment of a receiver is not proper where the rights of the parties, one of whom is in possession of the property, are still to be determined by the trial court. In view of the foregoing reasons, we uphold the CA ruling that the grant of the receivership was without sufficient justification nor strong basis.

APPEARANCES OF COUNSEL

Mutia Trinidad & Romero Law Offices for petitioners.
Law Firm of Hermosisima & Inso for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

The kernel dispute in this petition under Rule 45 is the legality of the May 22, 2001 Resolution[1] of the Camiguin Regional Trial Court (RTC), Branch 28 in Civil Case No. 517, which placed the estate of Severino Reyes under receivership. The Court of Appeals (CA) saw it differently in CA-G.R. SP No. 67492—its June 18, 2002 Decision[2] recalled the RTC directive on the appointment of the receiver, prompting Julio Vivares and Mila Ignaling to file the petition at bar to convince the Court to reinstate the receivership.

The Facts

Severino Reyes was the father of respondent Jose Reyes and Torcuato Reyes. Upon the death of Severino, respondent and Torcuato came upon their inheritance consisting of several properties. They had an oral partition of the properties and separately appropriated to themselves said properties.

On May 12, 1992, Torcuato died with a last will and testament executed on January 3, 1992. In *Reyes v. Court of Appeals*,[3] we affirmed the November 29, 1995 CA Decision, admitting the will for probate.

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[1] *Rollo*, pp. 94-95. Penned by Presiding Judge Noli T. Catli.

[2] *Id*. at 19-29. Penned by Associate Justice Wenceslao I. Agniri, Jr. and concurred in by Associate Justices B.A. Adefuin-De la Cruz (Chairperson) and Regalado E. Maambong.

[3] G.R. No. 124099, October 30, 1997, 281 SCRA 277.

Petitioner Vivares was the designated executor of Torcuato's last will and testament, while petitioner Ignaling was declared a lawful heir of Torcuato.

Believing that Torcuato did not receive his full share in the estate of Severino, petitioners instituted an action for *Partition and Recovery of Real Estate* before the Camiguin RTC, Branch 28 entitled *Julio A. Vivares, as executor of the estate of Torcuato J. Reyes and Mila R. Ignaling, as heir v. Engr. Jose J. Reyes* and docketed as Civil Case No. 517. With the approval of the trial court, the parties agreed that properties from the estate of Severino, which were already transferred in the names of respondent and Torcuato prior to the latter's death on May 12, 1992, shall be excluded from litigation. In short, what was being contested were the properties that were still in the name of Severino.

On November 24, 1997, for the purpose of collating the common properties that were disputed, the trial court directed the formation of a three-man commission with due representation from both parties, and the third member, appointed by the trial court, shall act as chairperson. The disputed properties were then annotated with notices of *lis pendens* upon the instance of petitioners.

On March 15, 2000, petitioners filed a Motion to Place Properties in Litigation under Receivership[4] before the trial court alleging that to their prejudice respondent had, without prior court approval and without petitioners' knowledge, sold to third parties and transferred in his own name several common properties. Petitioners also averred that respondent fraudulently antedated, prior to May 12, 1992, some conveyances and transfers to make it appear that these were no longer part of the estate of Severino under litigation. They further claimed that respondent was and is in possession of the common properties in the estate of Severino, and exclusively enjoying the fruits and income of said properties and without rendering an accounting on them and turning over the share pertaining to Torcuato. Thus, petitioners prayed to place the entire disputed estate of Severino

[4] *Rollo*, pp. 32-39.

under receivership. They nominated a certain Lope Salantin to be appointed as receiver.

On March 23, 2000, respondent filed his Opposition to Place the Estate of Severino Reyes under Receivership,[5] denying that he had fraudulently transferred any property of the estate of Severino and asserting that any transfer in his name of said properties was a result of the oral partition between him and Torcuato that enabled the latter as well to transfer several common properties in his own name.

On May 24, 2000, petitioners filed their Offer of Exhibits in support of their motion for receivership. On the same date, the trial court issued an Order[6] granting petitioners' motion and appointed Salantin as receiver conditioned on the filing of a PhP 50,000 bond. Respondent filed a motion for reconsideration, contending that the appointment of a receiver was unduly precipitate considering that he was not represented by counsel and thus was deprived of due process.

On August 4, 2000, the trial court allowed respondent to present his evidence to contest petitioners' grounds for the appointment of a receiver, and the trial court set the reception of respondent's evidence for September 4, 2000. However, on August 24, 2000, respondent filed a motion for postponement of the September 4, 2000 scheduled hearing on the ground that he was in the United States as early as July 23, 2000 for medical examination. On September 5, 2000, the trial court denied respondent's motion for postponement and reinstated its May 24, 2000 Order.

On September 19, 2000, respondent filed a Manifestation with Motion to Discharge Receiver, reiterating the circumstances which prevented him from attending the September 4, 2000 hearing and praying for the discharge of the receiver upon the filing of a counterbond in an amount to be fixed by the court in accordance with Section 3, Rule 59 of the 1997 Revised Rules

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[5] *Id*. at 40-41.

[6] *Id*. at 67-68. Penned by Judge-Designate Antonio A. Orcullo.

on Civil Procedure. On October 10, 2000, petitioners filed their undated Opposition to Motion to Discharge Receiver.

Subsequently, respondent filed a Motion to Cancel Notice of *Lis Pendens* which was annotated on Tax Declaration (TD) No. 112 covering Lot No. 33 allegedly belonging exclusively to him. Respondent asserted in the motion that an adjacent property to Lot No. 33, particularly a portion of Lot No. 35, which is owned by a certain Elena Unchuan, was erroneously included in Lot No. 33 and, consequently, was subjected to the notice of *lis pendens*. Petitioners filed their Opposition to the Motion to Cancel *Lis Pendens.*

Consequently, on May 22, 2001, the trial court issued a Resolution, denying respondent's motions to discharge receiver and cancel the notice of *lis pendens* in TD No. 112. Respondent seasonably filed a partial motion for reconsideration of the May 22, 2001 Resolution, attaching copies of deeds of sale executed by Torcuato covering several common properties of the estate of Severino to prove that he and Torcuato had indeed made an oral partition of the estate of their father, Severino, and thus allowing him and Torcuato to convey their respective shares in the estate of Severino to third persons.

On October 19, 2001, the trial court heard respondent's motion for partial reconsideration, and on the same date issued an Order denying the motion for partial reconsideration on the ground that respondent failed to raise new matters in the motion but merely reiterated the arguments raised in previous pleadings.

Aggrieved, respondent filed a Petition for *Certiorari* before the CA, assailing the May 22, 2001 Resolution and October 19, 2001 Order of the RTC.

The Ruling of the Court of Appeals

On June 18, 2002, the CA rendered the assailed Decision, sustaining respondent's position and granted relief, thus:

WHEREFORE, premises considered, the Petition is hereby **GRANTED**. The Resolution dated 22 May 2001 of the Regional Trial Court of Camiguin, Branch 28 in Civil Case No. 517 is hereby

reversed and set aside. The court-appointed receiver, Lope Salantin, is discharged upon the posting by petitioner of a counterbond in the amount of ₱100,000.00. The notice of *lis pendens* in Tax Declaration 112, in so far as it covers the property of Elena Unchuan, is cancelled. Let this case be remanded to the court *a quo* for further proceedings.[7]

In reversing the trial court, the CA reasoned that the court *a quo* failed to observe the well-settled rule that allows the grant of the harsh judicial remedy of receivership only in extreme cases when there is an imperative necessity for it. The CA thus held that it is proper that the appointed receiver be discharged on the filing of a counterbond pursuant to Sec. 3, Rule 59 of the 1997 Revised Rules on Civil Procedure.

Moreover, the CA ratiocinated that respondent has adequately demonstrated that the appointment of the receiver has no sufficient basis, and further held that the rights of petitioners over the properties in litigation are doubly protected through the notices of *lis pendens* annotated on the titles of the subject properties. In fine, the appellate court pointed out that the appointment of a receiver is a delicate one, requiring the exercise of discretion, and not an absolute right of a party but subject to the attendant facts of each case. The CA found that the trial court abused its discretion in appointing the receiver and in denying the cancellation of the notice of *lis pendens* on TD No. 112, insofar as it pertains to the portion owned by Unchuan.

Aggrieved, petitioners in turn interposed a Motion for Reconsideration that was denied through the assailed September 24, 2002 CA Resolution.

Thus, this petition for review on *certiorari* is before us, presenting the following issues for consideration:

I

WHETHER OR NOT THE ANNOTATION OF A NOTICE OF *LIS PENDENS* PRECLUDES THE APPOINTMENT OF A RECEIVER WHEN THERE IS A NEED TO SAFEGUARD THE PROPERTIES IN LITIGATION.

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[7] *Supra* note 2, at 28.

II

WHETHER OR NOT A DULY APPOINTED RECEIVER OF PROPERTIES IN LITIGATION SHOULD BE DISCHARGED SIMPLY BECAUSE THE ADVERSE PARTY OFFERS TO POST A COUNTERBOND.

III

WHETHER OR NOT THE CANCELLATION OF A NOTICE OF *LIS PENDENS* ANNOTATED ON TAX DECLARATION NO. 112 IS CONTRARY TO LAW.[8]

The Court's Ruling

The petition must be denied. Being closely related, we discuss the first and second issues together.

Receivership not justified

We sustain the CA ruling that the trial court acted arbitrarily in granting the petition for appointment of a receiver as "there was no sufficient cause or reason to justify placing the disputed properties under receivership."

First, petitioners asseverate that respondent alienated several common properties of Severino without court approval and without their knowledge and consent. The fraudulent transfers, they claim, were antedated prior to May 12, 1992, the date of Torcuato's death, to make it appear that these properties no longer form part of the assets of the estate under litigation in Civil Case No. 517.

Petitioners' position is bereft of any factual mooring.

Petitioners miserably failed to adduce clear, convincing, and hard evidence to show the alleged fraud in the transfers and the antedating of said transfers. The fact that the transfers were dated prior to the demise of Torcuato on May 12, 1992 does not necessarily mean the transfers were attended by fraud. He who alleges fraud has the burden to prove it.

Moreover, respondent has adduced documentary proof that Torcuato himself similarly conveyed several lots in the estate of

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[8] *Rollo,* pp. 212-213.

Severino based on the oral partition between the siblings. To lend credence to the transfers executed by Torcuato but distrust to those made by respondent would be highly inequitable as correctly opined by the court *a quo*.

Indeed, receivership is a harsh remedy to be granted only in extreme situations. As early as 1914, the Court already enunciated the doctrinal pronouncement in *Velasco & Co. v. Gochuico & Co.* that courts must use utmost circumspection in allowing receivership, thus:

> The power to appoint a receiver is a delicate one and should be exercised with extreme caution and only under circumstances requiring summary relief or where the court is satisfied that there is imminent danger of loss, lest the injury thereby caused be far greater than the injury sought to be averted. The court should consider the consequences to all of the parties and the power should not be exercised when it is likely to produce irreparable injustice or injury to private rights or the facts demonstrate that the appointment will injure the interests of others whose rights are entitled to as much consideration from the court as those of the complainant.[9]

Petitioners cannot now impugn the oral partition entered into by Torcuato and respondent and hence cannot also assail the transfers made by respondent of the lots which were subject of said agreement, considering that Torcuato also sold properties based on said verbal arrangement. Indeed, the parties agreed that the civil action does not encompass the properties covered by the oral partition. In this factual setting, petitioners cannot convince the Court that the alleged fraudulent transfers of the lots made by respondent, which purportedly form part of his share in Severino's estate based on the partition, can provide a strong basis to grant the receivership.

Second, petitioner is willing to post a counterbond in the amount to be fixed by the court based on Sec. 3, Rule 59 of the 1997 Rules of Civil Procedure, which reads:

> Sec. 3. *Denial of application or discharge of receiver*.—The application may be denied, or the receiver discharged, when the

[9] 28 Phil. 39, 41 (1914).

adverse party files a bond executed to the applicant, in an amount to be fixed by the court, to the effect that such party will pay the applicant all damages he may suffer by reason of the acts, omissions, or other matter specified in the application as ground for such appointment. The receiver may also be discharged if it is shown that his appointment was obtained without sufficient cause.

Anchored on this rule, the trial court should have dispensed with the services of the receiver, more so considering that the alleged fraud put forward to justify the receivership was not at all established.

Petitioners advance the issue that the receivership should not be recalled simply because the adverse party offers to post a counterbond. At the outset, we find that this issue was not raised before the CA and therefore proscribed by the doctrine that an issue raised for the first time on appeal and not timely raised in the proceedings in the lower court is barred by estoppel.[10] Even if we entertain the issue, the contention is nevertheless devoid of merit. The assailed CA decision supported the discharge of the receiver with several reasons including the posting of the counterbond. While the CA made a statement that the trial court should have discharged the appointed receiver on the basis of the proposed counterbond, such opinion does not jibe with the import of Sec. 3, Rule 59. The rule states that the "application may be denied or the receiver discharged." In statutory construction, the word "may" has always been construed as permissive. If the intent is to make it mandatory or ministerial for the trial court to order the recall of the receiver upon the offer to post a counterbond, then the court should have used the word "shall." Thus, the trial court has to consider the posting of the counterbond in addition to other reasons presented by the offeror why the receivership has to be set aside.

Third, since a notice of *lis pendens* has been annotated on the titles of the disputed properties, the rights of petitioners are amply safeguarded and preserved since "there can be no risk of losing the property or any part of it as a result of any conveyance

[10] *Philippine Banking Corporation v. Court of Appeals*, G.R. No. 127469, January 15, 2004, 419 SCRA 487, 503-504.

of the land or any encumbrance that may be made thereon posterior to the filing of the notice of *lis pendens*."[11] Once the annotation is made, any subsequent conveyance of the lot by the respondent would be subject to the outcome of the litigation since the fact that the properties are under *custodia legis* is made known to all and sundry by operation of law. Hence, there is no need for a receiver to look after the disputed properties.

On the issue of *lis pendens*, petitioners argue that the mere fact that a notice of *lis pendens* was annotated on the titles of the disputed properties does not preclude the appointment of a receiver. It is true that the notice alone will not preclude the transfer of the property *pendente lite*, for the title to be issued to the transferee will merely carry the annotation that the lot is under litigation. Hence, the notice of *lis pendens*, by itself, may not be the "most convenient and feasible means of preserving or administering the property in litigation." However, the situation is different in the case at bar. A counterbond will also be posted by the respondent to answer for all damages petitioners may suffer by reason of any transfer of the disputed properties in the future. As a matter of fact, petitioners can also ask for the issuance of an injunctive writ to foreclose any transfer, mortgage, or encumbrance on the disputed properties. These considerations, plus the finding that the appointment of the receiver was without sufficient cause, have demonstrated the vulnerability of petitioners' postulation.

Fourth, it is undisputed that respondent has actual possession over some of the disputed properties which are entitled to protection. Between the possessor of a subject property and the party asserting contrary rights to the properties, the former is accorded better rights. In litigation, except for exceptional and extreme cases, the possessor ought not to be deprived of possession over subject property. Article 539 of the New Civil Code provides that "every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court." In *Descallar v. Court of Appeals*, we ruled that the appointment of a receiver

[11] *Medelo v. Gorospe*, G.R. No. L-41970, March 25, 1988, 159 SCRA 248, 254.

is not proper where the rights of the parties, one of whom is in possession of the property, are still to be determined by the trial court.[12]

In view of the foregoing reasons, we uphold the CA ruling that the grant of the receivership was without sufficient justification nor strong basis.

Anent the third issue that the cancellation of the notice of *lis pendens* on TD No. 112 is irregular as Lot No. 33 is one of the disputed properties in the partition case, petitioners' position is correct.

The CA made a factual finding that the property of Unchuan was erroneously included in Lot No. 33, one of the disputed properties in Civil Case No. 517. It then ruled that the annotation of *lis pendens* should be lifted.

This ruling is bereft of factual basis.

The determination whether the property of Unchuan is a part of Lot No. 33 and whether that portion really belongs to Unchuan are matters to be determined by the trial court. Consequently, the notice of *lis pendens* on TD No. 112 stays until the final ruling on said issues is made.

WHEREFORE, the petition is *PARTLY GRANTED*. The June 18, 2002 CA Decision in CA-G.R. SP No. 67492 is *AFFIRMED* with *MODIFICATION* insofar as it ordered the cancellation of the notice of *lis pendens* in TD No. 112. As thus modified, the appealed CA Decision should read as follows:

WHEREFORE, premises considered, the Petition is hereby **PARTLY GRANTED**. The Resolution dated 22 May 2001 of the Regional Trial Court of Camiguin, Branch 28 in Civil Case No. 517 is hereby reversed and set aside. The court-appointed receiver, Lope Salantin, is discharged upon the posting by petitioner of a counterbond in the amount of PhP 100,000. **The notice of *lis pendens* in TD No. 112, including the portion allegedly belonging to Elena Unchuan, remains valid and effective.** Let this case be remanded to the court *a quo* for further proceedings in Civil Case No. 517.

[12] G.R. No. 106473, July 12, 1993, 224 SCRA 566, 569.

No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 156052. February 13, 2008]

SOCIAL JUSTICE SOCIETY (SJS), VLADIMIR ALARIQUE T. CABIGAO and BONIFACIO S. TUMBOKON, *petitioners, vs.* **HON. JOSE L. ATIENZA, JR., in his capacity as Mayor of the City of Manila,** *respondent.*

CHEVRON PHILIPPINES, INC., PETRON CORPORATION and PILIPINAS SHELL PETROLEUM CORPORATION, *movants-intervenors*.

DEPARTMENT OF ENERGY, *movant-intervenor.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; REQUISITES.— Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her or it to protect or preserve a right or interest which may be affected by such proceedings. x x x The following are the requisites for intervention of a non-party: "(1) Legal interest (a) in the matter in controversy; or (b) in the success of either of the parties; or (c) against both parties; or (d) person 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; (2) Intervention

will not unduly delay or prejudice the adjudication of rights of original parties; (3) Intervenor's rights may not be fully protected in a separate proceeding and (4) The motion to intervene may be filed at any time before rendition of judgment by the trial court."

2. ID.; ID.; ID.; ALLOWED BEFORE RENDITION OF JUDGMENT; EXCEPTIONS TO THE RULE, RECOGNIZED IN THE INTEREST OF SUBSTANTIAL JUSTICE.— As a rule, intervention is allowed "before rendition of judgment" as Section 2, Rule 19 expressly provides. x x x The Court, however, has recognized exceptions to Section 2, Rule 19 in the interest of substantial justice: The rule on intervention, like all other rules of procedure, is intended to make the powers of the Court fully and completely available for justice. It is aimed to facilitate a comprehensive adjudication of rival claims overriding technicalities on the timeliness of the filing thereof.

3. ID.; ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES.— There are two requisites for the issuance of a preliminary injunction: (1) the right to be protected exists *prima facie* and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented will cause an irreparable injustice.

4. POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; AN ORDINANCE CANNOT BE RESTRAINED BY INJUNCTION; ISSUANCE OF INJUNCTIVE WRIT, WHEN PROPER.— It is a settled rule that an ordinance enjoys the presumption of validity and, as such, cannot be restrained by injunction. Nevertheless, when the validity of the ordinance is assailed, the courts are not precluded from issuing an injunctive writ against its enforcement. However, we have declared that the issuance of said writ is proper only when: ... the petitioner assailing the ordinance **has made out a case of unconstitutionality strong enough to overcome, in the mind of the judge, the presumption of validity**, in addition to a showing of a clear legal right to the remedy sought....

5. ID.; ID.; ID.; PRESUMPTION OF VALIDITY; RATIONALE.— Statutes and ordinances are presumed valid unless and until

the courts declare the contrary in clear and unequivocal terms. The mere fact that the ordinance is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined. The presumption is all in favor of validity. The reason for this is obvious: The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well being of the people . . . The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation. x x x ...[Courts] accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary[,] in the determination of actual cases and controversies[,] must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.

6. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; THE COURT IS NOT REQUIRED TO TAKE JUDICIAL NOTICE OF ORDINANCES THAT ARE NOT BEFORE IT AND TO WHICH IT DOES NOT HAVE ACCESS.— While courts are required to take judicial notice of the laws enacted by Congress, the rule with respect to local ordinances is different. Ordinances are not included in the enumeration of matters covered by mandatory judicial notice under Section 1, Rule 129 of the Rules of Court. Although, Section 50 of RA 409 provides that: SEC. 50 Judicial notice of ordinances. — All courts sitting in the city shall take judicial notice of the ordinances passed by the [*Sangguniang Panglungsod*]. this cannot be taken to mean that this Court, since it has its seat in the City of Manila, should have taken steps to procure a copy of the ordinance on its own, relieving the party of any duty to inform the Court about it. Even where there is a statute that requires a court to take judicial notice of municipal ordinances, a court is not required to take judicial notice of ordinances that are not before it and to which it does not have access. The party asking the court to take judicial notice is

obligated to supply the court with the full text of the rules the party desires it to have notice of. Counsel should take the initiative in requesting that a trial court take judicial notice of an ordinance even where a statute requires courts to take judicial notice of local ordinances. The intent of a statute requiring a court to take judicial notice of a local ordinance is to remove any discretion a court might have in determining whether or not to take notice of an ordinance. Such a statute does not direct the court to act on its own in obtaining evidence for the record and a party must make the ordinance available to the court for it to take notice.

7. ID.; ID.; JUDICIAL ADMISSIONS; TO CONSTITUTE A JUDICIAL ADMISSION, THE ADMISSION MUST BE MADE IN THE SAME CASE IN WHICH IT IS OFFERED.— Rule 129, Section 4 of the Rules of Court provides: Section 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. x x x To constitute a judicial admission, the admission must be made in the same case in which it is offered.

8. POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; REPEAL BY IMPLICATION; KINDS.— Repeal by implication proceeds on the premise that where a statute of later date clearly reveals the intention of the legislature to abrogate a prior act on the subject, that intention must be given effect. There are two kinds of implied repeal. The first is: where the provisions in the two acts on the same subject matter are irreconcilably contradictory, the latter act, to the extent of the conflict, constitutes an implied repeal of the earlier one. The second is: if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.

9. ID.; ID.; ID.; ID.; IMPLIED REPEALS ARE NOT FAVORED AND WILL NOT BE SO DECLARED UNLESS THE INTENT OF THE LEGISLATORS IS MANIFEST.— Implied repeals are not favored and will not be so declared unless the intent of the legislators is manifest. As statutes and ordinances are

presumed to be passed only after careful deliberation and with knowledge of all existing ones on the subject, it follows that, in passing a law, the legislature did not intend to interfere with or abrogate a former law relating to the same subject matter. If the intent to repeal is not clear, the later act should be construed as a continuation of, and not a substitute for, the earlier act.

10. ID.; ID.; ID.; A GENERAL LAW DOES NOT NULLIFY A SPECIFIC OR SPECIAL LAW; RATIONALE.— [I]t is a well-settled rule in statutory construction that a subsequent general law does not repeal a prior special law on the same subject unless it clearly appears that the legislature has intended by the latter general act to modify or repeal the earlier special law. *Generalia specialibus non derogant* (a general law does not nullify a specific or special law). This is so even if the provisions of the general law are sufficiently comprehensive to include what was set forth in the special act. The special act and the general law must stand together, one as the law of the particular subject and the other as the law of general application. The special law must be taken as intended to constitute an exception to, or a qualification of, the general act or provision. The reason for this is that the legislature, in passing a law of special character, considers and makes special provisions for the particular circumstances dealt with by the special law. This being so, the legislature, by adopting a general law containing provisions repugnant to those of the special law and without making any mention of its intention to amend or modify such special law, cannot be deemed to have intended an amendment, repeal or modification of the latter.

11. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WHEN PROPER.— Indeed, [the] Courts will not interfere by *mandamus* proceedings with the legislative [or executive departments] of the government in the legitimate exercise of its powers, **except to enforce mere ministerial acts required by law to be performed by some officer thereof.** since this is the function of a writ of *mandamus*, which is the power to compel "the performance of an act which the law specifically enjoins as a duty resulting from office, trust or station."

12. POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; TESTS OF A VALID ORDINANCE.— The tests of a valid ordinance are well established. For an ordinance to be valid, it must not only be within the corporate powers of the LGU to enact and be passed according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy and (6) must not be unreasonable.

13. ID.; ID.; INHERENT POWERS OF THE STATE; POLICE POWER; EXPLAINED.— Police power is the plenary power vested in the legislature to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people. This power flows from the recognition that *salus populi est suprema lex* (the welfare of the people is the supreme law). While police power rests primarily with the national legislature, such power may be delegated. Section 16 of the LGC, known as the general welfare clause, encapsulates the delegated police power to local governments. x x x LGUs like the City of Manila exercise police power through their respective legislative bodies, in this case, the *Sangguniang Panlungsod* or the city council.

14. ID.; ID.; ID.; ID.; REQUISITES.— As with the State, local governments may be considered as having properly exercised their police power only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. In short, there must be a concurrence of a lawful subject and a lawful method.

15. ID.; ID.; ID.; ID.; IN THE EXERCISE OF POLICE POWER, PROPERTY RIGHTS OF INDIVIDUALS MAY BE SUBJECTED TO RESTRAINTS AND BURDENS IN ORDER TO FULFILL THE OBJECTIVES OF THE GOVERNMENT.— In the exercise of police power, property rights of individuals may be subjected to restraints and burdens in order to fulfill

the objectives of the government. Otherwise stated, the government may enact legislation that may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare. However, the interference must be reasonable and not arbitrary. And to forestall arbitrariness, the methods or means used to protect public health, morals, safety or welfare must have a reasonable relation to the end in view.

16. ID.; ID.; ID.; ID.; THE ENACTMENT OF A ZONING ORDINANCE IS A LEGITIMATE EXERCISE OF POLICE POWER; CASE AT BAR.— The means adopted by the *Sanggunian* was the enactment of a zoning ordinance which reclassified the area where the depot is situated from industrial to commercial. A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribes, defines and apportions a given political subdivision into specific land uses as present and future projection of needs. As a result of the zoning, the continued operation of the businesses of the oil companies in their present location will no longer be permitted. The power to establish zones for industrial, commercial and residential uses is derived from the police power itself and is exercised for the protection and benefit of the residents of a locality. Consequently, the enactment of Ordinance No. 8027 is within the power of the *Sangguniang Panlungsod* of the City of Manila and any resulting burden on those affected cannot be said to be unjust. x x x We entertain no doubt that Ordinance No. 8027 is a valid police power measure because there is a concurrence of lawful subject and lawful method.

17. ID.; ID.; ID.; POLICE POWER AND EMINENT DOMAIN, DISTINGUISHED.— In the exercise of police power, there is a limitation on or restriction of property interests to promote public welfare which involves no compensable taking. Compensation is necessary only when the state's power of eminent domain is exercised. In eminent domain, property is appropriated and applied to some public purpose. Property condemned under the exercise of police power, on the other hand, is noxious or intended for a noxious or forbidden purpose and, consequently, is not compensable. The restriction imposed to protect lives, public health and safety from danger is not a

taking. It is merely the prohibition or abatement of a noxious use which interferes with paramount rights of the public. Property has not only an individual function, insofar as it has to provide for the needs of the owner, but also a social function insofar as it has to provide for the needs of the other members of society. The principle is this: "Police power proceeds from the principle that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the right of the community. Rights of property, like all other social and conventional rights, are subject to reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient." In the regulation of the use of the property, nobody else acquires the use or interest therein, hence there is no compensable taking.

18. ID.; ID.; BILL OF RIGHTS; EQUAL PROTECTION OF THE LAW; VALID CLASSIFICATION; REQUIREMENTS.— An ordinance based on reasonable classification does not violate the constitutional guaranty of the equal protection of the law. The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only and (4) it must apply equally to all members of the same class.

19. ID.; ID.; LOCAL GOVERNMENT; PRINCIPLE OF LOCAL AUTONOMY; UPHELD IN CASE AT BAR.— Under Section 5 (c) of RA 7638, DOE was given the power to "establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources." On the other hand, under Section 7 of RA 8749, the DOE "shall continue to encourage certain practices in the Industry which serve the public interest and are intended to achieve efficiency and cost reduction, ensure continuous supply of petroleum products." Nothing in these statutes prohibits the City of Manila from enacting ordinances in the exercise of its police power. The principle of local

autonomy is enshrined in and zealously protected under the Constitution. In Article II, Section 25 thereof, the people expressly adopted the following policy: Section 25. The State shall ensure the autonomy of local governments. An entire article (Article X) of the Constitution has been devoted to guaranteeing and promoting the autonomy of LGUs. The LGC was specially promulgated by Congress to ensure the autonomy of local governments as mandated by the Constitution. x x x The laws cited merely gave DOE general powers to "establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources" and "to encourage certain practices in the [oil] industry which serve the public interest and are intended to achieve efficiency and cost reduction, ensure continuous supply of petroleum products." These powers can be exercised without emasculating the LGUs of the powers granted them. When these ambiguous powers are pitted against the unequivocal power of the LGU to enact police power and zoning ordinances for the general welfare of its constituents, it is not difficult to rule in favor of the latter. Considering that the powers of the DOE regarding the Pandacan Terminals are not categorical, the doubt must be resolved in favor of the City of Manila. x x x The least we can do to ensure genuine and meaningful local autonomy is not to force an interpretation that negates powers explicitly granted to local governments. To rule against the power of LGUs to reclassify areas within their jurisdiction will subvert the principle of local autonomy guaranteed by the Constitution.

20. ID.; ID.; ID.; THE CHIEF EXECUTIVE OR HIS ALTER EGOS CANNOT EXERCISE THE POWER OF CONTROL OVER LOCAL GOVERNMENT UNITS; CONTROL AND SUPERVISION, DISTINGUISHED.— Section 4 of Article X of the Constitution confines the President's power over LGUs to one of general supervision: SECTION 4. The President of the Philippines shall exercise general supervision over local governments. xxx Consequently, the Chief Executive or his or her alter egos, cannot exercise the power of control over them. Control and supervision are distinguished as follows: "[Supervision] means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take

such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter. Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body. It does not allow the supervisor to annul the acts of the subordinate. x x x Thus, the President and his or her alter egos, the department heads, cannot interfere with the activities of local governments, so long as they act within the scope of their authority.

APPEARANCES OF COUNSEL

Samson S. Alcantara and *Ed Vincent S. Albano* for petitioners.

R E S O L U T I O N

CORONA, *J.*:

After we promulgated our decision in this case on March 7, 2007, Chevron Philippines Inc. (Chevron), Petron Corporation (Petron) and Pilipinas Shell Petroleum Corporation (Shell) (collectively, the oil companies) and the Republic of the Philippines, represented by the Department of Energy (DOE), filed their respective motions for leave to intervene and for reconsideration of the decision.

Chevron[1] is engaged in the business of importing, distributing and marketing of petroleum products in the Philippines while Shell and Petron are engaged in the business of manufacturing, refining and likewise importing, distributing and marketing of petroleum products in the Philippines.[2] The DOE is a governmental agency created under Republic Act (RA) No. 7638[3] and tasked

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[1] Formerly known as Caltex (Philippines), Inc.

[2] *Rollo*, p. 192.

[3] Entitled "An Act Creating the Department of Energy, Rationalizing the Organization and Functions of Government Agencies Related to Energy, and

to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the government relative to energy exploration, development, utilization, distribution and conservation.[4]

The facts are restated briefly as follows:

Petitioners Social Justice Society, Vladimir Alarique T. Cabigao and Bonifacio S. Tumbokon, in an original petition for *mandamus* under Rule 65 of the Rules of Court, sought to compel respondent Hon. Jose L. Atienza, Jr., then mayor of the City of Manila, to enforce Ordinance No. 8027. This ordinance was enacted by the *Sangguniang Panlungsod* of Manila on November 20, 2001,[5] approved by respondent Mayor on November 28, 2001,[6] and became effective on December 28, 2001 after publication.[7] Sections 1 and 3 thereof state:

SECTION 1. For the purpose of promoting sound urban planning and ensuring health, public safety, and general welfare of the residents of Pandacan and Sta. Ana as well as its adjoining areas, the land use of [those] portions of land bounded by the Pasig River in the north, PNR Railroad Track in the east, Beata St. in the south, Palumpong St. in the southwest, and Estero de Pandacan in the west[,] PNR Railroad in the northwest area, Estero de Pandacan in the [n]ortheast, Pasig River in the southeast and Dr. M.L. Carreon in the southwest. The area of Punta, Sta. Ana bounded by the Pasig River, Marcelino

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for Other Purposes" also known as the "DOE Act of 1992" and approved on December 9, 1992. Prior to RA 7638, a Department of Energy was established under Presidential Decree No. 1206, "Creating the Department of Energy," approved on October 6, 1977.

[4] RA 7638, Section 4.

[5] Entitled "Ordinance Reclassifying the Land Use of [Those] Portions of Land Bounded by the Pasig River In The North[,] PNR Railroad Track in the East, Beata St. in the South, Palumpong St. in the Southwest and Estero De Pandacan in the West, PNR Railroad in the Northwest Area, Estero of Pandacan in the Northeast, Pasig River in the Southeast and Dr. M. L. Carreon in the Southwest; the Area of Punta, Sta. Ana Bounded by the Pasig River, Marcelino Obrero St.[,] Mayo 28 St. and the F. Manalo Street from Industrial II to Commercial I."

[6] *Rollo*, p. 12.

[7] *Id.*, p. 6.

Obrero St., Mayo 28 St., and F. Manalo Street, are hereby reclassified from Industrial II to Commercial I.

x x x x x x x x x

SEC. 3. Owners or operators of industries and other businesses, the operation of which are no longer permitted under Section 1 hereof, are hereby given a period of six (6) months from the date of effectivity of this Ordinance within which to cease and desist from the operation of businesses which are hereby in consequence, disallowed.

Ordinance No. 8027 reclassified the area described therein from industrial to commercial and directed the owners and operators of businesses disallowed under the reclassification to cease and desist from operating their businesses within six months from the date of effectivity of the ordinance. Among the businesses situated in the area are the so-called "Pandacan Terminals" of the oil companies.

On June 26, 2002, the City of Manila and the Department of Energy (DOE) entered into a memorandum of understanding (MOU)[8] with the oil companies. They agreed that "the scaling down of the Pandacan Terminals [was] the most viable and practicable option." The *Sangguniang Panlungsod* ratified the MOU in Resolution No. 97.[9] In the same resolution, the *Sanggunian* declared that the MOU was effective only for a period of six months starting July 25, 2002.[10] Thereafter, on

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[8] *Id*., pp. 16-18. This MOU modified the Memorandum of Agreement (MOA) executed on October 12, 2001 by the oil companies and the DOE. This MOA called for close coordination among the parties with a view of formulating appropriate measures to arrive at the best possible option to ensure, maintain and at the same time harmonize the interests of both government and the oil companies; *id*., pp. 413-415.

[9] Entitled "Resolution Ratifying the Memorandum of Understanding (MOU) Entered into by and among the Department of Energy, the City of Manila, Caltex (Philippines), Inc., Petron Corporation and Pilipinas Shell Petroleum Corporation on 26 June 2002, and Known as Document No. 60, Page No. 12, Book No. 1, Series of 2002 in the Notarial Registry of Atty. Neil Lanson Salcedo, Notary Public for and in the City of Manila"; *id*., p. 36.

[10] *Id*.

January 30, 2003, the *Sanggunian* adopted Resolution No. 13[11] extending the validity of Resolution No. 97 to April 30, 2003 and authorizing the mayor of Manila to issue special business permits to the oil companies.[12]

This was the factual backdrop presented to the Court which became the basis of our March 7, 2007 decision. We ruled that respondent had the ministerial duty under the Local Government Code (LGC) to "enforce all laws and ordinances relative to the governance of the city,"[13] including Ordinance No. 8027. We also held that we need not resolve the issue of whether the MOU entered into by respondent with the oil companies and the subsequent resolutions passed by the *Sanggunian* could amend or repeal Ordinance No. 8027 since the resolutions which ratified the MOU and made it binding on the City of Manila expressly gave it full force and effect only until April 30, 2003. We concluded that there was nothing that legally hindered respondent from enforcing Ordinance No. 8027.

After we rendered our decision on March 7, 2007, the oil companies and DOE sought to intervene and filed motions for reconsideration in intervention on March 12, 2007 and March 21, 2007 respectively. On April 11, 2007, we conducted the oral arguments in Baguio City to hear petitioners, respondent and movants-intervenors oil companies and DOE.

The oil companies called our attention to the fact that on April 25, 2003, Chevron had filed a complaint against respondent and the City of Manila in the Regional Trial Court (RTC) of Manila, Branch 39, for the annulment of Ordinance No. 8027 with application for writs of preliminary prohibitory injunction and preliminary mandatory injunction.[14] The case was docketed

[11] Entitled "Resolution Extending the Validity of Resolution 97, Series of 2002, to April 30, 2003, Thereby Authorizing his Honor Mayor Jose L. Atienza, Jr., to Issue Special Business Permits to Caltex Phil., Inc., Petron Corporation and Pilipinas Shell Petroleum Corporation Situated within the Pandacan Oil Terminal Covering the said Period"; *id*., p. 38.

[12] *Id*.

[13] Section 455 (b) (2).

[14] *Rollo*, p. 280.

as Civil Case No. 03-106377. On the same day, Shell filed a petition for prohibition and *mandamus* likewise assailing the validity of Ordinance No. 8027 and with application for writs of preliminary prohibitory injunction and preliminary mandatory injunction.[15] This was docketed as civil case no. 03-106380. Later on, these two cases were consolidated and the RTC of Manila, Branch 39 issued an order dated May 19, 2003 granting the applications for writs of preliminary prohibitory injunction and preliminary mandatory injunction:

> WHEREFORE, upon the filing of a total bond of TWO MILLION (Php 2,000,000.00) PESOS, let a Writ of Preliminary Prohibitory Injunction be issued ordering [respondent] and the City of Manila, their officers, agents, representatives, successors, and any other persons assisting or acting in their behalf, during the pendency of the case, to REFRAIN from taking steps to enforce Ordinance No. 8027, and let a Writ of Preliminary Mandatory Injunction be issued ordering [respondent] to issue [Chevron and Shell] the necessary Business Permits to operate at the Pandacan Terminal.[16]

Petron likewise filed its own petition in the RTC of Manila, Branch 42, also attacking the validity of Ordinance No. 8027 with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order (TRO). This was docketed as Civil Case No. 03-106379. In an order dated August 4, 2004, the RTC enjoined the parties to maintain the status quo.[17]

Thereafter, in 2006, the city council of Manila enacted Ordinance No. 8119, also known as the Manila Comprehensive Land Use Plan and Zoning Ordinance of 2006.[18] This was approved by respondent on June 16, 2006.[19]

Aggrieved anew, Chevron and Shell filed a complaint in the RTC of Manila, Branch 20, asking for the nullification of

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[15] *Id*., p. 333.

[16] Penned by Judge Reynaldo G. Ros, *id*., p. 388.

[17] Penned by Judge Guillermo G. Purganan, *id*., p. 423.

[18] *Id*., p. 458.

[19] *Id*., p. 493.

Ordinance No. 8119.[20] This was docketed as Civil Case No. 06-115334. Petron filed its own complaint on the same causes of action in the RTC of Manila, Branch 41.[21] This was docketed as Civil Case No. 07-116700.[22] The court issued a TRO in favor of Petron, enjoining the City of Manila and respondent from enforcing Ordinance No. 8119.[23]

Meanwhile, in Civil Case No. 03-106379, the parties filed a joint motion to withdraw complaint and counterclaim on February 20, 2007.[24] In an order dated April 23, 2007, the joint motion was granted and all the claims and counterclaims of the parties were withdrawn.[25]

Given these additional pieces of information, the following were submitted as issues for our resolution:

1. whether movants-intervenors should be allowed to intervene in this case;[26]
2. whether the following are impediments to the execution of our March 7, 2007 decision:
   (a) Ordinance No. 8119, the enactment and existence of which were not previously brought by the parties to the attention of the Court and
   (b) writs of preliminary prohibitory injunction and preliminary mandatory injunction and status quo order issued by the RTC of Manila, Branches 39 and 42 and
3. whether the implementation of Ordinance No. 8027 will unduly encroach upon the DOE's powers and functions involving energy resources.

[20] *Id*., p. 495.

[21] Petron tried to intervene in civil case no. 06-115334 but the court denied its motion; *id*., pp. 692-694.

[22] Memorandum of oil companies, p. 25.

[23] *Rollo*, p. 238.

[24] *Id*., p. 698.

[25] Memorandum of the oil companies, footnote no. 50, p. 26.

[26] According to the oil companies, they were informed that their and the DOE's motions to intervene had already been granted (Memorandum of oil companies, p. 28). However, this contention is not supported by the records.

During the oral arguments, the parties submitted to this Court's power to rule on the constitutionality and validity of Ordinance No. 8027 despite the pendency of consolidated cases involving this issue in the RTC.[27] The importance of settling this controversy as fully and as expeditiously as possible was emphasized, considering its impact on public interest. Thus, we will also dispose of this issue here. The parties were after all given ample opportunity to present and argue their respective positions. By so doing, we will do away with the delays concomitant with litigation and completely adjudicate an issue which will most likely reach us anyway as the final arbiter of all legal disputes.

Before we resolve these issues, a brief review of the history of the Pandacan Terminals is called for to put our discussion in the proper context.

HISTORY OF THE PANDACAN OIL TERMINALS

Pandacan (one of the districts of the City of Manila) is situated along the banks of the Pasig river. At the turn of the twentieth century, Pandacan was unofficially designated as the industrial center of Manila. The area, then largely uninhabited, was ideal for various emerging industries as the nearby river facilitated the transportation of goods and products. In the 1920s, it was classified as an industrial zone.[28] Among its early industrial settlers were the oil companies. Shell established its installation there on January 30, 1914.[29] Caltex (now Chevron) followed suit in 1917 when the company began marketing its products in the country.[30] In 1922, it built a warehouse depot which was later converted into a key distribution terminal.[31] The corporate

[27] Transcript of April 11, 2007 Oral Arguments, pp. 125, 192-195.

[28] G. B. Bagayaua, *Pandacan's Ring of Fire*, NEWSBREAK 3(4): 12 (March 3, 2003).

[29] *Pandacan Installation Profile*, <http://www.shell.com/home/framework?siteId=ph-en&FC2=/ph-en/thml/iwgen/about_shell/> (visited March 11, 2007).

[30] *History: More than 85 years of Philippine Partnership*, <http://www.caltex.com/ph/en/ph_history. asp> (visited March 11, 2007).

[31] *Rollo*, p. 300.

presence in the Philippines of Esso (Petron's predecessor) became more keenly felt when it won a concession to build and operate a refinery in Bataan in 1957.[32] It then went on to operate a state-of-the-art lube oil blending plant in the Pandacan Terminals where it manufactures lubes and greases.[33]

On December 8, 1941, the Second World War reached the shores of the Philippine Islands. Although Manila was declared an open city, the Americans had no interest in welcoming the Japanese. In fact, in their zealous attempt to fend off the Japanese Imperial Army, the United States Army took control of the Pandacan Terminals and hastily made plans to destroy the storage facilities to deprive the advancing Japanese Army of a valuable logistics weapon.[34] The U.S. Army burned unused petroleum, causing a frightening conflagration. Historian Nick Joaquin recounted the events as follows:

> After the USAFFE evacuated the City late in December 1941, all army fuel storage dumps were set on fire. The flames spread, enveloping the City in smoke, setting even the rivers ablaze, endangering bridges and all riverside buildings. … For one week longer, the "open city" blazed—a cloud of smoke by day, a pillar of fire by night.[35]

The fire consequently destroyed the Pandacan Terminals and rendered its network of depots and service stations inoperative.[36]

After the war, the oil depots were reconstructed. Pandacan changed as Manila rebuilt itself. The three major oil companies resumed the operation of their depots.[37] But the district was no longer a sparsely populated industrial zone; it had evolved into

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[32] <http://www.fundinguniverse.com/company-histories/Petron-Corporation-Company-History.html> (visited May 15, 2007).

[33] <http://www.petron.com/about-leading.asp> (visited May 15, 2007).

[34] *United States v. Caltex, Phils., et. al.*, 344 U.S. 149 (1952).

[35] N. JOAQUIN, *ALMANAC FOR MANILEÑOS* 97 (1979).

[36] *Supra* note 30.

[37] *Pandacan oil depots: A disaster waiting to happen* <http://www.foe.co.uk/resource/reports/behind_shine.pdf> (visited May 15, 2007).

a bustling, hodgepodge community. Today, Pandacan has become a densely populated area inhabited by about 84,000 people, majority of whom are urban poor who call it home.[38] Aside from numerous industrial installations, there are also small businesses, churches, restaurants, schools, daycare centers and residences situated there.[39] Malacañang Palace, the official residence of the President of the Philippines and the seat of governmental power, is just two kilometers away.[40] There is a private school near the Petron depot. Along the walls of the Shell facility are shanties of informal settlers.[41] More than 15,000 students are enrolled in elementary and high schools situated near these facilities.[42] A university with a student population of about 25,000 is located directly across the depot on the banks of the Pasig river.[43]

The 36-hectare Pandacan Terminals house the oil companies' distribution terminals and depot facilities.[44] The refineries of Chevron and Shell in Tabangao and Bauan, both in Batangas, respectively, are connected to the Pandacan Terminals through a 114-kilometer[45] underground pipeline system.[46] Petron's refinery in Limay, Bataan, on the other hand, also services the depot.[47] The terminals store fuel and other petroleum products and supply 95% of the fuel requirements of Metro Manila,[48] 50% of Luzon's consumption and 35% nationwide.[49] Fuel can also be transported

[38] *Id*.

[39] *Safety and health risks in the Philippines* <http://www.foe.co.uk/resource/reports/failing_challenge.pdf> (visited May 15, 2007).

[40] *Supra* note 37.

[41] *Supra* note 28.

[42] *Supra* note 37.

[43] *Id*.

[44] *Rollo*, p. 221.

[45] *Supra* note 28 at 13.

[46] *Supra* note 44.

[47] *Id*., p. 223.

[48] *Id*., p. 222.

[49] *Id*., p. 731.

through barges along the Pasig river or tank trucks via the South Luzon Expressway.

We now discuss the first issue: whether movants-intervenors should be allowed to intervene in this case.

INTERVENTION OF THE OIL COMPANIES AND THE DOE SHOULD BE ALLOWED IN THE INTEREST OF JUSTICE

Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her or it to protect or preserve a right or interest which may be affected by such proceedings.[50] The pertinent rules are Sections 1 and 2, Rule 19 of the Rules of Court:

> 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.
>
> SEC. 2. Time to intervene. — The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

Thus, the following are the requisites for intervention of a non-party:

(1) Legal interest

  (a) in the matter in controversy; or

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[50] *Hi-Tone Marketing Corporation v. Baikal Realty Corporation*, G.R. No. 149992, 20 August 2004, 437 SCRA 121, 139, citing *Manalo v. Court of Appeals*, G.R. No. 141297, 8 October 2001, 366 SCRA 752, 766 (2001), which in turn cited *First Philippine Holdings Corporation v. Sandiganbayan*, 253 SCRA 30 (1996).

(b) in the success of either of the parties; or
(c) against both parties; or
(d) person 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;

(2) Intervention will not unduly delay or prejudice the adjudication of rights of original parties;

(3) Intervenor's rights may not be fully protected in a separate proceeding[51] and

(4) The motion to intervene may be filed at any time before rendition of judgment by the trial court.

For both the oil companies and DOE, the last requirement is definitely absent. As a rule, intervention is allowed "before rendition of judgment" as Section 2, Rule 19 expressly provides. Both filed their separate motions after our decision was promulgated. In *Republic of the Philippines v. Gingoyon*,[52] a recently decided case which was also an original action filed in this Court, we declared that the appropriate time to file the motions-in-intervention was before and not after resolution of the case.[53]

The Court, however, has recognized exceptions to Section 2, Rule 19 in the interest of substantial justice:

> The rule on intervention, like all other rules of procedure, is intended to make the powers of the Court fully and completely available for justice. It is aimed to facilitate a comprehensive adjudication of rival claims overriding technicalities on the timeliness of the filing thereof.[54]

The oil companies assert that they have a legal interest in this case because the implementation of Ordinance No. 8027 will directly affect their business and property rights.[55]

[51] See *Ortega v. Court of Appeals*, 359 Phil. 126, 139 (1998), citing the 1997 *Rules of Civil Procedure* by Feria, pp. 71-72.

[52] G.R. No. 166429, 1 February 2006, 481 SCRA 457.

[53] *Id*., p. 470.

[54] *Pinlac v. Court of Appeals*, 457 Phil. 527, 534 (2003), citing *Director of Lands v. Court of Appeals*, G.R. No. L-45168, 25 September 1979, 93 SCRA 238, 246.

[55] *Rollo*, p. 203.

[T]he interest which entitles a person to intervene in a suit between other parties 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 the judgment. Otherwise, if persons not parties to the action were allowed to intervene, proceedings would become unnecessarily complicated, expensive and interminable. And this would be against the policy of the law. The words "an interest in the subject" means a direct interest in the cause of action as pleaded, one that would put the intervenor in a legal position to litigate a fact alleged in the complaint without the establishment of which plaintiff could not recover.[56]

We agree that the oil companies have a direct and immediate interest in the implementation of Ordinance No. 8027. Their claim is that they will need to spend billions of pesos if they are compelled to relocate their oil depots out of Manila. Considering that they admitted knowing about this case from the time of its filing on December 4, 2002, they should have intervened long before our March 7, 2007 decision to protect their interests. But they did not.[57] Neither did they offer any worthy explanation to justify their late intervention.

Be that as it may, although their motion for intervention was not filed on time, we will allow it because they raised and presented novel issues and arguments that were not considered by the Court in its March 7, 2007 decision. After all, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court before which the case is pending.[58] Considering the compelling reasons favoring intervention, we

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[56] *Alfelor v. Halasan*, G.R. No. 165987, 31 March 2006, 486 SCRA 451, 461, citing *Nordic Asia Ltd. v. Court of Appeals*, 451 Phil. 482, 492-493 (2003).

[57] To justify their late intervention, the oil companies explained that [they] were aware of this Petition before the Honorable Court but they opted not to intervene then because they believed that it was more proper to directly attack the validity of Ordinance No. 8027 (Memorandum, p. 22). They also said that they did not deem it necessary to intervene then because they relied in good faith that respondent [Mayor] would, as a conscientious litigant, interpose a fitting defense of the instant Petition. (Footnote no. 2, *id*., p. 3)

[58] *Hi-Tone Marketing Corporation v. Baikal Realty Corporation*, *supra* note 50 at 140.

do not think that this will unduly delay or prejudice the adjudication of rights of the original parties. In fact, it will be expedited since their intervention will enable us to rule on the constitutionality of Ordinance No. 8027 instead of waiting for the RTC's decision.

The DOE, on the other hand, alleges that its interest in this case is also direct and immediate as Ordinance No. 8027 encroaches upon its exclusive and national authority over matters affecting the oil industry. It seeks to intervene in order to represent the interests of the members of the public who stand to suffer if the Pandacan Terminals' operations are discontinued. We will tackle the issue of the alleged encroachment into DOE's domain later on. Suffice it to say at this point that, for the purpose of hearing all sides and considering the transcendental importance of this case, we will also allow DOE's intervention.

THE INJUNCTIVE WRITS ARE NOT IMPEDIMENTS TO THE ENFORCEMENT OF ORDINANCE NO. 8027

Under Rule 65, Section 3[59] of the Rules of Court, a petition for *mandamus* may be filed when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station. According to the oil companies, respondent did not unlawfully fail or neglect to enforce Ordinance No. 8027 because he was lawfully prevented from doing so by virtue of the injunctive writs and status quo order issued by the RTC of Manila, Branches 39 and 42.

[59] The full text reads:

SEC. 3. *Petition for Mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. xxx

First, we note that while Chevron and Shell still have in their favor the writs of preliminary injunction and preliminary mandatory injunction, the status quo order in favor of Petron is no longer in effect since the court granted the joint motion of the parties to withdraw the complaint and counterclaim.[60]

Second, the original parties failed to inform the Court about these injunctive writs. Respondent (who was also impleaded as a party in the RTC cases) defends himself by saying that he informed the court of the pendency of the civil cases and that a TRO was issued by the RTC in the consolidated cases filed by Chevron and Shell. It is true that had the oil companies only intervened much earlier, the Court would not have been left in the dark about these facts. Nevertheless, respondent should have updated the Court, by way of manifestation, on such a relevant matter.

In his memorandum, respondent mentioned the issuance of a TRO. Under Section 5 of Rule 58 of the Rules of Court, a TRO issued by the RTC is effective only for a period of 20 days. This is why, in our March 7, 2007 decision, we presumed with certainty that this had already lapsed.[61] Respondent also mentioned the grant of injunctive writs in his rejoinder which the Court, however, expunged for being a prohibited pleading. The parties and their counsels were clearly remiss in their duties to this Court.

In resolving controversies, courts can only consider facts and issues pleaded by the parties.[62] Courts, as well as magistrates presiding over them are not omniscient. They can only act on the facts and issues presented before them in appropriate pleadings. They may not even substitute their own personal knowledge for evidence. Nor may they take notice of matters except those expressly provided as subjects of mandatory judicial notice.

We now proceed to the issue of whether the injunctive writs are legal impediments to the enforcement of Ordinance No. 8027.

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[60] *Supra* note 25.

[61] Footnote no. 24, p. 9 of the decision.

[62] *Logronio v. Taleseo*, 370 Phil. 907, 910 (1999).

Section 3, Rule 58 of the Rules of Court enumerates the grounds for the issuance of a writ of preliminary injunction:

SEC. 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or nonperformance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

There are two requisites for the issuance of a preliminary injunction: (1) the right to be protected exists *prima facie* and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented will cause an irreparable injustice.

The act sought to be restrained here was the enforcement of Ordinance No. 8027. It is a settled rule that an ordinance enjoys the presumption of validity and, as such, cannot be restrained by injunction.[63] Nevertheless, when the validity of the ordinance is assailed, the courts are not precluded from issuing an injunctive writ against its enforcement. However, we have declared that the issuance of said writ is proper only when:

... the petitioner assailing the ordinance **has made out a case of unconstitutionality strong enough to overcome, in the mind of the judge, the presumption of validity**, in addition to a showing of a clear legal right to the remedy sought....[64] (Emphasis supplied)

[63] *Vera v. Hon. Judge Arca*, 138 Phil. 369, 384 (1969).

[64] *Filipino Metals Corporation v. Secretary of Department of Trade and Industry*, G.R. No. 157498, 15 July 2005, 463 SCRA 616, 624 citing

Judge Reynaldo G. Ros, in his order dated May 19, 2003, stated his basis for issuing the injunctive writs:

> The Court, in resolving whether or not a Writ of Preliminary Injunction or Preliminary Mandatory Injunction should be issued, is guided by the following requirements: (1) a clear legal right of the complainant; (2) a violation of that right; and (3) a permanent and urgent necessity for the Writ to prevent serious damage. The Court believes that these requisites are present in these cases.
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> There is no doubt that the plaintiff/petitioners have been legitimately operating their business in the Pandacan Terminal for many years and they have made substantial capital investment therein. Every year they were issued Business Permits by the City of Manila. Its operations have not been declared illegal or contrary to law or morals. In fact, because of its vital importance to the national economy, it was included in the Investment Priorities Plan as mandated under the "Downstream Oil Industry Deregulation Act of 1988 (R.A. 8479). As a lawful business, the plaintiff/petitioners have a right, therefore, to continue their operation in the Pandacan Terminal and the right to protect their investments. This is a clear and unmistakable right of the plaintiff/petitioners.
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> The enactment, therefore, of City Ordinance No. 8027 passed by the City Council of Manila reclassifying the area where the Pandacan Terminal is located from Industrial II to Commercial I and requiring the plaintiff/petitioners to cease and desist from the operation of their business has certainly violated the rights of the plaintiff/petitioners to continue their legitimate business in the Pandacan Terminal and deprived them of their huge investments they put up therein. Thus, before the Court, therefore, determines whether the Ordinance in question is valid or not, a Writ of Preliminary Injunction and a Writ of Mandatory Injunction be issued to prevent serious and irreparable damage to plaintiff/petitioners.[65]

Nowhere in the judge's discussion can we see that, in addition to a showing of a clear legal right of Chevron and Shell to the remedy sought, he was convinced that they

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Valley Trading Co., Inc. v. CFI of Isabela, Br. II, G.R. No. L-49529, 31 March 1989, 171 SCRA 501, 508, in turn citing *Tablarin v. Gutierrez*, G.R. No. 78104, 31 July 1987, 52 SCRA 731, 737.

[65] *Rollo*, pp. 387-388.

had made out a case of unconstitutionality or invalidity strong enough to overcome the presumption of validity of the ordinance. Statutes and ordinances are presumed valid unless and until the courts declare the contrary in clear and unequivocal terms.[66] The mere fact that the ordinance is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined.[67] The presumption is all in favor of validity. The reason for this is obvious:

> The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well being of the people . . . The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation.[68]
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> x x x x x x x x x
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> ...[Courts] accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary[,] in the determination of actual cases and controversies[,] must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[69]

The oil companies argue that this presumption must be set aside when the invalidity or unreasonableness appears on the face of the ordinance itself.[70] We see no reason to set aside the

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[66] *Valley Trading Co., Inc. v. CFI of Isabela*, Br. II, *supra* note 64.

[67] *Id*., citations omitted.

[68] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. Hon. City Mayor of Manila*, 127 Phil. 306, 314-315 (1967), citing *US v. Salaveria*, 39 Phil. 102, 111 (1918).

[69] *Angara v. Electoral Commission*, 63 Phil. 139, 158-159 (1936).

[70] Memorandum of oil companies, p. 38, citing *City of Manila v. Laguio, Jr.*, G.R. No. 118127, 12 April 2005, 455 SCRA 308, 358-359.

presumption. The ordinance, on its face, does not at all appear to be unconstitutional. It reclassified the subject area from industrial to commercial. *Prima facie*, this power is within the power of municipal corporations:

> The power of municipal corporations to divide their territory into industrial, commercial and residential zones is recognized in almost all jurisdictions inasmuch as it is derived from the police power itself and is exercised for the protection and benefit of their inhabitants.[71]
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> x x x x x x x x x x x x
>
> There can be no doubt that the City of Manila has the power to divide its territory into residential and industrial zones, and to prescribe that offensive and unwholesome trades and occupations are to be established exclusively in the latter zone.
>
> x x x x x x x x x x x x
>
> Likewise, it cannot be denied that the City of Manila has the authority, derived from the police power, of forbidding the appellant to continue the manufacture of *toyo* in the zone where it is now situated, which has been declared residential....[72]

Courts will not invalidate an ordinance unless it clearly appears that it is unconstitutional. There is no such showing here. Therefore, the injunctive writs issued in the Manila RTC's May 19, 2003 order had no leg to stand on.

We are aware that the issuance of these injunctive writs is not being assailed as tainted with grave abuse of discretion. However, we are confronted with the question of whether these writs issued by a lower court are impediments to the enforcement of Ordinance No. 8027 (which is the subject of the *mandamus* petition). As already discussed, we rule in the negative.

ORDINANCE NO. 8027 WAS NOT SUPERSEDED BY ORDINANCE NO. 8119

The March 7, 2007 decision did not take into consideration the passage of Ordinance No. 8119 entitled "An Ordinance Adopting

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[71] *People v. De Guzman, et al.*, 90 Phil. 132, 135 (1951), citations omitted.

[72] *Seng Kee & Co. v. Earnshaw and Piatt*, 56 Phil. 204, 212-213 (1931).

the Manila Comprehensive Land Use Plan and Zoning Regulations of 2006 and Providing for the Administration, Enforcement and Amendment thereto" which was approved by respondent on June 16, 2006. The simple reason was that the Court was never informed about this ordinance.

While courts are required to take judicial notice of the laws enacted by Congress, the rule with respect to local ordinances is different. Ordinances are not included in the enumeration of matters covered by mandatory judicial notice under Section 1, Rule 129 of the Rules of Court.[73]

Although, Section 50 of RA 409[74] provides that:

> SEC. 50 Judicial notice of ordinances. — All courts sitting in the city shall take judicial notice of the ordinances passed by the [*Sangguniang Panglungsod*].

this cannot be taken to mean that this Court, since it has its seat in the City of Manila, should have taken steps to procure a copy of the ordinance on its own, relieving the party of any duty to inform the Court about it.

Even where there is a statute that requires a court to take judicial notice of municipal ordinances, a court is not required to take judicial notice of ordinances that are not before it and to which it does not have access. The party asking the court to take judicial notice is obligated to supply the court with the full text of the rules the party desires it to have notice of.[75] Counsel should take the initiative in requesting that a trial court take

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[73] Sec. 1. Judicial notice, when mandatory. — A court shall take judicial notice, without introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time and the geographical divisions.

[74] Revised Charter of the City of Manila.

[75] 29 AmJur 2d 156, Evidence, Section 126 citing *Faustrum v. Board of Fire & Police Comm'rs*, (2d Dist) 240 III App 3d 947, 181 Ill Dec 567, 608 NE2d 640, app den 151 III 2d 563, 186 III Dec 380, 616 NE2d 333.

judicial notice of an ordinance even where a statute requires courts to take judicial notice of local ordinances.[76]

The intent of a statute requiring a court to take judicial notice of a local ordinance is to remove any discretion a court might have in determining whether or not to take notice of an ordinance. Such a statute does not direct the court to act on its own in obtaining evidence for the record and a party must make the ordinance available to the court for it to take notice.[77]

In its defense, respondent claimed that he did not inform the Court about the enactment of Ordinance No. 8119 because he believed that it was different from Ordinance No. 8027 and that the two were not inconsistent with each other.[78]

In the same way that we deem the intervenors' late intervention in this case unjustified, we find the failure of respondent, who was an original party here, inexcusable.

THE RULE ON JUDICIAL ADMISSIONS IS NOT APPLICABLE AGAINST RESPONDENT

The oil companies assert that respondent judicially admitted that Ordinance No. 8027 was repealed by Ordinance No. 8119 in Civil Case No. 03-106379 (where Petron assailed the constitutionality of Ordinance No. 8027) when the parties in their joint motion to withdraw complaint and counterclaim stated that "the issue ...has been rendered moot and academic by virtue of the passage of [Ordinance No. 8119]."[79] They contend that such admission worked as an estoppel against the respondent.

Respondent countered that this stipulation simply meant that Petron was recognizing the validity and legality of Ordinance No. 8027 and that it had conceded the issue of said ordinance's

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[76] *Id*., citing *Dream Mile Club, Inc. v. Tobyhanna Township Bd. of Supervisors*, 150 Pa Cmwlth 309, 615 A2d 931.

[77] *Id*.

[78] Transcript of April 11, 2007 Oral Arguments, p. 244.

[79] *Rollo*, p. 698.

constitutionality, opting instead to question the validity of Ordinance No. 8119.[80] The oil companies deny this and further argue that respondent, in his answer in Civil Case No. 06-115334 (where Chevron and Shell are asking for the nullification of Ordinance No. 8119), expressly stated that Ordinance No. 8119 replaced Ordinance No. 8027:[81]

> ... Under Ordinance No. 8027, businesses whose uses are not in accord with the reclassification were given six months to cease [their] operation. **Ordinance No. 8119, which in effect, replaced Ordinance [No.] 8027**, merely took note of the time frame provided for in Ordinance No. 8119.... Ordinance No. 8119 thus provided for an even longer term, that is[,] seven years;[82] (Emphasis supplied)

Rule 129, Section 4 of the Rules of Court provides:

> Section 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. (Emphasis supplied)

While it is true that a party making a judicial admission cannot subsequently take a position contrary to or inconsistent with what was pleaded,[83] the aforestated rule is not applicable here. Respondent made the statements regarding the ordinances in Civil Case Nos. 03-106379 and 06-115334 which are not "the same" as this case before us.[84] To constitute a judicial admission, the admission must be made in the same case in which it is offered.

Hence, respondent is not estopped from claiming that Ordinance No. 8119 did not supersede Ordinance No. 8027. On the contrary,

[80] Memorandum of respondent, pp. 30-31.

[81] Memorandum of oil companies, p. 26.

[82] Answer, paragraphs 20.1 and 20.3, pp. 20-21.

[83] *Alfelor v. Halasan*, *supra* note 56 at 460, citing *Cunanan v. Amparo*, 80 Phil. 227, 232 (1948), in turn citing *McDaniel v. Apacible*, 44 Phil. 248 (1922).

[84] *Republic Glass Corporation v. Qua*, G.R. No. 144413, 30 July 2004, 435 SCRA 480, 492.

it is the oil companies which should be considered estopped. They rely on the argument that Ordinance No. 8119 superseded Ordinance No. 8027 but, at the same time, also impugn its (8119's) validity. We frown on the adoption of inconsistent positions and distrust any attempt at clever positioning under one or the other on the basis of what appears advantageous at the moment. Parties cannot take vacillating or contrary positions regarding the validity of a statute[85] or ordinance. Nonetheless, we will look into the merits of the argument of implied repeal.

ORDINANCE NO. 8119 DID NOT IMPLIEDLY REPEAL ORDINANCE NO. 8027

Both the oil companies and DOE argue that Ordinance No. 8119 repealed Ordinance No. 8027. They assert that although there was no express repeal[86] of Ordinance No. 8027, Ordinance No. 8119 impliedly repealed it.

According to the oil companies, Ordinance No. 8119 reclassified the area covering the Pandacan Terminals to "High Density Residential/Mixed Use Zone (R-3/MXD)"[87] whereas Ordinance No. 8027 reclassified the same area from Industrial II to Commercial I:

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[85] *Republic of the Philippines v. Court of Appeals*, 359 Phil. 530, 582 (1998), Romero, *J.*, separate opinion.

[86] Sec. 84 of Ordinance No. 8119 provides:

"Repealing Clause. — All ordinances, rules or regulations in conflict with the provisions of this Ordinance are hereby repealed; *PROVIDED,* That the rights that are vested upon the effectivity of this Ordinance shall not be impaired." (*Rollo*, p. 493.)

[87] Memorandum of oil companies, pp. 44-45, citing Annex "C" of Ordinance No. 8119. Annex "C" (Zone Boundaries) of Ordinance No. 8119 enumerates and specifies the areas covered by the different zones:

"High Density Residential/Mixed Use Zone

R-3/MXD

Color: Yellow

District I

1. area covered by Smokey Mountain Development and Reclamation Project.

SECTION 1. For the purpose of promoting sound urban planning and ensuring health, public safety, and general welfare of the residents

2. area bounded on the N by Manila–Navotas boundary, on the SW by Estero de Maypajo, on the NW by Malaya, on the NE by Simeon de Jesus, and on the NW by Taliba
3. area bounded on the N by Estero de Maypajo, on the SW by Estero de Sunog Apog/Rodriguez, on the NW by Younger, and on the NE by Estaro de Maypajo
4. area occupied by a portion in Vitas Complex (as indicated in the Zoning Map)
5. area bounded on the SE by F. Varona, on the SW by Lallana, on the NW by Roxas, and on the NE by Jacinto
6. area bounded on the E by Estero de Vitas, on the SW by C-2 Road, on the NW by Velasquez, and on the NE by Osorio
7. area bounded on the SE by Varona, on the NW by Pitong Gatang, on the SW by Lacson, on the S by Chesa, on the W by Quezon, on the NW by Liwayway, on the W by Garcia, and on the NE by Harbosa (except the area covered by C-2/MXD Zone – area bounded on the N by Bulacan, on the E by Magsaysay, on the S by Dandan, and on the W by Garcia)
8. area bounded on the SE by Estero de Vitas, on the SW by Zamora, on the NW by Herbosa, on the SW by Franco, on the NW by Concha/ Nolasco, on the SE by Pavia, on the NE Sta. Maria, on the SW by Perla, on the W by Varona, on the NE by Herbosa on the NW by Velasquez, and on the NE by Inocencio (except the area covered by INS-G – bounded on the SE by Dandan, on the SW by Sta. Maria, and on the NW by Peñalosa/Sta. Maria)
9. area bounded on the SE by Corcuera/Estero dela Reina, on the NW by Pavia, and on the NE by J. Luna
10. area bounded on the SE by a line parallel/extending from Arqueros, on the SW by Dist. 1/Dist. II boundary on the NW by a line parallel/ extending from Ricafort, and on the NE by Dagupan Ext.
11. area bounded on the E by Dama de Noche, on the SW by Lakandula, on the SE by Asuncion, on the SW by C.M. Recto, on the W by Del Pan, on the S by Zaragosa, on the W by Kagitingan, and on the N/NE by Tuazon

Distinct II

1. area bounded on the N by Manila-Kalookan boundary, and on the E/S/W by Estero de Maypajo
2. area bounded ion (sic) the N by Manila-Kalookan boundary, on the SW by J. Luna, on the NW by Antipolo, and on the NE by Estero de Sunog Apog

of Pandacan and Sta. Ana as well as its adjoining areas, the land use of [those] portions of land bounded by the Pasig River in the north,

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3. area bounded on the SE by Avellana, on the SW by Dagupan, on the NW by Bualcan (sic), and on the NE by J. Luna
4. area bounded on the SE by Manila-Kalookan boundary, on the SW buy (sic) Rizal Avenue, on the NW by Teodoro/Tabora/Estero de Maypajo and on the N/NW/NE by Manila-Kalookan boundary
5. area bounded on the SE by Laguna, on the SW by Estero de San Lazaro, on the S by Herrera, and on the NE by J. Abad Santos
6. area bounded on the SE by a line parallel/extending from Arqueros, on the SW by A. Rivera, on the NW by a line parallel/extending from La Torre, and on the NE by Dist. I – Dist. II boundary

District III

1. area bounded on the SE by Chu Chin Road, on the E by L. Rivera, on the NW by Aurora Blvd., and on the NE by Liat Su
2. area bounded on the N by Laguna, on the E by T. Mapua, on the S by S. Herrera, and on the W by Dist II – Dist. III boundary

District IV

1. area bounded on the SE by Manila-Quezon City boundary, on the SW by Piy Margal, on the NW by Casañas, on the SW by Dapitan, on the NW by Ibarra, and on the NE by Simoun
2. area bounded on the SE by PNR Railway, on the SW by Lardizabal, on the SE by M. dela Fuente, on the NW by a lien parallel/extending from San Jose II, on the NW by Loreto, on the NE by Tuazon, on the NW by M. dela Fuente, and on the NE by España
3. area bounded on the SE by Matimyas/Blumentritt, on the SE by Sobriedad Ext., on the NW by Antipolo, and on the NE by S. Loyola, (except the area covered by Legarda Elem. School)
4. area bounded on the SE Manila-Quezon City boundary, on the SW/NW by Blumentritt, and on the NE by Matimyas
5. area bounded on the SE by Blumentritt, on the SW by Tuazon, on the NW by Antipolo, and on the NE by Sobriedad (except the area bounded by Most Holy Trinity Parish Church/Holy Trinity Academy)
6. area bounded on the SE by Manila-Quezon City boundary, on the S by Sociego, on the E by Santol, on the S by one (1) block south of Escoda, on the W by one (1) block west of Santol, on the S by one (10 block south of Tuazon, on the SE by Piña, on the S by Vigan, on the E by Santiago, on the NW by PNR Railway, and on the NE by G. Tuazon (except the area occupied by a portion of Burgos Elem. School)

PNR Railroad Track in the east, Beata St. in the south, Palumpong St. in the southwest, and Estero de Pancacan in the west[,] PNR

District V

1. area occupied by an area in Baseco Compound (as indicated in the Zoning Map
2. area occupied by Engineering Island
3. area bounded on the SE by Estero de Pandacan, on the SW by Quirino Avenue, on the S by Plaza Dilao, on the NW by Pres. Quirino Avenue, on the NE by the property line of Grayline Phils. Inc. (except the area occupied by Plaza dela Virgen/M.A. Roxas High School)
4. area bounded on the SE by Estero de Pandacan, on the SW by Estero Tripa de Gallina/Pedro Gil, on the E by Onyx, on the SW by Estero Tripa de Gallina, on the NW/NE by PNR Railway (except the area occupied by Concordia College)
5. area bounded on the NE by Pedro Gil, on the SE by Pasig Line, on the SW buy (sic) F. Torres, and on the NW/W by Onyx
6. area bounded on the SE by one (1) block northwest of Tejeron, on the SW by F. Torres, on the SE by Pasig Line, on the SW by Estrada, on the NW by Onyx, and on the SW by A. Francisco
7. area bounded on the SE by Jimenez, on the SW by Franco, on the SE by Alabastro, on the NE by road parallel/extending to Jade, on the SE by Topacio, on the SW by Estrada, on the NW by PNR Railway, and on the NE by Estero Tripa de Gallina
8. area bounded on the SE by PNR Railway, on the SW by Estrada, on the SE by del Pilar, on the SW by Don Pedro, on the SE by A. Aquino, on the SW by P. Ocampo, Sr., and on the NW by Diamante
9. area bounded on the NE by San Andres, on the SW by Diamante, on the S by Zapanta, on the NW by Singalong, on the NE by Cong. A. Francisco, and on the NE by Linao.

District VI

1. area bounded on the SE/SW by Manila-Quezon City boundary/San Juan River, on the NW by PNR Railway, and on the N/NE by R. Magsaysay Blvd. (except the area occupied by C-3/MXD – area bounded by R. Magsaysay and Santol Ext./area bounded by R. Magsaysay Baldovino, Hintoloro, Road 2, Buenviaje, and V. Mapa)
2. area bounded on the SE by PNR Railway, on the SW by San Juan River, on the NE by Dalisay, on the NW by Lubiran, and on the NE by Cordeleria
3. area bounded on the SE by San Juan River, on the SW by Manila-Mandaluyong boundary/Panaderos, and on the NW/SW/NE by Pasig River
4. area bounded on the E/SW by Pres. Quirino Avenue, and on the NW/NE by Estero de Pandacan

Railroad in the northwest area, Estero de Pandacan in the [n]ortheast, Pasig River in the southeast and Dr. M.L. Carreon in the southwest. The area of Punta, Sta. Ana bounded by the Pasig River, Marcelino Obrero St., Mayo 28 St., and F. Manalo Street, are hereby **reclassified from Industrial II to Commercial I**. (Emphasis supplied)

Moreover, Ordinance No. 8119 provides for a phase-out of seven years:

SEC. 72. Existing Non-Conforming Uses and Buildings. — The lawful use of any building, structure or land at the time of the adoption of this Ordinance may be continued, although such use does not conform with the provision of the Ordinance, provided:

x x x x x x x x x

2. In case the non-conforming use is an industrial use:

x x x x x x x x x

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5. area bounded on the SE/E by Estero de Pandacan, on the W by Pres. Quirino Avenue, and on the NE by Pasig River

6. area bounded on the SE by Pasig River, on the SW by PNR Railway, on the NW/SW by Estero de Pandacan,/PNR rail tracks, on the NW by Pres. Quirino Avenue, and on the NE by Estero de Pandacan

7. area bounded on the N by Estero de Pandacan, on the SW by PNR rail tracks, and on the NW by Estero de Pandacan

8. area bounded on the SW by Kahilum/Felix, on the NW by Pedro Gil, on the NW by Pedro Gil, on the NE by Estero Tripa de Gallina, on the NW by Estero de Pandacan, and on the NE By Pres. Quirino Avenue

9. area bounded on the SE by Estero de Pandacan, on the SW/SE by Pasig River, on the E by a line parallel/extending form (sic) Vista on the south side, on the SW by Pedro Gil, on the NW by M. L. Carreon, and on the NE by PNR Railway

10. area bounded on the SE/SW by Pasig River/Manila-Makati boundary on the NW by Tejeron, and on the NE by Pedro Gil/New Panaderos."

Section 12 of Ordinance No. 8119 states the allowable uses of an R-3/MXD zone:

"Sec. 12. Use Regulations in [R-3/MXD]. - An R-3/MXD shall be used primarily for high-rise housing/dwelling purposes and limited complementary/supplementary trade, services and business activities. Enumerated below are the allowable uses:

x x x x x x x x x"

d. **The land use classified as non-conforming shall program the phase-out and relocation of the non-conforming use within seven (7) years from the date of effectivity of this Ordinance**. (Emphasis supplied)

This is opposed to Ordinance No. 8027 which compels affected entities to vacate the area within six months from the effectivity of the ordinance:

SEC. 3. Owners or operators of industries and other businesses, the operation of which are no longer permitted under Section 1 hereof, are hereby given a period of six (6) months from the date of effectivity of this Ordinance within which to cease and desist from the operation of businesses which are hereby in consequence, disallowed.

Ordinance No. 8119 also designated the Pandacan oil depot area as a "Planned Unit Development/Overlay Zone (O-PUD)":

SEC. 23. Use Regulations in Planned Unit Development/Overlay Zone (O-PUD). – O-PUD Zones are identified specific sites in the City of Manila wherein the project site is comprehensively planned as an entity via unitary site plan which permits flexibility in planning/ design, building siting, complementarily of building types and land uses, usable open spaces and the preservation of significant natural land features, pursuant to regulations specified for each particular PUD. Enumerated below are identified PUD:

x x x x x x x x x

6. **Pandacan Oil Depot Area**

x x x x x x x x x

Enumerated below are the allowable uses:

1. all uses allowed in all zones where it is located
2. the [Land Use Intensity Control (LUIC)] under which zones are located shall, in all instances be complied with
3. the validity of the prescribed LUIC shall only be [superseded] by the development controls and regulations specified for each PUD as provided for each PUD as provided for by the masterplan of respective PUDs.[88] (Emphasis supplied)

[88] *Rollo*, pp. 742-744.

Respondent claims that in passing Ordinance No. 8119, the *Sanggunian* did not intend to repeal Ordinance No. 8027 but meant instead to carry over 8027's provisions to 8119 for the purpose of making Ordinance No. 8027 applicable to the oil companies even after the passage of Ordinance No. 8119.[89] He quotes an excerpt from the minutes of the July 27, 2004 session of the *Sanggunian* during the first reading of Ordinance No. 8119:

> Member GARCIA: Your Honor, *iyong patungkol po roon sa* oil depot *doon sa amin sa* Sixth District *sa* Pandacan, *wala pong nakalagay dito sa ordinansa rito na taliwas o kakaiba roon sa ordinansang ipinasa noong nakaraang Konseho, iyong* Ordinance No. 8027. So *kung ano po ang nandirito sa ordinansa na ipinasa ninyo* last time, *iyon lang po ang ni-lift namin at inilagay dito. At dito po sa ordinansang ...iyong naipasa ng huling Konseho, niri-classify [ninyo]* from Industrial II to Commercial C-1 *ang* area ng *Pandacan kung nasaan ang* oil depot. *So ini-lift lang po [namin] iyong* definition, density, *at saka po yon pong … ng… noong ordinansa ninyo na siya na po naming inilagay dito, iniba lang po naming iyong* title. **So *wala po kaming binago na taliwas o nailagay na taliwas doon sa ordinansang ipinasa ninyo, ni-lift lang po [namin]* from Ordinance No. 8027**."[90] (Emphasis supplied)

We agree with respondent.

Repeal by implication proceeds on the premise that where a statute of later date clearly reveals the intention of the legislature to abrogate a prior act on the subject, that intention must be given effect.[91]

There are two kinds of implied repeal. The first is: where the provisions in the two acts on the same subject matter are irreconcilably contradictory, the later act, to the extent of the conflict, constitutes an implied repeal of the earlier one.[92] The

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[89] Memorandum of oil companies, p. 28.

[90] Memorandum of respondent, p. 27.

[91] *Mecano v. Commission on Audit*, G.R. No. 103982, 11 December 1992, 216 SCRA 500, 505, citation omitted.

[92] *Delfino v. St. James Hospital, Inc.*, G.R. No. 166735, 5 September 2006, 501 SCRA 97, 112, citing *Mecano v. Commission on Audit*, *id*., p. 506.

second is: if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.[93] The oil companies argue that the situation here falls under the first category.

Implied repeals are not favored and will not be so declared unless the intent of the legislators is manifest.[94] As statutes and ordinances are presumed to be passed only after careful deliberation and with knowledge of all existing ones on the subject, it follows that, in passing a law, the legislature did not intend to interfere with or abrogate a former law relating to the same subject matter.[95] If the intent to repeal is not clear, the later act should be construed as a continuation of, and not a substitute for, the earlier act.[96]

These standards are deeply enshrined in our jurisprudence. We disagree that, in enacting Ordinance No. 8119, there was any indication of the legislative purpose to repeal Ordinance No. 8027.[97] The excerpt quoted above is proof that there was never such an intent. While it is true that both ordinances relate to the same subject matter, *i.e.* classification of the land use of the area where Pandacan oil depot is located, if there is no intent to repeal the earlier enactment, every effort at reasonable construction must be made to reconcile the ordinances so that both can be given effect:

> The fact that a later enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an implied repeal of the prior act, since the new statute may merely be cumulative or a continuation of the old one. What is necessary is a manifest indication of legislative purpose to repeal.[98]

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[93] *Id*.

[94] *Tan v. Pereña*, G.R. No. 149743, 18 February 2005, 452 SCRA 53, 68, citations omitted.

[95] *Id*.

[96] *Supra* note 91.

[97] See *Villegas, etc., et al. v. Subido*, 148-B Phil. 668, 676 (1971), citations omitted.

[98] *Supra note* 91 at 507.

For the first kind of implied repeal, there must be an irreconcilable conflict between the two ordinances. There is no conflict between the two ordinances. Ordinance No. 8027 reclassified the Pandacan area from Industrial II to Commercial I. Ordinance No. 8119, in Section 23, designated it as a "Planned Unit Development/Overlay Zone (O-PUD)." In its Annex C which defined the zone boundaries,[99] the Pandacan area was shown to be within the "High Density Residential/Mixed Use Zone (R-3/MXD)." These zone classifications in Ordinance No. 8119 are not inconsistent with the reclassification of the Pandacan area from Industrial to Commercial in Ordinance No. 8027. The "O-PUD" classification merely made Pandacan a "project site ... comprehensively planned as an entity via unitary site plan which permits flexibility in planning/design, building siting, complementarity of building types and land uses, usable open spaces and the preservation of significant natural land features...."[100] Its classification as "R-3/MXD" means that it should "be used primarily for high-rise housing/dwelling purposes and limited complementary/supplementary trade, services and business activities."[101] There is no conflict since both ordinances actually have a common objective, *i.e.*, to shift the zoning classification from industrial to commercial (Ordinance No. 8027) or mixed residential/commercial (Ordinance No. 8119).

Moreover, it is a well-settled rule in statutory construction that a subsequent general law does not repeal a prior special law on the same subject unless it clearly appears that the legislature has intended by the later general act to modify or repeal the earlier special law. *Generalia specialibus non derogant* (a general law does not nullify a specific or special law).[102] This is so even if the provisions of the general law are sufficiently comprehensive to include what was set forth in the special act.[103]

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[99] *See* Section 9; *rollo*, p. 460.

[100] Section 23.

[101] Section 12.

[102] *Leynes v. Commission on Audit*, G.R. No. 143596, 11 December 2003, 418 SCRA 180, 196.

[103] *Supra* note 97.

The special act and the general law must stand together, one as the law of the particular subject and the other as the law of general application.[104] The special law must be taken as intended to constitute an exception to, or a qualification of, the general act or provision.[105]

> The reason for this is that the legislature, in passing a law of special character, considers and makes special provisions for the particular circumstances dealt with by the special law. This being so, the legislature, by adopting a general law containing provisions repugnant to those of the special law and without making any mention of its intention to amend or modify such special law, cannot be deemed to have intended an amendment, repeal or modification of the latter.[106]

Ordinance No. 8027 is a special law[107] since it deals specifically with a certain area described therein (the Pandacan oil depot area) whereas Ordinance No. 8119 can be considered a general law[108] as it covers the entire city of Manila.

The oil companies assert that even if Ordinance No. 8027 is a special law, the existence of an all-encompassing repealing clause in Ordinance No. 8119 evinces an intent on the part of the *Sanggunian* to repeal the earlier ordinance:

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[104] *Philippine National Oil Company v. Court of Appeals*, G.R. No. 109976, 26 April 2005, 457 SCRA 32, 80, citing *Ex Parte United States*, 226 U. S., 420; 57 L. ed., 281; *Ex Parte Crow Dog*, 109 U. S., 556; 27 L. ed., 1030; *Partee v. St. Louis & S. F. R. Co.*, 204 Fed. Rep., 970.

[105] *Id*., citing *Crane v. Reeder and Reeder*, 22 Mich., 322, 334; *University of Utah vs. Richards*, 77 Am. St. Rep., 928.

[106] *Supra* note 102, citing *De Villa v. Court of Appeals*, 195 SCRA 722 (1991).

[107] A special law is one which relates to particular persons or things of a class, or to a particular portion or section of the state only; *Leynes v. Commission on Audit*, *supra* note 102, footnote no. 21, citing *U.S. v. Serapio*, 23 Phil. 584 [1912].

[108] A general law is one which affects all people of the state or all of a particular class of persons in the state or embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class; *id*., footnote no. 22, citing *U.S. v. Serapio*, *id*. *Valera v. Tuason*, 80 Phil. 823 (1948) and *Villegas v. Subido*, *supra* note 97.

Sec. 84. Repealing Clause. – All ordinances, rules, regulations in conflict with the provisions of this Ordinance are hereby repealed; *PROVIDED*, That the rights that are vested upon the effectivity of this Ordinance shall not be impaired.

They cited *Hospicio de San Jose de Barili, Cebu City v. Department of Agrarian Reform*:[109]

> The presence of such general repealing clause in a later statute clearly indicates the legislative intent to repeal all prior inconsistent laws on the subject matter, whether the prior law is a general law or a special law... Without such a clause, a later general law will ordinarily not repeal a prior special law on the same subject. But with such clause contained in the subsequent general law, the prior special law will be deemed repealed, as the clause is a clear legislative intent to bring about that result.[110]

This ruling is not applicable here. The repealing clause of Ordinance No. 8119 cannot be taken to indicate the legislative intent to repeal all prior inconsistent laws on the subject matter, including Ordinance No. 8027, a special enactment, since the aforequoted minutes (an official record of the discussions in the *Sanggunian*) actually indicated the clear intent to preserve the provisions of Ordinance No. 8027.

To summarize, the conflict between the two ordinances is more apparent than real. The two ordinances can be reconciled. Ordinance No. 8027 is applicable to the area particularly described therein whereas Ordinance No. 8119 is applicable to the entire City of Manila.

MANDAMUS LIES TO COMPEL RESPONDENT MAYOR TO ENFORCE ORDINANCE NO. 8027

The oil companies insist that *mandamus* does not lie against respondent in consideration of the separation of powers of the executive and judiciary.[111] This argument is misplaced. Indeed,

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[109] G.R. No. 140847, 23 September 2005, 470 SCRA 609.

[110] *Id.*, p. 623, citing R. AGPALO, *STATUTORY CONSTRUCTION* (2003), p. 411, in turn citing *Gaerlan v. Catubig*, G.R. No. L-23964, 1 June 1966, 17 SCRA 376.

[111] Memorandum, p. 39, citing *Mama, Jr. v. Court of Appeals*, G.R. No. 86517, 30 April 1991, 196 SCRA 489, 496.

[the] Courts will not interfere by *mandamus* proceedings with the legislative [or executive departments] of the government in the legitimate exercise of its powers, **except to enforce mere ministerial acts required by law to be performed by some officer thereof.**[112] (Emphasis Supplied)

since this is the function of a writ of *mandamus*, which is the power to compel "the performance of an act which the law specifically enjoins as a duty resulting from office, trust or station."[113]

They also argue that petitioners had a plain, speedy and adequate remedy to compel respondent to enforce Ordinance No. 8027 which was to seek relief from the President of the Philippines through the Secretary of the Department of Interior and Local Government (DILG) by virtue of the President's power of supervision over local government units. Again, we disagree. A party need not go first to the DILG in order to compel the enforcement of an ordinance. This suggested process would be unreasonably long, tedious and consequently injurious to the interests of the local government unit (LGU) and its constituents whose welfare is sought to be protected. Besides, petitioners' resort to an original action for *mandamus* before this Court is undeniably allowed by the Constitution.[114]

ORDINANCE NO. 8027 IS CONSTITUTIONAL AND VALID

Having ruled that there is no impediment to the enforcement of Ordinance No. 8027, we now proceed to make a definitive ruling on its constitutionality and validity.

The tests of a valid ordinance are well established. For an ordinance to be valid, it must not only be within the corporate powers of the

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[112] *Suanes v. Chief Accountant of the Senate*, 81 Phil. 877, 879 (1948), citing 55 C. J., S; Sec. 130, p. 215; *see* also 34 Am. Jur., pp. 910-911; 95 A. L. R. 273, 277-278.

[113] Rule 65, Section 3 of the Rules of Court.

[114] Section 5 (1), Article VIII.

LGU to enact and be passed according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy and (6) must not be unreasonable.[115]

THE CITY OF MANILA HAS THE POWER TO ENACT ORDINANCE NO. 8027

Ordinance No. 8027 was passed by the *Sangguniang Panlungsod* of Manila in the exercise of its police power. Police power is the plenary power vested in the legislature to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people.[116] This power flows from the recognition that *salus populi est suprema lex* (the welfare of the people is the supreme law).[117] While police power rests primarily with the national legislature, such power may be delegated.[118] Section 16 of the LGC, known as the general welfare clause, encapsulates the delegated police power to local governments:[119]

Section 16. General Welfare. — Every local government unit shall exercise the powers expressly granted, those necessarily implied

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[115] *City of Manila v. Laguio, Jr.*, *supra* note 70 at 326, citing *Tatel v. Municipality of Virac*, G.R. No. L-40243, 11 March 1992, 207 SCRA 157, 161; *Solicitor General v. Metropolitan Manila Authority*, G.R. No. 102782, 11 December 1991, 204 SCRA 837, 845; *Magtajas v. Pryce Properties Corp., Inc.*, G.R. No. 111097, 20 July 1994, 234 SCRA 255, 268-267.

[116] *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, G.R. No. 170656, 15 August 2007, citing *Binay v. Domingo*, G.R. No. 92389, September 11, 1991, 201 SCRA 508, 514; *Presidential Commission on Good Government v. Peña*, G.R. No. 77663, April 12, 1988, 159 SCRA 556, 574; *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 708.

[117] *Id*.

[118] *Id*., citing *Pangasinan Transportation Co., Inc. v. The Public Service Commission,* 70 Phil. 221, 229 (1940) and *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, G.R. No. 76633, October 18, 1988, 166 SCRA 533, 544.

[119] *Roble Arrastre, Inc. v. Villaflor*, G.R. No. 128509, 22 August 2006, 499 SCRA 434, 448.

therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

LGUs like the City of Manila exercise police power through their respective legislative bodies, in this case, the *Sangguniang Panlungsod* or the city council. Specifically, the *Sanggunian* can enact ordinances for the general welfare of the city:

Section. 458. – *Powers, Duties, Functions and Compensation*. – (a) The *Sangguniang Panglungsod*, as the legislative branch of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code xxxx

This police power was also provided for in RA 409 or the Revised Charter of the City of Manila:

Section 18. Legislative powers. — The [City Council] shall have the following legislative powers:

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(kk) To enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, and the promotion of the morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants, and such others as may be necessary to carry into effect and discharge the powers and duties conferred by this chapter xxxx[120]

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[120] Article III, Section 18 (kk).

Specifically, the *Sanggunian* has the power to "reclassify land within the jurisdiction of the city."[121]

THE ENACTMENT OF ORDINANCE NO. 8027 IS A LEGITIMATE EXERCISE OF POLICE POWER

As with the State, local governments may be considered as having properly exercised their police power only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. In short, there must be a concurrence of a lawful subject and a lawful method.[122]

Ordinance No. 8027 was enacted "for the purpose of promoting sound urban planning, ensuring health, public safety and general welfare"[123] of the residents of Manila. The *Sanggunian* was impelled to take measures to protect the residents of Manila from catastrophic devastation in case of a terrorist attack on the Pandacan Terminals. Towards this objective, the *Sanggunian* reclassified the area defined in the ordinance from industrial to commercial.

The following facts were found by the Committee on Housing, Resettlement and Urban Development of the City of Manila which recommended the approval of the ordinance:

(1) the depot facilities contained 313.5 million liters of highly flammable and highly volatile products which include petroleum gas, liquefied petroleum gas, aviation fuel, diesel, gasoline, kerosene and fuel oil among others;

(2) the depot is open to attack through land, water or air;

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[121] Section 458 (a) (2) (viii).

[122] *Lucena Grand Central Terminal, Inc. v. Jac Liner, Inc.*, G.R. No. 148339, 23 February 2005, 452 SCRA 174, 185, citing *Department of Education, Culture and Sports v. San Diego*, G.R. No. 89572, 21 December 1989, 180 SCRA 533, 537.

[123] Section 1 thereof.

(3) it is situated in a densely populated place and near Malacañang Palace and

(4) in case of an explosion or conflagration in the depot, the fire could spread to the neighboring communities.[124]

The ordinance was intended to safeguard the rights to life, security and safety of all the inhabitants of Manila and not just of a particular class.[125] The depot is perceived, rightly or wrongly, as a representation of western interests which means that it is a terrorist target. As long as there is such a target in their midst, the residents of Manila are not safe. It therefore became necessary to remove these terminals to dissipate the threat. According to respondent:

> Such a public need became apparent after the 9/11 incident which showed that what was perceived to be impossible to happen, to the most powerful country in the world at that, is actually possible. The destruction of property and the loss of thousands of lives on that fateful day became the impetus for a public need. In the aftermath of the 9/11 tragedy, the threats of terrorism continued [such] that it became imperative for governments to take measures to combat their effects.[126]

Wide discretion is vested on the legislative authority to determine not only what the interests of the public require but also what measures are necessary for the protection of such interests.[127] Clearly, the *Sanggunian* was in the best position to determine the needs of its constituents.

In the exercise of police power, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government.[128] Otherwise stated, the

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[124] *Rollo*, pp. 982-985.

[125] *Id.*, p. 1004.

[126] *Id.*, p. 1006.

[127] *Fabie v. City of Manila*, 21 Phil. 486, 492 (1912).

[128] *Didipio Earth-Savers' Multi-purpose Association, Incorporated (DESAMA) v. Gozun*, G.R. No. 157882, 30 March 2006, 485 SCRA 586, 604.

government may enact legislation that may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare.[129] However, the interference must be reasonable and not arbitrary. And to forestall arbitrariness, the methods or means used to protect public health, morals, safety or welfare must have a reasonable relation to the end in view.[130]

The means adopted by the *Sanggunian* was the enactment of a zoning ordinance which reclassified the area where the depot is situated from industrial to commercial. A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribes, defines and apportions a given political subdivision into specific land uses as present and future projection of needs.[131] As a result of the zoning, the continued operation of the businesses of the oil companies in their present location will no longer be permitted. The power to establish zones for industrial, commercial and residential uses is derived from the police power itself and is exercised for the protection and benefit of the residents of a locality.[132] Consequently, the enactment of Ordinance No. 8027 is within the power of the *Sangguniang Panlungsod* of the City of Manila and any resulting burden on those affected cannot be said to be unjust:

> There can be no doubt that the City of Manila has the power to divide its territory into residential and industrial zones, and to prescribe that offensive and unwholesome trades and occupations are to be established exclusively in the latter zone.
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> "The benefits to be derived by cities adopting such regulations (zoning) may be summarized as follows: They attract a desirable

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[129] *Patalinghug v. Court of Appeals*, G.R. No. 104786, 27 January 1994, 229 SCRA 554, 559, citing *Sangalang v. Intermediate Court*, G.R. Nos. 71169, 76394, 74376 and 82281, December 22, 1988, 168 SCRA 634; *Ortigas & Co. Ltd. Partnership v. Feati Bank and Trust Co.*, G.R. No. L-24670, December 14, 1989, 94 SCRA 533.

[130] *Balacuit v. Court of First Instance of Agusan del Norte and Butuan City, Branch II*, G.R. No. L-38429, 30 June 1988, 163 SCRA 182, 191.

[131] *Sta. Rosa Realty Development Corporation v. Court of Appeals*, G.R. No. 112526, 12 October 2001, 367 SCRA 175, 193, citing PD 449, Section 4 (b).

[132] *Tan Chat v. Municipality of Iloilo*, 60 Phil. 465, 473 (1934).

and assure a permanent citizenship; they foster pride in and attachment to the city; they promote happiness and contentment; they stabilize the use and value of property and promote the peace, [tranquility], and good order of the city. We do not hesitate to say that the attainment of these objects affords a legitimate field for the exercise of the police power. He who owns property in such a district is not deprived of its use by such regulations. He may use it for the purposes to which the section in which it is located is dedicated. That he shall not be permitted to use it to the desecration of the community constitutes no unreasonable or permanent hardship and results in no unjust burden."

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"The 14th Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public."[133]

We entertain no doubt that Ordinance No. 8027 is a valid police power measure because there is a concurrence of lawful subject and lawful method.

ORDINANCE NO. 8027 IS NOT UNFAIR, OPPRESSIVE OR CONFISCATORY WHICH AMOUNTS TO TAKING WITHOUT COMPENSATION

According to the oil companies, Ordinance No. 8027 is unfair and oppressive as it does not only regulate but also absolutely prohibits them from conducting operations in the City of Manila. Respondent counters that this is not accurate since the ordinance merely prohibits the oil companies from operating their businesses in the Pandacan area.

Indeed, the ordinance expressly delineated in its title and in Section 1 what it pertained to. Therefore, the oil companies' contention is not supported by the text of the ordinance. Respondent succinctly stated that:

The oil companies are not forbidden to do business in the City of Manila. They may still very well do so, except that their oil storage

[133] *Supra* note 72.

facilities are no longer allowed in the Pandacan area. Certainly, there are other places in the City of Manila where they can conduct this specific kind of business. Ordinance No. 8027 did not render the oil companies illegal. The assailed ordinance affects the oil companies business only in so far as the Pandacan area is concerned.[134]

The oil companies are not prohibited from doing business in other appropriate zones in Manila. The City of Manila merely exercised its power to regulate the businesses and industries in the zones it established:

As to the contention that the power to regulate does not include the power to prohibit, it will be seen that the ordinance copied above does not prohibit the installation of motor engines within the municipality of Cabanatuan but only within the zone therein fixed. If the municipal council of Cabanatuan is authorized to establish said zone, it is also authorized to provide what kind of engines may be installed therein. In banning the installation in said zone of all engines not excepted in the ordinance, the municipal council of Cabanatuan did no more than regulate their installation by means of zonification.[135]

The oil companies aver that the ordinance is unfair and oppressive because they have invested billions of pesos in the depot.[136] Its forced closure will result in huge losses in income and tremendous costs in constructing new facilities.

Their contention has no merit. In the exercise of police power, there is a limitation on or restriction of property interests to promote public welfare which involves no compensable taking. Compensation is necessary only when the state's power of eminent domain is exercised. In eminent domain, property is appropriated and applied to some public purpose. Property condemned under the exercise of police power, on the other hand, is noxious or intended for a noxious or forbidden purpose and, consequently,

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[134] *Rollo*, pp. 1010-1011.

[135] *People v. Cruz*, 54 Phil. 24, 28 (1929).

[136] *Rollo*, p. 300.

is not compensable.[137] The restriction imposed to protect lives, public health and safety from danger is not a taking. It is merely the prohibition or abatement of a noxious use which interferes with paramount rights of the public.

Property has not only an individual function, insofar as it has to provide for the needs of the owner, but also a social function insofar as it has to provide for the needs of the other members of society.[138] The principle is this:

> Police power proceeds from the principle that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the right of the community. Rights of property, like all other social and conventional rights, are subject to reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient.[139]

In the regulation of the use of the property, nobody else acquires the use or interest therein, hence there is no compensable taking.[140] In this case, the properties of the oil companies and other businesses situated in the affected area remain theirs. Only their use is restricted although they can be applied to other profitable uses permitted in the commercial zone.

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[137] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, 14 July 1989, 343 SCRA 175, 370.

[138] Chief Justice Reynato S. Puno, "The Right to Property: Its Philosophical and Legal Bases," The Court Systems Journal, vol. 10, no. 4, December 2005, p. 6.

[139] *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Comelec*, 352 Phil. 153 (1998), Dissenting Opinion of J. Romero, citing Cooley, Thomas II *Constitutional Limitations,* 8th Ed., p. 1224 (1927). This is further reinforced by Section 6, Article XII of the Constitution: "The use of property bears a social function xxx"

[140] *Didipio Earth-Savers' Multi-Purpose Association v. Gozun*, *supra* note 128 at 605.

ORDINANCE NO. 8027 IS NOT PARTIAL AND DISCRIMINATORY

The oil companies take the position that the ordinance has discriminated against and singled out the Pandacan Terminals despite the fact that the Pandacan area is congested with buildings and residences that do not comply with the National Building Code, Fire Code and Health and Sanitation Code.[141]

This issue should not detain us for long. An ordinance based on reasonable classification does not violate the constitutional guaranty of the equal protection of the law.[142] The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only and (4) it must apply equally to all members of the same class.[143]

The law may treat and regulate one class differently from another class provided there are real and substantial differences to distinguish one class from another.[144] Here, there is a reasonable classification. We reiterate that what the ordinance seeks to prevent is a catastrophic devastation that will result from a terrorist attack. Unlike the depot, the surrounding community is not a high-value terrorist target. Any damage caused by fire or explosion occurring in those areas would be nothing compared to the damage caused by a fire or explosion in the depot itself. Accordingly, there is a substantial distinction. The enactment of the ordinance which provides for the cessation of the operations of these terminals removes the threat they pose. Therefore it is germane to the purpose of the ordinance. The classification is not limited to the conditions existing when the ordinance was enacted but

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[141] *Rollo*, p. 305.

[142] Article III, Section 1 states:

Section 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

[143] *Government Service Insurance System v. Montesclaros*, G.R. No. 146494, 14 July 2004, 434 SCRA 441, 452.

[144] *Id.*, citations omitted.

to future conditions as well. Finally, the ordinance is applicable to all businesses and industries in the area it delineated.

ORDINANCE NO. 8027 IS NOT INCONSISTENT WITH RA 7638 AND RA 8479

The oil companies and the DOE assert that Ordinance No. 8027 is unconstitutional because it contravenes RA 7638 (DOE Act of 1992)[145] and RA 8479 (Downstream Oil Industry Deregulation Law of 1998).[146] They argue that through RA 7638, the national legislature declared it a policy of the state "to ensure a continuous, adequate, and economic supply of energy"[147] and created the DOE to implement this policy. Thus, under Section 5 (c), DOE is empowered to "establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources." Considering that the petroleum products contained in the Pandacan Terminals are major and critical energy resources, they conclude that their administration, storage, distribution and transport are of national interest and fall under DOE's primary and exclusive jurisdiction.[148]

They further assert that the terminals are necessary for the delivery of immediate and adequate supply of oil to its recipients in the most economical way.[149] Local legislation such as Ordinance No. 8027 (which effectively calls for the removal of these terminals) allegedly frustrates the state policy of ensuring a continuous, adequate, and economic supply of energy expressed in RA 7638, a national law.[150] Likewise, the ordinance thwarts

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[145] Entitled "An Act Creating the Department of Energy, Rationalizing the Organization and Functions of Government Agencies Related to Energy, and for Other Purposes" approved on December 9, 1992.

[146] Entitled "An Act Deregulating the Downstream Oil Industry, and for Other Purposes" approved on February 10, 1998.

[147] Section 1.

[148] *Rollo*, p. 1443.

[149] *Id.*, p. 1444.

[150] *Id.*, p. 1470.

the determination of the DOE that the terminals' operations should be merely scaled down and not discontinued.[151] They insist that this should not be allowed considering that it has a nationwide economic impact and affects public interest transcending the territorial jurisdiction of the City of Manila.[152]

According to them, the DOE's supervision over the oil industry under RA 7638 was subsequently underscored by RA 8479, particularly in Section 7 thereof:

> SECTION 7. Promotion of Fair Trade Practices. — The Department of Trade and Industry (DTI) and DOE shall take all measures to promote fair trade and prevent cartelization, monopolies, combinations in restraint of trade, and any unfair competition in the Industry as defined in Article 186 of the Revised Penal Code, and Articles 168 and 169 of Republic Act No. 8293, otherwise known as the "Intellectual Property Rights Law". **The DOE shall** continue to **encourage certain practices in the Industry which serve the public interest** and are **intended to achieve efficiency and cost reduction, ensure continuous supply of petroleum products,** and enhance environmental protection. These practices may include borrow-and-loan agreements, rationalized depot and manufacturing operations, hospitality agreements, joint tanker and pipeline utilization, and joint actions on oil spill control and fire prevention. (Emphasis supplied)

Respondent counters that DOE's regulatory power does not preclude LGUs from exercising their police power.[153]

Indeed, ordinances should not contravene existing statutes enacted by Congress. The rationale for this was clearly explained in *Magtajas vs. Pryce Properties Corp., Inc.*:[154]

> The rationale of the requirement that the ordinances should not contravene a statute is obvious. Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress as the

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[151] *Id.*, p. 1480.

[152] *Id.*, p. 730.

[153] *Id.*, p. 1023.

[154] *Supra* note 115.

national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.

"Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on the right so far as to the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature."

This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax, which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.[155]

The question now is whether Ordinance No. 8027 contravenes RA 7638 and RA 8479. It does not.

Under Section 5 (c) of RA 7638, DOE was given the power to "establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources." On the other hand, under Section 7 of RA 8749, the DOE "shall continue to encourage certain practices in the Industry which serve the public interest

[155] *Id*., pp. 272-273, citation omitted.

and are intended to achieve efficiency and cost reduction, ensure continuous supply of petroleum products." Nothing in these statutes prohibits the City of Manila from enacting ordinances in the exercise of its police power.

The principle of local autonomy is enshrined in and zealously protected under the Constitution. In Article II, Section 25 thereof, the people expressly adopted the following policy:

> Section 25. The State shall ensure the autonomy of local governments.

An entire article (Article X) of the Constitution has been devoted to guaranteeing and promoting the autonomy of LGUs. The LGC was specially promulgated by Congress to ensure the autonomy of local governments as mandated by the Constitution:

> Sec. 2. Declaration of Policy. (a) **It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals.** Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units. (Emphasis supplied)

We do not see how the laws relied upon by the oil companies and DOE stripped the City of Manila of its power to enact ordinances in the exercise of its police power and to reclassify the land uses within its jurisdiction. To guide us, we shall make a brief survey of our decisions where the police power measure of the LGU clashed with national laws.

In *Tan v. Pereña*,[156] the Court ruled that Ordinance No. 7 enacted by the municipality of Daanbantayan, Cebu allowing the operation of three cockpits was invalid for violating

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[156] G.R. No. 149743, 18 February 2005, 452 SCRA 53.

PD 449 (or the Cockfighting Law of 1974) which permitted only one cockpit per municipality.

In *Batangas CATV, Inc. v. Court of Appeals*,[157] the *Sangguniang Panlungsod* of Batangas City enacted Resolution No. 210 granting Batangas CATV, Inc. a permit to operate a cable television (CATV) system in Batangas City. The Court held that the LGU did not have the authority to grant franchises to operate a CATV system because it was the National Telecommunications Commission (NTC) that had the power under EO Nos. 205 and 436 to regulate CATV operations. EO 205 mandated the NTC to grant certificates of authority to CATV operators while EO 436 vested on the NTC the power to regulate and supervise the CATV industry.

In *Lina, Jr. v. Paño*,[158] we held that *Kapasiyahan Bilang 508, Taon 1995* of the *Sangguniang Panlalawigan* of Laguna could not be used as justification to prohibit lotto in the municipality of San Pedro, Laguna because lotto was duly authorized by RA 1169, as amended by BP 42. This law granted a franchise to the Philippine Charity Sweepstakes Office and allowed it to operate lotteries.

In *Magtajas v. Pryce Properties Corp., Inc.,*[159] the *Sangguniang Panlungsod* of Cagayan de Oro City passed Ordinance Nos. 3353 and 3375-93 prohibiting the operation of casinos in the city. We ruled that these ordinances were void for contravening PD 1869 or the charter of the Philippine Amusements and Gaming Corporation which had the power to operate casinos.

The common denominator of all of these cases is that the national laws were clearly and expressly in conflict with the ordinances/resolutions of the LGUs. The inconsistencies were so patent that there was no room for doubt. This is not the case here.

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[157] G.R. No. 138810, 29 September 2004, 439 SCRA 326.

[158] 416 Phil. 438 (2001).

[159] *Supra* note 115.

The laws cited merely gave DOE general powers to "establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources" and "to encourage certain practices in the [oil] industry which serve the public interest and are intended to achieve efficiency and cost reduction, ensure continuous supply of petroleum products." These powers can be exercised without emasculating the LGUs of the powers granted them. When these ambiguous powers are pitted against the unequivocal power of the LGU to enact police power and zoning ordinances for the general welfare of its constituents, it is not difficult to rule in favor of the latter. Considering that the powers of the DOE regarding the Pandacan Terminals are not categorical, the doubt must be resolved in favor of the City of Manila:

> SECTION 5. Rules of Interpretation. — In the interpretation of the provisions of this Code, the following rules shall apply:
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> (a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned;
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> x x x x x x x x x
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> (c) The general welfare provisions in this Code shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community xxx

The least we can do to ensure genuine and meaningful local autonomy is not to force an interpretation that negates powers explicitly granted to local governments. To rule against the power of LGUs to reclassify areas within their jurisdiction will subvert the principle of local autonomy guaranteed by the Constitution.[160] As we have noted in earlier decisions, our national officials should not only comply with the constitutional provisions on

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[160] *Leynes v. Commission on Audit*, *supra* note 102 at 199, citing Section 25, Article II and Section 2, Article X of the Constitution.

local autonomy but should also appreciate the spirit and liberty upon which these provisions are based.[161]

THE DOE CANNOT EXERCISE THE POWER OF CONTROL OVER LGUS

Another reason that militates against the DOE's assertions is that Section 4 of Article X of the Constitution confines the President's power over LGUs to one of general supervision:

> SECTION 4. The President of the Philippines shall exercise general supervision over local governments. xxx

Consequently, the Chief Executive or his or her alter egos, cannot exercise the power of control over them.[162] Control and supervision are distinguished as follows:

> [Supervision] means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter.[163]

Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body.[164] It does not allow the supervisor to annul the acts of the subordinate.[165] Here, what

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[161] *Province of Batangas v. Romulo*, G.R. No. 152774, 27 May 2004, 429 SCRA 736, 772, citing *San Juan v. Civil Service Commission*, G.R. No. 92299, 19 April 1991, 196 SCRA 69.

[162] *National Liga ng mga Barangay v. Paredes*, G.R. Nos. 130775 and 131939, 27 September 2004, 439 SCRA 130.

[163] *Mondano v. Silvosa*, 97 Phil. 143, 147-148 (1955).

[164] *Taule v. Santos*, G.R. No. 90336, 12 August 1991, 200 SCRA 512, 522, citing *Hebron v. Reyes*, 104 Phil. 175 (1958).

[165] *Municipality of Malolos v. Libangang Malolos, Inc.*, G.R. No. 78592, 11 August 1988, 164 SCRA 290, 298 citing *Hee Acusar v. IAC*, G.R. Nos. 72969-70, 17 December 1986, 146 SCRA 294, 300.

the DOE seeks to do is to set aside an ordinance enacted by local officials, a power that not even its principal, the President, has. This is because:

> Under our present system of government, executive power is vested in the President. The members of the Cabinet and other executive officials are merely alter egos. As such, they are subject to the power of control of the President, at whose will and behest they can be removed from office; or their actions and decisions changed, suspended or reversed. In contrast, the heads of political subdivisions are elected by the people. Their sovereign powers emanate from the electorate, to whom they are directly accountable. By constitutional fiat, they are subject to the President's supervision only, not control, so long as their acts are exercised within the sphere of their legitimate powers. By the same token, the President may not withhold or alter any authority or power given them by the Constitution and the law.[166]

Thus, the President and his or her alter egos, the department heads, cannot interfere with the activities of local governments, so long as they act within the scope of their authority. Accordingly, the DOE cannot substitute its own discretion for the discretion exercised by the *sanggunian* of the City of Manila. In local affairs, the wisdom of local officials must prevail as long as they are acting within the parameters of the Constitution and the law.[167]

ORDINANCE NO. 8027 IS NOT INVALID FOR FAILURE TO COMPLY WITH RA 7924 AND EO 72

The oil companies argue that zoning ordinances of LGUs are required to be submitted to the Metropolitan Manila Development Authority (MMDA) for review and if found to be in compliance with its metropolitan physical framework plan

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[166] *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, 19 July 2000, 336 SCRA 201, 215, citing Sec. 1, Art. VII, 1987 Constitution and Joaquin G. Bernas, SJ, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., p. 739.

[167] See *Dadole v. Commission on Audit*, G.R. No. 125350, 3 December 2002, 393 SCRA 262, 271.

and regulations, it shall endorse the same to the Housing and Land Use Regulatory Board (HLURB). Their basis is Section 3 (e) of RA 7924:[168]

SECTION 3. Scope of MMDA Services. — **Metro-wide services under the jurisdiction of the MMDA** are those services which have metro-wide impact and transcend local political boundaries or entail huge expenditures such that it would not be viable for said services to be provided by the individual [LGUs] comprising Metropolitan Manila. These services shall include:

x x x x x x x x x

(e) **Urban renewal, zoning, and land use planning**, and shelter services which include the formulation, adoption and implementation of policies, standards, rules and regulations, programs and projects to rationalize and optimize urban land use and provide direction to urban growth and expansion, the rehabilitation and development of slum and blighted areas, the development of shelter and housing facilities and the provision of necessary social services thereof. (Emphasis supplied)

Reference was also made to Section 15 of its implementing rules:

Section 15. Linkages with HUDCC, HLURB, NHA, LGUs and Other National Government Agencies Concerned on Urban Renewal, Zoning and Land Use Planning and Shelter Services. Within the context of the National Housing and Urban Development Framework, and pursuant to the national standards, guidelines and regulations formulated by the Housing and Land Use Regulatory Board [HLURB] on land use planning and zoning, the [MMDA] shall prepare a metropolitan physical framework plan and regulations which shall complement and translate the socio-economic development plan for Metro Manila into physical or spatial terms, and provide the basis for the preparation, review, integration and implementation of local land use plans and zoning, ordinance of cities and municipalities in the area.

Said framework plan and regulations shall contain, among others, planning and zoning policies and procedures that shall be observed by local government units in the preparation of their own plans and

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[168] Entitled "An Act Creating the [MMDA], Defining its Powers and Functions, Providing Funds therefor and for Other Purposes."

ordinances pursuant to Section 447 and 458 of RA 7160, as well as the identification of sites and projects that are considered to be of national or metropolitan significance.

Cities and municipalities shall prepare their respective land use plans and zoning ordinances and submit the same for review and integration by the [MMDA] and indorsement to HLURB in accordance with Executive Order No. 72 and other pertinent laws.

In the preparation of a Metropolitan Manila physical framework plan and regulations, the [MMDA] shall coordinate with the Housing and Urban Development Coordinating Council, HLURB, the National Housing Authority, Intramuros Administration, and all other agencies of the national government which are concerned with land use and zoning, urban renewal and shelter services. (Emphasis supplied)

They also claim that EO 72[169] provides that zoning ordinances of cities and municipalities of Metro Manila are subject to review by the HLURB to ensure compliance with national standards and guidelines. They cite Section 1, paragraphs (c), (e), (f) and (g):

SECTION 1. Plan formulation or updating. —

x x x x x x x x x

(c) Cities and municipalities of Metropolitan Manila shall continue to formulate or update their respective **comprehensive land use plans**, in accordance with the land use planning and zoning standards and guidelines prescribed by the HLURB pursuant to EO 392, S. of 1990, and other pertinent national policies.

x x x x x x x x x

(e) Pursuant to LOI 729, S. of 1978, EO 648, S. of 1981, and RA 7279, the **comprehensive land use plans** of provinces, highly urbanized cities and independent component cities shall be reviewed and ratified by the HLURB to ensure compliance with national standards and guidelines.

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[169] Entitled "Providing for the Preparation and Implementation of the Comprehensive Land Use Plans of Local Government Units Pursuant to the Local Government Code of 1991 and Other Pertinent Laws" issued on March 25, 1993.

(f) Pursuant to EO 392, S. of 1999, the **comprehensive land use plans** of cities and municipalities of Metropolitan Manila shall be reviewed by the HLURB to ensure compliance with national standards and guidelines.

(g) Said review shall be completed within three (3) months upon receipt thereof otherwise, the same shall be deemed consistent with law, and, therefore, valid. (Emphasis supplied)

They argue that because Ordinance No. 8027 did not go through this review process, it is invalid.

The argument is flawed.

RA 7942 does not give MMDA the authority to review land use plans and zoning ordinances of cities and municipalities. This was only found in its implementing rules which made a reference to EO 72. EO 72 expressly refers to comprehensive land use plans (CLUPs) only. Ordinance No. 8027 is admittedly not a CLUP nor intended to be one. Instead, it is a very specific ordinance which reclassified the land use of a defined area in order to prevent the massive effects of a possible terrorist attack. It is Ordinance No. 8119 which was explicitly formulated as the "Manila [CLUP] and Zoning Ordinance of 2006." CLUPs are the ordinances which should be submitted to the MMDA for integration in its metropolitan physical framework plan and approved by the HLURB to ensure that they conform with national guidelines and policies.

Moreover, even assuming that the MMDA review and HLURB ratification are necessary, the oil companies did not present any evidence to show that these were not complied with. In accordance with the presumption of validity in favor of an ordinance, its constitutionality or legality should be upheld in the absence of proof showing that the procedure prescribed by law was not observed. The burden of proof is on the oil companies which already had notice that this Court was inclined to dispose of all the issues in this case. Yet aside from their bare assertion, they did not present any certification from the MMDA or the HLURB nor did they append these to their pleadings. Clearly,

they failed to rebut the presumption of validity of Ordinance No. 8027.[170]

CONCLUSION

Essentially, the oil companies are fighting for their right to property. They allege that they stand to lose billions of pesos if forced to relocate. However, based on the hierarchy of constitutionally protected rights, the right to life enjoys precedence over the right to property.[171] The reason is obvious: life is irreplaceable, property is not. When the state or LGU's exercise of police power clashes with a few individuals' right to property, the former should prevail.[172]

Both law and jurisprudence support the constitutionality and validity of Ordinance No. 8027. Without a doubt, there are no impediments to its enforcement and implementation. Any delay is unfair to the inhabitants of the City of Manila and its leaders who have categorically expressed their desire for the relocation of the terminals. Their power to chart and control their own destiny and preserve their lives and safety should not be curtailed by the intervenors' warnings of doomsday scenarios and threats of economic disorder if the ordinance is enforced.

Secondary to the legal reasons supporting the immediate implementation of Ordinance No. 8027 are the policy considerations which drove Manila's government to come up with such a measure:

> ... [The] oil companies still were not able to allay the apprehensions of the city regarding the security threat in the area in general. No specific action plan or security measures were presented that would prevent a possible large-scale terrorist or malicious attack especially an attack aimed at Malacañang. The measures that were installed were more directed towards their internal security and did not include

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[170] *Figuerres v. Court of Appeals*, 364 Phil. 683, 692-693 (1999); *Reyes v. Court of Appeals*, 378 Phil. 232, 239 (1999).

[171] *Secretary of Justice v. Hon. Lantion*, 379 Phil. 165, 201 (2000).

[172] *Vda. de Genuino v. Court of Agrarian Relations*, G.R. No. L-25035, 26 February 1968, 22 SCRA 792, 797.

the prevention of an external attack even on a bilateral level of cooperation between these companies and the police and military.

x x x x x x x x x

It is not enough for the city government to be told by these oil companies that they have the most sophisticated fire-fighting equipments and have invested millions of pesos for these equipments. The city government wants to be assured that its residents are safe at any time from these installations, and in the three public hearings and in their position papers, not one statement has been said that indeed the absolute safety of the residents from the hazards posed by these installations is assured.[173]

We are also putting an end to the oil companies' determination to prolong their stay in Pandacan despite the objections of Manila's residents. As early as October 2001, the oil companies signed a MOA with the DOE obliging themselves to:

... undertake a comprehensive and comparative study ... [which] shall include the preparation of a Master Plan, whose aim is to determine the scope and timing of the feasible location of the Pandacan oil terminals and all associated facilities and infrastructure including government support essential for the relocation such as the necessary transportation infrastructure, land and right of way acquisition, resettlement of displaced residents and environmental and social acceptability which shall be based on mutual benefit of the Parties and the public.[174]

Now that they are being compelled to discontinue their operations in the Pandacan Terminals, they cannot feign unreadiness considering that they had years to prepare for this eventuality.

Just the same, this Court is not about to provoke a crisis by ordering the immediate relocation of the Pandacan Terminals out of its present site. The enforcement of a decision of this Court, specially one with far-reaching consequences, should

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[173] Report of Committee on Housing, Resettlement and Urban Development of the City of Manila's *Sangguniang Panlungsod* recommending the approval of Ordinance No. 8027; *rollo*, pp. 985, 989.

[174] Even if this MOU was modified by the June 26, 2002 MOA; *id*., pp. 601-602.

always be within the bounds of reason, in accordance with a comprehensive and well-coordinated plan, and within a time-frame that complies with the letter and spirit of our resolution. To this end, the oil companies have no choice but to obey the law.

A WARNING TO PETITIONERS' COUNSEL

We draw the attention of the parties to a matter of grave concern to the legal profession.

Petitioners and their counsel, Atty. Samson Alcantara, submitted a four-page memorandum that clearly contained neither substance nor research. It is absolutely insulting to this Court.

We have always tended towards judicial leniency, temperance and compassion to those who suffer from a wrong perception of what the majesty of the law means. But for a member of the bar, an officer of the court, to file in this Court a memorandum of such unacceptable quality is an entirely different matter.

It is indicative less of a personal shortcoming or contempt of this Court and more of a lawyer's sorry descent from a high sense of duty and responsibility. As a member of the bar and as an officer of the court, a lawyer ought to be keenly aware that the chief safeguard of the body politic is respect for the law and its magistrates.

There is nothing more effective than the written word by which counsel can persuade this Court of the righteousness of his cause. For if truth were self-evident, a memorandum would be completely unnecessary and superfluous.

The inability of counsel to prepare a memorandum worthy of this Court's consideration is an *ejemplo malo* to the legal profession as it betrays no genuine interest in the cause he claims to espouse. Or did counsel think he can earn his moment of glory without the hard work and dedication called for by his petition?

A FINAL WORD

On Wednesday, January 23, 2008, a defective tanker containing 2,000 liters of gasoline and 14,000 liters of diesel exploded in

the middle of the street a short distance from the exit gate of the Pandacan Terminals, causing death, extensive damage and a frightening conflagration in the vicinity of the incident. Need we say anything about what will happen if it is the estimated 162 to 211 million liters[175] of petroleum products in the terminal complex which blow up?

WHEREFORE, the motions for leave to intervene of Chevron Philippines Inc., Petron Corporation and Pilipinas Shell Petroleum Corporation, and the Republic of the Philippines, represented by the Department of Energy, are hereby *GRANTED*. Their respective motions for reconsideration are hereby *DENIED*. The Regional Trial Court, Manila, Branch 39 is *ORDERED* to *DISMISS* the consolidated cases of Civil Case No. 03-106377 and Civil Case No. 03-106380.

We reiterate our order to respondent Mayor of the City of Manila to enforce Ordinance No. 8027. In coordination with the appropriate agencies and other parties involved, respondent Mayor is hereby ordered to oversee the relocation and transfer of the Pandacan Terminals out of its present site.

To ensure the orderly transfer, movement and relocation of assets and personnel, the intervenors Chevron Philippines Inc., Petron Corporation and Pilipinas Shell Petroleum Corporation shall, within a non-extendible period of ninety (90) days, submit to the Regional Trial Court of Manila, Branch 39, the comprehensive plan and relocation schedule which have allegedly been prepared. The presiding judge of Manila RTC, Branch 39 will monitor the strict enforcement of this resolution.

Atty. Samson Alcantara is hereby ordered to explain within five (5) days from notice why he should not be disciplined for his refusal, or inability, to file a memorandum worthy of the consideration of this Court.

Treble costs against petitioners' counsel, Atty. Samson Alcantara.

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[175] *Id.*, p. 1109. *See* also footnote 35.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 160172. February 13, 2008]

REINEL ANTHONY B. DE CASTRO, *petitioner, vs.* **ANNABELLE ASSIDAO-DE CASTRO,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; VOID MARRIAGES; THE VALIDITY OF A VOID MARRIAGE MAY BE COLLATERALLY ATTACKED.— The validity of a void marriage may be collaterally attacked. Thus, in *Niñal v. Bayadog,* we held: "However, other than for purposes of remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolutions of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case. This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is other than to remarry. The clause "on the basis of a final judgment declaring such previous marriage void" in Article 40 of the Family Code connotes that such final judgment need not be obtained only for purpose of remarriage." Likewise, in *Nicdao Cariño v. Yee Cariño*, the Court ruled that it is clothed with sufficient authority to pass upon the validity of two marriages

despite the main case being a claim for death benefits. Reiterating *Niñal*, we held that the Court may pass upon the validity of a marriage even in a suit not directly instituted to question the validity of said marriage, so long as it is essential to the determination of the case. However, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a marriage an absolute nullity.

2. ID.; ID.; ID.; FORMAL REQUISITES OF; MARRIAGE LICENSE; FAILURE OF THE PARTIES TO OBTAIN AND PRESENT A MARRIAGE LICENSE RENDERS THEIR MARRIAGE VOID *AB INITIO*; CASE AT BAR.— Under the Family Code, the absence of any of the essential or formal requisites shall render the marriage void *ab initio,* whereas a defect in any of the essential requisites shall render the marriage voidable. In the instant case, it is clear from the evidence presented that petitioner and respondent did not have a marriage license when they contracted their marriage. Instead, they presented an affidavit stating that they had been living together for more than five years. However, respondent herself in effect admitted the falsity of the affidavit when she was asked during cross-examination x x x. The falsity of the affidavit cannot be considered as a mere irregularity in the formal requisites of marriage. The law dispenses with the marriage license requirement for a man and a woman who have lived together and exclusively with each other as husband and wife for a continuous and unbroken period of at least five years before the marriage. The aim of this provision is to avoid exposing the parties to humiliation, shame and embarrassment concomitant with the scandalous cohabitation of persons outside a valid marriage due to the publication of every applicant's name for a marriage license. In the instant case, there was no "scandalous cohabitation" to protect; in fact, there was no cohabitation at all. The false affidavit which petitioner and respondent executed so they could push through with the marriage has no value whatsoever; it is a mere scrap of paper. They were not exempt from the marriage license requirement. Their failure to obtain and present a marriage license renders their marriage void *ab initio.*

3. ID.; ID.; PATERNITY AND FILIATION; ILLEGITIMATE CHILDREN MAY ESTABLISH THEIR ILLEGITIMATE

FILIATION IN THE SAME WAY AND ON THE SAME EVIDENCE AS LEGITIMATE CHILDREN.— Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children. Thus, one can prove illegitimate filiation through the record of birth appearing in the civil register or a final judgment, an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned, or the open and continuous possession of the status of a legitimate child, or any other means allowed by the Rules of Court and special laws.

APPEARANCES OF COUNSEL

Macario D. Carpio and *Cristine P. Carpio* for petitioner.
Richard Lee for respondent.

D E C I S I O N

TINGA, *J.*:

This is a petition for review of the Decision[1] of the Court of Appeals in CA-GR CV. No. 69166,[2] declaring that (1) Reianna Tricia A. De Castro is the legitimate child of the petitioner; and (2) that the marriage between petitioner and respondent is valid until properly nullified by a competent court in a proceeding instituted for that purpose.

The facts of the case, as culled from the records, follow.

Petitioner and respondent met and became sweethearts in 1991. They planned to get married, thus they applied for a marriage license with the Office of the Civil Registrar of Pasig City in September 1994. They had their first sexual relation sometime in October 1994, and had regularly engaged in sex thereafter. When the couple went back to the Office of the Civil Registrar, the marriage license had already expired. Thus,

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[1] *Rollo*, pp. 31-41.

[2] Captioned *Annabelle Assidao–De Castro v. Reinel Anthony B. De Castro*.

in order to push through with the plan, in lieu of a marriage license, they executed an affidavit dated 13 March 1995 stating that they had been living together as husband and wife for at least five years. The couple got married on the same date, with Judge Jose C. Bernabe, presiding judge of the Metropolitan Trial Court of Pasig City, administering the civil rites. Nevertheless, after the ceremony, petitioner and respondent went back to their respective homes and did not live together as husband and wife.

On 13 November 1995, respondent gave birth to a child named Reinna Tricia A. De Castro. Since the child's birth, respondent has been the one supporting her out of her income as a government dentist and from her private practice.

On 4 June 1998, respondent filed a complaint for support against petitioner before the Regional Trial Court of Pasig City (trial court).[3] In her complaint, respondent alleged that she is married to petitioner and that the latter has "reneged on his responsibility/obligation to financially support her "as his wife and Reinna Tricia as his child."[4]

Petitioner denied that he is married to respondent, claiming that their marriage is void *ab initio* since the marriage was facilitated by a fake affidavit; and that he was merely prevailed upon by respondent to sign the marriage contract to save her from embarrassment and possible administrative prosecution due to her pregnant state; and that he was not able to get parental advice from his parents before he got married. He also averred that they never lived together as husband and wife and that he has never seen nor acknowledged the child.

In its Decision dated 16 October 2000,[5] the trial court ruled that the marriage between petitioner and respondent is not valid because it was solemnized without a marriage license. However, it declared petitioner as the natural father of the child, and thus

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[3] The case was eventually raffled to Branch 70 of the Pasig RTC, presided by Judge Pablito M. Rojas.

[4] Records, p. 3, Complaint.

[5] *Rollo*, pp. 92-94.

obliged to give her support. Petitioner elevated the case to the Court of Appeals, arguing that the lower court committed grave abuse of discretion when, on the basis of mere belief and conjecture, it ordered him to provide support to the child when the latter is not, and could not have been, his own child.

The Court of Appeals denied the appeal. Prompted by the rule that a marriage is presumed to be subsisting until a judicial declaration of nullity has been made, the appellate court declared that the child was born during the subsistence and validity of the parties' marriage. In addition, the Court of Appeals frowned upon petitioner's refusal to undergo DNA testing to prove the paternity and filiation, as well as his refusal to state with certainty the last time he had carnal knowledge with respondent, saying that petitioner's "forgetfulness should not be used as a vehicle to relieve him of his obligation and reward him of his being irresponsible."[6] Moreover, the Court of Appeals noted the affidavit dated 7 April 1998 executed by petitioner, wherein he voluntarily admitted that he is the legitimate father of the child.

The appellate court also ruled that since this case is an action for support, it was improper for the trial court to declare the marriage of petitioner and respondent as null and void in the very same case. There was no participation of the State, through the prosecuting attorney or fiscal, to see to it that there is no collusion between the parties, as required by the Family Code in actions for declaration of nullity of a marriage. The burden of proof to show that the marriage is void rests upon petitioner, but it is a matter that can be raised in an action for declaration of nullity, and not in the instant proceedings. The proceedings before the trial court should have been limited to the obligation of petitioner to support the child and his wife on the basis of the marriage apparently and voluntarily entered into by petitioner and respondent.[7] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Decision dated 16 October 2000, of the Regional Trial Court of Pasig City, National

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[6] *Id*. at 37.

[7] *Id*. at 40.

Capital Judicial Region, Brach (sic) 70, in JDRC No. 4626, is **AFFIRMED** with the **MODIFICATIONS** (1) declaring Reianna Tricia A. De Castro, as the legitimate child of the appellant and the appellee and (2) declaring the marriage on 13 March 1995 between the appellant and the appellee valid until properly annulled by a competent court in a proceeding instituted for that purpose. Costs against the appellant.[8]

Petitioner filed a motion for reconsideration, but the motion was denied by the Court of Appeals.[9] Hence this petition.

Before us, petitioner contends that the trial court properly annulled his marriage with respondent because as shown by the evidence and admissions of the parties, the marriage was celebrated without a marriage license. He stresses that the affidavit they executed, in lieu of a marriage license, contained a false narration of facts, the truth being that he and respondent never lived together as husband and wife. The false affidavit should never be allowed or admitted as a substitute to fill the absence of a marriage license.[10] Petitioner additionally argues that there was no need for the appearance of a prosecuting attorney in this case because it is only an ordinary action for support and not an action for annulment or declaration of absolute nullity of marriage. In any case, petitioner argues that the trial court had jurisdiction to determine the invalidity of their marriage since it was validly invoked as an affirmative defense in the instant action for support. Citing several authorities,[11] petitioner claims that a void marriage can be the subject of a collateral attack. Thus, there is no necessity to institute another independent proceeding for the declaration of nullity of the marriage between the parties. The refiling of another case for declaration of nullity where the same evidence and parties would be presented would entail enormous expenses and anxieties, would be time-consuming for the parties, and would increase the burden of the courts.[12] Finally, petitioner

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[8] *Rollo*, p. 41.

[9] *Id*. at 43-44; Resolution dated 1 October 2003.

[10] *Id*. at 15-20.

[11] *Niñal v. Bayadog*, 384 Phil. 661 (2000). TOLENTINO, *CIVIL CODE OF THE PHILIPPINES*, Vol. I, 1990 Ed. and SEMPIO-DIY, *HANDBOOK ON THE FAMILY CODE*, 1991 Ed.

[12] *Rollo*, pp. 25-26.

claims that in view of the nullity of his marriage with respondent and his vigorous denial of the child's paternity and filiation, the Court of Appeals gravely erred in declaring the child as his legitimate child.

In a resolution dated 16 February 2004, the Court required respondent and the Office of the Solicitor General (OSG) to file their respective comments on the petition.[13]

In her Comment,[14] respondent claims that the instant petition is a mere dilatory tactic to thwart the finality of the decision of the Court of Appeals. Echoing the findings and rulings of the appellate court, she argues that the legitimacy of their marriage cannot be attacked collaterally, but can only be repudiated or contested in a direct suit specifically brought for that purpose. With regard to the filiation of her child, she pointed out that compared to her candid and straightforward testimony, petitioner was uncertain, if not evasive in answering questions about their sexual encounters. Moreover, she adds that despite the challenge from her and from the trial court, petitioner strongly objected to being subjected to DNA testing to prove paternity and filiation.[15]

For its part, the OSG avers that the Court of Appeals erred in holding that it was improper for the trial court to declare null and void the marriage of petitioner and respondent in the action for support. Citing the case of *Niñal v. Bayadog,*[16] it states that courts may pass upon the validity of a marriage in an action for support, since the right to support from petitioner hinges on the existence of a valid marriage. Moreover, the evidence presented during the proceedings in the trial court showed that the marriage between petitioner and respondent was solemnized without a marriage license, and that their affidavit (of a man and woman who have lived together and exclusively with each other as husband and wife for at least five years) was false. Thus, it concludes the trial court correctly held that the marriage

[13] *Id*. at 135.

[14] *Id*. at 119-126.

[15] *Id*. at 139-144.

[16] 384 Phil. 661, 673 (2000).

between petitioner and respondent is not valid.[17] In addition, the OSG agrees with the findings of the trial court that the child is an illegitimate child of petitioner and thus entitled to support.[18]

Two key issues are presented before us. First, whether the trial court had the jurisdiction to determine the validity of the marriage between petitioner and respondent in an action for support and second, whether the child is the daughter of petitioner.

Anent the first issue, the Court holds that the trial court had jurisdiction to determine the validity of the marriage between petitioner and respondent. The validity of a void marriage may be collaterally attacked.[19] Thus, in *Niñal v. Bayadog*, we held:

> However, other than for purposes of remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case. This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is other than to remarry. The clause "on the basis of a final judgment declaring such previous marriage void" in Article 40 of the Family Code connotes that such final judgment need not be obtained only for purpose of remarriage.[20]

Likewise, in *Nicdao Cariño v. Yee Cariño*,[21] the Court ruled that it is clothed with sufficient authority to pass upon the validity of two marriages despite the main case being a claim for death benefits. Reiterating *Niñal*, we held that the Court may pass

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[17] *Rollo,* pp. 174-182.

[18] *Id*. at 183-185.

[19] *Vda. de Jacob v. Court of Appeals,* 371 Phil. 693, 704 (1999), citing TOLENTINO, *CIVIL CODE OF THE PHILIPPINES: COMMENTARIES AND JURISPRUDENCE*, Vol. I, 1987 ed., p. 265.

[20] *Niñal v. Bayadog,* 384 Phil. 661, 675 (2000).

[21] *Cariño v. Cariño*, 403 Phil. 861 (2001).

upon the validity of a marriage even in a suit not directly instituted to question the validity of said marriage, so long as it is essential to the determination of the case. However, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a marriage an absolute nullity.[22]

Under the Family Code, the absence of any of the essential or formal requisites shall render the marriage void *ab initio,* whereas a defect in any of the essential requisites shall render the marriage voidable.[23] In the instant case, it is clear from the evidence presented that petitioner and respondent did not have a marriage license when they contracted their marriage. Instead, they presented an affidavit stating that they had been living together for more than five years.[24] However, respondent herself in effect admitted the falsity of the affidavit when she was asked during cross-examination, thus—

ATTY. CARPIO:

Q But despite of (sic) the fact that you have not been living together as husband and wife for the last five years on or before March 13, 1995, you signed the Affidavit, is that correct?
A Yes, sir.[25]

The falsity of the affidavit cannot be considered as a mere irregularity in the formal requisites of marriage. The law dispenses with the marriage license requirement for a man and a woman who have lived together and exclusively with each other as husband and wife for a continuous and unbroken period of at

[22] *Id*. at 132.

[23] FAMILY CODE, Art. 4.

[24] Purportedly complying with Art. 34 of the Family Code, which provides:

Art. 34. No license shall be necessary for the marriage of a man and woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage.

[25] TSN, 18 February 2000, p. 20.

least five years before the marriage. The aim of this provision is to avoid exposing the parties to humiliation, shame and embarrassment concomitant with the scandalous cohabitation of persons outside a valid marriage due to the publication of every applicant's name for a marriage license.[26] In the instant case, there was no "scandalous cohabitation" to protect; in fact, there was no cohabitation at all. The false affidavit which petitioner and respondent executed so they could push through with the marriage has no value whatsoever; it is a mere scrap of paper. They were not exempt from the marriage license requirement. Their failure to obtain and present a marriage license renders their marriage void *ab initio.*

Anent the second issue, we find that the child is petitioner's illegitimate daughter, and therefore entitled to support.

Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.[27] Thus, one can prove illegitimate filiation through the record of birth appearing in the civil register or a final judgment, an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned, or the open and continuous possession of the status of a legitimate child, or any other means allowed by the Rules of Court and special laws.[28]

The Certificate of Live Birth[29] of the child lists petitioner as the father. In addition, petitioner, in an affidavit waiving additional

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[26] *Niñal v. Bayadog*, 384 Phil. 661, 669 (2000), citing THE REPORT OF THE CODE COMMISSION, p. 80.

[27] FAMILY CODE, Art. 175.

[28] FAMILY CODE, Art. 172.

In the book Handbook on the Family Code of the Philippines by Alicia V. Sempio-Diy, p. 246 (1988), the following were given as examples of "other means allowed by the Rules of Court and special laws", (a) the baptismal certificate of the child ; (b) a judicial admission; (c) the family bible wherein the name of the child is entered; (d) common reputation respecting pedigree; (e) admission by silence; (f) testimonies of witnesses; and (g) other kinds of proof admissible under Rule 130.

[29] Records, p. 6.

tax exemption in favor of respondent, admitted that he is the father of the child, thus stating:

> 1. I am the legitimate father of REIANNA TRICIA A. DE CASTRO who was born on November 3, 1995 at Better Living, Parañaque, Metro Manila;[30]

We are likewise inclined to agree with the following findings of the trial court:

> That Reinna Tricia is the child of the respondent with the petitioner is supported not only by the testimony of the latter, but also by respondent's own admission in the course of his testimony wherein he conceded that petitioner was his former girlfriend. While they were sweethearts, he used to visit petitioner at the latter's house or clinic. At times, they would go to a motel to have sex. As a result of their sexual dalliances, petitioner became pregnant which ultimately led to their marriage, though invalid, as earlier ruled. While respondent claims that he was merely forced to undergo the marriage ceremony, the pictures taken of the occasion reveal otherwise (Exhs. "B", "B-1", to "B-3", "C", "C-1" and "C-2", "D", "D-1" and "D-2", "E", "E-1" and "E-2", "F", "F-1" and "F-2", "G", "G-1" and "G-2" and "H", "H-1" to "H-3"). In one of the pictures (Exhs. "D", "D-1" and "D-2"), defendant is seen putting the wedding ring on petitioner's finger and in another picture (Exhs. "E", "E-1" and "E-2") respondent is seen in the act of kissing the petitioner.[31]

WHEREFORE, the petition is granted in part. The assailed Decision and Resolution of the Court of Appeals in CA-GR CV No. 69166 are *SET ASIDE* and the decision of the Regional Trial Court Branch 70 of Pasig City in JDRC No. 4626 dated 16 October 2000 is hereby *REINSTATED*.

SO ORDERED.

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

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[30] *Id*. at 160.

[31] *Rollo*, pp. 93-94.

* As replacement of Justice Conchita Carpio Morales who inhibited herself per Administrative Circular No. 84-2007.

THIRD DIVISION

[G.R. No. 160956. February 13, 2008]

JOAQUIN QUIMPO, SR., substituted by Heirs of Joaquin Quimpo, Sr., *petitioners, vs.* **CONSUELO ABAD *VDA. DE* BELTRAN, IRENEO ABAD, DANILO ABAD, MARITES ABAD, ANITA and HELEN ABAD,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; LIMITED TO REVIEWING OR REVERSING ERRORS OF LAW.— Well-entrenched is the rule that the Supreme Court's role in a petition under Rule 45 is limited to reviewing or reversing errors of law allegedly committed by the appellate court. Factual findings of the trial court, especially when affirmed by the Court of Appeals, are conclusive on the parties. Since such findings are generally not reviewable, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below, unless the factual findings complained of are devoid of support from the evidence on record or the assailed judgment is based on a misapprehension of facts.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE; A DEED OF SALE IS VOID WHEN THE STATED CONSIDERATION HAS NOT IN FACT BEEN PAID.— In *Rongavilla v. Court of Appeals*, reiterated in *Cruz v. Bancom Finance Corp*, we held that a deed of sale, in which the stated consideration has not been, in fact, paid is a false contract; that it is void *ab initio*. Furthermore, *Ocejo v. Flores*, ruled that a contract of purchase and sale is null and void and produces no effect whatsoever where it appears that the same is without cause or consideration which should have been the motive thereof, or the purchase price which appears thereon as paid but which in fact has never been paid by the purchaser to the vendor.

3. ID.; PROPERTY; CO-OWNERSHIP; PARTITION; PAROL PARTITION, EXPLAINED.— In *Maglucot-aw v. Maglucot*, we held, *viz*: "[P]artition may be inferred from circumstances sufficiently strong to support the presumption. Thus, after a long possession in severalty, a deed of partition may be presumed. It has been held that recitals in deeds, possession and occupation of land, improvements made thereon for a long series of years, and acquiescence for 60 years, furnish sufficient evidence that there was an actual partition of land either by deed or by proceedings in the probate court, which had been lost and were not recorded." Furthermore, in *Hernandez v. Andal*, we explained that: "On general principle, independent and in spite of the statute of frauds, courts of equity have enforced oral partition when it has been completely or partly performed. Regardless of whether a parol partition or agreement to partition is valid and enforceable at law, equity will in proper cases, where the parol partition has actually been consummated by the taking of possession in severalty and the exercise of ownership by the parties of the respective portions set off to each, recognize and enforce such parol partition and the rights of the parties thereunder. Thus, it has been held or stated in a number of cases involving an oral partition under which the parties went into possession, exercised acts of ownership, or otherwise partly performed the partition agreement, that equity will confirm such partition and in a proper case decree title in accordance with the possession in severalty. In numerous cases it has been held or stated that parol partitions may be sustained on the ground of *estoppel* of the parties to assert the rights of a tenant in common as to parts of land divided by parol partition as to which possession in severalty was taken and acts of individual ownership were exercised. And a court of equity will recognize the agreement and decree it to be valid and effectual for the purpose of concluding the right of the parties as between each other to hold their respective parts in severalty. A parol partition may also be sustained on the ground that the parties thereto have acquiesced in and ratified the partition by taking possession in severalty, exercising acts of ownership with respect thereto, or otherwise recognizing the existence of the partition. A number of cases have specifically applied the doctrine of part performance, or have stated that a part performance is necessary, to take a parol partition out of the operation of the statute of frauds. It has been held that

where there was a partition in fact between tenants in common, and a part performance, a court of equity would have regard to and enforce such partition agreed to by the parties."

4. ID.; ID.; ID.; ID.; ANY CO-OWNER MAY DEMAND AT ANY TIME THE PARTITION OF THE COMMON PROPERTY UNLESS A CO-OWNER HAS REPUDIATED THE CO-OWNERSHIP.— Jurisprudence is replete with rulings that any co-owner may demand at any time the partition of the common property unless a co-owner has repudiated the co-ownership. This action for partition does not prescribe and is not subject to laches.

5. ID.; DAMAGES; ATTORNEY'S FEES; WHEN AWARDED.— The grant of attorney's fees depends on the circumstances of each case and lies within the discretion of the court. It may be awarded when a party is compelled to litigate or to incur expenses to protect its interest by reason of an unjustified act by the other, as in this case.

APPEARANCES OF COUNSEL

Tito Abuda Oneza for petitioners.
Eustaquio S. Beltran for respondents.

R E S O L U T I O N

NACHURA, *J.*:

This Petition for Review on *Certiorari* assails the July 22, 2003 Decision[1] of the Court of Appeals in CA-G.R. CV No. 56187, and the October 16, 2003 Resolution denying the motion for its reconsideration.

Eustaquia Perfecto-Abad (Eustaquia) was the owner of several parcels of land in Goa, Camarines Sur, described as follows:

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[1] Penned by Associate Justice Eliezer R. De Los Santos (deceased), with Associate Justices Romeo A. Brawner (retired) and Jose C. Mendoza, concurring; *rollo*, pp. 29-39.

Parcel I — Residential land situated at Abucayan, Goa, Camarines Sur covering an area of 684 square-meters;

Parcel II – Coconut land situated at Abucayan, Goa, Camarines Sur covering an area of 4.3731 hectares;

Parcel III – Residential land situated at San Jose Street, Goa, Camarines Sur covering an area of 1,395 square meters; and

Parcel IV – Abaca and coconut land situated at Abucayan, Goa, Camarines Sur covering an area 42.6127 hectares.[2]

Eustaquia died intestate in 1948 leaving these parcels of land to her grandchild and great grandchildren, namely, Joaquin Quimpo and respondents Consuelo, Ireneo, Danilo, Marites, Anita and Helen, all surnamed Abad.

In 1966, Joaquin and respondents undertook an oral partition of parcel III (San Jose property) and parcel IV. Half of the properties was given to Joaquin and the other half to the respondents. However, no document of partition was executed, because Joaquin refused to execute a deed. Consuelo and Ireneo occupied their respective shares in the San Jose property, and installed several tenants over their share in parcel IV. Joaquin, on the other hand, became the administrator of the remaining undivided properties and of the shares of respondents Danilo, Marites, Anita and Helen, who were still minors at that time.

In 1989, Danilo, Marites, Anita and Helen wanted to take possession of the portions allotted to them, but Joaquin prevented them from occupying the same. Joaquin also refused to heed respondents' demand for partition of parcels I and II, prompting respondents to file a complaint for judicial partition and/or recovery of possession with accounting and damages with the Regional Trial Court (RTC) of Camarines Sur.[3]

Joaquin denied the material allegations in the complaint, and averred, as his special and affirmative defenses, lack of cause of action and prescription. He asserted absolute ownership over parcels III and IV, claiming that he purchased these lands from

[2] *Rollo*, p. 29.

[3] *Id*. at 58-62.

Eustaquia in 1946, evidenced by deeds of sale executed on August 23, 1946 and December 2, 1946. He, likewise, claimed continuous, peaceful and adverse possession of these lots since 1946, and alleged that Consuelo's occupation of the portion of the San Jose property was by mere tolerance.[4]

During the pendency of the case, Joaquin died. Accordingly, he was substituted by his wife, Estela Tena-Quimpo and his children, namely, Jose, Adelia, Joaquin, Anita, Angelita, Amelia, Arlene, Joy and Aleli, all surnamed Quimpo (the Quimpos).

On December 12, 1996, the RTC rendered a Decision[5] in favor of respondents, declaring them as co-owners of all the properties left by Eustaquia. It rejected Joaquin's claim of absolute ownership over parcels III and IV, and declared void the purported deeds of sale executed by Eustaquia for lack of consideration and consent. The court found that at the time of the execution of these deeds, Joaquin was not gainfully employed and had no known source of income, which shows that the deeds of sale state a false and fictitious consideration. Likewise, Eustaquia could not have possibly given her consent to the sale because she was already 91 years old at that time. The RTC also sustained the oral partition among the heirs in 1966. According to the trial court, the possession and occupation of land by respondents Consuelo and Ireneo, and Joaquin's acquiescence for 23 years, furnish sufficient evidence that there was actual partition of the properties. It held that Joaquin and his heirs are now *estopped* from claiming ownership over the entire San Jose property as well as over parcel IV.

The RTC disposed, thus:

> WHEREFORE, decision is hereby rendered in favor of the plaintiffs Consuelo *Vda. de* Beltran, Ireneo Abad, Marites Abad, Danilo Abad, Anita Abad and Helen Abad and against defendant Joaquin Quimpo, substituted by the latter's wife Estela Tena and their children, Amparo, Jose, Amelia, Joaquin Jr., Adelia, Arlene, Anita, Joy, Angelita and Aleli, all surnamed Quimpo, as follows:

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[4] *Id*. at 76-77.

[5] *Id*. at 125-137.

1. Ordering the above-named substituted defendants, and the plaintiffs to execute their written agreement of partition with respect to parcel Nos. III and IV more particularly described in paragraph 7 of the complaint, and for them to execute an agreement of partition with respect to parcel Nos. I and II, both parcels are more particularly described in paragraph 7 of the complaint;

2. Declaring the plaintiffs Danilo Abad, Marites Abad, Anita Abad and Helen Abad the owner of six (6) hectares a portion included in parcel No. IV also described in paragraph 7 of the complaint, and therefore, entitled to its possession and ordering the said substituted defendants to deliver that portion to them as their share thereto;

3. Ordering the above-named substituted defendants to pay plaintiffs the sum of Six Thousand Pesos (₱6,000.00), Philippine Currency, as reasonable attorney's fees and the sum of One Thousand Pesos (₱1,000.00) also of Philippine Currency, as litigation expenses and for the said defendants to pay the costs.

The counterclaim, not being proved, the same is hereby ordered dismissed.

SO ORDERED.[6]

On appeal, the CA affirmed the RTC ruling. Sustaining the RTC, the CA declared that it was plausible that Eustaquia's consent was vitiated because she was then 91 years old and sickly. It was bolstered by the fact that the deeds of sale only surfaced 43 years after its alleged execution and 23 years from the time of the oral partition. The CA also rejected petitioners' argument that the action was barred by prescription and laches, that prescription does not run against the heirs so long as the heirs, for whose benefit prescription is invoked, have not expressly or impliedly repudiated the co-ownership. The CA found no repudiation on Joaquin's part. It, therefore, concluded that respondents' action could not be barred by prescription or laches.

The Quimpos, thus, filed the instant petition for review on *certiorari* imputing the following errors to the CA:

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[6] *Id*. at 137.

1) THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONERS DID NOT ACQUIRE OWNERSHIP OVER [THE] SUBJECT PARCELS OF LAND BY WAY OF DEEDS OF ABSOLUTE SALE EXECUTED IN THEIR FAVOR;

2) THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT CO-OWNERSHIP EXISTS AMONG PETITIONERS AND RESPONDENTS OVER THE SUBJECT PARCELS OF LAND;

3) THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT RESPONDENTS HAVE PROVEN THEIR FILIATION TO THE ORIGINAL OWNER OF THE SUBJECT PARCELS OF LAND BY MERE SCANT EVIDENCE;

4) THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT LACHES HAS TIME–BARRED THE RESPONDENTS FROM ASSAILING THE ABSOLUTE OWNERSHIP OF PETITIONERS OVER THE SUBJECT PARCELS OF LAND; AND

5) THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT RESPONDENTS ARE ENTITLED TO ATTORNEY'S FEES.[7]

The Quimpos insist on the validity of the deeds of sale between Joaquin and Eustaquia. They assail the probative value and weight given by the RTC and the CA in favor of the respondents' pieces of evidence while refusing to give credence or value to the documents they presented. Specifically, they contend that the notarized deeds of sale and the tax declarations should have adequately established Joaquin's ownership of parcels III and IV.

The contention has no merit. Well-entrenched is the rule that the Supreme Court's role in a petition under Rule 45 is limited to reviewing or reversing errors of law allegedly committed by the appellate court. Factual findings of the trial court, especially when affirmed by the Court of Appeals, are conclusive on the parties. Since such findings are generally not reviewable, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below, unless the factual findings complained of are devoid of support from the evidence on record or the assailed judgment is based on a misapprehension of facts.[8]

[7] *Id*. at 17.

[8] *Fagonnil-Herrera v. Fagonil*, G.R. No. 169356, August 28, 2007.

Petitioners fail to convince us that the CA committed reversible error in affirming the trial court and in giving no weight to the pieces of evidence they presented.

The stated consideration for the sale are ₱5,000.00 and ₱6,000.00, respectively, an amount which was so difficult to raise in the year 1946. Respondents established that at the time of the purported sale Joaquin Quimpo was not gainfully employed. He was studying in Manila and Eustaquia was the one supporting him; that when Eustaquia died two (2) years later, Joaquin was not able to continue his studies. The Quimpos failed to override this. Except for the incredible and unpersuasive testimony of Joaquin's daughter, Adelia Magsino, no other testimonial or documentary evidence was offered to prove that Joaquin was duly employed and had the financial capacity to buy the subject properties in 1946.

In *Rongavilla v. Court of Appeals*,[9] reiterated in *Cruz v. Bancom Finance Corp*,[10] we held that a deed of sale, in which the stated consideration has not been, in fact, paid is a false contract; that it is void *ab initio*. Furthermore, *Ocejo v. Flores*,[11] ruled that a contract of purchase and sale is null and void and produces no effect whatsoever where it appears that the same is without cause or consideration which should have been the motive thereof, or the purchase price which appears thereon as paid but which in fact has never been paid by the purchaser to the vendor.

Likewise, both the trial court and the CA found that Eustaquia was 91 years old, weak and senile, at the time the deeds of sale were executed. In other words, she was already mentally incapacitated by then, and could no longer be expected to give her consent to the sale. The RTC and CA cannot, therefore, be faulted for not giving credence to the deeds of sale in favor of Joaquin.

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[9] 355 Phil. 721 (1998).

[10] 429 Phil. 225, 233 (2002).

[11] 40 Phil. 921 (1920).

Petitioners also presented Tax Declaration Nos. 3650,[12] 3708,[13] and 3659[14] to substantiate Joaquin's claim of absolute dominion over parcels III and IV. But we note that these tax declarations are all in the name of Eustaquia Perfecto-Abad. These documents, therefore, do not support their claim of absolute dominion since 1946, but enervate it instead. Besides, the fact that the disputed property may have been declared for taxation purposes in the name of Joaquin Quimpo does not necessarily prove ownership for it is well settled that a tax declaration or tax receipts are not conclusive evidence of ownership.[15] The CA, therefore, correctly found this proof inadequate to establish Joaquin's claim of absolute dominion.

For forty-three (43) years, Consuelo and Ireneo occupied their portions of the San Jose property and significantly, Joaquin never disturbed their possession. They also installed tenants in parcel IV, and Joaquin did not prevent them from doing so, nor did he assert his ownership over the same. These unerringly point to the fact that there was indeed an oral partition of parcels III and IV.

In *Maglucot-aw v. Maglucot*,[16] we held, *viz.*:

> [P]artition may be inferred from circumstances sufficiently strong to support the presumption. Thus, after a long possession in severalty, a deed of partition may be presumed. It has been held that recitals in deeds, possession and occupation of land, improvements made thereon for a long series of years, and acquiescence for 60 years, furnish sufficient evidence that there was an actual partition of land either by deed or by proceedings in the probate court, which had been lost and were not recorded.

Furthermore, in *Hernandez v. Andal*,[17] we explained that:

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[12] *Rollo*, p. 208.

[13] *Id*. at 210.

[14] *Id*. at 212.

[15] *Rivera v. Court of Appeals*, 314 Phil. 57 (1995).

[16] 385 Phil. 720, 736-737 (2000).

[17] 78 Phil. 196, 203 (1947).

On general principle, independent and in spite of the statute of frauds, courts of equity have enforced oral partition when it has been completely or partly performed.

> Regardless of whether a parol partition or agreement to partition is valid and enforceable at law, equity will in proper cases, where the parol partition has actually been consummated by the taking of possession in severalty and the exercise of ownership by the parties of the respective portions set off to each, recognize and enforce such parol partition and the rights of the parties thereunder. Thus, it has been held or stated in a number of cases involving an oral partition under which the parties went into possession, exercised acts of ownership, or otherwise partly performed the partition agreement, that equity will confirm such partition and in a proper case decree title in accordance with the possession in severalty.
>
> In numerous cases it has been held or stated that parol partitions may be sustained on the ground of *estoppel* of the parties to assert the rights of a tenant in common as to parts of land divided by parol partition as to which possession in severalty was taken and acts of individual ownership were exercised. And a court of equity will recognize the agreement and decree it to be valid and effectual for the purpose of concluding the right of the parties as between each other to hold their respective parts in severalty.
>
> A parol partition may also be sustained on the ground that the parties thereto have acquiesced in and ratified the partition by taking possession in severalty, exercising acts of ownership with respect thereto, or otherwise recognizing the existence of the partition.
>
> A number of cases have specifically applied the doctrine of part performance, or have stated that a part performance is necessary, to take a parol partition out of the operation of the statute of frauds. It has been held that where there was a partition in fact between tenants in common, and a part performance, a court of equity would have regard to and enforce such partition agreed to by the parties.

The CA, therefore, committed no reversible error in sustaining the oral partition over parcels III and IV and in invalidating the deeds of sale between Eustaquia and Joaquin.

Similarly, we affirm the CA ruling that respondents are co-owners of the subject four (4) parcels of land, having inherited the same from a common ancestor – Eustaquia Perfecto-Abad. Petitioners' assertion that respondents failed to prove their relationship to the late Eustaquia deserves scant consideration.

During the pre-trial, Joaquin Quimpo admitted that:

> Eustaquia Perfecto Abad and Diego Abad had two (2) children by the names of Leon Abad and Joaquin Abad; that Leon Abad has three (3) children namely: Anastacia, Wilfredo and Consuelo, all surnamed Abad; that Joaquin Abad has only one (1) child, a daughter by the name of Amparo; that Wilfredo has four (4) children, namely, Danilo, Helen, Marites and Anita; Amparo has one child, son Joaquin Quimpo, x x x[18]

Consuelo was the grandchild of Eustaquia, while respondents Danilo, Helen, Marites, Anita and also Joaquin Quimpo were Eustaquia's great grandchildren. As such, respondents can rightfully ask for the confirmation of the oral partition over parcels III and IV, and the partition of parcels I and II. Jurisprudence is replete with rulings that any co-owner may demand at any time the partition of the common property unless a co-owner has repudiated the co-ownership. This action for partition does not prescribe and is not subject to laches.[19]

Finally, petitioners challenge the attorney's fees in favor of respondents.

The grant of attorney's fees depends on the circumstances of each case and lies within the discretion of the court. It may be awarded when a party is compelled to litigate or to incur expenses to protect its interest by reason of an unjustified act by the other,[20] as in this case.

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[18] Amended Pre-trial Order, *rollo*, p. 89.

[19] *Bravo-Guerero v. Bravo*, G.R. No. 152658, July 29, 2005, 465 SCRA 244, 266.

[20] *Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. Of Iloilo, Inc.*, G.R. No. 159831, October 14, 2005, 473 SCRA 151, 175.

In fine, we find no reversible error in the assailed rulings of the Court of Appeals.

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 56187, are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 162097. February 13, 2008]

LOURDES A. PASCUA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; REPUBLIC ACT 26; RECONSTITUTION OF TORRENS CERTIFICATE OF TITLE LOST OR DESTROYED; DOCUMENTS THAT MAY BE CONSIDERED AS SUFFICIENT BASES FOR THE RECONSTITUTION OF A LOST OR DESTROYED CERTIFICATE OF TITLE.— Sec. 2 of RA 26 provides: "SEC. 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available in the following order: (a) The owner's duplicate of the certificate of titles; (b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title; (c) A certified copy of the certificate of title, previously issued by the register

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

of deeds or by a legal custodian thereof; (d) An authenticated copy of the decree of registration or patent, as the case may be pursuant to which the original certificate of title was issued; (e) A document, on file in the Registry of Deeds by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original has been registered; and (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title." xxx As held in *Republic v. Intermediate Appellate Court*, when RA 26, Section 2(f) speaks of "any other document," the reference is to similar documents previously enumerated in the section or documents *ejusdem generis* as the documents earlier referred to. xxx RA 26 presupposes that the property whose title is sought to be reconstituted has already been brought under the provisions of the Torrens System, Act No. 496.

2. ID.; ID.; ID.; ID.; RECONSTITUTION OF TITLE, NOT WARRANTED IN CASE AT BAR.— [W]e are not persuaded that petitioner's pieces of evidence warrant the reconstitution of title since she failed to prove the existence of the title in the first place. The purpose of reconstitution of title is to have the original title reproduced in the same form it was when it was lost or destroyed. In this case, there is no title to be re-issued. The appellate and trial courts were correct in denying Pascua's petition. We emphasize that courts must be cautious in granting reconstitution of lost or destroyed certificates of titles. It is the duty of the trial court to scrutinize and verify carefully all supporting documents, deeds, and certifications. Each and every fact, circumstance, or incident which corroborates or relates to the existence and loss of the title should be examined.

APPEARANCES OF COUNSEL

Jose F. Mañacop for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The instant petition for review under Rule 45 seeks the reversal of the July 22, 2003 Decision[1] and February 10, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 74050, affirming the trial court's denial of petitioner's action for reconstitution of title covering Lot No. 3209 of the Pagsanjan, Laguna Cadastre in her name.

The Facts

Petitioner claimed that she is the owner in fee simple of Lot No. 3209, Pagsanjan, Laguna Cadastre, having inherited it from her parents, Guillermo Abinsay and Leoncia Rivera. She and her predecessors-in-interest had allegedly been in open, public, continuous, and peaceful possession of the disputed lot since it was bought from Serafin Limuaco in 1956. On December 4, 1930, the cadastral court awarded the lot to Limuaco, who sold the lot to petitioner's parents on December 24, 1956, as evidenced by a Deed of Absolute Sale.[3]

Due to the ravages of World War II, however, the owner's duplicate certificate of the Torrens title covering Lot No. 3209, its original copy on file with the Laguna Register of Deeds (RD), and other pertinent papers were lost and/or destroyed, and diligent efforts to find them were futile. Thus, on December 8, 1999, petitioner filed a petition for judicial reconstitution of the original certificate of title (OCT) covering Lot No. 3209 with the Sta. Cruz, Laguna, Regional Trial Court (RTC), Branch 27. She alleged that there were no deeds or instruments covering the disputed lot that were presented or pending registration with the RD, and that no co-owners, mortgagees, or lessees' duplicate of the OCT was issued by the RD.

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[1] *Rollo*, pp. 61-68. Penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Remedios A. Salazar-Fernando and Edgardo F. Sundiam.

[2] *Id*. at 74.

[3] *Id*. at 62.

After complying with the jurisdictional requirements, petitioner was allowed to present evidence *ex-parte*. She testified that her parents bought a piece of land from Limuaco and that after her parents' death, her siblings partitioned the land and Lot No. 3209 was allocated to her. She learned from the Land Registration Authority (LRA) that Decree No. 412846 was issued in the cadastral case in 1930, but the records, including those in the Laguna RD, were destroyed during the war. She said the lot was declared for tax purposes in her name and she had been paying taxes due on the lot, as evidenced by the Tax Clearance dated March 2, 2000. She stated that the adjoining lot owners were Olivar Pening on the north, Hernan Zaide on the east; and that there is a stream on the south and west. Petitioner submitted in evidence the tracing cloth plan and technical description of Lot No. 3209.

The RTC denied the petition for reconstitution for insufficiency of evidence in its October 30, 2000 Order, ruling as follows:

> The certification issued by Acting Chief Alberto H. Lingayo of the Ordinary and Cadastral Decree Division (Exh. "F") and another certification of the Chief of the Docket Division of the Land Registration Authority (Exh. "G") speak of Decree No. 412846 issued on December 4, 1930 covering Lot No. 3209. On the other hand, Tax Declaration No. 5471 in the name of spouses Guillermo Abinsay and Leoncia Rivera (Exh. "I") did not indicate any certificate of title number, cadastral lot number or even an assessor's lot number while Tax Declaration No. 1376 (Exh. "J") only indicated Assessor's Lot No. 19-pt. Petitioner failed to establish that Assessor's Lot No. 19-pt and Lot No. 3209 are one and the same.
>
> Assuming that Assessor's Lot No. 19-pt refers to Lot No. 3209, still, the petition could not be granted because there is no showing that an original certificate of title was actually issued pursuant to Decree No. 412846. The certifications issued by the Land Registration Authority dated October 26, 1999 and September 23, 1998 and the Report of the same office dated May 5, 2000 are bereft of any allusion to the issuance of a title. The documents presented in evidence by petitioner not only failed to prove the issuance of an original certificate of title but also the name of the adjudicatee.[4]

[4] *Id*. at 28.

On appeal to the CA, petitioner argued that Assessor's Lot No. 19-pt and Lot No. 3209 are the same; that she is the adjudicatee of the disputed lot; and that an OCT was issued in accordance with Decree No. 412846. For respondent Republic of the Philippines, the Solicitor General contended that what petitioner's predecessors-in-interest bought from Limuaco was Assesor's Lot No. 19-pt, which was neither designated nor mentioned as Lot No. 3209. Also, the Solicitor General said the property described in the documents presented is still unregistered land of the public domain and there is no evidence that an OCT was actually issued to Lot No. 3209. The Solicitor General added that the trial court did not acquire jurisdiction over the petition since petitioner failed to submit proof of notices to all adjoining lot owners.

The July 22, 2003 Decision of the CA affirmed the trial court's order *in toto*. The CA held that petitioner failed to present the documents enumerated in Section 2, Republic Act No. (RA) 26 entitled *An Act Providing a Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed*, as amended by RA 6732, or any other document that could be a sufficient basis for reconstituting title.

Petitioner's motion for reconsideration was denied by the CA in its February 10, 2004 Resolution.

The Issues

Thus, petitioner elevated the matter to us, interposing that:

I

The CA erred in holding that petitioner failed to present any of the documents enumerated in Sec. 2 of RA 26.

II

The CA erred in holding that the certification of the LRA that Decree No. 412846 was issued over Lot 3209 cannot qualify as a proper document for reconstituting the lost or destroyed titled (sic) because Lot 3209 is different from Lot 19-pt.

III

The CA erred in holding that the lot sold by Serafin Limuaco to the Sps. Abinsay and Rivera is not Lot 3209 but Lot 19-pt which are different from each other.

IV

The CA erred in holding that statements in the Deed of Sale and Deed of Co-owners Partition that the land is not registered under Act 496 are fatal to the instant Petition.[5]

The Court's Ruling

The petition lacks merit.

Sec. 2 of RA 26 provides:

SEC. 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) An authenticated copy of the decree of registration or patent, as the case may be pursuant to which the original certificate of title was issued;

(e) A document, on file in the Registry of Deeds by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original has been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

Petitioner asserts that under Sec. 2(f) of RA 26, other documents may be considered by the court as sufficient bases for the reconstitution of a lost or destroyed certificate of title. The

[5] *Id*. at 13-14.

pertinent documents she presented before the trial court are as follows:

(1) List of lot descriptions from the Bureau of Lands which show that Limuaco is a claimant of Lot No. 3209 covered by Survey No. Cad. 69, Case No. 5 Pagsanjan, Laguna, which is 10,673 sq. m. in area (Exhibit "O");

(2) Certification of the LRA dated October 26, 1999, stating that based on the Record of Book of Decrees kept at the Vault Section, Docket Division of said office, the copy of Decree No. 412846 issued on December 4, 1930 covering Lot No. 3209 of the Cadastral Survey of Pagsanjan, Laguna under Cadastral Case No. 14, LRC Cadastral Record No. 211 was not among the salvaged decrees on file with said office and that the said copy is presumed lost or destroyed during World War II (Exhibit "F");

(3) Certification from the LRA dated September 23, 1998 that its Record of Book of Cadastral Lots shows that Lot No. 3209 of Pagsanjan Cadastre was issued Decree No. 412846 (Exhibit "G");

(4) Deed of Absolute Sale dated December 24, 1956, showing that Limuaco sold to petitioner's parents a parcel of land in Anibong, Pagsanjan, Laguna which consists of 10,673 sq. m. covered by Tax Declaration No. 156 (Exhibit "E");

(5) Tax Declaration No. 5471 in the name of petitioner's parents which canceled Tax Declaration No. 156 covering a property bounded by the lot of Timoteo Abaya on the north, a stream on the south and west, a *callejon* in the east (Exhibit "J"); and

(6) Deed of Co-owner's Partition dated February 5, 1968 which shows that petitioner and her siblings divided their inheritance after the death of their parents, and that petitioner obtained Lot No. 19-pt covered by Tax Declaration No. 1376 situated in Anibong, Pagsanjan, Laguna consisting of 10,673 sq. m., bounded by Lot No. 15 pt. of Marcelo Aquino on the north, a stream on the south and west, and a *callejon* in the east (Exhibit "D").[6]

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[6] *Id*. at 15-16.

As held in *Republic v. Intermediate Appellate Court*,[7] when RA 26, Section 2(f) speaks of "any other document," the reference is to similar documents previously enumerated in the section or documents *ejusdem generis* as the documents earlier referred to.

The Deed of Co-owners Partition states that the subject of the instrument is Lot No. 19-pt. The Deed of Absolute Sale between Limuaco and petitioner's parents, on the other hand, states that the land was not registered under Act No. 496. Petitioner nevertheless insists that Lot No. 3209 is the subject of a decree of registration according to the records of the LRA, and that between Limuaco's statement and the certification from the LRA, the latter must prevail.

We are not convinced. RA 26 presupposes that the property whose title is sought to be reconstituted has already been brought under the provisions of the Torrens System, Act No. 496.[8] Petitioner's evidence itself, the Deed of Sale between Limuaco and her parents, stated that the lot was not registered under Act No. 496 and that the parties agreed to register it under Act No. 3344. Even the Deed of Co-owner's Partition stated that the subject lot, Lot No. 19-pt, is not registered. The other piece of evidence, the certifications from the LRA, merely stated that Decree No. 412846 covering Lot No. 3209 was issued on December 4, 1930, but the copy of said decree is not among the salvaged decrees on file with said office. The said copy is presumed lost or destroyed during World War II. The LRA neither stated that a certificate of title was actually issued nor mentioned the number of the OCT. It cannot be determined from any of the evidence submitted by petitioner that the adjudicatee of the purported decree was Limuaco.

In *Republic v. El Gobierno de las Islas Filipinas*, this Court denied the petition for reconstitution of title despite the existence of a decree:

We also find insufficient the index of decree showing that Decree No. 365835 was issued for Lot No. 1499, as a basis for reconstitution.

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[7] G.R. No. 68303, January 15, 1988, 157 SCRA 62, 67-68.

[8] *Dordas v. Court of Appeals*, 337 Phil. 59, 64 (1997).

We noticed that the name of the applicant as well as the date of the issuance of such decree was illegible. While Decree No. 365835 existed in the Record Book of Cadastral Lots in the Land Registration Authority as stated in the Report submitted by it, however, the same report did not state the number of the original certificate of title, which is not sufficient evidence in support of the petition for reconstitution. The deed of extrajudicial declaration of heirs with sale executed by Aguinaldo and Restituto Tumulak Perez and respondent on February 12, 1979 did not also mention the number of the original certificate of title but only Tax Declaration No. 00393. As we held in *Tahanan Development Corp. vs. Court of Appeals*, the absence of any document, private or official, mentioning the number of the certificate of title and the date when the certificate of title was issued, does not warrant the granting of such petition.[9]

Petitioner argues that since it is incumbent upon the Commissioner of Land Registration to issue a certificate of title pursuant to a court decree, it can be presumed that a certificate of title over Lot No. 3209 was indeed issued when the cadastral court ordered it so on December 4, 1930. Petitioner relied on Rule 131, Sec. 3 of the Rules of Court which states the presumption that official duty has been regularly performed. This presumption, however, is merely disputable. In this case, the LRA certified that (1) a decree covering Lot No. 3209 was issued, but (2) a copy of the said decree cannot be found on the records. If in fact a certificate of title was issued, a title number could have been mentioned by the LRA. Since the LRA itself made no reference to any certificate of title, the conclusion is that none was issued. More importantly, Limuaco himself stated in the Deed of Absolute Sale that the property he was selling was not registered. Petitioner's evidence, no less, disproves the presumption she relies upon.

What further militates against petitioner's arguments is the fact that the Deed of Absolute Sale, Deed of Co-owner's Partition, and Tax Declaration Nos. 5471 and 99-19-003-00022 mention Lot No. 19-pt and not Lot No. 3209, which was sold by Limuaco to her parents. "Lot No. 3209" only appears on the Tracing Cloth Plan and the Technical Description. There is no document that refers or designates Lot No. 19-pt as Lot No. 3209.

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[9] G.R. No. 142284, June 8, 2005, 459 SCRA 533, 546-547.

Petitioner points out, however, that both Lot No. 19-pt and Lot No. 3209 have the area of 10,673 sq. m., bounded by a *callejon* and a stream, and located in Anibong, Pagsanjan, Laguna. Moreover, the Lot Description (Exhibit "O") and Lot Data (Exhibit "P") show that the technical description of Lot No. 19-pt fits the technical description of Lot No. 3209. She also asserts that Lot No. 19-pt, which was mentioned in Tax Declaration No. 99-19-003-00022 issued in her name, was the Assessor's Lot Number and not the Cadastral Lot Number.[10] The Solicitor General points out, however, that Tax Declaration No. 5471 in the name of petitioner's parents did not indicate any certificate of title number or cadastral or assessor's lot number. This creates serious doubt as to the exact identity of the two lots.

Assuming that Lot Nos. 19-pt and 3209 are the same, we are still constrained to deny the reconstitution of title mainly because there is no proof that a certificate of title was originally issued to both lots. The Solicitor General notes that both lots are still unregistered land of the public domain; thus, no certificate covering such property can be issued under the instant proceeding.

In sum, we are not persuaded that petitioner's pieces of evidence warrant the reconstitution of title since she failed to prove the existence of the title in the first place. The purpose of reconstitution of title is to have the original title reproduced in the same form it was when it was lost or destroyed.[11] In this case, there is no title to be re-issued. The appellate and trial courts were correct in denying Pascua's petition. We emphasize that courts must be cautious in granting reconstitution of lost or destroyed certificates of titles. It is the duty of the trial court to scrutinize and verify carefully all supporting documents, deeds, and certifications. Each and every fact, circumstance, or incident which corroborates or relates to the existence and loss of the title should be examined.[12]

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[10] *Rollo*, p. 17.

[11] *Puzon v. Sta. Lucia Realty and Development, Inc.*, G.R. No. 139518, March 6, 2001, 353 SCRA 699, 710.

[12] *Tahanan Development Corp. v. Court of Appeals*, G.R. No. 55771, November 15, 1982, 118 SCRA 273, 314-315.

WHEREFORE, the CA's July 22, 2003 Decision and February 10, 2004 Resolution in CA-G.R. CV No. 74050, affirming the October 30, 2000 Order of the Sta. Cruz, Laguna RTC, Branch 27, are *AFFIRMED **IN TOTO***. Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 163101. February 13, 2008]

BENGUET CORPORATION, *petitioner, vs.* **DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES-MINES ADJUDICATION BOARD and J.G. REALTY AND MINING CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL UNDER RULE 43; A DECISION OF THE MINES ADJUDICATION BOARD MUST FIRST BE APPEALED TO THE COURT OF APPEALS BEFORE RECOURSE TO THE SUPREME COURT MAY BE HAD.— The last paragraph of Section 79 of Republic Act No. (RA) 7942 or the "Philippine Mining Act of 1995" states, "A petition for review by *certiorari* and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the [MAB]." However, this Court has already invalidated such provision in *Carpio v. Sulu Resources Development Corp.*, ruling that a decision of the MAB must first be appealed to the Court of Appeals (CA) under Rule 43

of the Rules of Court, before recourse to this Court may be had.

2. ID.; REPUBLIC ACT 876; VOLUNTARY ARBITRATION; A CONTRACTUAL STIPULATION FOR VOLUNTARY ARBITRATION BEFORE RESORT IS MADE TO COURTS OR QUASI-JUDICIAL AGENCIES IS VALID.— In RA 9285 or the "Alternative Dispute Resolution Act of 2004," the Congress reiterated the efficacy of arbitration as an alternative mode of dispute resolution by stating in Sec. 32 thereof that domestic arbitration shall still be governed by RA 876. Clearly, a contractual stipulation that requires prior resort to voluntary arbitration before the parties can go directly to court is not illegal and is in fact promoted by the State. [A]vailment of voluntary arbitration before resort is made to the courts or quasi-judicial agencies of the government is a valid contractual stipulation that must be adhered to by the parties. x x x [I]n the event a case that should properly be the subject of voluntary arbitration is erroneously filed with the courts or quasi-judicial agencies, on motion of the defendant, the court or quasi-judicial agency shall determine whether such contractual provision for arbitration is sufficient and effective. If in affirmative, the court or quasi-judicial agency shall then order the enforcement of said provision. Besides, in *BF Corporation v. Court of Appeals*, we already ruled: In this connection, it bears stressing that the lower court has not lost its jurisdiction over the case. Section 7 of Republic Act No. 876 provides that proceedings therein have only been stayed. After the special proceeding of arbitration has been pursued and completed, then the lower court may confirm the award made by the arbitrator.

3. ID.; ID.; ARBITRATIONS; TYPES.— In *Ludo and Luym Corporation v. Saordino*, the Court had the occasion to distinguish between the two types of arbitrations: "Comparatively, in *Reformist Union of R.B. Liner, Inc. vs. NLRC*, compulsory arbitration has been defined both as "the process of settlement of labor disputes by a **government agency which has the authority to investigate and to make an award** which is binding on all the parties, and as a mode of arbitration where the parties are compelled to accept the resolution of their dispute through arbitration by a third party." While a voluntary arbitrator is **not part of the governmental unit or labor**

department's personnel, said arbitrator renders arbitration services provided for under labor laws." There is a clear distinction between compulsory and voluntary arbitration.

4. ID.; EVIDENCE; BURDEN OF PROOF; THE DEBTOR HAS THE BURDEN OF SHOWING WITH LEGAL CERTAINTY THAT THE OBLIGATION HAS BEEN DISCHARGED BY PAYMENT.— The allegation of nonpayment is not a positive allegation. x x x Rather, such is a negative allegation that does not require proof and in fact transfers the burden of proof to Benguet. Thus, this Court ruled in *Jimenez v. National Labor Relations Commission*: "As a general rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. **The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment."**

5. CIVIL LAW; HUMAN RELATIONS; UNJUST ENRICHMENT; REQUISITES.— In *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, we defined unjust enrichment, as follows: "We have held that "[t]here is unjust enrichment when a person **unjustly** retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." Article 22 of the Civil Code provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage. **There is no unjust enrichment when the person who will benefit has a valid claim to such benefit.**

APPEARANCES OF COUNSEL

Reynaldo P. Mendoza for petitioner.
Cortina Buted & Coloma Law Offices for private respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The instant petition under Rule 65 of the Rules of Court seeks the annulment of the December 2, 2002 Decision[1] and March 17, 2004 Resolution[2] of the Department of Environment and Natural Resources-Mining Adjudication Board (DENR-MAB) in MAB Case No. 0124-01 (Mines Administrative Case No. R-M-2000-01) entitled *Benguet Corporation* (*Benguet*) *v. J.G. Realty and Mining Corporation* (*J.G. Realty*). The December 2, 2002 Decision upheld the March 19, 2001 Decision[3] of the MAB Panel of Arbitrators (POA) which canceled the Royalty Agreement with Option to Purchase (RAWOP) dated June 1, 1987[4] between Benguet and J.G. Realty, and excluded Benguet from the joint Mineral Production Sharing Agreement (MPSA) application over four mining claims. The March 17, 2004 Resolution denied Benguet's Motion for Reconsideration.

The Facts

On June 1, 1987, Benguet and J.G. Realty entered into a RAWOP, wherein J.G. Realty was acknowledged as the owner of four mining claims respectively named as Bonito-I, Bonito-II, Bonito-III, and Bonito-IV, with a total area of 288.8656 hectares, situated in Barangay Luklukam, Sitio Bagong Bayan, Municipality of Jose Panganiban, Camarines Norte. The parties also executed a Supplemental Agreement[5] dated June 1, 1987. The mining claims were covered by MPSA Application No. APSA-V-0009 jointly filed by J.G. Realty as claimowner and Benguet as operator.

In the RAWOP, Benguet obligated itself to perfect the rights to the mining claims and/or otherwise acquire the mining rights to the mineral claims. Within 24 months from the execution of

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[1] *Rollo*, pp. 25-38.

[2] *Id*. at 39-41.

[3] *Id*. at 42-47.

[4] *Id*. at 73-111.

[5] *Id*. at 112-115.

the RAWOP, Benguet should also cause the examination of the mining claims for the purpose of determining whether or not they are worth developing with reasonable probability of profitable production. Benguet undertook also to furnish J.G. Realty with a report on the examination, within a reasonable time after the completion of the examination. Moreover, also within the examination period, Benguet shall conduct all necessary exploration in accordance with a prepared exploration program. If it chooses to do so and before the expiration of the examination period, Benguet may undertake to develop the mining claims upon written notice to J.G. Realty. Benguet must then place the mining claims into commercial productive stage within 24 months from the written notice.[6] It is also provided in the RAWOP that if the mining claims were placed in commercial production by Benguet, J.G. Realty should be entitled to a royalty of five percent (5%) of net realizable value, and to royalty for any production done by Benguet whether during the examination or development periods.

Thus, on August 9, 1989, the Executive Vice-President of Benguet, Antonio N. Tachuling, issued a letter informing J.G. Realty of its intention to develop the mining claims. However, on February 9, 1999, J.G. Realty, through its President, Johnny L. Tan, then sent a letter to the President of Benguet informing the latter that it was terminating the RAWOP on the following grounds:

a. The fact that your company has failed to perform the obligations set forth in the RAWOP, *i.e.*, to undertake development works within 2 years from the execution of the Agreement;

b. Violation of the Contract by allowing high graders to operate on our claim.

c. No stipulation was provided with respect to the term limit of the RAWOP.

d. Non-payment of the royalties thereon as provided in the RAWOP.[7]

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[6] *Id*. at 75-78.

[7] *Id*. at 202.

In response, Benguet's Manager for Legal Services, Reynaldo P. Mendoza, wrote J.G. Realty a letter dated March 8, 1999,[8] therein alleging that Benguet complied with its obligations under the RAWOP by investing PhP 42.4 million to rehabilitate the mines, and that the commercial operation was hampered by the non-issuance of a Mines Temporary Permit by the Mines and Geosciences Bureau (MGB) which must be considered as *force majeure*, entitling Benguet to an extension of time to prosecute such permit. Benguet further claimed that the high graders mentioned by J.G. Realty were already operating prior to Benguet's taking over of the premises, and that J.G. Realty had the obligation of ejecting such small scale miners. Benguet also alleged that the nature of the mining business made it difficult to specify a time limit for the RAWOP. Benguet then argued that the royalties due to J.G. Realty were in fact in its office and ready to be picked up at any time. It appeared that, previously, the practice by J.G. Realty was to pick-up checks from Benguet representing such royalties. However, starting August 1994, J.G. Realty allegedly refused to collect such checks from Benguet. Thus, Benguet posited that there was no valid ground for the termination of the RAWOP. It also reminded J.G. Realty that it should submit the disagreement to arbitration rather than unilaterally terminating the RAWOP.

On June 7, 2000, J.G. Realty filed a Petition for Declaration of Nullity/Cancellation of the RAWOP[9] with the Legaspi City POA, Region V, docketed as DENR Case No. 2000-01 and entitled *J.G. Realty v. Benguet*.

On March 19, 2001, the POA issued a Decision,[10] dwelling upon the issues of (1) whether the arbitrators had jurisdiction over the case; and (2) whether Benguet violated the RAWOP justifying the unilateral cancellation of the RAWOP by J.G. Realty. The dispositive portion stated:

WHEREFORE, premises considered, the June 01, 1987 [RAWOP] and its Supplemental Agreement is hereby declared cancelled and

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[8] *Id*. at 118-119.

[9] *Id*. at 215-219.

[10] *Id*. at 42-47.

without effect. BENGUET is hereby excluded from the joint MPSA Application over the mineral claims denominated as "BONITO-I", "BONITO-II", "BONITO-III" and "BONITO-IV".

SO ORDERED.

Therefrom, Benguet filed a Notice of Appeal[11] with the MAB on April 23, 2001, docketed as Mines Administrative Case No. R-M-2000-01. Thereafter, the MAB issued the assailed December 2, 2002 Decision. Benguet then filed a Motion for Reconsideration of the assailed Decision which was denied in the March 17, 2004 Resolution of the MAB. Hence, Benguet filed the instant petition.

The Issues

1. There was serious and palpable error when the Honorable Board failed to rule that the contractual obligation of the parties to arbitrate under the Royalty Agreement is mandatory.

2. The Honorable Board exceeded its jurisdiction when it sustained the cancellation of the Royalty Agreement for alleged breach of contract despite the absence of evidence.

3. The Questioned Decision of the Honorable Board in cancelling the RAWOP prejudice[d] the substantial rights of Benguet under the contract to the unjust enrichment of JG Realty.[12]

Restated, the issues are: (1) Should the controversy have first been submitted to arbitration before the POA took cognizance of the case?; (2) Was the cancellation of the RAWOP supported by evidence?; and (3) Did the cancellation of the RAWOP amount to unjust enrichment of J.G. Realty at the expense of Benguet?

The Court's Ruling

Before we dwell on the substantive issues, we find that the instant petition can be denied outright as Benguet resorted to an improper remedy.

The last paragraph of Section 79 of Republic Act No. (RA) 7942 or the "Philippine Mining Act of 1995" states,

[11] *Id*. at 48.

[12] *Id*. at 8, 14 & 18, respectively.

"A petition for review by *certiorari* and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the [MAB]."

However, this Court has already invalidated such provision in *Carpio v. Sulu Resources Development Corp.*,[13] ruling that a decision of the MAB must first be appealed to the Court of Appeals (CA) under Rule 43 of the Rules of Court, before recourse to this Court may be had. We held, thus:

> To summarize, there are sufficient legal footings authorizing a review of the MAB Decision under Rule 43 of the Rules of Court. *First,* Section 30 of Article VI of the 1987 Constitution, mandates that "[n]o law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and consent." On the other hand, Section 79 of RA No. 7942 provides that decisions of the MAB may be reviewed by this Court on a "petition for review by *certiorari*." This provision is obviously an expansion of the Court's appellate jurisdiction, an expansion to which this Court has not consented. Indiscriminate enactment of legislation enlarging the appellate jurisdiction of this Court would unnecessarily burden it.
>
> *Second,* when the Supreme Court, in the exercise of its rule-making power, transfers to the CA pending cases involving a review of a quasi-judicial body's decisions, such transfer relates only to procedure; hence, it does not impair the substantive and vested rights of the parties. The aggrieved party's right to appeal is preserved; what is changed is only the procedure by which the appeal is to be made or decided. The parties still have a remedy and a competent tribunal to grant this remedy.
>
> *Third,* the Revised Rules of Civil Procedure included Rule 43 to provide a uniform rule on appeals from quasi-judicial agencies. Under the rule, appeals from their judgments and final orders are now required to be brought to the CA on a verified petition for review. A quasi-judicial agency or body has been defined as an organ of government, other than a court or legislature, which affects the rights of private parties through either adjudication or rule-making. MAB falls under this definition; hence, it is no different from the other quasi-judicial

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[13] G.R. No. 148267, August 8, 2002, 387 SCRA 128.

bodies enumerated under Rule 43. Besides, the introductory words in Section 1 of Circular No. 1-91—"among these agencies are"—indicate that the enumeration is not exclusive or conclusive and acknowledge the existence of other quasi-judicial agencies which, though not expressly listed, should be deemed included therein.

Fourth, the Court realizes that under Batas Pambansa (BP) Blg. 129 as amended by RA No. 7902, factual controversies are usually involved in decisions of quasi-judicial bodies; and the CA, which is likewise tasked to resolve questions of fact, has more elbow room to resolve them. By including questions of fact among the issues that may be raised in an appeal from quasi-judicial agencies to the CA, Section 3 of Revised Administrative Circular No. 1-95 and Section 3 of Rule 43 explicitly expanded the list of such issues.

According to Section 3 of Rule 43, "[a]n appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided whether the appeal involves questions of fact, of law, or mixed questions of fact and law." Hence, appeals from quasi-judicial agencies even only on questions of law may be brought to the CA.

Fifth, the judicial policy of observing the hierarchy of courts dictates that direct resort from administrative agencies to this Court will not be entertained, unless the redress desired cannot be obtained from the appropriate lower tribunals, or unless exceptional and compelling circumstances justify availment of a remedy falling within and calling for the exercise of our primary jurisdiction.[14]

The above principle was reiterated in *Asaphil Construction and Development Corporation v. Tuason, Jr.* (*Asaphil*).[15] However, the *Carpio* ruling was not applied to *Asaphil* as the petition in the latter case was filed in 1999 or three years before the promulgation of *Carpio* in 2002. Here, the petition was filed on April 28, 2004 when the *Carpio* decision was already applicable, thus Benguet should have filed the appeal with the CA.

Petitioner having failed to properly appeal to the CA under Rule 43, the decision of the MAB has become final and executory. On this ground alone, the instant petition must be denied.

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[14] *Id.* at 138-141.

[15] G.R. No. 134030, April 25, 2006, 488 SCRA 126, 133.

Even if we entertain the petition although Benguet skirted the appeal to the CA via Rule 43, still, the December 2, 2002 Decision and March 17, 2004 Resolution of the DENR-MAB in MAB Case No. 0124-01 should be maintained.

First Issue: The case should have first been brought to voluntary arbitration before the POA

Secs. 11.01 and 11.02 of the RAWOP pertinently provide:

11.01 Arbitration

Any disputes, differences or disagreements between BENGUET and the OWNER with reference to anything whatsoever pertaining to this Agreement that cannot be amicably settled by them shall not be cause of any action of any kind whatsoever in any court or administrative agency but shall, upon notice of one party to the other, be referred to a Board of Arbitrators consisting of three (3) members, one to be selected by BENGUET, another to be selected by the OWNER and the third to be selected by the aforementioned two arbitrators so appointed.

x x x x x x x x x

11.02 Court Action

No action shall be instituted in court as to any matter in dispute as hereinabove stated, except to enforce the decision of the majority of the Arbitrators.[16]

Thus, Benguet argues that the POA should have first referred the case to voluntary arbitration before taking cognizance of the case, citing Sec. 2 of RA 876 on persons and matters subject to arbitration.

On the other hand, in denying such argument, the POA ruled that:

While the parties may establish such stipulations clauses, terms and conditions as they may deem convenient, the same must not be contrary to law and public policy. At a glance, there is nothing wrong with the terms and conditions of the agreement. But to state that an aggrieved party cannot initiate an action without going to arbitration

[16] *Rollo*, p. 90.

would be tying one's hand even if there is a law which allows him to do so.[17]

The MAB, meanwhile, denied Benguet's contention on the ground of estoppel, stating:

> Besides, by its own act, Benguet is already estopped in questioning the jurisdiction of the Panel of Arbitrators to hear and decide the case. As pointed out in the appealed Decision, Benguet initiated and filed an Adverse Claim docketed as MAC-R-M-2000-02 over the same mining claims without undergoing contractual arbitration. In this particular case (MAC-R-M-2000-02) now subject of the appeal, Benguet is likewise in estoppel from questioning the competence of the Panel of Arbitrators to hear and decide in the summary proceedings J.G. Realty's petition, when Benguet itself did not merely move for the dismissal of the case but also filed an Answer with counterclaim seeking affirmative reliefs from the Panel of Arbitrators.[18]

Moreover, the MAB ruled that the contractual provision on arbitration merely provides for an additional forum or venue and does not divest the POA of the jurisdiction to hear the case.[19]

In its July 20, 2004 Comment,[20] J.G. Realty reiterated the above rulings of the POA and MAB. It argued that RA 7942 or the "Philippine Mining Act of 1995" is a special law which should prevail over the stipulations of the parties and over a general law, such as RA 876. It also argued that the POA cannot be considered as a "court" under the contemplation of RA 876 and that jurisprudence saying that there must be prior resort to arbitration before filing a case with the courts is inapplicable to the instant case as the POA is itself already engaged in arbitration.

On this issue, we rule for Benguet.

Sec. 2 of RA 876 elucidates the scope of arbitration:

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[17] *Id*. at 44.

[18] *Id*. at 31.

[19] *Id*. at 32.

[20] *Id*. at 150-273.

Section 2. *Persons and matters subject to arbitration.*—**Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission and which may be the subject of an action, or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them. Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract.**

Such submission or contract may include question[s] arising out of valuations, appraisals or other controversies which may be collateral, incidental, precedent or subsequent to any issue between the parties. (Emphasis supplied.)

In RA 9285 or the "Alternative Dispute Resolution Act of 2004," the Congress reiterated the efficacy of arbitration as an alternative mode of dispute resolution by stating in Sec. 32 thereof that domestic arbitration shall still be governed by RA 876. Clearly, a contractual stipulation that requires prior resort to voluntary arbitration before the parties can go directly to court is not illegal and is in fact promoted by the State. Thus, petitioner correctly cites several cases whereby arbitration clauses have been upheld by this Court.[21]

Moreover, the contention that RA 7942 prevails over RA 876 presupposes a conflict between the two laws. Such is not the case here. To reiterate, availment of voluntary arbitration before resort is made to the courts or quasi-judicial agencies of the government is a valid contractual stipulation that must be adhered to by the parties. As stated in Secs. 6 and 7 of RA 876:

Section 6. *Hearing by court.*— **A party aggrieved by the failure, neglect or refusal of another to perform under an agreement**

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[21] *BF Corporation v. CA*, G.R. No. 120105, March 27, 1998, 288 SCRA 267; *Puromines v. CA*, G.R. No. 91228, March 22, 1993, 220 SCRA 281; *General Insurance and Surety Corporation v. Union Insurance Society of Canton, et al.*, G.R. Nos. L-30475-76, November 22, 1989, 179 SCRA 530; *Gascon v. Arroyo*, G.R. No. 78389, October 16, 1989, 178 SCRA 582; *Bengson v. Chan*, G.R. No. L-27283, July 29, 1977, 78 SCRA 113; *Mindanao Portland Cement Corporation v. McDonough Construction Company of Florida*, G.R. No. L-23390, April 24, 1967, 19 SCRA 808.

in writing providing for arbitration may petition the court for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days notice in writing of the hearing of such application shall be served either personally or by registered mail upon the party in default. **The court shall hear the parties, and upon being satisfied that the making of the agreement or such failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the agreement or default be in issue the court shall proceed to summarily hear such issue. If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in the proceeding thereunder, the proceeding shall be dismissed. If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.**

x x x x x x x x x

Section 7. *Stay of civil action.*—If any suit or proceeding be brought upon an issue arising out of an agreement providing for the arbitration thereof, the court in which such suit or proceeding is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration, shall stay the action or proceeding until an arbitration has been had in accordance with the terms of the agreement: Provided, That the applicant, for the stay is not in default in proceeding with such arbitration. (Emphasis supplied.)

In other words, in the event a case that should properly be the subject of voluntary arbitration is erroneously filed with the courts or quasi-judicial agencies, on motion of the defendant, the court or quasi-judicial agency shall determine whether such contractual provision for arbitration is sufficient and effective. If in affirmative, the court or quasi-judicial agency shall then order the enforcement of said provision. Besides, in *BF Corporation v. Court of Appeals*, we already ruled:

In this connection, it bears stressing that the lower court has not lost its jurisdiction over the case. Section 7 of Republic Act No. 876

provides that proceedings therein have only been stayed. After the special proceeding of arbitration has been pursued and completed, then the lower court may confirm the award made by the arbitrator.[22]

J.G. Realty's contention, that prior resort to arbitration is unavailing in the instant case because the POA's mandate is to arbitrate disputes involving mineral agreements, is misplaced. A distinction must be made between voluntary and compulsory arbitration. In *Ludo and Luym Corporation v. Saordino*, the Court had the occasion to distinguish between the two types of arbitrations:

> Comparatively, in *Reformist Union of R.B. Liner, Inc. vs. NLRC*, compulsory arbitration has been defined both as "the process of settlement of labor disputes by a **government agency which has the authority to investigate and to make an award** which is binding on all the parties, and as a mode of arbitration where the parties are compelled to accept the resolution of their dispute through arbitration by a third party." While a voluntary arbitrator is **not part of the governmental unit or labor department's personnel**, said arbitrator renders arbitration services provided for under labor laws.[23] (Emphasis supplied.)

There is a clear distinction between compulsory and voluntary arbitration. The arbitration provided by the POA is compulsory, while the nature of the arbitration provision in the RAWOP is voluntary, not involving any government agency. Thus, J.G. Realty's argument on this matter must fail.

As to J.G. Realty's contention that the provisions of RA 876 cannot apply to the instant case which involves an administrative agency, it must be pointed out that Section 11.01 of the RAWOP states that:

> [Any controversy with regard to the contract] shall not be cause of any action of any kind whatsoever in any court or **administrative agency** but shall, upon notice of one party to the other, be referred to a Board of Arbitrators consisting of three (3) members, one to be selected by BENGUET, another to be selected by the OWNER

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[22] *Supra* at 285.

[23] G.R. No. 140960, January 20, 2003, 395 SCRA 451, 457-458.

and the third to be selected by the aforementioned two arbiters so appointed.[24] (Emphasis supplied.)

There can be no quibbling that POA is a quasi-judicial body which forms part of the DENR, an administrative agency. Hence, the provision on mandatory resort to arbitration, freely entered into by the parties, must be held binding against them.[25]

In sum, on the issue of whether POA should have referred the case to voluntary arbitration, we find that, indeed, POA has no jurisdiction over the dispute which is governed by RA 876, the arbitration law.

However, we find that Benguet is already estopped from questioning the POA's jurisdiction. As it were, when J.G. Realty filed DENR Case No. 2000-01, Benguet filed its answer and participated in the proceedings before the POA, Region V. Secondly, when the adverse March 19, 2001 POA Decision was rendered, it filed an appeal with the MAB in Mines Administrative Case No. R-M-2000-01 and again participated in the MAB proceedings. When the adverse December 2, 2002 MAB Decision was promulgated, it filed a motion for reconsideration with the MAB. When the adverse March 17, 2004 MAB Resolution was issued, Benguet filed a petition with this Court pursuant to Sec. 79 of RA 7942 impliedly recognizing MAB's jurisdiction. In this factual milieu, the Court rules that the jurisdiction of POA and that of MAB can no longer be questioned by Benguet at this late hour. What Benguet should have done was to immediately challenge the POA's jurisdiction by a special civil action for *certiorari* when POA ruled that it has jurisdiction over the dispute. To redo the proceedings fully participated in by the parties after the lapse of seven years from date of institution of the original action with the POA would be anathema to the speedy and efficient administration of justice.

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[24] *Rollo*, p. 90.

[25] *Chan v. CA*, G.R. No. 147999, February 27, 2004, 424 SCRA 127, 134.

Second Issue: The cancellation of the RAWOP was supported by evidence

The cancellation of the RAWOP by the POA was based on two grounds: (1) Benguet's failure to pay J.G. Realty's royalties for the mining claims; and (2) Benguet's failure to seriously pursue MPSA Application No. APSA-V-0009 over the mining claims.

As to the royalties, Benguet claims that the checks representing payments for the royalties of J.G. Realty were available for pick-up in its office and it is the latter which refused to claim them. Benguet then thus concludes that it did not violate the RAWOP for nonpayment of royalties. Further, Benguet reasons that J.G. Realty has the burden of proving that the former did not pay such royalties following the principle that the complainants must prove their affirmative allegations.

With regard to the failure to pursue the MPSA application, Benguet claims that the lengthy time of approval of the application is due to the failure of the MGB to approve it. In other words, Benguet argues that the approval of the application is solely in the hands of the MGB.

Benguet's arguments are bereft of merit.

Sec. 14.05 of the RAWOP provides:

14.05 Bank Account

OWNER shall maintain a bank account at _____ or any other bank from time to time selected by OWNER with notice in writing to BENGUET where BENGUET shall deposit to the OWNER's credit any and all advances and payments which may become due the OWNER under this Agreement as well as the purchase price herein agreed upon in the event that BENGUET shall exercise the option to purchase provided for in the Agreement. **Any and all deposits so made by BENGUET shall be a full and complete acquittance and release to** [sic] **BENGUET from any further liability to the OWNER of the amounts represented by such deposits.** (Emphasis supplied.)

Evidently, the RAWOP itself provides for the mode of royalty payment by Benguet. The fact that there was the previous practice

whereby J.G. Realty picked-up the checks from Benguet is unavailing. The mode of payment is embodied in a contract between the parties. As such, the contract must be considered as the law between the parties and binding on both.[26] Thus, after J.G. Realty informed Benguet of the bank account where deposits of its royalties may be made, Benguet had the obligation to deposit the checks. J.G. Realty had no obligation to furnish Benguet with a Board Resolution considering that the RAWOP itself provided for such payment scheme.

Notably, Benguet's claim that J.G. Realty must prove nonpayment of its royalties is both illogical and unsupported by law and jurisprudence.

The allegation of nonpayment is not a positive allegation as claimed by Benguet. Rather, such is a negative allegation that does not require proof and in fact transfers the burden of proof to Benguet. Thus, this Court ruled in *Jimenez v. National Labor Relations Commission*:

> As a general rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. **The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.**[27] (Emphasis supplied.)

In the instant case, the obligation of Benguet to pay royalties to J.G. Realty has been admitted and supported by the provisions of the RAWOP. Thus, the burden to prove such obligation rests on Benguet.

It should also be borne in mind that MPSA Application No. APSA-V-0009 has been pending with the MGB for a considerable length of time. Benguet, in the RAWOP, obligated itself to perfect the rights to the mining claims and/or otherwise acquire the mining rights to the mineral claims but failed to present any evidence showing that it exerted efforts to speed

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[26] CIVIL CODE, Arts. 1159 & 1308.

[27] G.R. No. 116960, April 2, 1996, 256 SCRA 84, 89.

up and have the application approved. In fact, Benguet never even alleged that it continuously followed-up the application with the MGB and that it was in constant communication with the government agency for the expeditious resolution of the application. Such allegations would show that, indeed, Benguet was remiss in prosecuting the MPSA application and clearly failed to comply with its obligation in the RAWOP.

Third Issue: There is no unjust enrichment in the instant case

Based on the foregoing discussion, the cancellation of the RAWOP was based on valid grounds and is, therefore, justified. The necessary implication of the cancellation is the cessation of Benguet's right to prosecute MPSA Application No. APSA-V-0009 and to further develop such mining claims.

In *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, we defined unjust enrichment, as follows:

> We have held that "[t]here is unjust enrichment when a person **unjustly** retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." Article 22 of the Civil Code provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage.
>
> **There is no unjust enrichment when the person who will benefit has a valid claim to such benefit.**[28] (Emphasis supplied.)

Clearly, there is no unjust enrichment in the instant case as the cancellation of the RAWOP, which left Benguet without any legal right to participate in further developing the mining claims, was brought about by its violation of the RAWOP. Hence, Benguet has no one to blame but itself for its predicament.

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[28] G.R. No. 138088, January 23, 2006, 479 SCRA 404, 412-413.

WHEREFORE, we *DISMISS* the petition, and *AFFIRM* the December 2, 2002 Decision and March 17, 2004 Resolution of the DENR-MAB in MAB Case No. 0124-01 upholding the cancellation of the June 1, 1987 RAWOP. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 163419. February 13, 2008]

TSPIC CORPORATION, *petitioner, vs.* **TSPIC EMPLOYEES UNION (FFW), representing MARIA FE FLORES, FE CAPISTRANO, AMY DURIAS,[1] CLAIRE EVELYN VELEZ, JANICE OLAGUIR, JERICO ALIPIT, GLEN BATULA, SER JOHN HERNANDEZ, RACHEL NOVILLAS, NIMFA ANILAO, ROSE SUBARDIAGA, VALERIE CARBON, OLIVIA EDROSO, MARICRIS DONAIRE, ANALYN AZARCON, ROSALIE RAMIREZ, JULIETA ROSETE, JANICE NEBRE, NIA ANDRADE, CATHERINE YABA, DIOMEDISA ERNI,[2] MARIO SALMORIN, LOIDA COMULLO,[3] MARIE ANN DELOS SANTOS,[4] JUANITA YANA, and SUZETTE DULAY,** *respondents.*

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[1] Also appears as Amie Durias in some parts of the records.

[2] Also appears as Deomedisa Erne in some parts of the records.

[3] Also appears as Loida Camullo in some parts of the records.

[4] Also appears as Mary Ann delos Santos in some parts of the records.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; NATURE.—** It is familiar and fundamental doctrine in labor law that the CBA is the law between the parties and they are obliged to comply with its provisions. We said so in *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda*: "A collective bargaining agreement or CBA refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. As in all contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order or public policy. Thus, where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law."

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; CONTRACTS, HOW CONSTRUED.—** [I]f the terms of a contract, as in a CBA, are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of their stipulations shall control. x x x As a general rule, in the interpretation of a contract, the intention of the parties is to be pursued. *Littera necat spiritus vivificat*. An instrument must be interpreted according to the intention of the parties. It is the duty of the courts to place a practical and realistic construction upon it, giving due consideration to the context in which it is negotiated and the purpose which it is intended to serve. Absurd and illogical interpretations should also be avoided. Considering that the parties have unequivocally agreed to substitute the benefits granted under the CBA with those granted under wage orders, the agreement must prevail and be given full effect. x x x It is a familiar rule in interpretation of contracts that conflicting provisions should be harmonized to give effect to all. Likewise, when general and specific provisions are inconsistent, the specific provision shall be paramount to and govern the general provision.

3. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; PROHIBITION AGAINST NON-DIMINUTION OF BENEFITS; DIMINUTION OF BENEFITS, WHEN PRESENT.— Diminution of benefits is the unilateral withdrawal by the employer of benefits already enjoyed by the employees. There is diminution of benefits when it is shown that: (1) the grant or benefit is founded on a policy or has ripened into a practice over a long period; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer.

4. ID.; ID.; ID.; ID.; AN ERRONEOUSLY GRANTED BENEFIT MAY BE WITHDRAWN WITHOUT VIOLATING THE PROHIBITION AGAINST NON-DIMINUTION OF BENEFITS.— We have ruled before that an erroneously granted benefit may be withdrawn without violating the prohibition against non-diminution of benefits. We ruled in *Globe-Mackay Cable and Radio Corp. v. NLRC*: "Absent clear administrative guidelines, Petitioner Corporation cannot be faulted for erroneous application of the law. Payment may be said to have been made by reason of a mistake in the construction or application of a "doubtful or difficult question of law". (Article 2155, in relation to Article 2154 of the Civil Code). Since it is a past error that is being corrected, no vested right may be said to have arisen nor any diminution of benefit under Article 100 of the Labor Code may be said to have resulted by virtue of the correction."

5. ID.; ID.; DISPUTES BETWEEN LABOR AND CAPITAL, HOW RESOLVED.— [T]hough it is the state's responsibility to afford protection to labor, this policy should not be used as an instrument to oppress management and capital. In resolving disputes between labor and capital, fairness and justice should always prevail. We ruled in *Norkis Union v. Norkis Trading* that in the resolution of labor cases, we have always been guided by the State policy enshrined in the Constitution: social justice and protection of the working class. Social justice does not, however, mandate that **every** dispute should be automatically decided in favor of labor. In any case, justice is to be granted

to the deserving and dispensed in the light of the established facts and the applicable law and doctrine.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Federation for Free Workers for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The path towards industrial peace is a two-way street. Fundamental fairness and protection to labor should always govern dealings between labor and management. Seemingly conflicting provisions should be harmonized to arrive at an interpretation that is within the parameters of the law, compassionate to labor, yet, fair to management.

In this Petition for Review on *Certiorari* under Rule 45, petitioner TSPIC Corporation (TSPIC) seeks to annul and set aside the October 22, 2003 Decision[5] and April 23, 2004 Resolution[6] of the Court of Appeals (CA) in CA-G.R. SP No. 68616, which affirmed the September 13, 2001 Decision[7] of Accredited Voluntary Arbitrator Josephus B. Jimenez in National Conciliation and Mediation Board Case No. JBJ-AVA-2001-07-57.

TSPIC is engaged in the business of designing, manufacturing, and marketing integrated circuits to serve the communication, automotive, data processing, and aerospace industries. Respondent TSPIC Employees Union (FFW) (Union), on the other hand, is the registered bargaining agent of the rank-and-file employees of TSPIC. The respondents, Maria Fe Flores, Fe Capistrano,

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[5] *Rollo*, pp. 31-39-A. Penned by Associate Justice Conrado M. Vasquez, Jr., and concurred in by Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale.

[6] *Id*. at 41-42.

[7] *Id*. at 118-132.

Amy Durias, Claire Evelyn Velez, Janice Olaguir, Jerico Alipit, Glen Batula, Ser John Hernandez, Rachel Novillas, Nimfa Anilao, Rose Subardiaga, Valerie Carbon, Olivia Edroso, Maricris Donaire, Analyn Azarcon, Rosalie Ramirez, Julieta Rosete, Janice Nebre, Nia Andrade, Catherine Yaba, Diomedisa Erni, Mario Salmorin, Loida Comullo, Marie Ann Delos Santos, Juanita Yana, and Suzette Dulay, are all members of the Union.

In 1999, TSPIC and the Union entered into a Collective Bargaining Agreement (CBA)[8] for the years 2000 to 2004. The CBA included a provision on yearly salary increases starting January 2000 until January 2002. Section 1, Article X of the CBA provides, as follows:

> Section 1. Salary/ Wage Increases.—Employees covered by this Agreement shall be granted salary/wage increases as follows:
>
> a) Effective January 1, 2000, all employees on regular status and within the bargaining unit on or before said date shall be granted a salary increase equivalent to ten percent (10%) of their basic monthly salary as of December 31, 1999.
>
> b) Effective January 1, 2001, all employees on regular status and within the bargaining unit on or before said date shall be granted a salary increase equivalent to twelve (12%) of their basic monthly salary as of December 31, 2000.
>
> c) Effective January 1, 2002, all employees on regular status and within the bargaining unit on or before said date shall be granted a salary increase equivalent to eleven percent (11%) of their basic monthly salary as of December 31, 2001.
>
> The wage salary increase of the first year of this Agreement shall be over and above the wage/salary increase, including the wage distortion adjustment, granted by the COMPANY on November 1, 1999 as per Wage Order No. NCR-07.
>
> The wage/salary increases for the years 2001 and 2002 shall be deemed inclusive of the mandated minimum wage increases under future Wage Orders, that may be issued after Wage Order No. NCR-07, and shall be considered as correction of any wage distortion that may

[8] *Id*. at 188-212.

have been brought about by the said future Wage Orders. Thus the wage/salary increases in 2001 and 2002 shall be deemed as compliance to future wage orders after Wage Order No. NCR-07.

Consequently, on January 1, 2000, all the regular rank-and-file employees of TSPIC received a 10% increase in their salary. Accordingly, the following nine (9) respondents (first group) who were already regular employees received the said increase in their salary: Maria Fe Flores, Fe Capistrano, Amy Durias, Claire Evelyn Velez, Janice Olaguir, Jerico Alipit, Glen Batula, Ser John Hernandez, and Rachel Novillas.[9]

The CBA also provided that employees who acquire regular employment status within the year but after the effectivity of a particular salary increase shall receive a proportionate part of the increase upon attainment of their regular status. Sec. 2 of the CBA provides:

SECTION 2. Regularization Increase.—A covered daily paid employee who acquires regular status within the year subsequent to the effectivity of a particular salary/wage increase mentioned in Section 1 above shall be granted a salary/wage increase in proportionate basis as follows:

Regularization Period	Equivalent Increase
- 1st Quarter	100%
- 2nd Quarter	75%
- 3rd Quarter	50%
- 4th Quarter	25%

Thus, a daily paid employee who becomes a regular employee covered by this Agreement only on May 1, 2000, *i.e.*, during the second quarter and subsequent to the January 1, 2000 wage increase under this Agreement, will be entitled to a wage increase equivalent to seventy-five percent (75%) of ten percent (10%) of his basic pay. In the same manner, an employee who acquires regular status on December 1, 2000 will be entitled to a salary increase equivalent to twenty-five percent (25%) of ten percent (10%) of his last basic pay.

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[9] *Id*. at 122.

On the other hand, any monthly-paid employee who acquires regular status within the term of the Agreement shall be granted regularization increase equivalent to 10% of his regular basic salary.

Then on October 6, 2000, the Regional Tripartite Wage and Productivity Board, National Capital Region, issued Wage Order No. NCR-08[10] (WO No. 8) which raised the daily minimum wage from PhP 223.50 to PhP 250 effective November 1, 2000. Conformably, the wages of 17 probationary employees, namely: Nimfa Anilao, Rose Subardiaga, Valerie Carbon, Olivia Edroso, Maricris Donaire, Analyn Azarcon, Rosalie Ramirez, Julieta Rosete, Janice Nebre, Nia Andrade, Catherine Yaba, Diomedisa Erni, Mario Salmorin, Loida Comullo, Marie Ann Delos Santos, Juanita Yana, and Suzette Dulay (second group), were increased to PhP 250.00 effective November 1, 2000.

On various dates during the last quarter of 2000, the above named 17 employees attained regular employment[11] and received 25% of 10% of their salaries as granted under the provision on regularization increase under Article X, Sec. 2 of the CBA.

In January 2001, TSPIC implemented the new wage rates as mandated by the CBA. As a result, the nine employees (first group), who were senior to the above-listed recently regularized employees, received less wages.

On January 19, 2001, a few weeks after the salary increase for the year 2001 became effective, TSPIC's Human Resources Department notified 24 employees,[12] namely: Maria Fe Flores, Janice Olaguir, Rachel Novillas, Fe Capistrano, Jerico Alipit, Amy Durias, Glen Batula, Claire Evelyn Velez, Ser John Hernandez, Nimfa Anilao, Rose Subardiaga, Valerie Carbon, Olivia Edroso, Maricris Donaire, Analyn Azarcon, Rosalie Ramirez, Julieta Rosete, Janice Nebre, Nia Andrade, Catherine Yaba, Diomedisa Erni, Mario Salmorin, Loida Comullo, and

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[10] "Providing an Increase in the Daily Minimum Wage in the National Capital Region, and Its Implementing Rules: Rules Implementing Wage Order No. NCR-08," approved on October 25, 2000.

[11] *Rollo*, p. 32.

[12] *Id.* at 43.

Marie Ann Delos Santos, that due to an error in the automated payroll system, they were overpaid and the overpayment would be deducted from their salaries in a staggered basis, starting February 2001. TSPIC explained that the correction of the erroneous computation was based on the crediting provision of Sec. 1, Art. X of the CBA.

The Union, on the other hand, asserted that there was no error and the deduction of the alleged overpayment from employees constituted diminution of pay. The issue was brought to the grievance machinery, but TSPIC and the Union failed to reach an agreement.

Consequently, TSPIC and the Union agreed to undergo voluntary arbitration on the solitary issue of whether or not the acts of the management in making deductions from the salaries of the affected employees constituted diminution of pay.

On September 13, 2001, Arbitrator Jimenez rendered a Decision, holding that the unilateral deduction made by TSPIC violated Art. 100[13] of the Labor Code. The *fallo* reads:

WHEREFORE, in the light of the law on the matter and on the facts adduced in evidence, judgment is hereby rendered in favor of the Union and the named individual employees and against the company, thereby ordering the [TSPIC] to pay as follows:

1) to the sixteen (16) newly regularized employees named above, the amount of ₱12,642.24 a month or a total of ₱113,780.16 for nine (9) months or ₱7,111.26 for each of them as well as an additional ₱12,642.24 (for all), or ₱790.14 (for each), for every month after 30 September 2001, until full payment, with legal interests for every month of delay;

2) to the nine (9) who were hired earlier than the sixteen (16); also named above, their respective amount of entitlements, according to the Union's correct computation, ranging from ₱110.22 per month (or ₱991.98 for nine months) to ₱450.58

[13] Art. 100. **Prohibition against elimination or diminution of benefits**. Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

a month (or ₱4,055.22 for nine months), as well as corresponding monthly entitlements after 30 September 2001, plus legal interests until full payment,

3) to Suzette Dulay, the amount of ₱608.14 a month (or ₱5,473.26), as well as corresponding monthly entitlements after 30 September 2001, plus legal interest until full payment,

4) Attorney's fees equal to 10% of all the above monetary awards.

The claim for exemplary damages is denied for want of factual basis.

The parties are hereby directed to comply with their joint voluntary commitment to abide by this Award and thus, submit to this Office jointly, a written proof of voluntary compliance with this DECISION within ten (10) days after the finality hereof.

SO ORDERED.[14]

TSPIC filed a Motion for Reconsideration which was denied in a Resolution dated November 21, 2001.

Aggrieved, TSPIC filed before the CA a petition for review under Rule 43 docketed as CA-G.R. SP No. 68616. The appellate court, through its October 22, 2003 Decision, dismissed the petition and affirmed *in toto* the decision of the voluntary arbitrator. The CA declared TSPIC's computation allowing PhP 287 as daily wages to the newly regularized employees to be correct, noting that the computation conformed to WO No. 8 and the provisions of the CBA. According to the CA, TSPIC failed to convince the appellate court that the deduction was a result of a system error in the automated payroll system. The CA explained that when WO No. 8 took effect on November 1, 2000, the concerned employees were still probationary employees who were receiving the minimum wage of PhP 223.50. The CA said that effective November 1, 2000, said employees should have received the minimum wage of PhP 250. The CA held that when respondents became regular employees on November 29, 2000,

[14] *Rollo*, pp. 131-132.

they should be allowed the salary increase granted them under the CBA at the rate of 25% of 10% of their basic salary for the year 2000; thereafter, the 12% increase for the year 2001 and the 10% increase for the year 2002 should also be made applicable to them.[15]

TSPIC filed a Motion for Reconsideration which was denied by the CA in its April 23, 2004 Resolution.

TSPIC filed the instant petition which raises this sole issue for our resolution: Does the TSPIC's decision to deduct the alleged overpayment from the salaries of the affected members of the Union constitute diminution of benefits in violation of the Labor Code?

TSPIC maintains that the formula proposed by the Union, adopted by the arbitrator and affirmed by the CA, was flawed, inasmuch as it completely disregarded the "crediting provision" contained in the last paragraph of Sec. 1, Art. X of the CBA.

We find TSPIC's contention meritorious.

A Collective Bargaining Agreement is the law between the parties

It is familiar and fundamental doctrine in labor law that the CBA is the law between the parties and they are obliged to comply with its provisions.[16] We said so in *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda*:

> A collective bargaining agreement or CBA refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. As in all contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order or public policy. Thus, where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law.[17]

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[15] *Id*. at 37-38.

[16] *Centro Escolar University Faculty and Allied Workers Union-Independent v. Court of Appeals*, G.R. No. 165486, May 31, 2006, 490 SCRA 61, 72.

[17] G.R. No. 145561, June 15, 2005, 460 SCRA 187, 190-191.

Moreover, if the terms of a contract, as in a CBA, are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of their stipulations shall control.[18] However, sometimes, as in this case, though the provisions of the CBA seem clear and unambiguous, the parties sometimes arrive at conflicting interpretations. Here, TSPIC wants to credit the increase granted by WO No. 8 to the increase granted under the CBA. According to TSPIC, it is specifically provided in the CBA that "the salary/wage increase for the year 2001 shall be deemed inclusive of the mandated minimum wage increases under future wage orders that may be issued after Wage Order No. 7." The Union, on the other hand, insists that the "crediting" provision of the CBA finds no application in the present case, since at the time WO No. 8 was issued, the probationary employees (second group) were not yet covered by the CBA, particularly by its crediting provision.

As a general rule, in the interpretation of a contract, the intention of the parties is to be pursued.[19] *Littera necat spiritus vivificat*. An instrument must be interpreted according to the intention of the parties. It is the duty of the courts to place a practical and realistic construction upon it, giving due consideration to the context in which it is negotiated and the purpose which it is intended to serve.[20] Absurd and illogical interpretations should also be avoided. Considering that the parties have unequivocally agreed to substitute the benefits granted under the CBA with those granted under wage orders, the agreement must prevail and be given full effect.

Paragraph (b) of Sec. 1 of Art. X of the CBA provides for the general agreement that, effective January 1, 2001, all employees on regular status and within the bargaining unit on or before said date shall be granted a salary increase equivalent to twelve

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[18] CIVIL CODE, Art. 1370.

[19] *See* RULES OF COURT, Rule 130, Sec. 11.

[20] *Marcopper Mining Corporation v. NLRC*, G.R. No. 103525, March 29, 1996, 255 SCRA 322, 333; citing *Davao Integrated Port Stevedoring Services v. Abarquez*, G.R. No. 102132, March 19, 1993, 220 SCRA 197.

(12%) of their basic monthly salary as of December 31, 2000. The 12% salary increase is granted to all employees who (1) are regular employees and (2) are within the bargaining unit.

Second paragraph of (c) provides that the salary increase for the year 2000 shall not include the increase in salary granted under WO No. 7 and the correction of the wage distortion for November 1999.

The last paragraph, on the other hand, states the specific condition that the wage/salary increases for the years 2001 and 2002 shall be deemed inclusive of the mandated minimum wage increases under future wage orders, that may be issued after WO No. 7, and shall be considered as correction of the wage distortions that may be brought about by the said future wage orders. Thus, the wage/salary increases in 2001 and 2002 shall be deemed as compliance to future wage orders after WO No. 7.

Paragraph (b) is a general provision which allows a salary increase to all those who are qualified. It, however, clashes with the last paragraph which specifically states that the salary increases for the years 2001 and 2002 shall be deemed inclusive of wage increases subsequent to those granted under WO No. 7. It is a familiar rule in interpretation of contracts that conflicting provisions should be harmonized to give effect to all.[21] Likewise, when general and specific provisions are inconsistent, the specific provision shall be paramount to and govern the general provision.[22] Thus, it may be reasonably concluded that TSPIC granted the salary increases under the condition that any wage order that may be subsequently issued shall be credited against the previously granted increase. The intention of the parties is clear: As long as an employee is qualified to receive the 12% increase in salary, the employee shall be granted the increase; and as long as an employee is granted the 12% increase, the amount shall be credited against any wage order issued after WO No. 7.

Respondents should not be allowed to receive benefits from the CBA while avoiding the counterpart crediting provision. They have received their regularization increases under Art. X, Sec. 2 of the

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[21] CIVIL CODE, Art. 1374; RULES OF COURT, Rule 130, Sec. 11.

[22] *See* RULES OF COURT, Rule 130, Sec. 12.

CBA and the yearly increase for the year 2001. They should not then be allowed to avoid the crediting provision which is an accompanying condition.

Respondents attained regular employment status before January 1, 2001. WO No. 8, increasing the minimum wage, was issued after WO No. 7. Thus, respondents rightfully received the 12% salary increase for the year 2001 granted in the CBA; and consequently, TSPIC rightfully credited that 12% increase against the increase granted by WO No. 8.

Proper formula for computing the salaries for the year 2001

Thus, the proper computation of the salaries of individual respondents is as follows:

(1) With regard to the first group of respondents who attained regular employment status before the effectivity of WO No. 8, the computation is as follows:

For respondents Jerico Alipit and Glen Batula:[23]

Wage rate before WO No. 8……..……....	**PhP 234.67**
Increase due to WO No. 8 setting the minimum wage at PhP 250……..….	**15.33**
Total Salary upon effectivity of WO No. 8……...	**PhP 250.00**
Increase for 2001 (12% of 2000 salary)…….....	**PhP 30.00**
Less the wage increase under WO No. 8…….....	**15.33**
Total difference between the wage increase for 2001 and the increase granted under WO No. 8..	**PhP 14.67**
Wage rate by December 2000…….....	**PhP 250.00**
Plus total difference between the wage increase for 2001 and the increase granted under WO No. 8…….	**14.67**
Total (Wage rate range beginning January 1, 2001)	**PhP 264.67**

[23] *Rollo*, p. 537. It appears from the records that they attained regular employment status on July 31, 2000 with a basic wage rate of PhP 234.67.

For respondents Ser John Hernandez and Rachel Novillas:[24]

Wage rate range before WO No. 8…….....…….**PhP 234.68**
Increase due to WO No. 8
setting the minimum wage at PhP 250……..... **15.32**
Total Salary upon effectivity of WO No. 8. ..... **PhP 250.00**

Increase for 2001 (12% of 2000 salary)… ……. **PhP 30.00**
Less the wage increase under WO No. 8 ……..... **15.32**
Total difference between the wage increase
for 2001 and the increase granted under WO No. 8…. **PhP 14.68**

Wage rate by December 2000……..... **PhP 250.00**
Plus total difference between the wage increase for 2001
and the increase granted under WO No. 8…..... **14.68**
Total (Wage rate range beginning January 1, 2001) **PhP 264.68**

For respondents Amy Durias, Claire Evelyn Velez, and Janice Olaguir:[25]

Wage rate range before WO No. 8……..... **PhP 240.26**
Increase due to WO No. 8
setting the minimum wage at PhP 250…… **9.74**
Total Salary upon effectivity of WO No. 8…. **PhP 250.00**

Increase for 2001 (12% of 2000 salary)……. **PhP 30.00**
Less the wage increase under WO No. 8….. **9.74**
Total difference between the wage increase for 2001
and the increase granted under WO No. 8..... **PhP 20.26**

Wage rate by December 2000…… ……..... **PhP 250.00**
Plus total difference between the wage increase for 2001
and the increase granted under WO No. 8……..... **20.26**
Total (Wage rate range beginning January 1, 2001) **PhP 270.26**

For respondents Ma. Fe Flores and Fe Capistrano:[26]

Wage rate range before WO No. 8……. **PhP 245.85**
Increase due to WO No. 8

[24] *Id*. It appears from the records that they attained regular employment status on August 21, 2000 with a basic wage rate of PhP 234.68.

[25] *Id*. It appears from the records that respondents Amy Durias and Claire Evelyn Velez attained regular employment status on April 11, 2000, while Janice Olaguir on April 18, 2000, all with a basic wage rate of PhP 240.26.

[26] *Id*. It appears from the records that respondent Maria Fe Flores attained regular employment status on February 22, 2000, while Fe Capistrano on March 22, 2000, both with a basic wage rate of PhP 245.85.

setting the minimum wage at PhP 250…..…….. **4.15**
Total Salary upon effectivity of WO No. 8…..... **PhP 250.00**

Increase for 2001 (12% of 2000 salary)……. **PhP 30.00**
Less the wage increase under WO No. 8……..... **4.15**
Total difference between the wage increase for 2001
and the increase granted under WO No. 8…..... **PhP 25.85**

Wage rate by December 2000……... **PhP 250.00**
Plus total difference between the wage increase for 2001
and the increase granted under WO No. 8……..…. **25.85**

Total (Wage rate range beginning January 1, 2001)**PhP 275.85**

(2) With regard to the second group of employees, who attained regular employment status after the implementation of WO No. 8, namely: Nimfa Anilao, Rose Subardiaga, Valerie Carbon, Olivia Edroso, Maricris Donaire, Analyn Azarcon, Rosalie Ramirez, Julieta Rosete, Janice Nebre, Nia Andrade, Catherine Yaba, Diomedisa Erni, Mario Salmorin, Loida Comullo, Marie Ann Delos Santos, Juanita Yana, and Suzette Dulay, the proper computation of the salaries for the year 2001, in accordance with the CBA, is as follows:

Compute the increase in salary after the implementation of WO No. 8 by subtracting the minimum wage before WO No. 8 from the minimum wage per the wage order to arrive at the wage increase, thus:

Minimum Wage per Wage Order……..…. **PhP 250.00**
Wage rate before Wage Order……...……..**223.50**
Wage Increase……. **PhP 26.50**

Upon attainment of regular employment status, the employees' salaries were increased by 25% of 10% of their basic salaries, as provided for in Sec. 2, Art. X of the CBA, thus resulting in a further increase of PhP 6.25, for a total of PhP 256.25, computed as follows:

Wage rate after WO No. 8……. **PhP 250.00**
Regularization increase (25 % of 10% of basic salary) **6.25**
Total (Salary for the end of year 2000)…….. **PhP 256.25**

To compute for the increase in wage rates for the year 2001, get the increase of 12% of the employees' salaries as of December 31, 2000; then subtract from that amount, the amount increased in salaries as granted under WO No. 8 in accordance with the crediting provision of the CBA, to arrive at the increase in salaries for the year 2001 of the recently regularized employees. Add the result to their salaries as of December 31, 2000 to get the proper salary beginning January 1, 2001, thus:

Increase for 2001 (12% of 2000 salary)..... **PhP 30.75**
Less the wage increase under WO No. 8.....**26.50**
Difference between the wage increase
for 2001 and the increase granted under WO No. 8...**PhP 4.25**

Wage rate after regularization increase..... **PhP 256.25**
Plus total difference between the wage increase and
the increase granted under WO No. 8.....**4.25**
Total (Wage rate beginning January 1, 2001)..... **PhP 260.50**

With these computations, the crediting provision of the CBA is put in effect, and the wage distortion between the first and second group of employees is cured. The first group of employees who attained regular employment status before the implementation of WO No. 8 is entitled to receive, starting January 1, 2001, a daily wage rate within the range of PhP 264.67 to PhP 275.85, depending on their wage rate before the implementation of WO No. 8. The second group that attained regular employment status after the implementation of WO No. 8 is entitled to receive a daily wage rate of PhP 260.50 starting January 1, 2001.

Diminution of benefits

TSPIC also maintains that charging the overpayments made to the 16 respondents through staggered deductions from their salaries does not constitute diminution of benefits.

We agree with TSPIC.

Diminution of benefits is the unilateral withdrawal by the employer of benefits already enjoyed by the employees. There is diminution of benefits when it is shown that: (1) the grant or benefit is founded on a policy or has ripened into a practice

over a long period; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer.[27]

As correctly pointed out by TSPIC, the overpayment of its employees was a result of an error. This error was immediately rectified by TSPIC upon its discovery. We have ruled before that an erroneously granted benefit may be withdrawn without violating the prohibition against non-diminution of benefits. We ruled in *Globe-Mackay Cable and Radio Corp. v. NLRC*:

> Absent clear administrative guidelines, Petitioner Corporation cannot be faulted for erroneous application of the law. Payment may be said to have been made by reason of a mistake in the construction or application of a "doubtful or difficult question of law". (Article 2155, in relation to Article 2154 of the Civil Code). Since it is a past error that is being corrected, no vested right may be said to have arisen nor any diminution of benefit under Article 100 of the Labor Code may be said to have resulted by virtue of the correction.[28]

Here, no vested right accrued to individual respondents when TSPIC corrected its error by crediting the salary increase for the year 2001 against the salary increase granted under WO No. 8, all in accordance with the CBA.

Hence, any amount given to the employees in excess of what they were entitled to, as computed above, may be legally deducted by TSPIC from the employees' salaries. It was also compassionate and fair that TSPIC deducted the overpayment in installments over a period of 12 months starting from the date of the initial deduction to lessen the burden on the overpaid employees. TSPIC, in turn, must refund to individual respondents any amount deducted from their salaries which was in excess of what TSPIC is legally allowed to deduct from the salaries based on the computations discussed in this Decision.

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[27] C.A. Azucena, *THE LABOR CODE WITH COMMENTS AND CASES* 222 (2004).

[28] G.R. No. 74156, June 29, 1988, 163 SCRA 71, 78.

As a last word, it should be reiterated that though it is the state's responsibility to afford protection to labor, this policy should not be used as an instrument to oppress management and capital.[29] In resolving disputes between labor and capital, fairness and justice should always prevail. We ruled in *Norkis Union v. Norkis Trading* that in the resolution of labor cases, we have always been guided by the State policy enshrined in the Constitution: social justice and protection of the working class. Social justice does not, however, mandate that **every** dispute should be automatically decided in favor of labor. In any case, justice is to be granted to the deserving and dispensed in the light of the established facts and the applicable law and doctrine.[30]

WHEREFORE, premises considered, the September 13, 2001 Decision of the Labor Arbitrator in National Conciliation and Mediation Board Case No. JBJ-AVA-2001-07-57 and the October 22, 2003 CA Decision in CA-G.R. SP No. 68616 are hereby *AFFIRMED* with *MODIFICATION*. TSPIC is hereby *ORDERED* to pay respondents their salary increases in accordance with this Decision, as follows:

Name of Employee	Daily Wage Rate	No. of Working Days in a Month	No. of Months in a Year	Total Salary for 2001
Nimfa Anilao	260.5	26	12	81,276.00
Rose Subardiaga	260.5	26	12	81,276.00
Valerie Carbon	260.5	26	12	81,276.00
Olivia Edroso	260.5	26	12	81,276.00
Maricris Donaire	260.5	26	12	81,276.00
Analyn Azarcon	260.5	26	12	81,276.00
Rosalie Ramirez	260.5	26	12	81,276.00
Julieta Rosete	260.5	26	12	81,276.00
Janice Nebre	260.5	26	12	81,276.00
Nia Andrade	260.5	26	12	81,276.00
Catherine Yaba	260.5	26	12	81,276.00

[29] *Agabon v. NLRC*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 614.

[30] G.R. No. 157098, June 30, 2005, 462 SCRA 485, 497.

Diomedisa Erni	260.5	26	12	81,276.00
Mario Salmorin	260.5	26	12	81,276.00
Loida Camullo	260.5	26	12	81,276.00
Marie Ann Delos Santos	260.5	26	12	81,276.00
Juanita Yana	260.5	26	12	81,276.00
Suzette Dulay	260.5	26	12	81,276.00
Jerico Alipit	264.67	26	12	82,577.04
Glen Batula	264.67	26	12	82,577.04
Ser John Hernandez	264.68	26	12	82,580.16
Rachel Novillas	264.68	26	12	82,580.16
Amy Durias	270.26	26	12	84,321.12
Claire Evelyn Velez	270.26	26	12	84,321.12
Janice Olaguir	270.26	26	12	84,321.12
Maria Fe Flores	275.85	26	12	86,065.20
Fe Capistrano	275.85	26	12	86,065.20

The award for attorney's fees of ten percent (10%) of the total award is *MAINTAINED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 163437. February 13, 2008]

ERNESTO PIDELI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI TO THE SUPREME COURT UNDER RULE 45; THE JURISDICTION OF THE SUPREME COURT IN CASES BROUGHT BEFORE IT BY THE COURT OF APPEALS IS LIMITED TO REVIEWING OR REVISING ERRORS OF LAW.— [T]he thrust of a petition for review on *certiorari* under Rule 45 is the resolution *only* of questions of law. Any peripheral factual question addressed to this Court is beyond the ambit of this mode of review. Indeed, well-entrenched is the general rule that the jurisdiction of this Court in cases brought before it from the CA is limited to reviewing or revising errors of law.

2. ID.; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN A CRIMINAL CASE THROWS THE WHOLE CASE WIDE OPEN FOR REVIEW.— [A]n appeal in a criminal case throws the whole case wide open for review.

3. CRIMINAL LAW; THEFT; ELEMENTS; PRESENT IN CASE AT BAR.— [T]he elements of theft are as follows: "1. That there be taking of personal property; 2. That said property belongs to another; 3. That the taking be done with intent to gain; 4. That the taking be done without the consent of the owner; and 5. That the taking be accomplished without the use of violence against or intimidation of persons or force upon things." There is, here, a confluence of the elements of theft. Petitioner received the final payment due the partners Placido and Wilson under the pretext of paying off their obligation with the MTFSH. Under the terms of their agreement, petitioner was to account for the remaining balance of the said funds and give each of the partners their respective shares. He, however, failed to give private complainant Placido what was due him under the construction contract.

4. ID.; THEFT AND ESTAFA, DISTINGUISHED.— As early as *U.S. v. De Vera*, the Court has consistently ruled that not all misappropriation is *estafa*. Chief Justice Ramon C. Aquino, in his commentary on the Revised Penal Code, succinctly opined: "The principal distinction between the two crimes is that in theft the thing is taken while in *estafa* the accused receives the property and converts it to his own use or benefit. However, there may be theft even if the accused has possession of the property. If he was entrusted only with the material or physical (natural) or *de facto* possession of the thing, his misappropriation of the same constitutes theft, but if he has the juridical possession of the thing, his conversion of the same constitutes embezzlement or *estafa*."

5. ID.; THEFT; PENALTY; CASE AT BAR.— Article 309 of the Revised Penal Code penalizes theft in the following tenor: "Art. 309. Penalties. — Any person guilty of theft shall be punished by: 1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceed the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years." The record bears out that private complainant originally claimed ₱65,000.00 as his share in the partnership. However, he admitted receiving the total amount of ₱15,500.00, on two separate occasions, from Wilson Pideli. Verily, only ₱49,500.00 is due private complainant. Hence, the imposable penalty is the maximum period of *prision mayor* minimum and medium prescribed in the abovequoted first paragraph of Article 309. That period ranges from six (6) years and one (1) day to ten (10) years, plus one (1) year for every additional ten thousand pesos in excess of ₱22,000.00, which in this case is two (2) years for the excess amount of ₱27,500.00. Applying the Indeterminate Sentence Law, the maximum term could be twelve (12) years while the minimum term would fall under the next lower penalty of *prision correccional* in its medium and maximum periods (2 years, 4 months and 1 day to 6 years), to be imposed in any of its periods. Both the trial court and the CA sentenced petitioner to an indeterminate penalty of four (4) years of *prision correccional* medium, as

minimum term, to twelve (12) years of *prision mayor* maximum, as maximum term. We sustain it.

APPEARANCES OF COUNSEL

Benjamin B. Fernando, Jr. for petitioner.
The Solicitor General for respondent.

D E C I S I O N

REYES, R.T., *J.*:

On appeal via petition for review on *certiorari* under Rule 45 is the Decision[1] of the Court of Appeals (CA), affirming that[2] of the Regional Trial Court (RTC) in Baguio City, convicting petitioner Ernesto Pideli of theft in the amount of ₱49,500.00 belonging to his brother's business partner. The appeal zeroes in on the questions of ownership, unlawful taking and intent to gain. In short, is it *estafa* or theft?

The Facts

Sometime in March 1997, Placido Cancio (Placido) and Wilson Pideli (Wilson) entered into a verbal partnership agreement to subcontract a rip-rapping and spillway project at Tongcalong, Tinongdan Dalupirip Road, Itogon, Benguet. Placido and Wilson agreed to undertake the project in favor of ACL Construction (ACL), the contractor awarded the development project by the Department of Public Works and Highways.[3]

Petitioner Ernesto Pideli (petitioner), brother to Wilson and neighbor and friend to Placido, offered the duo the use of his credit line with the Mt. Trail Farm Supply and Hardware (MTFSH) in La Trinidad, Benguet. Petitioner was an employee of the Provincial Planning and Development Office of Benguet,

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[1] *Rollo,* pp. 8-16 & 62-70. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Edgardo Cruz and Noel Tijam, concurring.

[2] *Id*. at 81-94. Penned by Presiding Judge Clarence J. Villanueva.

[3] TSN, July 13, 1999, p. 23.

likewise based in La Trinidad. With the said arrangement, Wilson and Placido, with the assistance of petitioner, were able to secure an assortment of construction materials for the rip-rap and spillway contract.[4]

On November 17, 1997, after the completion of the project, ACL summoned all its subcontractors to a meeting. Placido, Wilson and petitioner were in attendance. At the meeting, ACL management informed Placido and Wilson that the final payment for the work that they have done would be withheld. It was learned that they failed to settle their accountabilities with the MTFSH.[5]

Placido, Wilson and petitioner made representations with the accountable ACL personnel, a certain Boy Candido, to facilitate the release of their payment. They assured Boy that the matter of the unpaid obligations to MTFSH has been resolved. Boy acceded to the request and proceeded to release the final payment due to Placido and Wilson, amounting to ₱222,732.00.[6]

Consequently, Placido, Wilson and petitioner computed their expenses and arrived at a net income of ₱130,000.00. Placido, as partner, claimed one-half (1/2) or ₱65,000.00 of the net amount as his share in the project. Petitioner, however, advised the two to first settle their accountabilities for the construction materials taken from the hardware store. Placido and Wilson did as told and entrusted the full amount to petitioner, with express instructions to pay MTFSH and deliver the remaining balance to them.[7]

The following day, or on November 18, 1997, Placido attempted but failed to contact petitioner. He had hoped to obtain his share of the partnership income. Placido got hold of petitioner the next morning. Unexpectedly, petitioner informed Placido that nothing was left of the proceeds after paying off the supplier.[8]

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[4] *Rollo,* pp. 65, 93.

[5] TSN, February 23, 1999, pp. 6-7.

[6] *Id*. at 8.

[7] *Id*. at 11-12.

[8] *Id*. at 12-15.

Despite repeated demands, petitioner refused to give Placido his share in the net income of the contract.[9]

Alarmed over the sudden turn of events, Placido lodged a complaint for theft against petitioner Ernesto Pideli. Eventually, an Information bearing the following allegations was instituted against petitioner:

> The undersigned accuses ERNESTO PIDELE (*sic*) of the crime of THEFT, committed as follows:
>
> That on or about the 17th day of November, 1977, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain (*sic*) and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away, cash money in the amount of ₱65,000.00, belonging to PLACIDO CANSIO (*sic*) *y* TALUKTOK, to the damage and prejudice of the owner thereof in the aforementioned amount of SIXTY-FIVE THOUSAND PESOS (₱65,000.00), Philippine Currency.
>
> CONTRARY TO LAW.[10]

Upon arraignment, petitioner pleaded "not guilty" to the charge. Then, trial on the merits ensued.

The evidence for the People portraying the foregoing facts was supplied by private complainant Placido, the lone prosecution witness.

Petitioner's defense founded on denial is summarized by the trial court as follows:

> Ernesto Pideli, 43 years old, married, government employee and a resident of Km. 4, La Trinidad, Benguet. He is a government employee at the Provincial Planning and Development Office, Capitol, La Trinidad, Benguet. He was first employed at the Provincial Engineer's Office on April 11, 1978. Sometime in 1980, he was appointed as Project Development Officer of the Provincial Planning and Development Office and continuously up to the present.

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[9] TSN, April 6, 1999, p. 7.

[10] *Rollo,* pp. 115-118.

Wilson Pideli is his brother. In 1997, his brother Wilson had a construction project along Tinongdan, Itogon, Benguet. His brother asked him if he knows of a hardware which can extend him credit for construction materials. He approached the manager of Mt. Trail Farm Supply and Hardware, Mrs. Editha Paayas, who then said that they could extend credit to his brother. As of 1997, his brother owed the hardware the amount of ₱279,000.00 for the construction materials supplied by the hardware, namely: reinforcement bars, cement, tire wires and other construction materials. This amount was paid to the hardware by installment. The first installment was paid in June 1997 when the main contractor paid his brother. His brother gave him ₱179,000.00 at his residence and he was the one who paid the hardware which issued him a receipt (Exhibit 1-C). After the project was completed, his brother gave him ₱100,000.00 on November 18, 1997 while he, his brother and Placido Cancio were at the Rose Bowl Restaurant. He went to the hardware but the manager was not there. One of the staff then informed him that the manager will still have to compute the interest of their loan credit and so he deposited ₱75,000.00 which was covered by a receipt (Exhibit 1-B). Their account was finally computed in December 1997 and so he paid their balance of ₱25,000.00. All in all, he paid the hardware the amount of ₱279,000.00.

When his brother tendered to him the ₱100,000.00 at the Rose Bowl Restaurant, Placido Cancio was also there discussing the expenses. The money which his brother got from the main contractor, Boy Cupido, the partner of the late Engineer Lestino, was being held by his brother and not Placido Cancio.

The total cost of the materials taken by his brother from the Mt. Trail Farm Supply is ₱279,000.00. On June 10, 1997, he paid the initial payment of ₱179,000.00 covered by Exhibit 1-C issued by the sales boy Cris. The second partial payment was made on November 18, 1997 in the amount of ₱75,000.00 covered by Exhibit 1-B issued by Mrs. Editha Paayas. The last time that he paid was on December 18, 1997 in the amount of ₱25,000.00. This was not yet the full payment because according to Mrs. Paayas she still has to compute for the interest. (TSN, May 2, 2000, pp. 19-20). Aside from the amount of ₱279,000.00 representing the materials taken by his brother, he still has an outstanding account with Mt. Trail Farm Supply charged in his name. This is the reason why in the receipt it was noted as part payment (TSN, May 2, 2000, p. 21).

On cross-examination, Ernesto Pideli said that he was never a partner of his brother. It was only in 1997 that his brother sought his assistance to look for a hardware where he can buy construction materials on credit. All materials ordered by Wilson for the project were placed in his account because it was easier for the hardware to contact him at their office which is nearer. After the project in Itogon, Wilson stopped his construction project. He denies having taken the ₱65,000.00. He does not also know where the amount went (TSN, May 2, 2000, p. 18).

On redirect, he said that when he tendered the first payment of ₱179,000.00, a statement of account was prepared by the salesboy of Mt. Trail Farm Supply and Hardware (Exhibit 1-D). He was furnished a copy of the statement of account. After the first and second payment, other materials were obtained by his brother, this is the reason why they still have a balance of ₱20,000.00 to be settled within the hardware.[11] (Underscoring supplied)

RTC and CA Dispositions

On March 13, 2001, the RTC handed down a judgment of conviction, disposing in this wise:

WHEREFORE, the guilt of the accused having been proven beyond reasonable doubt, judgment is hereby rendered CONVICTING the accused of the crime of theft and hereby sentences him after applying the Indeterminate Sentence Law, to suffer imprisonment from 4 years of *prision correccional* medium as minimum, to 12 years of *prision mayor* maximum as maximum (applying Art. 309(1) of the Revised Penal Code) and to reimburse the private complainant the amount of ₱49,500.00 plus interest thereon at the rate of 6% per annum from date of filing of the complaint up to the time it is actually paid.

Costs against the accused.

SO ORDERED.[12]

In convicting petitioner of theft, the trial court ratiocinated:

x x x Upon evaluation of the testimonies of the witnesses, the court finds the lone testimony of the private complainant more

[11] *Id*. at 88-89.

[12] *Id*. at 94.

credible than the testimony of the defense witnesses. The testimony of the private complainant is positive and credible, sufficient to sustain a conviction even in the absence of corroboration. The testimony of defense witness Wilson Pideli was glaringly inconsistent and contradictory on material points. At the initial stages of his (Wilson Pideli) testimony on direct examination, he categorically stated that it was he and his laborers who implemented the project (rip rap project along Dalupirip Road, Itogon, Benguet) awarded to him by ACL Construction. The private complainant had no participation in the project (TSN, October 18, 1999, pp. 9-10). Later, in his narration of what actually transpired between him, his brother Ernesto Pideli and private complainant at the Rose Bowl Restaurant on November 17, 1997, he said that after computing their expenses, he entrusted to the private complainant the following amounts: 1. ₱15,000.00 to be given by the private complainant to the laborers who excavated for the project; 2. ₱500.00 to be given by the private complainant to Mr. Apse as payment for the cement test; 3. ₱10,500.00 because he (private complainant) was pestering him (TSN, October 18, 1999, pp. 14-16). The question is, if the private complainant had no real participation in the project subject of this case, why would Wilson Pideli be entrusting such amounts to the former. If really private complainant has no involvement whatsoever in the project, why was he present at the: 1. Mido Restaurant where Josephine Bentres was disbursing final payments to the subcontractors of the project, and 2. At the Rose Bowl Restaurant when the Pideli brothers were computing the expenses incurred in the project and also presenting his list of expenses (Exhibit B, Exhibit 2). Later, in his testimony on direct, Wilson Pideli said that when he started the project, private complainant asked him to join him and he (Wilson Pideli) agreed provided the private complainant share in the expenses. Private complainant did not, however, share in the expenses nor did he provide any equipment (TSN, October 18, 1999; p. 13) yet he entrusted the aforementioned amounts to Cancio. On cross-examination, Wilson Pideli admitted that he gave private complainant ₱10,500.00 despite the fact that he did not share in the expenses for the implementation of the project (TSN, November 22, 1999, pp. 5-6). Such act is abnormal and contrary to human behavior and experience. The only plausible and logical conclusion is, private complainant and Wilson Pideli were partners in a joint venture. Just as private complainant did, in fact, stated, he was the one who provided the laborers and some equipments used in the project. Thus, it is only logical that the money for the payment of the wages and the cement

test were entrusted to him because it was his responsibility/obligation to pay them and not because they were his neighbors as the defense would like this court to believe. The reason propounded by Wilson Pideli to explain his actuations is too flimsy for this court to believe. Furthermore, Wilson Pideli admitted on cross that while the case was filed by private complainant against his brother Ernesto Pideli, he submitted an affidavit with the Office of the City Prosecutor of Baguio City. In Paragraph 1 of the said affidavit which was read into the records of the case, he (Wilson Pideli) alleged that "Placido Cancio was his companion in the project at Dalupirip Road, Itogon, Benguet which he subcontracted for ACL Construction." When asked by the Public Prosecutor what he meant by his statement, Wilson Pideli categorically admitted that Placido Cancio (the private complainant) is his partner in the endeavor along Dalupirip Road, Itogon, Benguet (TSN, November 22, 1999, p. 8). The testimony of Wilson Pideli, instead of being corroborative, in effect, weakened the cause of the defense. The rule is that witnesses are to be weighed, not numbered. It has not been uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness (*People v. Gondora,* 265 SCRA 408). Truth is established not by the number of witnesses but by the quality of their testimonies (*People v. Ferrer,* 255 SCRA 190).

It is unfortunate that the evidence on record does not disclose the agreement between the private complainant and Wilson Pideli with regards to the sharing of the capital (expenses) and profits on the project. Article 1790 of the Civil Code, however, provides: "Unless there is stipulation to the contrary, the partners shall contribute equal shares to the capital of the partnership." Paragraph 1 of Article 1797 of the same code further provides: "The losses and profits shall be distributed in conformity with the agreement. If only the share of each partner in the profits has been agreed upon, the share of each in the losses shall be in the same proportion." Thus, it is safe for the court to conclude that as a partner in the joint venture, Placido Cancio is entitled to 1/2 share in the net proceeds, *i.e.* ₱130,000.00 + 2 = ₱65,000.00.

The accused insists that private complainant and his brother were not partners in the subcontract project. According to him, he merely acted as guarantor of his brother so the latter can withdraw construction materials on credit from the Mt. Trail Farm Supply and Hardware. As the guarantor, he was also the one who paid his brother's credit when his brother was able to collect payment. Thus,

denying the charges filed against him. Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters (*People v. Paragua,* 257 SCRA 118). Affirmative testimony is stronger than a negative one. As between positive and categorical testimony which has a ring of truth, on one hand, and a bare denial, on the other hand, the former is generally held to prevail (*People v. Tuvilla,* 259 SCRA).

Finding the testimony of the private complainant to be more credible than that of the accused and his witnesses, the court rules that the presumption of innocence guaranteed by law in favor of the accused has been overturned and must be convicted of the crime charged.

Article 309(1) of the Revised Penal Code provides: Any person guilty of theft shall be punished by:

> "The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than ₱12,000.00, but does not exceed ₱22,000.00; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the 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 the code the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be." x x x

The penalty imposed upon those guilty of theft depends on the amount stolen. Accused carted away ₱65,000.00 representing private complainant's share in the next proceeds of the project. Accused's brother, Wilson Pideli, however, gave the private complainant and this was admitted by the latter the amount of ₱10,500.00 when the latter kept on pestering him at the Rose Bowl Restaurant and ₱5,000.00 at the initial (first) payment. Thus, the amount of ₱10,500.00 and ₱5,000.00 should be deducted from his net share of ₱65,000.00 leaving a balance of ₱49,500.00 which is now the basis for the construction of the penalty.[13] (Underscoring supplied)

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[13] *Id*. at 90-94.

Petitioner appealed to the CA. In a decision promulgated on April 30, 2003, the CA affirmed[14] the trial court disposition.

Petitioner moved to reconsider the adverse judgment. The motion was, however, denied with finality through a Resolution dated March 9, 2004.[15]

Issues

In this petition, petitioner imputes to the CA triple errors, *viz.*:

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE FINDING THAT THE PROPERTY ALLEGEDLY STOLEN WAS OWNED BY THE PRIVATE COMPLAINANT;

II.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THAT THERE WAS AN UNLAWFUL TAKING OF PERSONAL PROPERTY;

III.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THAT THE ALLEGED TAKING BY THE PETITIONER WAS ATTENDED WITH INTENT TO GAIN.[16]
(Underscoring supplied)

Our Ruling

Prefatorily, the thrust of a petition for review on *certiorari* under Rule 45 is the resolution *only* of questions of law.[17] Any

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[14] *Id*. at 16.

[15] *Id*. at 24-25.

[16] *Id*. at 43.

[17] Rules of Civil Procedure (1997), Rule 45, Sec. 1 provides:

Section 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

peripheral factual question addressed to this Court is beyond the ambit of this mode of review.[18] Indeed, well-entrenched is the general rule that the jurisdiction of this Court in cases brought before it from the CA is limited to reviewing or revising errors of law.[19]

The petition at bench raises not only questions of law but also of facts. We are asked to recalibrate the evidence adduced by the parties and to reevaluate the credibility of witnesses. On this ground alone, the petition is dismissible.

We, however, deem it proper to delve into the merits of the present petition considering that an appeal in a criminal case throws the whole case wide open for review.[20]

Article 308 of the Revised Penal Code provides for the concept of the crime of theft, *viz.*:

> ART. 308. *Who are liable for theft*. — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent. x x x

Accordingly, the elements of theft are as follows:

1. That there be taking of personal property;
2. That said property belongs to another;
3. That the taking be done with intent to gain;
4. That the taking be done without the consent of the owner; and
5. That the taking be accomplished without the use of violence against or intimidation of persons or force upon things.[21]

There is, here, a confluence of the elements of theft. Petitioner received the final payment due the partners Placido and Wilson under the pretext of paying off their obligation with the MTFSH.

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[18] *United Field Sea Watchman and Checkers Agency v. Requillo,* G.R. No. 143527, December 6, 2006, 510 SCRA 165; *YHT Realty Corporation v. Court of Appeals,* G.R. No. 126780, February 17, 2005, 451 SCRA 638.

[19] *United Field Sea Watchman and Checkers Agency v. Requillo, supra*.

[20] *People v. Alzona,* G.R. No. 132029, July 30, 2004, 435 SCRA 461, 47.

[21] Reyes, L.B., *The Revised Penal Code*, 1993 ed., Book II, p. 613; *Rebucan v. People,* G.R. No. 164545, November 20, 2006, 507 SCRA 332.

Under the terms of their agreement, petitioner was to account for the remaining balance of the said funds and give each of the partners their respective shares. He, however, failed to give private complainant Placido what was due him under the construction contract.

In an effort to exculpate himself, petitioner posits that he cannot be held liable for theft of the unaccounted funds. The monies subject matter of the complaint pertain to the partnership. As an agent of partner Wilson, intent to gain cannot be imputed against petitioner.

The CA correctly debunked petitioner's postulation in the following tenor:

> We likewise find no merit in appellant's contention that the money did not belong to the private complainant as the latter was only claiming for his share of ₱65,000.00; that it was owned by the partnership and was for payment of materials obtained from the supplier. Complainant's share in the amount of ₱65,000.00 manifestly belonged to and was owned by the private complainant.
>
> Appellant's argument that since the money belonged to the partnership, hence, cannot be the object of the crime of theft as between the partners, and that appellant as their agent acted in good faith and without intent to gain, holds no water. Parenthetically, this argument is inconsistent with the assertion of the defense witnesses that complainant had no participation at all in the project, and, hence, had no right to a share in its payment. In any case, appellant was not complainant's partner but his brother. As for his alleged acting in good faith and without intent of gain, it is jurisprudentially settled that intent is a mental state, the existence of which is made manifest by overt acts of the person. The intent to gain is presumed from the taking of property appertaining to another.
>
> Appellant presented a receipt dated November 18, 1997 allegedly evidencing his payment of ₱75,000.000 to Mt. Trail Farm Supply and Hardware store. Granting *arguendo* that appellant paid ₱75,000.00 to the Mt. Trail Farm Supply and Hardware (which the trial court did not grant credence), the same still does not exculpate him from liability. The net income earned and disbursed to the partnership of private complainant and Wilson Pideli was ₱130,000.00 and a balance of ₱55,000.00 still remained despite the alleged payment, which

should be divided into two (2) or ₱27,000.00 for each of them. However, not a single centavo of this amount was received by private complainant.

When appellant received the disbursement, he had only physical custody of private complainant's money, which was supposed to be applied to a particular purpose, *i.e*. settle the account with the supplier. Appellant's failure to do so or to return the money to the private complainant renders him guilty of the crime of theft. This is in line with the rulings of the Supreme Court in the case of *United States vs. De Vera*, 43 Phil. 1000 (1929) that the delivery of money to another for a particular purpose is a parting with its physical custody only, and the failure of the accused to apply the money to its specific purpose and converting it to his own use gives rise to the crime of theft. The basic principles enunciated in the *De Vera* case was reiterated in the recent case of *People vs. Tan*, 323 SCRA 30, an Anti-Carnapping case, where the High Court ruled that the unlawful taking or deprivation may occur after the transfer of physical possession and, in such a case, "the article (is considered as being) taken away, not received, although at the beginning the article was, in fact, given and received." We agree with the Office of the Solicitor General (OSG) that appellant had but the material/physical or *de facto* possession of the money and his act of depriving private complainant not only of the possession but also the dominion (*apoderamiento*) of his share of the money such that he (the appellant) could dispose of the money at will constitutes the element of "taking" in the crime of theft.[22] (Underscoring supplied)

Although there is misappropriation of funds here, petitioner was correctly found guilty of theft. As early as *U.S. v. De Vera*,[23] the Court has consistently ruled that not all misappropriation is *estafa*. Chief Justice Ramon C. Aquino, in his commentary on the Revised Penal Code, succinctly opined:

The principal distinction between the two crimes is that in theft the thing is taken while in *estafa* the accused receives the property and converts it to his own use or benefit. However, there may be theft even if the accused has possession of the property. If he was entrusted only with the material or physical (natural) or *de facto* possession of the thing, his misappropriation of the same constitutes

[22] *Rollo,* pp. 14-15.

[23] 43 Phil. 1000 (1921).

theft, but if he has the juridical possession of the thing, his conversion of the same constitutes embezzlement or *estafa*.[24]

In *De Vera*, the accused, Nieves de Vera, received from Pepe, an Igorot, a bar of gold weighing 559.7 grams for the purpose of having a silversmith examine the same, and bank notes amounting to ₱200.00 to have them exchanged for silver coins. Accused appropriated the bar of gold and bank notes. The Court ruled that the crime committed was theft and not *estafa* since the delivery of the personal property did not have the effect of transferring the juridical possession, thus such possession remained in the owner; and the act of disposal with gainful intent and lack of owner's consent constituted the crime of theft.

In *People v. Trinidad*,[25] defendant received a finger ring from the offended party for the purpose of pledging it as security for a loan of ₱5.00 for the benefit of said offended party. Instead of pledging the ring, the defendant immediately carried it to one of her neighbors to whom she sold it for ₱30.00 and appropriated the money to her own use. The Court, citing *De Vera*, similarly convicted defendant of theft.

In *People v. Locson,*[26] this Court considered deposits received by a teller in behalf of a bank as being only in the material possession of the teller. This interpretation applies with equal force to money received by a bank teller at the beginning of a business day for the purpose of servicing withdrawals. Such is only material possession. Juridical possession remains with the bank. In line with the reasoning of the Court in the above-cited cases, beginning with *People v. De Vera*, if the teller appropriates the money for personal gain then the felony committed is theft and not *estafa*. Further, since the teller occupies a position of confidence, and the bank places money in the teller's possession due to the confidence reposed on the teller, the felony of qualified theft would be committed.

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[24] Aquino, R.C., Vol. III, 1988 ed., p. 194.

[25] 50 Phil. 65 (1927).

[26] 57 Phil. 325 (1932).

In *People v. Isaac*,[27] this Court convicted a jeepney driver of theft and not *estafa* when he did not return the jeepney to its owner since the motor vehicle was in the juridical possession of its owner, although physically held by the driver. The Court reasoned that the accused was not a lessee or hirer of the jeepney because the Public Service Law and its regulations prohibit a motor vehicle operator from entering into any kind of contract with any person if by the terms thereof it allows the use and operation of all or any of his equipment under a fixed rental basis. The contract with the accused being under the "boundary system," legally, the accused was not a lessee but only an employee of the owner. Thus, the accused's possession of the vehicle was only an extension of the owner's.

The doctrine was reiterated in the recent case of *Roque v. People*.[28]

Now, on the penalty. Article 309 of the Revised Penal Code penalizes theft in the following tenor:

> Art. 309. Penalties. — Any person guilty of theft shall be punished by:
>
> 1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceed the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years.[29] (Underscoring supplied)

The record bears out that private complainant originally claimed ₱65,000.00 as his share in the partnership. However, he admitted receiving the total amount of ₱15,500.00, on two separate occasions, from Wilson Pideli. Verily, only ₱49,500.00 is due private complainant.

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[27] 96 Phil. 931 (1955).

[28] *Roque v. People,* G.R. No. 138954, November 25, 2004, 444 SCRA 98.

[29] *People v. Gungon,* G.R. No. 119574, March 19, 1998, 287 SCRA 618.

Hence, the imposable penalty is the maximum period of *prision mayor* minimum and medium prescribed in the abovequoted first paragraph of Article 309. That period ranges from six (6) years and one (1) day to ten (10) years, plus one (1) year for every additional ten thousand pesos in excess of ₱22,000.00, which in this case is two (2) years for the excess amount of ₱27,500.00.

Applying the Indeterminate Sentence Law, the maximum term could be twelve (12) years while the minimum term would fall under the next lower penalty of *prision correccional* in its medium and maximum periods (2 years, 4 months and 1 day to 6 years), to be imposed in any of its periods.

Both the trial court and the CA sentenced petitioner to an indeterminate penalty of four (4) years of *prision correccional* medium, as minimum term, to twelve (12) years of *prision mayor* maximum, as maximum term. We sustain it. Petitioner's civil liability is likewise maintained.

WHEREFORE, the appealed Decision is *AFFIRMED* in full.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 164479. February 13, 2008]

ROMBE EXIMTRADE (PHILS.), INC. and SPOUSES ROMEO PERALTA and MARRIONETTE PERALTA, *petitioners, vs.* **ASIATRUST DEVELOPMENT BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION REQUIREMENT; EXPLAINED.— [T]he purpose of the verification requirement is to assure that the allegations in a petition were made in good faith or are true and correct, not merely speculative. The verification requirement is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the petition signed the verification attached to it, and when matters alleged in the petition have been made in good faith or are true and correct. x x x This is in line with our ruling in *Iglesia ni Cristo v. Ponferrada*, where we said that it is deemed substantial compliance when one with sufficient knowledge swears to the truth of the allegations in the complaint. However, to forestall any challenge to the authority of the signatory to the verification, the better procedure is to attach a copy of the board resolution of the corporation empowering its official to sign the petition on its behalf.

2. ID.; ACTIONS; REHABILITATION CASE AND ANNULMENT OF FORECLOSURE CASE, DISTINGUISHED.— The rehabilitation case (Civil Case No. 325-M-2002) is distinct and dissimilar from the annulment of foreclosure case (Civil Case No. 906-M-2002), in that the first case is a special proceeding while the second is a civil action. A civil action is one by which a party sues another for the enforcement or protection of a right or the prevention or redress of a wrong. Strictly speaking, it is only in civil actions that one speaks of a cause of action. A cause of action is defined as the act or omission by which a party violates a right of another. Thus, in the annulment of foreclosure case, the cause of action of Rombe

is the act of Asiatrust in foreclosing the mortgage on Rombe's properties by which the latter's right to the properties was allegedly violated. On the other hand, the rehabilitation case is treated as a special proceeding. Initially, there was a difference in opinion as to what is the nature of a petition for rehabilitation. The Court, on September 4, 2001, issued a Resolution in A.M. No. 00-8-10-SC to clarify the ambiguity, thus: "On the other hand, a petition for rehabilitation, the procedure for which is provided in the Interim Rules of Procedure on Corporate Recovery, should be considered as a special proceeding. It is one that seeks to establish the status of a party or a particular fact. As provided in section 1, Rule 4 of the Interim Rules on Corporate Recovery, the status or fact sought to be established is the inability of the corporate debtor to pay its debts when they fall due so that a rehabilitation plan, containing the formula for the successful recovery of the corporation, may be approved in the end. It does not seek a relief from an injury caused by another party." Thus, a petition for rehabilitation need not state a cause of action and, hence, Rombe's contention that the two cases have distinct causes of action is incorrect. Indeed, the two cases are different with respect to their nature, purpose, and the reliefs sought such that the injunctive writ issued in the annulment of foreclosure case did not interfere with the September 24, 2002 Order in the rehabilitation case. The rehabilitation case is a special proceeding which is summary and non-adversarial in nature. The annulment of foreclosure case is an ordinary civil action governed by the regular rules of procedure under the 1997 Rules of Civil Procedure. The purpose of the rehabilitation case and the reliefs prayed for by Rombe are the suspension of payments because it "foresees the impossibility of meeting its debts when they respectively fall due," and the approval of its proposed rehabilitation plan. The objective and the reliefs sought by Rombe in the annulment of foreclosure case are, among others, to annul the unilateral increase in the interest rate and to cancel the auction of the mortgaged properties.

APPEARANCES OF COUNSEL

Villanueva Gabionza & De Santos for petitioners.

Law Firm of De La Rama De la Rama De La Rama & Associates for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

There is no interference by one co-equal court with another when the case filed in one involves corporate rehabilitation and suspension of extrajudicial foreclosure in the other.

The Case Background

Rombe Eximtrade (Phils.), Inc. (Rombe) is a corporation organized and existing under Philippine laws with its main office in the City of Mandaluyong. It is represented in this petition by the spouses Romeo and Marrionette Peralta. It owned some real properties in Malolos, Bulacan.

Sometime in 2002, Rombe filed a *Petition for the Declaration of a State of Suspension of Payments with Approval of Proposed Rehabilitation Plan* docketed as **Civil Case No. 325-M-2002** with the Malolos, Bulacan Regional Trial Court (RTC), Branch 7.

On May 3, 2002, in accordance with Section 6, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation (IRPCR), the RTC issued a Stay Order suspending the enforcement of all claims whether for money or otherwise judicial or extrajudicial against Rombe.

The Securities and Exchange Commission and Rombe's other creditors, the Bank of the Philippine Islands and creditor-respondent Asiatrust Development Bank (Asiatrust), opposed the petition.

Thereafter, on September 24, 2002, the Malolos, Bulacan RTC, Branch 7 issued an Order dismissing Civil Case No. 325-M-2002, and the May 3, 2002 Stay Order suspending all the claims against Rombe was lifted. According to the trial court, Rombe misrepresented its true financial status in its petition for suspension of payments. It found that: (1) Rombe did not submit an audited financial statement as required by the IRPCR; (2) Rombe made it appear that it had sufficient assets to fully pay its outstanding obligations when it submitted copies of certificates of title over

real properties, but when examined, these were registered in the names of other persons and only two were unencumbered; (3) Rombe misdeclared the value of its assets, violating the provisions of the IRPCR; (4) Rombe gave only general references to the location of its properties without mention of the book values nor condition of the properties in its Inventory of Assets; (5) Rombe did not attach any evidence of title or ownership to the properties enumerated in the Inventory of Assets contrary to the IRPCR; (6) Rombe did not attach nor provide a Schedule of Accounts Receivable indicating the amount of each receivable, from whom due, the maturity date, and the degree of collectivity, as required by the IRPCR; (7) Rombe also had not been complying with its reportorial duty in filing its General Information Sheet from 1992 to 2002, nor its Financial Statement (FS) from 1992 to 1995 and 2001, while its FSs for 1999 and 2000 were filed late; (8) Rombe's Balance Sheet claimed it had receivables but it did not indicate the nature, basis, and other information of the receivables; (9) Rombe grossly exaggerated assets claiming properties it did not own; and (10) Rombe did not have a feasible rehabilitation plan.[1] The RTC concluded that Rombe made numerous material misrepresentations and was insolvent.

Since Rombe did not appeal, Asiatrust initiated foreclosure proceedings against Rombe's properties.

On December 17, 2002, anticipating the foreclosure, Rombe filed a *Complaint for Annulment of Documents and Damages with Prayer for a Temporary Restraining Order* (*TRO*) *and Injunction* docketed as **Civil Case No. 906-M-2002** and raffled to the Malolos, Bulacan RTC, Branch 15. In this case, Rombe asked that Asiatrust and the *Ex-Officio* Provincial Sheriff of Bulacan be stopped from proceeding with the extra-judicial foreclosure of mortgage on its properties initiated by Asiatrust. The RTC, Branch 15 issued the January 8, 2003 Order granting the writ of preliminary injunction in favor of Rombe. Asiatrust's *Motion for Reconsideration with Motion to Dissolve Writ of Preliminary Injunction* was rejected in the April 3, 2003 Order.

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[1] *Rollo*, pp. 396-398.

Aggrieved, Asiatrust filed before the Court of Appeals (CA) a Petition for *Certiorari* under Rule 65 docketed as CA-G.R. SP No. 77471 with the CA, alleging grave abuse of discretion on the part of the RTC, Branch 15 in issuing the TRO.

The Court of Appeals ruled Rombe misrepresented itself

On March 29, 2004, the CA issued the Decision[2] in favor of Asiatrust stating, as follows:

> IN VIEW OF ALL THE FOREGOING, finding merit in this Petition, the same is **GRANTED** and the assailed Orders dated January 8, 2003 and April 3, 2003 are hereby **ANNULLED and SET ASIDE**, for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Costs against private respondents.
>
> SO ORDERED.

The CA found that the May 3, 2002 Stay Order of the Malolos, Bulacan RTC, Branch 7 in Civil Case No. 325-M-2002 could not be clearer. The Stay Order was lifted by the trial court because of Rombe's insolvency, misrepresentations, and infeasible rehabilitation plan. The appellate court observed that the January 8, 2003 Order of the RTC, Branch 15 granting the TRO in Civil Case No. 906-M-2002 interfered with and set aside the earlier September 24, 2002 Order of the RTC, Branch 7; and such intervention thwarted the foreclosure of Rombe's assets.

Rombe's Motion for Reconsideration was denied on July 2, 2004.

Hence, this petition is filed with us. Rombe raises the following issues:

(a)

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT ORDERED THE ANNULMENT OF THE ORDERS OF THE TRIAL COURT FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION AGAINST HEREIN RESPONDENT

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[2] Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale.

DESPITE THE FACT THAT CIVIL CASE NO. 906-M-2002, A CASE FOR ANNULMENT OF DOCUMENTS FILED BEFORE BRANCH 15 OF THE REGIONAL TRIAL COURT OF MALOLOS, BULACAN, INVOLVES A TOTALLY SEPARATE AND DISTINCT CAUSE OF ACTION FROM THAT OF CIVIL CASE NO. 325-M-2002, A PETITION FOR DECLARATION OF STATE OF SUSPENSION OF PAYMENTS WITH APPROVAL OF PROPOSED REHABILITATION FILED BEFORE BRANCH 7 OF THE REGIONAL TRIAL COURT OF MALOLOS, BULACAN

(b)

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT ORDERED THE ANNULMENT OF THE ORDERS OF THE TRIAL COURT FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION AGAINST HEREIN RESPONDENT DESPITE THE FACT THAT THE PURPOSE OF THE RESTRAINING ORDER ISSUED BY BRANCH 15 REGIONAL TRIAL COURT OF MALOLOS, BULACAN IN CIVIL CASE NO. 906-M-2002 IS ENTIRELY SEPARATE AND DISTINCT FROM THE PURPOSE OF THE STAY ORDER ISSUED BY BRANCH 7 OF THE REGIONAL TRIAL COURT OF MALOLOS, BULACAN IN CIVIL CASE NO. 325-M-2002

(c)

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT ORDERED THE ANNULMENT OF THE ORDERS OF THE TRIAL COURT FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION AGAINST HEREIN RESPONDENT DESPITE THE ABSENCE OF ANY FINDING OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION EXERCISED BY THE TRIAL COURT IN THE [ISSUANCE] OF THE SAID ORDERS

(d)

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT DID NOT EVEN BOTHER TO ADDRESS THE FACT THAT THE PETITION FILED BEFORE IT IS FATALLY DEFECTIVE

The Court's Ruling

We shall first address what Rombe claims are fatal defects in Asiatrust's petition before the CA. According to Rombe, the signatory of the petition, Esmael C. Ferrer, Asiatrust's Manager and Head of the Acquired Assets Unit, was not authorized by Asiatrust's Board of Directors to sign Asiatrust's petition and the CA, therefore, should have dismissed the petition outright. Citing *Premium Marble Resources, Inc. v. Court of Appeals* (*Premium*),[3] Rombe avers that the power of a corporation to sue and be sued in any court is lodged with the board of directors and, absent any board resolution, no one can act on behalf of the corporation. Any action without this authorization cannot bind the corporation.

Rombe's reliance on *Premium* is misplaced. The issue in *Premium* is not the authority of the president of Premium to sign the verification and certification against forum shopping in the absence of a valid authority from the board of directors. The real issue in *Premium* is, who between the two sets of officers, both claiming to be the legal board of directors, had the authority to file the suit for and on behalf of the company. *Premium* is inapplicable to this case.

On the matter of verification, the purpose of the verification requirement is to assure that the allegations in a petition were made in good faith or are true and correct, not merely speculative. The verification requirement is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the petition signed the verification attached to it, and when matters alleged in the petition have been made in good faith or are true and correct.[4] In this case, we find that the position, knowledge, and experience of Ferrer as Manager and Head of the Acquired Assets Unit of Asiatrust, and his good faith, are sufficient compliance with the verification and certification requirements. This is in line with our ruling in *Iglesia*

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[3] G.R. No. 96551, November 4, 1996, 264 SCRA 11.

[4] *Iglesia ni Cristo v. Ponferrada*, G.R. No. 168943, October 27, 2006, 505 SCRA 828, 840-841.

ni Cristo v. Ponferrada,[5] where we said that it is deemed substantial compliance when one with sufficient knowledge swears to the truth of the allegations in the complaint. However, to forestall any challenge to the authority of the signatory to the verification, the better procedure is to attach a copy of the board resolution of the corporation empowering its official to sign the petition on its behalf.

Now, as to the core of the petition, Rombe vigorously asserts that the writ of preliminary injunction issued by Branch 15 does not affect in any way the earlier September 24, 2002 Order of Branch 7 since the two cases involve separate and distinct causes of action.

Rombe's thesis is correct but for a different reason.

The rehabilitation case (Civil Case No. 325-M-2002) is distinct and dissimilar from the annulment of foreclosure case (Civil Case No. 906-M-2002), in that the first case is a special proceeding while the second is a civil action.

A civil action is one by which a party sues another for the enforcement or protection of a right or the prevention or redress of a wrong.[6] Strictly speaking, it is only in civil actions that one speaks of a cause of action. A cause of action is defined as the act or omission by which a party violates a right of another.[7] Thus, in the annulment of foreclosure case, the cause of action of Rombe is the act of Asiatrust in foreclosing the mortgage on Rombe's properties by which the latter's right to the properties was allegedly violated.

On the other hand, the rehabilitation case is treated as a special proceeding. Initially, there was a difference in opinion as to what is the nature of a petition for rehabilitation. The Court, on September 4, 2001, issued a Resolution in A.M. No. 00-8-10-SC to clarify the ambiguity, thus:

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[5] *Id*.

[6] RULES OF COURT, Rule 1, Sec. 3(a).

[7] *Id*., Rule 2, Sec. 2.

On the other hand, a petition for rehabilitation, the procedure for which is provided in the Interim Rules of Procedure on Corporate Recovery, should be considered as a special proceeding. It is one that seeks to establish the status of a party or a particular fact. As provided in Section 1, Rule 4 of the Interim Rules on Corporate Recovery, the status or fact sought to be established is the inability of the corporate debtor to pay its debts when they fall due so that a rehabilitation plan, containing the formula for the successful recovery of the corporation, may be approved in the end. It does not seek a relief from an injury caused by another party.

Thus, a petition for rehabilitation need not state a cause of action and, hence, Rombe's contention that the two cases have distinct causes of action is incorrect.

Indeed, the two cases are different with respect to their nature, purpose, and the reliefs sought such that the injunctive writ issued in the annulment of foreclosure case did not interfere with the September 24, 2002 Order in the rehabilitation case.

The rehabilitation case is a special proceeding which is summary and non-adversarial in nature. The annulment of foreclosure case is an ordinary civil action governed by the regular rules of procedure under the 1997 Rules of Civil Procedure.

The purpose of the rehabilitation case and the reliefs prayed for by Rombe are the suspension of payments because it "foresees the impossibility of meeting its debts when they respectively fall due,"[8] and the approval of its proposed rehabilitation plan. The objective and the reliefs sought by Rombe in the annulment of foreclosure case are, among others, to annul the unilateral increase in the interest rate and to cancel the auction of the mortgaged properties.

Being dissimilar as to nature, purpose, and reliefs sought, the January 8, 2003 Order granting the injunctive writ in the annulment of foreclosure case, therefore, did not interfere with the September 24, 2002 Order dismissing the rehabilitation petition and lifting the May 3, 2002 Stay Order.

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[8] INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION, Rule 4, Sec. 1.

More importantly, it cannot be argued that the RTC, Branch 15 intervened with the rehabilitation case before the RTC, Branch 7 when the former issued the January 8, 2003 injunctive writ since the rehabilitation petition was already dismissed on September 24, 2002, which eventually attained finality. After September 2002, there was no rehabilitation case pending before any court to speak of. Hence, the Malolos, Bulacan RTC, Branch 15 did not commit grave abuse of discretion in issuing the January 8, 2003 Order.

WHEREFORE, the petition is *GRANTED*. The CA Decision in CA-G.R. SP No. 77471, annulling and setting aside the January 8, 2003 and April 3, 2003 Orders of the Malolos Bulacan RTC, Branch 15, is hereby *REVERSED* and *SET ASIDE*. The Malolos, Bulacan RTC, Branch 15 is ordered to conduct further proceedings in Civil Case No. 906-M-2002 with dispatch.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 171124. February 13, 2008]

ALEJANDRO NG WEE, *petitioner, vs.* **MANUEL TANKIANSEE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; ISSUANCE OF A WRIT OF ATTACHMENT UNDER SECTION 1 (D), RULE 57 OF THE RULES OF COURT, EXPLAINED.— In the case at bench, the basis of

petitioner's application for the issuance of the writ of preliminary attachment against the properties of respondent is Section 1(d) of Rule 57 of the Rules of Court which pertinently reads: "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: x x x (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." For a writ of attachment to issue under this rule, the applicant must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. The applicant must then be able to demonstrate that the debtor has intended to defraud the creditor. In *Liberty Insurance Corporation v. Court of Appeals*, we explained as follows: "To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1 (d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. Fraud is a state of mind and need not be proved by direct evidence but may be inferred from the circumstances attendant in each case."

2. ID.; ID.; ID.; ID.; NATURE.— [T]he provisional remedy of preliminary attachment is harsh and rigorous for it exposes the debtor to humiliation and annoyance. The rules governing its issuance are, therefore, strictly construed against the applicant, such that if the requisites for its grant are not shown to be all present, the court shall refrain from issuing it, for, otherwise, the court which issues it acts in excess of its jurisdiction. Likewise, the writ should not be abused to cause

unnecessary prejudice. If it is wrongfully issued on the basis of false or insufficient allegations, it should at once be corrected.

APPEARANCES OF COUNSEL

Cadiz & Tabayoyong for petitioner.
Saulog & De Leon Law Offices for respondent.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the September 14, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 90130 and its January 6, 2006 Resolution[2] denying the motion for reconsideration thereof.

The facts are undisputed. Petitioner Alejandro Ng Wee, a valued client of Westmont Bank (now United Overseas Bank), made several money placements totaling ₱210,595,991.62 with the bank's affiliate, Westmont Investment Corporation (Wincorp), a domestic entity engaged in the business of an investment house with the authority and license to extend credit.[3]

Sometime in February 2000, petitioner received disturbing news on Wincorp's financial condition prompting him to inquire about and investigate the company's operations and transactions with its borrowers. He then discovered that the company extended a loan equal to his total money placement to a corporation [Power Merge] with a subscribed capital of only ₱37.5M. This credit facility originated from another loan of about ₱1.5B extended by Wincorp to another corporation [Hottick Holdings]. When the latter defaulted in its obligation, Wincorp instituted a case

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios (deceased) and Amelita G. Tolentino, concurring; *rollo*, pp. 44-55.

[2] *Rollo,* p. 57.

[3] *Id*. at 61-63, 650.

against it and its surety. Settlement was, however, reached in which Hottick's president, Luis Juan L. Virata (Virata), assumed the obligation of the surety.[4]

Under the scheme agreed upon by Wincorp and Hottick's president, petitioner's money placements were transferred without his knowledge and consent to the loan account of Power Merge through an agreement that virtually freed the latter of any liability. Allegedly, through the false representations of Wincorp and its officers and directors, petitioner was enticed to roll over his placements so that Wincorp could loan the same to Virata/Power Merge.[5]

Finding that Virata purportedly used Power Merge as a conduit and connived with Wincorp's officers and directors to fraudulently obtain for his benefit without any intention of paying the said placements, petitioner instituted, on October 19, 2000, Civil Case No. 00-99006 for damages with the Regional Trial Court (RTC) of Manila.[6] One of the defendants impleaded in the complaint is herein respondent Manuel Tankiansee, Vice-Chairman and Director of Wincorp.[7]

On October 26, 2000, on the basis of the allegations in the complaint and the October 12, 2000 Affidavit[8] of petitioner, the trial court ordered the issuance of a writ of preliminary

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[4] *Id*. at 63-67, 650-652.

[5] *Id*. at 67-71, 652-653.

[6] *Id*. at 58.

[7] *Id*. at 60. The other defendants in the civil case are Luis Juan L. Virata, Power Merge Corporation, UEM Development Philippines, Inc., UEM-MARA Philippines Corporation, United Engineers (Malaysia) Berhad, Majlis Amanah Rakyat, Renong Berhad, Westmont Investment Corporation, Antonio T. Ong, Anthony A.T. Reyes, Simeon S. Cua, Mariza Santos-Tan, Vicente T. Cualoping, Henry T. Cualoping, Manuel A. Estrella and John Anthony B. Espiritu.

[8] *Id*. at 377-383. The material portions of the October 12, 2000 Affidavit read:

> 4. In order to entice me to place substantial funds in Wincorp, the latter's officers and said Manager of Westmont Bank-Binondo Branch, who actively marketed Wincorp's business, made the following representations to me:

attachment against the properties not exempt from execution of all the defendants in the civil case subject, among others, to

4.1. Money placements with Wincorp would earn more interest than an ordinary savings or time deposit of the same amount with Westmont Bank.

4.2. Money placements with Wincorp are profitable, stable and secure because the funds are loaned to borrowers who are extensively screened and who are required to provide sufficient security in accordance with generally accepted banking standards and practices like those observed by Westmont Bank.

4.3. Wincorp is stable since Wincorp and Westmont Bank were owned or controlled by the same shareholders and thus, has the backing of Westmont Bank.

4.4. Being a depositor of Westmont Bank, I could easily make or withdraw my money placements by merely instructing Westmont Bank and Wincorp to transfer the funds from my accounts and remit the same to the other.

5. Relying on said representations, I placed substantial amounts of money in my own name and in the names of others with Wincorp on several occasions. Some of my outstanding placements with Wincorp, which were loaned by Wincorp, are in the names of Robert Tabada Tan, Elizabeth Ng Wee, Alex Lim Tan and Angela Archangel who hold said placements in trust for me.

6. Each money placement I gave to Wincorp and Wincorp's receipt thereof is evidenced by a confirmation advice issued by Wincorp.

7. I was assured by the officers of Wincorp with whom I transacted that upon maturity of each money placement, the maturity value thereof can be withdrawn from Wincorp or the same can be "rolled over" as principal for another money placement at the prevailing interest rate at the time of the roll-over. I was also assured by the officers of Wincorp that they would allow me, being a valued client, to pre-terminate my accounts/placements if I needed to withdraw the proceeds thereof before their maturity dates. However, I would usually roll-over most of the placements, upon the advice and enticement of Wincorp.

8. Sometime in February 2000, I received disturbing news about the financial condition and the questionable operations of Wincorp and its borrowers.

9. Considering that I had sizeable placements with Wincorp, I conducted inquiries and investigated the veracity of the news reports.

10. Based on my inquiries and the documents, which came to my possession as a result thereof, I discovered the following:

x x x x x x x x x

11. It must be noted that my money placements were transferred to the loan account of Power Merge by Wincorp and its officers/directors, without

petitioner's filing of a ₱50M-bond.[9] The writ was, consequently, issued on November 6, 2000.[10]

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my prior knowledge and consent. Later, however, through false representations by Wincorp and its officers/directors, I was enticed to roll over the placements which were loaned to Virata/Power Merge because I was made to believe that the latter were not in default of their loan obligations; otherwise, Wincorp and its officers/directors would not have renewed the loans or grant additional loans to Virata/Power Merge.

12. The principal amount of my money placements/funds which were loaned by Wincorp to Virata/Power Merge, is at least **Two Hundred Ten Million Five Hundred Ninety-Five Thousand Nine Hundred Ninety-One and 62/100 Pesos (₱210,595,991.62)**. [*cf.* Confirmation Advices (Annexes "S", "S-1" to "S-35" of the Complaint)]

13. Said money placements have all matured and are now all past due and owing.

14. However, despite demand, Virata/Power Merge have refused and continue to refuse to pay me the said outstanding loan obligations. [*cf.* Annexes "T", "T-1", "T-2" and "T-3" of the Complaint]

15. Based on the foregoing, it is evident that I have a sufficient cause of action for the payment of the outstanding loan obligation to me in the principal amount of Two Hundred Ten Million Five Hundred Ninety-Five Thousand Nine Hundred Ninety-One and 62/100 Pesos (₱210,595,991.62), plus all stipulated interests, liquidated damages and attorney's fees against Power Merge and Virata who beneficially owns all the shares of stock of the latter and who personally used and/or benefited from my placements/funds. I also have a cause of action against Wincorp and its officers and directors considering that the damage and prejudice to me could not have been caused without their participation and connivance with Virata/Power Merge in granting loans to the latter using my funds/placements.

16. From the foregoing facts, it clearly appears that the acts of Wincorp and its officers and directors in granting loans to Virata/Power Merge using my funds/placements with the latter having no intention nor capacity to pay said loan obligation, constitute fraud both in contracting the debt or incurring the obligation, and in the performance thereof under Section 1, Rule 57 of the Rules of Court.

17. There is no other security for my legitimate claims in the principal amount of at least Two Hundred Ten Million Five Hundred Ninety-Five Thousand Nine Hundred Ninety-One and 62/100 Pesos (₱210,595,991.62), plus all stipulated interests, liquidated damages and attorney's fees, which amount is likewise the amount to which I am entitled and for which the order of attachment is sought above all legal counterclaims.

[9] *Id.* at 384-386.

[10] *Id.* at 387.

Arguing that the writ was improperly issued and that the bond furnished was grossly insufficient, respondent, on December 22, 2000, moved for the discharge of the attachment.[11] The other defendants likewise filed similar motions.[12] On October 23, 2001, the RTC, in an Omnibus Order,[13] denied all the motions for the discharge of the attachment. The defendants, including respondent herein, filed their respective motions for reconsideration[14] but the trial court denied the same on October 14, 2002.[15]

Incidentally, while respondent opted not to question anymore the said orders, his co-defendants, Virata and UEM-MARA Philippines Corporation (UEM-MARA), assailed the same via *certiorari* under Rule 65 before the CA [docketed as CA-G.R. SP No. 74610]. The appellate court, however, denied the *certiorari* petition on August 21, 2003,[16] and the motion for reconsideration thereof on March 16, 2004.[17] In a petition for review on *certiorari* before this Court, in **G.R. No. 162928**, we denied the petition and affirmed the CA rulings on May 19, 2004 for Virata's and UEM-MARA's failure to sufficiently show that the appellate court committed any reversible error.[18] We subsequently denied the petition with finality on August 23, 2004.[19]

On September 30, 2004, respondent filed before the trial court another Motion to Discharge Attachment,[20] re-pleading the grounds

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[11] *Id*. at 390-393. This is respondent's first motion to discharge the attachment.

[12] *Id*. at 400.

[13] *Id*. at 400-404.

[14] *Id*. at 405-410.

[15] *Id*. at 412-417.

[16] *Id*. at 419-433. The August 21, 2003 Decision of the appellate court in CA-G.R. SP No. 74610 was penned by Associate Justice Arsenio J. Magpale, with Associate Justices Bienvenido L. Reyes and Rebecca De Guia-Salvador concurring.

[17] *Id*. at 435.

[18] *Id*. at 436.

[19] *Id*. at 437.

[20] *Id*. at 448-461. This is respondent's second motion to discharge the attachment.

he raised in his first motion but raising the following additional grounds: (1) that he was not present in Wincorp's board meetings approving the questionable transactions;[21] and (2) that he could not have connived with Wincorp and the other defendants because he and Pearlbank Securities, Inc., in which he is a major stockholder, filed cases against the company as they were also victimized by its fraudulent schemes.[22]

Ruling that the grounds raised were already passed upon by it in the previous orders affirmed by the CA and this Court, and that the additional grounds were respondent's affirmative defenses that properly pertained to the merits of the case, the trial court denied the motion in its January 6, 2005 Order.[23]

With the denial of its motion for reconsideration,[24] respondent filed a *certiorari* petition before the CA docketed as CA-G.R. SP No. 90130. On September 14, 2005, the appellate court rendered the assailed Decision[25] reversing and setting aside the aforementioned orders of the trial court and lifting the November 6, 2000 Writ of Preliminary Attachment[26] to the extent that it concerned respondent's properties. Petitioner moved for the reconsideration of the said ruling, but the CA denied the same in its January 6, 2006 Resolution.[27]

Thus, petitioner filed the instant petition on the following grounds:

A.

IT IS RESPECTFULLY SUBMITTED THAT THE COURT OF APPEALS SHOULD NOT HAVE GIVEN DUE COURSE TO THE PETITION FOR *CERTIORARI* FILED BY RESPONDENT, SINCE

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[21] *Id*. at 451-453.

[22] *Id*. at 453-455.

[23] *Id*. at 508-510.

[24] *Id*. at 511.

[25] *Supra* note 1.

[26] *Supra* note 10.

[27] *Supra* note 2.

IT MERELY RAISED ERRORS IN JUDGMENT, WHICH, UNDER PREVAILING JURISPRUDENCE, ARE NOT THE PROPER SUBJECTS OF A WRIT OF *CERTIORARI*.

B.

MOREOVER, IT IS RESPECTFULLY SUBMITTED THAT THE COURT OF APPEALS COMMITTED SERIOUS LEGAL ERROR IN RESOLVING FAVORABLY THE GROUNDS ALLEGED BY RESPONDENT IN HIS PETITION AND (SIC) LIFTING THE WRIT OF PRELIMINARY ATTACHMENT, SINCE THESE GROUNDS ALREADY RELATE TO THE MERITS OF CIVIL CASE NO. 00-99006 WHICH, UNDER PREVAILING JURISPRUDENCE, CANNOT BE USED AS BASIS (SIC) FOR DISCHARGING A WRIT OF PRELIMINARY ATTACHMENT.

C.

LIKEWISE, IT IS RESPECTFULLY SUBMITTED THAT THE COURT OF APPEALS ERRED IN SUSTAINING THE ERRORS IN JUDGMENT ALLEGED BY RESPONDENT, NOT ONLY BECAUSE THESE ARE BELIED BY THE VERY DOCUMENTS HE SUBMITTED AS PROOF OF SUCH ERRORS, BUT ALSO BECAUSE THESE HAD EARLIER BEEN RESOLVED WITH FINALITY BY THE LOWER COURT.[28]

For his part, respondent counters, among others, that the general and sweeping allegation of fraud against respondent in petitioner's affidavit—respondent as an officer and director of Wincorp allegedly connived with the other defendants to defraud petitioner—is not sufficient basis for the trial court to order the attachment of respondent's properties. Nowhere in the said affidavit does petitioner mention the name of respondent and any specific act committed by the latter to defraud the former. A writ of attachment can only be granted on concrete and specific grounds and not on general averments quoting perfunctorily the words of the Rules. Connivance cannot also be based on mere association but must be particularly alleged and established as a fact. Respondent further contends that the trial court, in resolving the Motion to Discharge Attachment, need not actually delve into the merits of the case. All that the court has to examine

[28] *Rollo*, pp. 17-18.

are the allegations in the complaint and the supporting affidavit. Petitioner cannot also rely on the decisions of the appellate court in CA-G.R. SP No. 74610 and this Court in G.R. No. 162928 to support his claim because respondent is not a party to the said cases.[29]

We agree with respondent's contentions and deny the petition.

In the case at bench, the basis of petitioner's application for the issuance of the writ of preliminary attachment against the properties of respondent is Section 1(d) of Rule 57 of the Rules of Court which pertinently reads:

> 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:
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> x x x x x x x x x
>
> (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.

For a writ of attachment to issue under this rule, the applicant must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.[30] The applicant must then be able to demonstrate that the debtor has intended to defraud the creditor.[31] In *Liberty Insurance Corporation v. Court of Appeals*,[32] we explained as follows:

> To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended

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[29] *Id*. at 661-685.

[30] *See Philippine National Construction Corporation v. Dy*, G.R. No. 156887, October 3, 2005, 472 SCRA 1, 9-12.

[31] *Spouses Godinez v. Hon. Alano*, 362 Phil. 597, 609 (1999).

[32] G.R. No. 104405, May 13, 1993, 222 SCRA 37.

to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1 (d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. Fraud is a state of mind and need not be proved by direct evidence but may be inferred from the circumstances attendant in each case.[33]

In the instant case, petitioner's October 12, 2000 Affidavit[34] is bereft of any factual statement that respondent committed a fraud. The affidavit narrated only the alleged fraudulent transaction between Wincorp and Virata and/or Power Merge, which, by the way, explains why this Court, in G.R. No. 162928, affirmed the writ of attachment issued against the latter. As to the participation of respondent in the said transaction, the affidavit merely states that respondent, an officer and director of Wincorp, connived with the other defendants in the civil case to defraud petitioner of his money placements. No other factual averment or circumstance details how respondent committed a fraud or how he connived with the other defendants to commit a fraud in the transaction sued upon. In other words, petitioner has not shown any specific act or deed to support the allegation that respondent is guilty of fraud.

The affidavit, being the foundation of the writ,[35] must contain such particulars as to how the fraud imputed to respondent was committed for the court to decide whether or not to issue the writ.[36] Absent any statement of other factual circumstances to show that respondent, at the time of contracting the obligation, had a preconceived plan or intention not to pay, or without any

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[33] *Id*. at 45.

[34] *Rollo*, pp. 377-383.

[35] *Jardine-Manila Finance, Inc. v. Court of Appeals*, G.R. No. 55272, April 10, 1989, 171 SCRA 636, 645.

[36] *See Philippine Bank of Communications v. Court of Appeals*, 405 Phil. 271, 280 (2001).

showing of how respondent committed the alleged fraud, the general averment in the affidavit that respondent is an officer and director of Wincorp who allegedly connived with the other defendants to commit a fraud, is insufficient to support the issuance of a writ of preliminary attachment.[37] In the application for the writ under the said ground, compelling is the need to give a hint about what constituted the fraud and how it was perpetrated[38] because established is the rule that fraud is never presumed.[39] Verily, the mere fact that respondent is an officer and director of the company does not necessarily give rise to the inference that he committed a fraud or that he connived with the other defendants to commit a fraud. While under certain circumstances, courts may treat a corporation as a mere aggroupment of persons, to whom liability will directly attach, this is only done when the wrongdoing has been clearly and convincingly established.[40]

Let it be stressed that the provisional remedy of preliminary attachment is harsh and rigorous for it exposes the debtor to humiliation and annoyance.[41] The rules governing its issuance are, therefore, strictly construed against the applicant,[42] such that if the requisites for its grant are not shown to be all present, the court shall refrain from issuing it, for, otherwise, the court which issues it acts in excess of its jurisdiction.[43] Likewise, the writ should not be abused to cause unnecessary prejudice. If it

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[37] *See PCL Industries Manufacturing Corporation v. Court of Appeals*, G.R. No. 147970, March 31, 2006, 486 SCRA 214, 222-226.

[38] *Ting v. Villarin*, G.R. No. 61754, August 17, 1989, 176 SCRA 532, 535.

[39] *Benitez v. Intermediate Appellate Court*, G.R. No. 71535, September 15, 1987, 154 SCRA 41, 46.

[40] *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, G.R. No. 153535, July 28, 2005, 464 SCRA 409, 424-425.

[41] *Benitez v. Intermediate Appellate Court*, *supra* note 39, at 48.

[42] *D.P. Lub Oil Marketing Center, Inc. v. Nicolas*, G.R. No. 76113, November 16, 1990, 191 SCRA 423, 428.

[43] *Philippine Bank of Communications v. Court of Appeals*, *supra* note 36, at 282.

is wrongfully issued on the basis of false or insufficient allegations, it should at once be corrected.[44]

Considering, therefore, that, in this case, petitioner has not fully satisfied the legal obligation to show the specific acts constitutive of the alleged fraud committed by respondent, the trial court acted in excess of its jurisdiction when it issued the writ of preliminary attachment against the properties of respondent.

We are not unmindful of the rule enunciated in *G.B. Inc., etc. v. Sanchez, et al.*,[45] that

> [t]he merits of the main action are not triable in a motion to discharge an attachment otherwise an applicant for the dissolution could force a trial of the merits of the case on his motion.[46]

However, the principle finds no application here because petitioner has not yet fulfilled the requirements set by the Rules of Court for the issuance of the writ against the properties of respondent.[47] The evil sought to be prevented by the said ruling will not arise, because the propriety or impropriety of the issuance of the writ in this case can be determined by simply reading the complaint and the affidavit in support of the application.

Furthermore, our ruling in G.R. No. 162928, to the effect that the writ of attachment is properly issued insofar as it concerns the properties of Virata and UEM-MARA, does not affect respondent herein, for, as correctly ruled by the CA, respondent is "never a party thereto."[48] Also, he is not in the same situation as Virata and UEM-MARA since, as aforesaid, while petitioner's affidavit detailed the alleged fraudulent scheme perpetrated by

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[44] *Benitez v. Intermediate Appellate Court, supra* note 39, at 48.

[45] 98 Phil. 886 (1956); *see Chuidian v. Sandiganbayan*, 402 Phil. 795, 816 (2001); *see also FCY Construction Group, Inc. v. Court of Appeals*, 381 Phil. 282 (2000).

[46] *Id*. at 891.

[47] See *Villongco, et al. v. Panlilio etc., et al.*, 94 Phil. 15 (1953).

[48] CA *rollo*, p. 341.

Virata and/or Power Merge, only a general allegation of fraud was made against respondent.

We state, in closing, that our ruling herein deals only with the writ of preliminary attachment issued against the properties of respondent—it does not concern the other parties in the civil case, nor affect the trial court's resolution on the merits of the aforesaid civil case.

WHEREFORE, premises considered, the petition is *DENIED*. The September 14, 2005 Decision and the January 6, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 90130 are *AFFIRMED*.

SO ORDERED.

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

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

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